

**HIGH COURT OF TRIPURA
AGARTALA**

REA No.05 of 2022

Shri Rajesh Saha,
S/o: Lt. Gopal Ch. Saha,
Resident of Masjid Road, Santipara,
P.O.-Agartala, P.S.-East Agartala,
District-West Tripura, Age-47 years.

----Plaintiff-Appellant(s)

Versus

1. Shri Bijoy Kr. Pal,
2. Shri Ranjit Pal,
Both sons of Lt. Prafulla Kr. Pal,
Residents of B.K. Road, Banamalipur,
P.O.-Agartala, P.S.-East Agartala,
District-West Tripura.
3. Shri Rajesh Roy,
S/o- Lt. Narayan Roy,
Resident of B.K. Road, Palace Compound,
P.O.-Agartala, P.S.-East Agartala,
District-West Tripura.

----Defendant-Respondent(s)

4. Punjab National Bank,
Represented by the Branch Manager,
Agartala Branch, Mantri Bari Road, Agartala.

----Pro-Respondent(s)

For Appellant(s)	:	Mr. S.M. Chakraborty, Sr. Advocate Mrs. P. Chakraborty, Advocate
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For Respondent(s)	:	Mr. A. Roy Barman, Advocate
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Date of hearing and delivery of Judgment & Order	:	18.01.2024
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Whether fit for reporting	:	Yes
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**HON'BLE MR. JUSTICE ARINDAM LODH
HON'BLE MR. JUSTICE S.D. PURKAYASTHA**

JUDGMENT & ORDER (ORAL)

This is a first appeal filed under Section 96 of the Civil Procedure Code, 1908 challenging the legality of the judgment and decree dated 17.12.2021 passed by learned Civil Judge(Senior Division), Court No.1, West Tripura, Agartala in T.S. 130 of 2016.

2. The facts projected by learned Civil Judge(Senior Division) in the judgment may be reproduced hereunder:

“2. FACTUAL MATRIX

The plaintiff stated in his plaint that the defendants family and the plaintiff had a good relation since years.

The suit premise belonged to the defendants specifically defendant no 1 and 2.

The said defendants once proposed the plaintiff to purchase the same and settled the consideration money of Rs.50,00,000/.

The plaint further reveals that the defendant made above proposal as they were in urgent need a money for the purpose of the marriage of the daughter of defendant No. 1.

The plaintiff after making a preliminary inquiry of the records of the suit premise accepted the proposal and ultimate written agreement for sale which they authenticated before the notary public vide No.185/FEB/16 dated 08.02.2016.

During execution of the agreement for sale the plaintiff paid Rs. 5,00,000/ to the defendant as earnest money of the consideration price which settled to Rs. 50.00,000/.

The time stipulated for execution of the deed of sale was three months from the date of agreement as stated above.

In the month of February 2016 defendant No. 1 approached the plaintiff for a loan of Rs.5,00,000/ on condition that it would be adjusted against the consideration money of the suit land.

After several persuasions by the defendant No.1, the plaintiff gave him Rs. 5,00,000/ in the following mode:

Rs.1,00,000/ was paid through NEFT NO.033099 dated 12.02.2016;

*Rs. 2,00,000/ through cheque No. 33963 dated 25.02.2016;
& Rs. 2,00,000/ vide cheque No. 33964 dated 01.03.2016.*

The said transaction is stated to be within the knowledge of defendant No.2.

Defendant No.1 time and again assured the plaintiff that the subsequent Rs. 5,00,000/ will be deducted at the time of execution of the sale deed.

However, the defendants later on demanded Rs.52,00,000/ as the consideration price of the suit land to which the plaintiff agreed and again entered into an agreement before the Notary Public on 06.05.2016 vide No. 69/May/16.

Again the time for execution of the sale deed was stipulated to 3 months from the date of agreement for sale.

During the execution of second agreement for sale the plaintiff again paid Rs.5,00,000/ in cash exactly on 06.05.2016.

Hence, the plaintiff alleged that the defendants received total amount of Rs.15,00,000/ in advance of the total consideration money which got ultimately fixed to Rs.52,00,000/.

The parties agreed that during execution of the sale deed the plaintiff will pay balance amount of Rs. 37,00,000/ to the defendants.

The plaintiff made the Branch Manager of Punjab National Bank , Agartala Branch as prodefendant because account of the plaintiff lies with the said branch.

Now, coming back to the background of the suit it is alleged by the plaintiff that the defendants promised to execute the sale deed in favour of the plaintiff within 3 months from the date of execution of the agreement dated 06.05.2016 but they did not execute the sale deed.

The plaintiff claims that he was and is always ready and willing to perform his part of contract by making payment of rest of the consideration money , but it is the defendants who are adopting dillydallying methods avoiding the same.

Finding no other alternative the plaintiff issued one Advocate's notice on 21.08.2016 by registered post asking the defendant to execute sale deed after receiving the balance amount of consideration money.

In spite of such notice the defendants remained dormant and hence, the plaintiff met the defendant No.1 on 1.11.2016 and

02.11.2016 at his Delhi residence requesting him to execute the sale deed.

In the meanwhile the plaintiff claim to know that defendant NO.1 and 2 in connivance with one Rajesh Saha(defendant no.3) have created a sale deed No. 1-10581, 1-10582 and 1-10583 for land measuring 0.0070 acres, 0.0140 acres and 0.0070 acres covering the suit land illegally and against the interest of the plaintiff.

The plaintiff claims his right over the suit land on the strength of the agreement for sale alleging that any transfer of the suit premise by the defendants is not sustainable in the eye of law.

The plaintiff claims that the transfer of the suit premise by defendant No. 1 and 2 in favour of defendant No. 3 is a mere public transaction done to deceive the plaintiff.

Seeking an order of cancellation of those deeds along with a decree of specific performance of contract the plaintiff has filed this suit.

This is in short the background which gave birth to this instant suit.”

3. The learned trial Court after consideration of the pleadings and evidence brought on record and having heard the arguments of learned counsel appearing for the parties passed the following order:

“12. ORDER

“In the result, the suit of the plaintiff is decreed opining that the plaintiff is entitled for a decree of realization of money whereby defendant no.1 is asked to make a payment of Rs 15 Lakhs to the plaintiff with an interest @ 8% from the date of cause of action till its recovery.

The suit is disposed of on contest with cost.

Make necessary entry in the relevant Trial Register.

Prepare decree accordingly and put up before me for signature within 14 (fourteen) days from today

Pronounced in the open court.”

4. Being aggrieved by and dissatisfied with the said judgment and decree passed by learned Civil Judge(Senior Division), Court No.1, West Tripura, Agartala, the plaintiff-appellant has preferred the instant appeal before this Court.

5. We have heard Mr. S.M. Chakraborty, learned senior counsel assisted by Mrs. P. Chakraborty, learned counsel appearing for the plaintiff-appellant. Also heard Mr. A. Roy Barman, learned counsel appearing for the defendant-respondent no.1 and 2.

6. Mr. Chakraborty, learned senior counsel appearing on behalf of the plaintiff-appellant has strenuously argued that the learned Civil Judge(Senior Division) had committed serious error of law and facts in passing the impugned judgment dismissing the reliefs sought for by the plaintiff-appellant. Mr. Chakraborty, learned senior counsel has drawn our attention to the fact that the plaintiff-appellant has not only pleaded that he was always ready and willing to perform his part of agreement but also had proved said averments by way of adducing evidence. To substantiate his submission, Mr. Chakraborty, learned senior counsel has relied upon the demand notice dated 21.08.2016 whereby and whereunder the plaintiff-appellant had served notice upon defendant-respondents no.1 and 2 through his advocate asking the defendant no.1 to perform his part of agreement by way of executing the sale deed in terms of the “Deed of Agreement for Sale” dated 08.02.2016 and 06.05.2016. With much emphasis learned senior counsel has submitted that the learned Civil Judge(Senior Division) has failed to take into account the Section 10 of SR Act, 1963 which is substituted by the Act 18 of 2018 w.e.f. 01.10.2018, where the words “may” and “in the discretion of the Court” were replaced by the words “shall”. Mr. Chakraborty,

learned senior counsel submits that after 2018 amendment, Section 10 of SR Act mandates the Court to direct the vendee to enforce the terms of the agreement, and, in the instant case, by way of directing the defendant no.1 to perform his part of performance mentioned in the agreement.

Mr. Chakraborty, learned senior counsel has further submitted that the plaintiff-appellant had paid Rs.15,00,000/- as advance in terms of the agreement dated 06.05.2016.

7. On the other hand, Mr. Roy Barman, learned counsel for defendant-respondents no.1 and 2 has submitted that the plaintiff-appellant has miserably failed to establish that he was always ready and willing to perform his part of agreement.

8. Mr. Roy Barman, learned counsel has further submitted that the defendant no.1 had received only Rs.10,00,000/- instead of Rs.15,00,000/- as observed by learned Civil Judge(Senior Division) in the judgment. Learned counsel for the defendant-respondents no.1 and 2 has contended that the defendant no.1 had served 3(three) demand notices requesting the plaintiff-appellant to pay the balance consideration money as decided in the agreement dated 06.05.2016 to ensure the execution of the sale deed as the defendant no.1 was in urgent need of money.

9. On the background of the aforesaid arguments advanced by learned counsel appearing for the parties, we have perused the plaint, counter affidavit and the evidence adduced by way of filing affidavits.

10. We have also perused the issues framed by learned Court below, which are as under:

“i. Whether the suit is maintainable in it's present form and nature?

ii. Whether the plaintiff has any cause of action for filing this suit?

- iii. Whether the suit of the plaintiff is barred by limitation?*
- iv. Whether the plaintiff is entitled to get a decree for specific performance of contract directing the defendants to execute the sale deed over the suit land in favour of the plaintiff?*
- v. Whether there is any personal bars to relief as per section 16 (c) of the SR Act, 1963 ?*
- vi. Whether the registered sale deed vide no. 1-10581 dated 16.12.2016 , sale deed No. 1-10582 dated 16.12.2016 and sale deed No. 1-10583 dated 16.12.2016 are liable to be adjudged void; if so, whether those instruments are liable to be delivered up and cancelled?*
- vii. Whether the plaintiff is entitled to get a decree as prayed for?*
- viii. What other relief(s) the parties are entitled to?"*

11. The learned trial Court while passing the impugned judgment had dealt with all the issues and also considered the documents exhibited. Learned trial Court decided the issues no.i, ii and iii in favour of the plaintiff-appellant, but, rest of the issues were decided against him.

12. We have given our thoughtful consideration to all the issues framed by the learned trial Court.

13. The core issue to be decided in this appeal, according to us, is whether the plaintiff-appellant has been able to prove that he was always ready and willing to perform his part of agreement, which is a mandatory condition in a suit for specific performance of contract as provided under Section 16(c) of the Specific Relief Act, 1963(for short, SR Act).

14. We have also given our thoughtful consideration to the submission of learned senior counsel appearing on behalf of the plaintiff-appellant that learned trial Court while considering Section 16(c) of the SR Act has not considered Section 10 of the SR Act. This leads us to take note of both Sections 10 and 16 of the SR Act, which are as under:

“10. Specific performance in respect of contracts. – The specific performance of a contract shall be enforced by the court subject to the provisions contained in sub-section (2) of Section 11, Section 14 and Section 16.”

Before the above substitution, Section 10 was read as under:

“10. Cases in which specific performance of contract enforceable. – Except as otherwise provided in this Chapter, the specific performance of any contract may, in the discretion of the court, be enforced –

- (a) When there exists no standard for ascertaining actual damage caused by the non-performance of the act agreed to be done; or*
- (b) When the act agreed to be done is such that compensation in money for its non-performance would not afford adequate relief.”*

Section 16 reads as under:

“16. Personal bars to relief. – Specific performance of a contract cannot be enforced in favour of a person –

- (a) Who has obtained substituted performance of contract under Section 20; or*
- (b) Who has become incapable of performing, or violates any essential term of, the contract that on his part remains to be performed, or acts in fraud of the contract, or willfully acts as variance with, or in subversion of, the relation intended to be established by the contract; or*
- (c) Who fails to prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.”***

15. It is true that after amendment, Section 10 of SR Act has been significantly given a new shape and the word “may” has been replaced by the word “shall”. What Section 10 stipulates is that when the plaintiff has been

able to establish his case, then, the Court has no other alternative but to enforce the terms of the agreement. However, at the same time, simultaneously, it is also to be kept in mind that before acting upon or enforcement of Section 10 of SR Act, the plaintiff must make out his case as provided under Section 16(c) of the SR Act, which clearly stipulates that a party claiming specific performance of contract/agreement must prove that he was always ready and willing to perform his part mentioned in the agreement. To put it in a different way, unless and until the essential requirements of Section 16(c) of the SR Act are proved, then, the Courts cannot be said to be under any obligation to enforce the terms of the agreement as provided under Section 10 of SR Act. In other words, observance/compliance of Section 16(c) of SR Act is a pre-condition to the compliance of Section 10 of the SR Act.

16. Keeping the above principle of law in mind, we have proceeded to examine and re-appreciate the evidence on record adduced by the plaintiff-appellant. Admittedly, the defendant did not adduce any evidence or he did not even cross-examine the plaintiff-appellant. However, it is settled proposition of law that the plaintiff has to prove his case and he cannot depend upon the weakness of the defendant's case.

17. In the instant case, what has been surfaced is that the examination-in-chief filed by the plaintiff-appellant under Order 18 Rule 4(1) of CPC is the replica of the averments/pleadings made in the prayer. Again, the evidence of PW2 is the replica of the evidence recorded by the plaintiff-appellant as PW1. It is true that the plaintiff-appellant has averred that he was always ready and willing to perform his part of agreement and he approached repeatedly to the defendant-respondents, but, the plaintiff-appellant has not made endeavour, or, to say otherwise, he has not brought any materials to

prove that he was always ready and willing to perform his part of agreement. There is no piece of evidence that the plaintiff-appellant had ever approached the defendant-respondent no.1 to execute his part of agreement. It is further surfaced that during the subsistence of the agreement dated 06.05.2016, the plaintiff-appellant had never served any notice upon the defendant-respondent no.1 to execute his part of agreement and he was always ready and willing to perform his part of agreement by way of offering balance consideration of money. What has been brought on record is that the plaintiff had served a demand notice through his advocate only on 21.08.2016 after expiry of the tenure of agreement asking the defendant-respondent no.1 to perform his part of agreement.

18. The agreement was entered upon between the plaintiff-appellant and the defendant no.1 on 06.05.2016 and it was stipulated in the agreement that the balance consideration of money would be paid to the defendant no.1 within 3(three) months followed by the execution of the sale deed. The tenure of the agreement for sale expired on 06.08.2016.

19. As we have said in the preceding paragraphs, there is absolutely no evidence as to how, when and in what manner the plaintiff-appellant had approached and expressed his readiness and willingness to pay the balance consideration money for the execution of the sale deed on or before 06.08.2016, the date of expiry of the deed of agreement for sale. After expiry of 3(three) months, the plaintiff-appellant had served a demand notice upon the defendant no.1 requesting him to execute a sale deed on receipt of the balance consideration of money. This being the most vital ingredient to get success in a suit for specific performance of contract, which the plaintiff-

appellant has miserably failed to substantiate, other issues, needless to say, would automatically fall and thus, need not be traversed.

20. For these reasons stated and discussed here-in-above, we do not find any ground to interfere with the findings of the learned trial Court that the plaintiff-appellant has failed to establish his case that he was ready and willing to perform his part of agreement by way of offering payment of balance consideration of money to the defendant no.1 for execution of sale deed i.e. to perform his part of agreement.

21. Accordingly, this appeal must fail and accordingly, stands dismissed. The judgment and decree passed by learned trial Court stand upheld and confirmed.

No order as to cost(s).

Send down the LCR.

Decree be drawn up accordingly.

JUDGE

JUDGE

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GHOSH SANJAY GHOSH
Date: 2024.02.01
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