



A.S.(MD)No.188 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
19.09.2025	26.09.2025

CORAM:

**THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

**A.S.(MD)No.188 of 2019
and
C.M.P.(MD)No.9557 of 2019**

P.Raghunathan

... Appellant / Plaintiff

vs.

V.Rayar

... Respondent / Defendant

PRAYER : Appeal Suit filed under Section 96 Civil Procedure Code against the judgement and decree dated 10.06.2019 passed in O.S.No.178 of 2013, on the file of II Additional District Court, Tiruchirapalli, dismissing the suit filed by the appellant as far as the relief of specific performance of the sale agreement dated 09.08.2011 with costs.

For Appellant

: Mr.S.Ramakrishnan
for Mr.K.S.Vamsidhar



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For Respondent

: Mr.P.Subbiah

JUDGMENT

C.V.KARTHIKEYAN, J.

The plaintiff in O.S.No.178 of 2013, on the file of the II Additional District Court, Tiruchirapalli, is the appellant herein.

2. The suit in O.S.No.178 of 2013 was filed by the appellant seeking specific performance of an Agreement of Sale dated 09.08.2011. In the alternative, the appellant prayed for a direction against the respondent to pay a sum of Rs.12,80,000/-, together with interest at 12% per annum from the date of the suit till the date of realization, along with a charge over the suit property, and for costs.

O.S.No.178 of 2013 [II Additional District Court, Trichy]:-

3. In the plaint, the plaintiff/appellant herein stated that he had entered into an agreement with the defendant/respondent herein on 09.08.2011, whereby the



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respondent agreed to sell the suit property to the appellant for a total sale consideration of Rs.2,47,35,360/-. It was contended that the appellant had paid an advance amount of Rs.10,00,000/-, and had agreed to pay the balance sale consideration of Rs.2,37,35,360/- within a period of six months from the date of the agreement. Upon receipt of the balance amount, the respondent was obligated to execute the sale deed in respect of the suit schedule property in favour of the appellant or his nominee.

4. The suit schedule property comprises vacant land measuring 0.91 cents, being a part of a larger extent of 1.82 cents in S.No.10/A1 at Tharanallur Village, Tiruchirapalli.

5. It was further contended in the plaint that the appellant was always ready and willing to pay the balance sale consideration, but the respondent was not ready or willing to perform his part of the agreement. It was also alleged that the appellant came to know that the respondent was attempting to alienate the suit property to third parties. Though the appellant claimed to be ready with the balance sale consideration, it was contended that the delay in execution of the sale deed was solely attributable to the conduct of the respondent.



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6. It was further stated that the appellant issued a legal notice dated 16.04.2013, calling upon the respondent to appear before the Office of the Sub-Registrar to receive the balance sale consideration and execute the sale deed.

7. It was further stated that, however, the respondent issued a reply notice dated 23.04.2013, wherein he raised false and untenable allegations. The respondent claimed that time was the essence of the agreement and that the appellant had failed to come forward to pay the balance sale consideration, which, according to him, indicated that the appellant did not possess the necessary funds. He also contended that the value of the property had increased substantially in the intervening period and, therefore, enforcing the agreement would cause financial loss to him.

8. The appellant denied the allegations made in the reply notice as false and reiterated that he was always ready and willing to pay the balance sale consideration of Rs.2,37,35,360/-. It was in these circumstances that the appellant instituted the present suit seeking the reliefs as stated above.



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9. In the written statement, the respondent admitted having entered into the agreement dated 09.08.2011 with the appellant in respect of the suit schedule property and also admitted that the total sale consideration was fixed at Rs.2,47,35,360/-, out of which he had received an advance amount of Rs.10,00,000/-.

10. However, he contended that the agreement specifically stipulated that the appellant was required to pay the balance sale consideration within a period of six months, which the appellant failed to do so. It was therefore contended that the appellant was never ready and willing to pay the balance sale consideration and to have the sale deed executed in his favour.

11. The respondent further alleged that the appellant had suppressed material facts and had filed the suit only with an intention to grab the property. He also pointed out that the appellant had issued the legal notice after considerable delay and had instituted the suit after an even longer delay.



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12. It was further contended that the guideline value of the property had increased substantially during the intervening period, and that the appellant had intentionally delayed issuing the notice and filing the suit with the ulterior motive of acquiring the property at a price lower than its prevailing market value.

13. The respondent denied all other averments made in the plaint and sought dismissal of the suit.

14. On the basis of the pleadings, the following issues were framed:-

"(i) Whether the plaintiff is entitled for the relief of specific performance as prayed for or not?

(ii) Whether the plaintiff is entitled for the alternative relief of refund of advance amount or not?

(iii) To what other relief?"

15. During the trial, the plaintiff examined himself as P.W.1 and marked Exhibits A.1 to A.8 on his side. Ex.A.1 was the unregistered Agreement of Sale dated 09.08.2011. Ex.A.2 was the copy of the legal notice issued by the plaintiff dated 16.04.2013. Ex.A.4 was the reply issued by the defendant dated



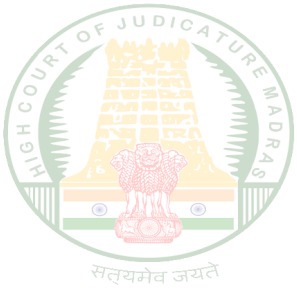
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02.05.2013. Exs.A.5 to A.7 were copies of Income Tax Returns for the Assessment Years 2011–2012, 2012–2013, and 2013–2014, filed in the name of Mrs. Sureshkumari. Ex.A.8 was a certificate issued by the Chief Manager, Indian Bank, Trichy, dated 08.09.2016.

16. Based on the pleadings and appreciation of the evidence, the learned Trial Judge observed that the appellant, during cross-examination, had admitted that the six-month time period was in fact stipulated in the Agreement (Ex.A.1). He further deposed that it was his father who was aware of the circumstances surrounding the execution of the Agreement.

17. The appellant also stated that it was his father who had caused the issuance of the Advocate notice dated 16.04.2013 (Ex.A.2), and that only his father would be aware of the contents of the reply notice dated 02.05.2013 (Ex.A.4). He further admitted that it was his father alone who would know the details regarding the institution of the suit, which was filed in November 2013.



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18. The appellant also conceded that only his father would be aware why the suit was filed after more than two years from the date of the Agreement. He admitted that the advance amount of Rs.10,00,000/- had been paid by his father, and further stated that he himself was not in possession of the balance sale consideration of Rs.2,37,35,360/-, and that it was only his father who possessed the said amount.

19. He also categorically admitted that he had not filed any document to establish that he was in possession of the balance sale consideration within the stipulated six-month period from the date of the Agreement.

20. The relevant portion of his cross-examination in vernacular is as follows:-

"நான் தாக்கல் செய்துள்ள பிரமாண வாக்குமூலத்தில் என்னை விட எனது தந்தை பிரகாசம் பிள்ளைக்குதான் வழக்கு விபரங்கள் நன்றாக தெரியும் என்று நான் கூறியுள்ளேனா என்றால் அவ்வாறு கூறியுள்ளேன். வழக்கை தாக்கல் செய்வதற்கு முன்பு பிரதிவாதிக்கு வழக்கறிஞர் அறிவிக்கை அனுப்புவது குறித்து எனது தந்தை கூறினாரா என்றால் கூறினார். ரியல் எஸ்டேட் தொழில் செய்வதற்கு நிலத்தினை சதுரடி கணக்கில் வாங்குவோமா என்றால் அது குறித்து எனது தந்தைக்குதான்



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தெரியும். எத்தனை வருடங்களாக அந்த நிலம் தரிசு நிலமாக உள்ளது என்றால் அது குறித்து எனது தந்தைக்குதான் தெரியும். வழக்குச் சொத்தினை சுற்றியுள்ள நிலங்கள் தரிசு நிலங்களாக இருந்து அதனை தற்போது மனைகளாக பிரித்துள்ளார்களா என்றால் அது குறித்து எனது தந்தைக்குதான் தெரியும். வா.சா.ஆ2 வழக்கறிஞர் அறிவிப்பு பிரதிவாதிக்கு அனுப்பினோம் என்று சொன்னால் அப்பாவுக்குதான் அது பற்றி தெரியும். வா.சா.ஆ2 அறிவிப்பு 16.4.2013 தேதியிட்டது என்று சொன்னால் அது பற்றி அப்பாவுக்குதான் தெரியும். ஆனால் வழக்கறிஞர் மூலம் அப்பா அறிவிப்பு அனுப்பியதாக அப்பா சொல்லி தெரியும். வா.சா.ஆ.2 அறிவிப்பிற்கு பிரதிவாதி தரப்பில் 2.5.2013 தேதியிட்ட வழக்கறிஞர் மூலம் பதில் அறிவிப்பு வா.சா.ஆ.4 அனுப்பப்பட்டது என்றால் அது பற்றி அப்பாவுக்குத்தான் தெரியும். இந்த வழக்கு நவம்பர் மாதம் 2013ல் தாக்கல் செய்த விபரம் அப்பாவுக்குத் தான் தெரியும். வா.சா.ஆ 1 கிரைய ஒப்பந்தம் ஏற்படுத்திய தேதியில் இருந்து சுமார் 2 □ வருடம் கழித்துதான் வழக்கு தாக்கல் செய்யப்பட்ட விபரம் தெரியுமா என்றால் அப்பாவுக்குத்தான் தெரியும். வா.சா.ஆ 1 கிரைய ஒப்பந்தம் ஏற்படுத்திக் கொண்ட போது அதில் கண்டுள்ள கிரைய முன் தொகையான ரூ.10,00,000/-யை என் அப்பாதான் கொடுத்தார். இந்த பாக்கி கிரையத் தொகையான ரூ.2,37,35,360/-என்னிடம் இருந்ததா என்றால் இருந்தது. இல்லை அப்பாவிடம் இருந்தது. வா.சா.ஆ1 கிரைய ஒப்பந்தம் ஏற்படுத்திய தேதியிலிருந்து 6 மாத கிரைய கால கெடுவிற்குள் என்னிடம் பாக்கி கிரையத் தொகையான ரூ.2,37,35,360/- இருந்ததை காட்ட ஆவணங்கள் என்னிடம் இல்லை."



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21. During cross-examination, the appellant further stated that only his elder brother would know the details of the property, and that only his father was aware of the contents of the plaint and the description of the property as set forth therein. He admitted that any questions regarding the specific property covered under the agreement should be addressed to his father. The appellant also acknowledged that he signed the Agreement at the instance of his father but claimed that he did not have personal knowledge about the Agreement itself, and that his father was fully aware of all details pertaining to the Agreement.

22. The relevant portion of the cross-examination and the admissions therein, in vernacular, are as follows:-

"வா.சா.ஆ1 கிரைய ஒப்பந்தத்தில் என் அப்பா கையெழுத்து போடச் சொன்னார். நான் கையெழுத்து செய்தேன். வா.ச.ஆ1 ஆவணத்தை என் தந்தைதான் முழுமையாக ஏற்படுத்தினார் என்றால் சரிதான். வா.சா.ஆ1 கிரைய ஒப்பந்தத்தைப் பற்றி எனக்கு எதுவும் தெரியாது என்றும், என் அப்பாவுக்குத்தான் தெரியும் என்றால் சரிதான்."

23. Upon examination of the above admissions made during cross-examination, the learned Trial Judge concluded that the appellant was never in possession of the balance sale consideration. The learned Judge further observed



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that Exhibits A.5 to A.7 were the Income Tax Returns of the appellant's mother, Mrs.Sureshkumari, who was not examined as a witness to establish that she was ready to provide the funds to the appellant towards the sale consideration.

24. Additionally, the learned Trial Judge noted that Exhibit A.8 was a certificate issued by the Chief Manager, Indian Bank, Trichy, relating to an account standing in the name of the appellant's father. The certificate, however, pertained to the year 2016, significantly after the Agreement dated 09.08.2011, and was produced only after the institution of the suit.

25. In view of these findings, the learned Trial Judge held that the appellant was not entitled to specific performance of the Agreement.

26. With regard to the alternate relief, since there was an admission that the respondent had received the advance amount, a decree was passed directing the respondent to return the advance amount with interest at 12% per annum from the date of the suit until the date of the decree, and at 6% per annum thereafter until realization. Furthermore, a charge was created over the suit property until the advance amount was fully realized.



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27. Aggrieved by the findings of the learned Trial Judge, the plaintiff has filed the present Appeal Suit.

28. Heard arguments advanced by Mr.S.Ramakrishnan for Mr.K.S.Vamsidhar, learned counsel for the appellant and Mr.P.Subbiah, learned counsel for the respondent and perused the material records.

29. The following points arise for consideration in this Appeal Suit, as required under Order XLI Rule 31 of the Code of Civil Procedure:

(i) Whether the Trial Court properly appreciated the evidence on record in concluding that the plaintiff/appellant had failed to prove his readiness and willingness to perform his part of the contract within the stipulated time, as required for the grant of specific performance?



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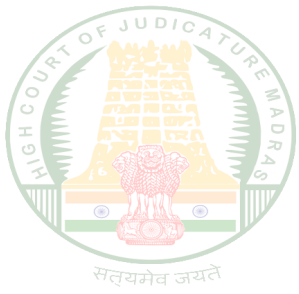
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(ii) Whether the Trial Court was justified in granting the alternate relief by directing the defendant/respondent to refund the advance amount received under the Agreement of Sale, along with interest at 12% per annum from the date of the suit till the date of decree, and subsequent interest at 6% per annum from the date of decree till the date of realization, and in creating a charge over the suit property for securing the said amount?

Point No.(i):-

30. The appellant had filed the suit seeking specific performance of an Agreement of Sale dated 09.08.2011, under which he and the respondent had agreed upon the terms for the conveyance of the suit schedule property for a total consideration of Rs.2,47,35,360/-. This agreement was marked as Ex.A.1 during the trial. At the time of entering into the agreement, the appellant had paid an advance amount of R.10,00,000/-. He was liable to pay the balance sale consideration of Rs.2,37,35,360/-.

31. As per Ex.A.1, it was stipulated that the said balance amount was to be



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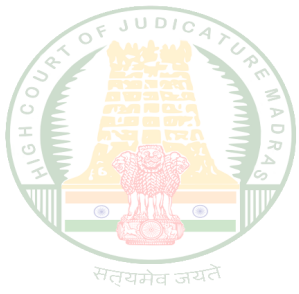
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paid within a period of six months. This fact is neither denied nor disputed by the appellant. It is not the appellant's case that the property suffered from any defect in title. There was only one obligation to be performed by the appellant namely, payment of the balance sale consideration within six months from the date of the agreement. In turn, upon receipt of the said amount, the respondent was required to execute the sale deed.

32. The suit property is vacant land measuring 91 cents, forming part of a larger extent of 1.82 acres in Survey No.10/A1, situated at Tharanallur Village, Trichirapalli.

33. It may also be noted that the appellant's brother had entered into a similar Agreement of Sale with the respondent on 08.08.2011, for the purchase of the remaining portion of the land.

34. The appellant did not pay the balance sale consideration of Rs.2,37,35,360/- within the agreed period of six months. However, he issued a legal notice to the respondent on 16.04.2013, nearly one year and seven months



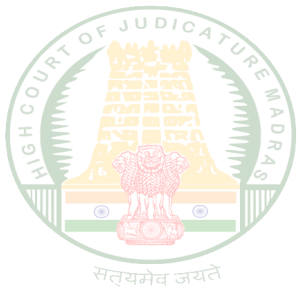
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after the date of the agreement, asserting that he had always been ready and willing to pay the balance amount, and that it was the respondent who had failed to perform his part of the contract.

35. In the said notice, the appellant further demanded that the respondent attend the Sub-Registrar's Office to receive the balance sale consideration and execute the sale deed in his favour. In response, the respondent issued a reply notice dated 02.05.2013, wherein it was specifically contended that the appellant had not approached the respondent at any time during the six-month period to express his willingness to perform the contract or to pay the balance sale consideration. It was further stated that, when the respondent had approached the appellant seeking performance of the agreement, the appellant had candidly informed him that he did not possess the requisite funds to pay the balance amount. These notices were marked during the trial as Exs.A.2 and A.4, respectively.

36. When the appellant graced the witness box as P.W.1, the learned Trial Judge noted that he disclaimed any personal knowledge of the agreement. He deposed that it was his father who was aware of the circumstances surrounding



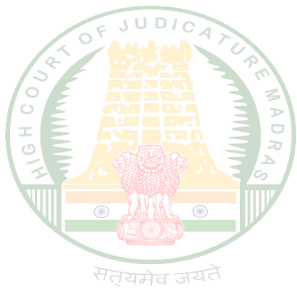
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the agreement; that it was his father who had the financial capacity to pay the sale consideration; and that the appellant himself did not have the means to make such payment. He also admitted that he had not paid the advance amount of Rs.10,00,000/-, which, in fact, had been paid by his father. The appellant further stated that he had signed the agreement solely because his father had requested him to do so.

37. The learned Trial Judge extracted this portion of the appellant's evidence, which has also been reproduced *supra* in this judgment. It is thus evident that the appellant lacked knowledge about the transaction, had not paid the advance amount himself, and had no financial capacity to discharge the balance consideration. Accordingly, it is clear that the appellant was neither ready nor willing to perform his part of the agreement.

38. The appellant relied on documents Ex.A.6 and Ex.A.7, being Income Tax Returns for the Assessment Years 2012-2013 and 2013-2014, which pertained to the income of his mother, Mrs.Sureshkumari. However, there were neither pleadings nor any evidence to suggest that she intended to contribute towards the



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sale consideration. Furthermore, she was not examined as a witness.

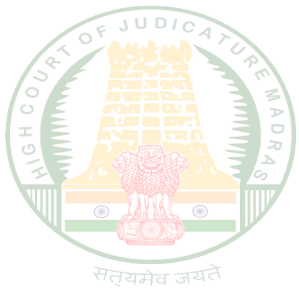
39. Ex.A.8, a certificate dated 08.09.2016 issued by the Chief Manager, Indian Bank, Trichy, pertains to a bank account held by the appellant's father. This certificate was issued nearly three years after the institution of the suit and five years after the date of the agreement. These documents, therefore, do not establish the appellant's readiness and willingness to perform his part of the agreement, and cannot be relied upon for that purpose.

40. Section 16 of the Specific Relief Act, 1963, as it stood at the material time (prior to amendment with effect from 01.10.2018), *inter alia*, provides as follows:-

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

(a) who would not be entitled to recover compensation for its breach; or

(b) who has become incapable of performing, or violates any essential term of, the contract that on his part remains to be performed,



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or acts in fraud of the contract, or wilfully acts at variance with, or in subversion of, the relation intended to be established by the contract; or

(c) who fails to aver and 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.

Explanation.- *For the purposes of clause (c), -*

(i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court;

(ii) the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction."

41. In **U.N.Krishnamurthy vs. A.M.Krishnamurthy** reported in **(2023) 11 SCC 775**, the Hon'ble Supreme Court examined the requirements for proving readiness and willingness to perform an obligation to pay money, and held as follows:-

"23. Section 16 (c) of the Specific Relief Act, 1963 bars the relief of specific performance of a contract in favour of a person, who fails to aver and prove his readiness and willingness to perform his part of contract. In view of Explanation (i) to clause (c) of Section 16, it may



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not be essential for the plaintiff to actually tender money to the defendant or to deposit money in court, except when so directed by the Court, to prove readiness and willingness to perform the essential terms of a contract, which involves payment of money. However, Explanation (ii) says the plaintiff must aver performance or readiness and willingness to perform the contract according to its true construction.

24. To aver and prove readiness and willingness to perform an obligation to pay money, in terms of a contract, the plaintiff would have to make specific statements in the plaint and adduce evidence to show availability of funds to make payment in terms of the contract in time. In other words, the plaintiff would have to plead that the plaintiff had sufficient funds or was in a position to raise funds in time to discharge his obligation under the contract. If the plaintiff does not have sufficient funds with him to discharge his obligations in terms of a contract, which requires payment of money, the plaintiff would have to specifically plead how the funds would be available to him. To cite an example, the plaintiff may aver and prove, by adducing evidence, an arrangement with a financier for disbursement of adequate funds for timely compliance with the terms and conditions of a contract involving payment of money.

*25. In **Man Kaur v. Hartar Singh Sangha [(2010) 10 SCC 512 : (2010) 4 SCC (Civ) 239]**, this Court held that : (SCC p. 531, para 40)*

"40. ... A person who fails to aver and 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 the terms the performance of which has been prevented or waived by the defendant) is barred from claiming specific performance. Therefore, even assuming that the defendant had committed breach, if the plaintiff fails to aver in the plaint or prove that he was always ready and willing to perform the essential terms of contract which are required to be performed by him (other than the terms the performance of which has been prevented or waived by the plaintiff), there is a bar to specific performance in his favour. Therefore, the assumption of the respondent that readiness and willingness on the part of the plaintiff is something which need not be proved, if the plaintiff is able to establish that the defendant refused to execute the sale deed and thereby committed breach, is not correct. Let us give an example. Take a case where there is a contract for sale for a consideration of Rs 10 lakhs and earnest money of Rs 1 lakh was paid and the vendor wrongly refuses to execute the sale deed unless the purchaser is ready to pay Rs 15 lakhs. In such a case there is a clear breach by the defendant. But in that case, if the plaintiff did not have the balance Rs 9 lakhs (and the money required for stamp duty and registration) or the capacity to arrange and pay such



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money, when the contract had to be performed, the plaintiff will not be entitled to specific performance, even if he proves breach by the defendant, as he was not “ready and willing” to perform his obligations.”

26. In *Prem Raj v. DLF Housing Co. Construction (P) Ltd.* [1968 SCC OnLine SC 151 : AIR 1968 SC 1355] cited by Mr.Venugopal, this Court speaking through Ramaswamy, J. held that : (AIR p. 1357, para 5)

“5. ... It is well settled that in a suit for specific performance the plaintiff should allege that he is ready and willing to perform his part of the contract...”

*and if the fact is traversed, he is required to prove a continuous readiness and willingness from the date of the contract to the time of the hearing, to perform the contract on his part. For such conclusion the learned Judge relied upon the opinion of Lord Blanesburgh, in *Ardeshir Mama v. Flora Sassoon* [1928 SCC OnLine PC 43 : (1927-28) 55 IA 360 at p. 372 : AIR 1928 PC 208].*

27. In *Prem Raj v. DLF Housing Co. Construction (P) Ltd.* [1968 SCC OnLine SC 151 : AIR 1968 SC 1355] , in the absence of an averment on the part of the plaintiff in the plaint, that he was ready and willing to perform his part of the contract, it was held that the plaintiff had no cause of action so far as the relief for specific performance was concerned. In this case, of course, there is an averment in the plaint that



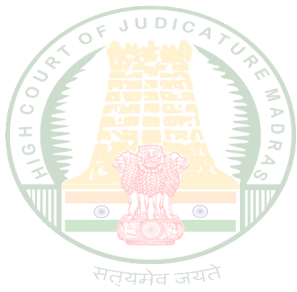
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the respondent-plaintiff was all along ready and willing to perform his obligations under the contract. The question is whether the respondent-plaintiff had proved his readiness and willingness to perform his obligations under the contract.

*28. In **N.P. Thirugnanam v. R.Jagan Mohan Rao [(1995) 5 SCC 115]**, this Court reiterated that Section 16(c) of the Specific Relief Act, 1963 envisages that the plaintiff must plead and prove that he had performed or has always been ready and willing to perform the essential terms of the contract which were to be performed by him other than those terms, the performance of which has been prevented or waived by the defendant. In **N.P. Thirugnanam v. R.Jagan Mohan Rao [(1995) 5 SCC 115]**, this Court said that the continuous readiness and willingness on the part of the plaintiff was a condition precedent for grant of the relief of specific performance.*

*29. This Court, in effect, held that for determining whether the plaintiff was ready and willing to perform his part of the agreement it is necessary for the Court to consider the conduct of the plaintiff prior and subsequent to filing the suit for specific performance. The relevant part of the judgment is extracted hereinbelow : [**N.P. Thirugnanam v. R.Jagan Mohan Rao, (1995) 5 SCC 115]**, SCC pp. 117-18, para 5)*

"5. ... Section 16(c) of the Act envisages that plaintiff must plead and prove that he had performed or



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has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than those terms the performance of which has been prevented or waived by the defendant. The continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of specific performance. This circumstance is material and relevant and is required to be considered by the court while granting or refusing to grant the relief."

30. In **Umabai v. Nilkanth Dhondiba Chavan [(2005) 6 SCC 243]**, this Court held that a finding as to whether the plaintiffs were all along and still ready and willing to perform their part of the contract, was a mandatory requirement under Section 16(c) of the Specific Relief Act. The Court would necessarily have to arrive at the finding that the plaintiff all along were, and still are ready and also willing to perform their part of the contract, taking into account the entirety of the pleadings as also the evidence brought on record. To quote this Court : (SCC p. 258, para 38)

"38. ... '5. ... So far these being a plea that they were ready and willing to perform their part of the contract is there in the pleading, we have no hesitation to conclude, that this by itself is not sufficient to hold that the appellants were ready and willing in terms of Section 16(c) of the



*Specific Relief Act. This requires not only such plea but also proof of the same. Now examining the first of the two circumstances, how could mere filing of this suit, after exemption was granted be a circumstance about willingness or readiness of the plaintiff. This at the most could be the desire of the plaintiff to have this property. It may be for such a desire this suit was filed raising such a plea. But Section 16(c) of the said Act makes it clear that mere plea is not sufficient, it has to be proved.' [Ed. : As observed in **Pushparani S. Sundaram v. Pauline Manomani James** [(2002) 9 SCC 582, p. 584, para 5.] "*

(emphasis supplied)

31. In **K.S. Vidyanadam v. Vairavan** [(1997) 3 SCC 1], B.P.Jeevan Reddy, J. said that grant of the relief of specific performance is discretionary and the Court is not bound to grant it. This Court further held that though time is not of essence to a contract relating to transfer of property, such contracts need to be completed within a reasonable time period. Thus, the time element cannot be completely ignored.

32. In a suit for specific performance of a contract, the Court is required to pose unto itself the following questions, namely:

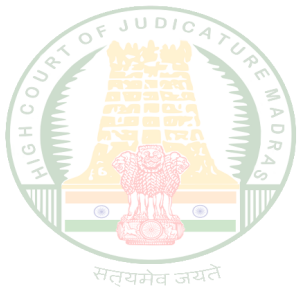
32.1. Whether there is a valid agreement of sale binding on both the vendor and the vendee.



32.2. *Whether the plaintiff has all along been and still is ready and willing to perform his part of the contract as envisaged under Section 16(c) of the Specific Relief Act, 1963.*

33. *There is a distinction between readiness and willingness to perform the contract and both ingredients are necessary for the relief of specific performance. In **Acharya Swami Ganesh Dassji v. Sita Ram Thapar** [(1996) 4 SCC 526] cited by Mr.Venugopal, this Court said that there was a difference between readiness and willingness to perform a contract. While readiness means the capacity of the plaintiff to perform the contract which would include his financial position, willingness relates to the conduct of the plaintiff. The same view was taken by this Court in **Kalawati v. Rakesh Kumar** [(2018) 3 SCC 658 : (2018) 2 SCC (Civ) 609] .*

34. *Even in a first appeal, the first appellate court is duty-bound to examine whether there was continuous readiness and willingness on the part of the plaintiff to perform the contract. This proposition finds support from **Balraj Taneja v. Sunil Madan** [(1999) 8 SCC 396] and **H.P. Pyarejan v. Dasappa** [(2006) 2 SCC 496] where this Court approved the views taken by the Privy Council in **Ardeshir Mama v. Flora Sassoon** [1928 SCC OnLine PC 43 : (1927-28) 55 IA 360 at p. 372 : AIR 1928 PC 208] .*

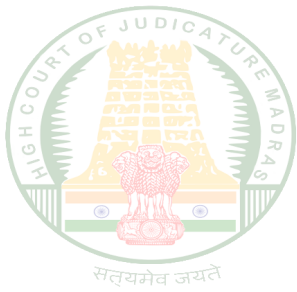


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35. In **Malluru Mallappa v. Kuruvathappa [(2020) 4 SCC 313 : (2020) 2 SCC (Civ) 686]**, this Court observed and held : (SCC pp. 317-19, paras 13-14 & 18)

*"13. It is a settled position of law that an appeal is a continuation of the proceedings of the original court. Ordinarily, the appellate jurisdiction involves a rehearing on law as well as on fact and is invoked by an aggrieved person. The first appeal is a valuable right of the appellant and therein all questions of fact and law decided by the trial court are open for reconsideration. Therefore, the first appellate court is required to address itself to all the issues and decide the case by giving reasons. The court of first appeal must record its findings only after dealing with all issues of law as well as fact and with the evidence, oral as well as documentary, led by the parties. The judgment of the first appellate court must display conscious application of mind and record findings supported by reasons on all issues and contentions (see : **Santosh Hazari v. Purushottam Tiwari [(2001) 3 SCC 179]**, **Madhukar v. Sangram [(2001) 4 SCC 756]**, **B.M.Narayana Gowda v. Shanthamma [(2011) 15 SCC 476 : (2014) 2 SCC (Civ) 619]**, **H.K.N. Swami v. Irshad Basith [(2005) 10 SCC 243]** and **Sri Raja Lakshmi Dyeing Works v. Rangaswamy***



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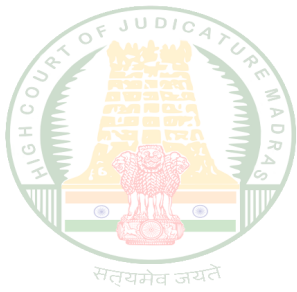
Chettiar [(1980) 4 SCC 259].

14. A first appeal under Section 96 CPC is entirely different from a second appeal under Section 100. Section 100 expressly bars second appeal unless a question of law is involved in a case and the question of law so involved is substantial in nature.

* * *

18. It is clear from the above provisions and the decisions of this Court that the judgment of the first appellate court has to set out points for determination, record the decision thereon and give its own reasons. Even when the first appellate court affirms the judgment of the trial court, it is required to comply with the requirement of Order 41 Rule 31 and non-observance of this requirement leads to infirmity in the judgment of the first appellate court. No doubt, when the appellate court agrees with the views of the trial court on evidence, it need not restate effect of evidence or reiterate reasons given by the trial court. Expression of a general agreement with the reasons given by the trial court would ordinarily suffice." "

42. It is thus clear that the burden of proof lay squarely upon the



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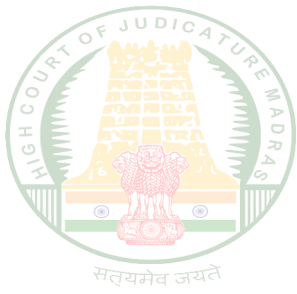
appellant to establish his readiness and willingness to perform his part of the contract. However, he has miserably failed to discharge this burden. He neither demonstrated that he was ready nor that he had the means to pay the balance sale consideration. In fact, as established by his own testimony, he did not even pay the advance amount of Rs.10,00,000/-, which was admittedly paid by his father. It is evident that the appellant was not financially capable and was certainly not willing to pay the balance sale consideration.

43. Accordingly, this Court finds no infirmity in the conclusion arrived at by the learned Trial Judge that the appellant was neither ready nor willing to perform his part of the agreement.

44. Point No.(i) is answered accordingly.

Point No.(ii):-

45. This point pertains to the alternate relief sought by the appellant for refund of the advance amount of Rs.10,00,000/-, paid at the time of execution of the agreement dated 09.08.2011.



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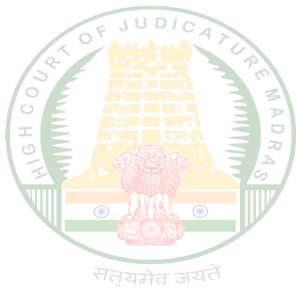
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46. As has been categorically found, the appellant was neither ready nor willing to pay the balance sale consideration and obtain the sale deed from the respondent. However, considering the fact that the respondent had received the advance amount under the agreement, and the agreement has not been performed, it would be appropriate to direct refund of the said amount.

47. Accordingly, we hold that the respondent shall refund the sum of Rs.10,00,000/- to the appellant, together with interest at the rate of 12% per annum from the date of institution of the suit till the date of this judgment, and thereafter at 6% per annum till the date of realization.

48. We further hold that the appellant shall have a charge over the suit property until the respondent refunds the amount as directed above.

49. We find that the learned Trial Judge has correctly adjudicated this aspect.



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50. Point No.(ii) is answered accordingly.

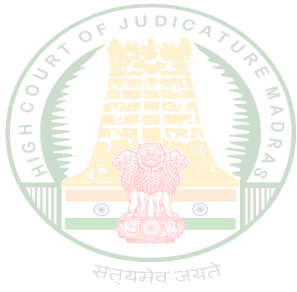
51. In the result, the Appeal Suit is dismissed with costs. Consequently, connected Miscellaneous Petition is closed.

Index : Yes
NCC : Yes
smn2

[C.V.K., J.] & [R.V., J.]
26.09.2025
(2/2)

To

- 1.The II Additional District Judge,
Tiruchirapalli.
- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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C.V.KARTHIKEYAN, J.
and
R.VIJAYAKUMAR, J.

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PRE-DELIVERY JUDGMENT MADE IN
A.S.(MD)No.188 of 2019

26.09.2025
(2/2)