



CGHC010227622024

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**FA No. 153 of 2024**Judgment Reserved on 24.6.2026Judgment Pronounced on 01.10.2026Judgment Uploaded on 01.10.2026

Balram Kashyap S/o Late Jhukulal Kashyap Aged About 52 Years R/o Purani Basti,
Rudra Chowk, Lakhe Nagar Road, Raipur, District Raipur, Chhattisgarh

... Appellant**versus**

1 - Sitaram Sahu (Died) Through LRs As Per Hon'ble Court Order Dated 26-08-2025.

1.1 - Smt. Dayabati Sahu W/o Late Sitaram Sahu Aged About 68 Years R/o Village Parteva, Tehsil Rajim, Post Office Devri, District Gariyabandh, Chhattisgarh

1.2 - Chhabiram Sahu S/o Late Sitaram Sahu Aged About 53 Years R/o Village Parteva, Tehsil Rajim, Post Office Devri, District Gariyabandh, Chhattisgarh

1.3 - Smt. Yashoda Bai W/o Tirith Sahu, D/o Late Sitaram Sahu R/o Village Kurud, Ponduka, Tehsil And District Gariyabandh, Chhattisgarh

1.4 - Smt. Yamin Bai W/o Derharam Sahu, D/o Late Sitaram Sahu Aged About 44 Years R/o Village Beltukri, Tehsil Rajim, District Gariyabandh, Chhattisgarh

2 - Sanjay Sahu S/o Shri Sitaram Sahu Aged About 44 Years R/o Partewa, Post Devri, Police Station And Tahsil Rajim, District Gariyabandh, Chhattisgarh

3 - Trilok Dewangan S/o Ruhela Ram Dewangan Aged About 61 Years R/o Ward No. 06, Gariyabandh, Tahsil And District Gariyabandh, Chhattisgarh

4 - State of Chhattisgarh Through The Collector, District Gariyabandh, Chhattisgarh.

... Respondents

For Appellant	:	Shri B.P. Sharma, Shri M.L. Sakat, Shri Pushp Kumar Gupta, Advocates
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For Respondent No. 1.2	:	Shri Khulesh Kumar Sahu, Advocate
For Respondent No. 1A, 1C, 1D	:	Shri Amit Buxy, Advocate

& 2

For Respondent No. 4	:	Shri Raj Kumar Sahu, PL
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Hon'ble Shri Justice Parth Prateem Sahu

Hon'ble Shri Justice Sachin Singh Rajput

C A V Judgment

Per Sachin Singh Rajput, J.

1. This is an appeal under Section 96 of the Code of Civil Procedure, 1908 (for short 'CPC') preferred by the plaintiff/appellant against the judgment and decree dated 14.06.2024 passed by the Additional District Judge, Gariyaband, District Gariyaband (Chhattisgarh) (for short 'Trial Court') in Civil Suit No.1A of 2021.
2. Parties shall be referred to as per their status before the trial Court.
3. **Facts in nutshell:** Plaintiff and defendant No.1 entered a sale agreement dated 26.10.2016 executed in the presence of three witnesses in respect of the agricultural land situated at Village Pod, Vijay Nagar, Patwari Halka No.12, Tahsil and District Gariyaband (C.G.) bearing Khasra Nos.131 and 132 admeasuring 0.29 hectare and 1.78 hectares respectively totalling 2.07 hectares (hereinafter referred to as "suit land") for a consideration of Rs. 27,75,000/-. The plaintiff paid Rs. 2,00,000/- in cash as earnest money on the date of execution of the agreement itself and the balance amount of Rs. 25,75,000/- was to be paid in December 2016. The agreement stipulated that, after demarcation of the land in December 2016, the balance consideration would be paid and the sale deed would be executed in March 2017. It was further agreed that in case of failure to pay the balance amount within the stipulated period, the earnest money would stand forfeited. According to the plaintiff, before making payment of the balance consideration, he called upon defendant No.1 to have the land demarcated and supply the relevant documents. Upon obtaining the

computerized B-1 and Khasra records in January 2017, the plaintiff came to know that the suit land was already mortgaged with the State Bank of India, but it was not disclosed to him at the time execution of the agreement. The plaintiff therefore demanded that defendant No.1 redeem the mortgage and obtain a No Objection Certificate (NOC) from the bank so that the sale deed could be executed within time. The plaintiff further pleaded that defendant No.1 informed him that the land had already been released from mortgage in the month of May, 2017 itself, that the NOC was also obtained and that only the demarcation proceedings were to be undertaken. Relying upon this version of the defendant No. 1, the plaintiff waited for the NOC and demarcation report. Plaintiff thus asserted that he had always been ready and willing to perform his part of the agreement. The requisite funds were also available with him, but it is the defendant No.1 who delayed to ensure the execution of the sale deed. Not only this, on 15.04.2019 he came to know that the suit land was transferred by defendant No.2 Sanjay Sahu (the son of defendant No. 1) to defendant No. 3 Trilok Dewangan. Upon applying for the certified copy of such transfer related documents, on 24.04.2019 he came to know that defendant No.1 had fraudulently transferred the suit land in favour of his son by a registered gift deed dated 19.05.2017 to defendant No.2. Defendant No.2 thereafter sold the land to defendant No.3 by registered sale deed dated 30.01.2019. The plaintiff then made a complaint to the Superintendent of Police, Gariyaband on 29.11.2019, pursuant to which an FIR was registered against defendant No.1 at Police Station Panduka.

4. On afore-stated pleadings, the plaintiff sought a decree for specific performance of the agreement to sale against defendant No.1; for a declaration that the registered gift deed dated 19.05.2017 executed by defendant No.1 in favour of defendant No.2 was illegal, void and not binding upon him; for a declaration that the registered sale deed dated 30.01.2019 executed by defendant No.2 in favour of defendant No.3 was illegal and void; and also for permanent injunction restraining defendant No.3 from further alienating the suit land in favour of some other person.
5. Defendants No.1 and 2 in their joint written statement denied the plaint averments except the admitted facts. They pleaded that defendant No.1 agreed to sell the suit land on 26.10.2016 due to urgent financial need for medical treatment but the plaintiff being a land broker, took undue advantage of his circumstances and got the agreement executed on his own terms. It is stated that plaintiff failed to perform his obligations as despite repeated requests, he neither participated in demarcation nor paid the balance sale consideration by December 2016 or caused the required public notice to be published. It is further stated by defendant No.1 that he was always ready to have the land measured and that the plaintiff had also received the Khasra B-1 on the date of agreement itself and thus knew the land being mortgaged with the State Bank of India. According to defendant No. 1, as per the agreement, the balance amount was to be paid by the plaintiff to him by December 2016, to be paid by defendant No. 1 to the Bank, and that after obtaining the bank's NOC, the sale deed was to be executed by March 2017. Since the plaintiff failed to arrange the balance amount

or take steps for demarcation, the earnest money stood forfeited and the transaction came to an end. Defendant No.2 subsequently repaid defendant No.1's bank loan, following which defendant No.1 executed a registered gift deed dated 19.05.2017 in his favour. The written statement further demonstrates that defendant No.1 had repeatedly contacted the plaintiff but it is he who neither contacted him for demarcation purposes nor showed readiness and willingness to execute the sale deed. After the suit land being gifted to him by defendant No. 1, the defendant No.2 sold the same to defendant No.3 at a lower price due to financial obligations incurred in releasing the property from mortgage. Having come to know of this transactions with respect to the suit land nearly two years thereafter, he with *mala fide* intent, lodged a complaint against defendant No.1 before the Superintendent of Police. In these circumstances, the suit filed by the plaintiff was sought to be dismissed.

6. Similarly, defendant No.3 also denied all averments except the admitted facts and pleaded that he was a *bona fide* purchaser of the suit land and had been in possession thereof since the date of purchase, followed by his name being mutated in the revenue records. Being this, the dismissal of the suit was sought for.
7. On the basis of the pleadings of the parties, learned trial Court framed the following issues:-

S. No.	Issues Framed and Findings	Conclusion
1.	Whether the plaintiff is entitled to a decree for specific performance of the contract against defendant No.1 in respect of the	Not proved.

	suit land situate at Village Pod, Vijay Nagar, Patwari Halka No.12, Tahsil and District Gariyaband (C.G.) bearing Khasra Nos.131 and 132 admeasuring 0.29 hectare and 1.78 hectares respectively?	
2.	Whether the registered gift deed dated 19.05.2017 executed by defendant No.1 in favour of his son, defendant No.2–Sanjay Sahu in respect of the suit land, was fraudulently executed without the knowledge of the plaintiff and is therefore illegal, void and not binding upon the plaintiff?	Proved. The gift deed having been legally executed is binding upon the plaintiff.
3.	Whether the registered sale deed dated 30.01.2019 executed by defendant No.2 in favour of defendant No.3 in respect of the suit land, is illegal and void and consequently not binding upon the plaintiff?	Proved. The registered sale deed dated 30.01.2019, having been legally executed, is binding upon the plaintiff.
4.	Whether the plaintiff is entitled to a decree of permanent injunction against defendant No.3 restraining him from selling, gifting, transferring or mortgaging the suit land in favour of any other person?	Not proved.
5.	Relief and costs.	In terms of Paragraph 43, the plaintiff's suit is dismissed.

8. After hearing the parties, learned Trial Court vide impugned judgment and decree dismissed the suit of the plaintiff. Hence this appeal.
9. Learned counsel for the appellant/plaintiff submits that the Trial Court erred in treating time as the essence of the agreement despite the settled principle that ordinarily time is not of the essence in contracts relating to immovable property. He further submits that the agreement did not disclose that the suit land was mortgaged while the defendants took inconsistent stands regarding the purpose for which the sale

consideration was required i.e. discharge of the bank loan and medical treatment of the defendant No.1. The Trial Court failed to properly appreciate the conduct of defendant No.1, the readiness and willingness of the plaintiff and the evidence on record. No specific issue with regard to readiness & willingness was framed, which is *sine qua non* for suit for specific performance of contract. He submits that the registration of the criminal case and filing of the charge-sheet concerning the title of defendant No.1 were material circumstances which have been completely overlooked. In midst of this factual bedrock, the appeal is prayed to be allowed and the impugned judgment and decree is bad in law, contrary to the evidence and therefore it may be set aside. In support of his submission reliance is placed on the decisions of Supreme Court in case of **Beemaneni Maha Lakshmi V/s Gangumalla Appa Rao** reported in **(2019) 6 SCC 233**, **V.S. Ramakrsihnan V/s P.M. Muhammed Ali** reported in **(2022) SCC OnLine SC 1545**, **P. Ramasubbamma V/s V. Vijayalakshmi & Ors.** reported in **(2022) 7 SCC 384**, **Rathnavathi & Anr. V/s Kavita Ganashamdas** reported in **(2015) 5 SCC 223**, **Shenbagam & Ors. V/s K.K. Rathinavel** reported in **(2022) SCC OnLine SC 71** and a judgment of this Court in case of **Bhagirathi Devangan V/s Jhaduram & ors.** reported in **(2013) 1 CGLJ 442**.

10. Learned counsel for the respondents/defendants, on the other hand, support the impugned judgment and decree and submit that the findings arrived at by learned trial court are based on due appreciation of the pleadings and evidence adduced by the parties and therefore call for no interference in this appeal. They submit that the agreement

to sale itself was self-eloquent defining the timeline of the action on the part of the plaintiff to keep himself ready and willing so as to ensure timely execution of the sale deed after redeeming the suit land from the bank, but in spite of being well aware of the land being mortgaged by bank, the plaintiff kept on equivocating by adopting the dilatory tactics to evade execution of the sale deed. In these circumstances, the judgment impugned dismissing the suit of the plaintiff does not appear to be at fault and therefore, the appeal being without any substance is liable to be dismissed. In support of their submissions, they placed reliance of Supreme Court in case of **Sangita Sinha Vs. Bhawana Bhardwaj and others** reported in **(2025) SCC OnLine SC 723** and **K. S. Vidyanadam and others Vs. Vairavan** reported in **(1997) 3 SCC**.

11. We have heard learned counsel for the parties at length and have carefully perused the entire record of the Trial Court and also impugned judgment.
12. Before considering the rival submissions and the questions arising for determination in this appeal, it would be appropriate to first notice the foundational facts which are not in dispute. The execution of the agreement to sell dated 26.10.2016 between the plaintiff and defendant No.1 in respect of the suit land for a total consideration of Rs.27,75,000/-. The plaintiff paid a sum of Rs.2,00,000/- as earnest money at the time of execution of the agreement and that the balance consideration of Rs.25,75,000/- was to be paid in the month of December, 2016. The agreement further contemplated completion of the transaction after demarcation of the land and execution of the sale deed in March, 2017.

- 13.** The principal controversy which arises for determination is whether the plaintiff has established his entitlement to the relief of specific performance by proving that he had performed or had always been ready and willing to perform, the essential terms of the contract which were required to be performed by him.
- 14.** Before examining the evidence on this aspect, it is necessary to notice the statutory provision applicable to the present transaction. The agreement to sell was executed on 26.10.2016, i.e. prior to the coming into force of the Specific Relief (Amendment) Act, 2018. Consequently, the rights and obligations arising from the agreement dated 26.10.2016 have to be examined with reference to Section 16(c) of the Specific Relief Act, 1963 (for short 'Act of 1963') as it stood prior to the 2018 amendment. Prior to the said amendment, Section 16(c) read as under:
- “16. Personal bars to relief.— Specific performance of a contract cannot be enforced in favour of a person—
- (a) xxxxx
- (b) xxxxx
- (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...”
- 15.** The unamended Section 16(c) of Act of 1963 required the plaintiff seeking specific performance to aver and prove that he had performed or had always been ready and willing to perform the essential terms of the contract which were to be performed by him. The requirement was

therefore both statutory and substantive. A mere assertion in the plaint or a statement made by the plaintiff in the witness box could not, by itself, discharge the burden. The conduct of the plaintiff considered in the light of the pleadings, evidence and surrounding circumstances has to establish the requisite readiness and willingness.

16. It is equally well settled that the expressions "readiness" and "willingness" are not synonymous. Readiness refers substantially to the capacity of the plaintiff to perform his contractual obligation, including his financial capacity to pay the balance consideration, whereas willingness is reflected from his conduct and the circumstances in which he pursued performance of the contract. Both aspects have to be established by the plaintiff.
17. The mere incorporation of a date in an agreement relating to immovable property does not, by itself, conclude the question whether time was intended to be of the essence. Such intention has to be gathered from the terms of the agreement read as a whole, the nature of the property and the surrounding circumstances. The Supreme Court has reiterated this principle even in recent decisions. However, the said principle does not mean that the dates stipulated in the agreement become wholly irrelevant nor does it dispense with the statutory requirement of readiness and willingness. Even where time is not treated as the essence of the contract, the plaintiff seeking the equitable relief of specific performance must establish that he was continuously ready and willing to perform his own contractual obligations. Thus, the question whether time was the essence of the contract and the question whether the plaintiff proved readiness and

willingness are distinct questions and have to be considered independently.

- 18.** In the present case, it was agreed between the parties under the agreement that balance consideration of Rs.25,75,000/- will be paid in the month of December, 2016 and the sale deed will be executed and registered in the month of March, 2017 after completion of the necessary formalities by respondent herein. It is not the case of the plaintiff that he has paid the balance consideration in the month of December, 2016. In fact, it is the case of plaintiff/appellant herein that upon obtaining the relevant revenue documents i.e. B-1 and Khasra records in the month of January, 2017, he noticed that the suit land was mortgaged with the State Bank of India and therefore, he has not paid the balance amount of sale consideration to defendant No.1.
- 19.** It is true that if a property agreed to be sold is found to be encumbered by a mortgage, completion of the transaction necessarily required appropriate steps towards redemption of the mortgage and securing the requisite clearance/NOC from the bank. However, merely because the suit land was mortgaged, it did not discharge the plaintiff of his obligation to establish his own readiness and willingness. The plaintiff was not required merely to express a desire to purchase the property; he was required to demonstrate that he was in a position to perform his part of the obligation under the agreement to sell. The plaintiff has pleaded that the requisite funds were available with him and that he was always ready and willing to pay the balance consideration. However, upon careful scrutiny of the evidence, we find that he has not brought on record any evidence to substantiate the availability of fund

of Rs.25,75,000/- with the plaintiff during the relevant period. There is no documentary evidence on record demonstrating that the plaintiff had the requisite amount in his bank account, had withdrawn or otherwise arranged the balance consideration, had obtained financial assistance or had entered into any concrete arrangement with a financier or any other person for making payment of the balance consideration. This circumstance assumes significance not because production of a particular class of documentary evidence is invariably mandatory in every suit for specific performance, but because in the present case the assertion of financial readiness of the plaintiff remains substantially unsupported by independent evidence.

- 20.** The law does not require a plaintiff to perform an empty ritual by tendering the entire sale consideration to the defendant or depositing the amount in Court in every case. What the law requires is proof of readiness and willingness. Nevertheless, where the balance consideration constitutes a substantial amount and the plaintiff relies upon the assertion that such amount was available with him, the Court is entitled to examine the surrounding circumstances and the evidence bearing upon his financial capacity. The absence of such material, coupled with the overall conduct of the plaintiff is a relevant circumstance in determining whether the statutory requirement has been discharged.
- 21.** Case of the plaintiff further requires examination in the context of the subsequent conduct of defendant No.1. According to the plaintiff, defendant No.1 informed him that the mortgage had been redeemed and that NOC had been obtained, and that only demarcation remained

to be completed. The plaintiff claims that relying upon such representation, he waited for necessary documents and demarcation proceedings. If the version of the plaintiff is accepted to that extent, it may explain why the transaction was not completed within the initially contemplated period. It also constitutes a circumstance which operates against the simplistic conclusion that the plaintiff lost his contractual right merely because he did not pay the balance amount in December, 2016. However, even thereafter the plaintiff was required to demonstrate by reliable evidence that he remained continuously ready and willing to complete the transaction and that he had the financial capacity to pay the balance consideration whenever the impediment attributable to the defendant was removed.

- 22.** The material on record does not satisfactorily establish such continuous readiness. The plaintiff has relied principally upon his own assertion regarding availability of funds. Beyond such assertion, there is no evidence demonstrating that the balance consideration of Rs.25,75,000/- was available to him or that he had made a concrete arrangement to secure the same.
- 23.** Subsequent execution of the registered gift deed dated 19.05.2017 by defendant No.1 in favour of defendant No.2 and sale deed dated 30.01.2019 executed by defendant No.2 in favour of defendant No.3 undoubtedly constitute conduct inconsistent with completion of the plaintiff's asserted contractual transaction. Such conduct cannot be approved merely because the plaintiff himself failed to establish readiness and willingness. Nevertheless, the subsequent conduct of

the defendants cannot dispense with the independent statutory burden resting upon the plaintiff under Section 16(c).

- 24.** Learned counsel for the plaintiff has also placed considerable reliance upon criminal proceedings initiated against defendant No.1 including registration of the FIR and filing of charge-sheet. The said circumstance may constitute part of surrounding factual background, but it cannot, by itself, determine the plaintiff's civil entitlement to specific performance. The issues in the present suit are required to be adjudicated on the basis of the pleadings and evidence led in the civil proceedings and according to the standard applicable to civil adjudication. Mere registration of a criminal case or filing of a charge-sheet cannot substitute proof of the plaintiff's readiness and willingness.
- 25.** We are therefore unable to accept the submission that the subsequent conduct of defendant No.1, by itself, establishes the plaintiff's entitlement to specific performance. The plaintiff's right to obtain that relief remains subject to satisfaction of the statutory requirement contained in Section 16(c) of Act of 1963 and the burden of establishing the same continues to remain upon him.
- 26.** At this stage, it would also be appropriate to consider the argument that defendant No.1 herself was responsible for preventing performance by failing to redeem the mortgage or provide the necessary documents. There is substance in the submission to the limited extent that a vendor cannot rely upon his own failure to perform a contractual obligation as a complete answer to a purchaser's claim. However, the existence of

such default does not automatically establish the purchaser's readiness. The Court has to examine whether, notwithstanding the defendant's default, the plaintiff had established his own capacity and willingness to perform when the impediment was removed or was capable of being removed. In the present case, the plaintiff has not placed before the Court satisfactory evidence showing that he possessed or had arranged the balance consideration of Rs.25,75,000/- at the relevant time. Consequently, even after giving due weight to the mortgage and the conduct attributed to defendant No.1, the plaintiff has failed to cross the statutory threshold required for grant of specific performance. The contention that the plaintiff had always been ready and willing cannot be accepted merely because such assertion finds place in the plaint and in his evidence.

- 27. In case of Umabai and Another vs. Nilkanth Dhondiba Chavan (Dead) By LRs. and another**, reported in **(2005) 6 SCC 243**, it has been held as under:-

“30. It is now well settled that the conduct of the parties, with a view to arrive at a finding as to whether the plaintiff-respondents were all along and still are ready and willing to perform their part of contract as is mandatorily required under Section 16 (c) of the Specific Relief Act must be determined having regard to the entire attending circumstances. A bare averment in the plaint or a statement made in the examination-in- chief would not suffice. The conduct of the plaintiff-respondents must be judged having regard to the entirety of the pleadings as also the evidence brought on records.”

28. Recently, in case of **Sangita Sinha (supra)**, Hon'ble Supreme Court has discussed the law with respect to readiness and willingness to succeed in the suit of specific performance and observed thus:-

“17. It is trite law that ‘*readiness*’ and ‘*willingness*’ are not one but two separate elements. ‘*Readiness*’ means the capacity of the Respondent No. 1-buyer to perform the contract, which would include the financial position to pay the sale consideration. ‘*Willingness*’ refers to the intention of the Respondent No. 1-buyer as a purchaser to perform his part of the contract, which is inferred by scrutinising the conduct of the Respondent No. 1-buyer/purchaser, including attending circumstances.

18. Continuous readiness and willingness on the part of the Respondent No. 1-buyer/purchaser from the date of execution of Agreement to Sell till the date of the decree, is a condition precedent for grant of relief of specific performance. This Court in various judicial pronouncements has held that it is not enough to show the readiness and willingness up to the date of the plaint as the conduct must be such as to disclose readiness and willingness at all times from the date of the contract and throughout the pendency of the suit up to the decree.”

29. In case of **R.Kandaswamy vs. TRK Saraswathi**, reported in **(2025) 3 SCC 513** Hon'ble Supreme Court has held that relief of specific performance is discretionary and equitable in nature. The plaintiff must plead and prove continuous readiness and willingness to perform the essential terms of the contract from the date of the agreement until the decree. The expression 'ready and willingness' signifies that the plaintiff must possess both the intention and financial capacity to perform the contractual obligations, particularly the obligation to pay the balance sale consideration. Mere assertions in pleadings are insufficient; plaintiff must place material on record demonstrating availability of funds or capacity to arrange the same within the

stipulated time. In absence of the same, plaintiff would not be entitled to the discretionary relief of specific performance.

30. In case of **His Holiness Acharya Swami Ganesh Dassji v. Sita Ram Thapar, (1996) 4 SCC 526**, while considering the issue of readiness and willingness to get the sale deed executed had also given weightage of the availability of sufficient funds to pay the consideration amount, Hon'ble Supreme Court observed thus :-

“2. There is a distinction between readiness to perform the contract and willingness to perform the contract. By readiness may be meant the capacity of the plaintiff to perform the contract which includes his financial position to pay the purchase price. For determining his willingness to perform his part of the contract, the conduct has to be properly scrutinized. There is no documentary proof that the plaintiff had ever funds to pay the balance of consideration. Assuming that he had the funds, he has to prove his willingness to perform his part of the contract. According to the terms of the agreement, the plaintiff was to supply the draft sale deed to the defendant within 7 days of the execution of the agreement, i.e., by 27-2-1975. The draft sale deed was not returned after being duly approved by the petitioner. The factum of readiness and willingness to perform plaintiff's part of the contract is to be adjudged with reference to the conduct of the party and the attending circumstances. The court may infer from the facts and circumstances whether the plaintiff was ready and was always ready and willing to perform his part of the contract. The facts of this case would amply demonstrate that the petitioner/plaintiff was not ready nor had the capacity to perform his part of the contract as he had no financial capacity to pay the consideration in cash as contracted and intended to bid for the time

which disentitles him as time is of the essence of the contract.”

Hon'ble Supreme Court in case of **U.N. Krishnamurthy v. A.M. Krishnamurthy, (2023) 11 SCC 775** has considered the importance of readiness and willingness for enforcement of specific performance and held thus :-

“**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 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.

* * *

45. It is settled law that for relief of specific performance, the plaintiff has to prove that all along and till the final decision of the suit, he was ready and willing to perform his part of the contract. It is the bounden duty of the plaintiff to prove his readiness and willingness by adducing evidence. This crucial facet has to be determined by considering all circumstances including availability of funds and mere statement or averment in plaint of readiness and willingness, would not suffice."

- 31.** Proof in civil cases is to be tested on the preponderance of probabilities. Hon'ble Supreme Court in case of **R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P. Temple, (2003) 8 SCC 752** while dealing with the issue has observed as under :-

"28. Whether a civil or a criminal case, the anvil for testing of "proved", "disproved" and "not proved", as defined in Section 3 of the Indian Evidence Act, 1872 is one and the same. A fact is said to be "proved" when, if considering the matters before it, the court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of a particular case, to act upon the supposition that it exists. It is the evaluation of the result drawn by the applicability of the rule, which makes the difference.

"The probative effects of evidence in civil and criminal cases are not, however, always the same and it has been laid down that a fact may be regarded as proved for purposes of a civil suit, though the evidence may not be considered sufficient for a conviction in a criminal case. Best says: 'There is a strong and marked difference as to the *effect* of evidence in civil and criminal proceedings. In the former a mere preponderance of probability, due regard being had to

the burden of proof, is a sufficient basis of decision: but in the latter, especially when the offence charged amounts to treason or felony, a much higher degree of assurance is required.’ (Best, § 95) While civil cases may be proved by a mere preponderance of evidence, in criminal cases the prosecution must prove the charge beyond reasonable doubt.” (See *Sarkar on Evidence*, 15th Edn., pp. 58-59.)

In the words of Denning, L.J. (*Bater v. Bater* [(1950) 2 All ER 458 : 1951 P 35 (CA)] , All ER at p. 459 B-C):

It is true that by our law there is a higher standard of proof in criminal cases than in civil cases, but this is subject to the qualification that there is no absolute standard in either case. In criminal cases the charge must be proved beyond reasonable doubt, but there may be degrees of proof within that standard. So also in civil cases there may be degrees of probability.

Agreeing with this statement of law, Hodson, L.J. said:

“Just as in civil cases the balance of probability may be more readily tilted in one case than in another, so in criminal cases proof beyond reasonable doubt may more readily be attained in some cases than in others.” (*Hornal v. Neuberger Products Ltd.* [(1956) 3 All ER 970 : (1957) 1 QB 247 : (1956) 3 WLR 1034 (CA)] , All ER at p. 977 D).

32. The expression of preponderance of probabilities has been explained by Hon’ble Supreme Court in case of **M. Siddiq (Ram Janmabhumi Temple-5 J.) v. Suresh Das, (2020) 1 SCC 1**, as under:

“The standard of proof

720. The court in a civil trial applies a standard of proof governed by a preponderance of probabilities. This standard is also described sometimes as a balance of probability or the

preponderance of the evidence. *Phipson on Evidence* formulates the standard succinctly : If therefore, the evidence is such that the court can say “we think it more probable than not”, the burden is discharged, but if the probabilities are equal, it is not. [*Phipson on Evidence*.] In *Miller v. Minister of Pensions* [*Miller v. Minister of Pensions*, (1947) 2 All ER 372] , Lord Denning, J. (as the Master of Rolls then was) defined the doctrine of the balance or preponderance of probabilities in the following terms : (All ER p. 373 H)

“(1) ... *It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice.* If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence, “of course it is possible, but not in the least probable” the case is proved beyond reasonable doubt, but nothing short of that will suffice.”

(emphasis supplied)

721. The law recognises that within the standard of preponderance of probabilities, there could be different degrees of probability. This was succinctly summarised by Denning, L.J. in *Bater v. Bater* [*Bater v. Bater*, 1951 P 35 (CA)] , where he formulated the principle thus : (p. 37)

“... So also in civil cases, the case must be proved by a preponderance of probability, but there may be degrees of probability within that standard. *The degree depends on the subject-matter.*”

(emphasis supplied)

722. The definition of the expression “proved” in Section 3 of the Evidence Act is in the following terms:

“3. ... “Proved”.—A fact is said to be proved when, after considering the matters before it, the court either believes it to exist, or considers its existence so probable that a prudent man

ought, under the circumstances of the particular case, to act upon the supposition that it exists.”

723. Proof of a fact depends upon the probability of its existence. The finding of the court must be based on:

723.1. The test of a prudent person, who acts under the supposition that a fact exists.

723.2. In the context and circumstances of a particular case.

724. Analysing this, Y.V. Chandrachud, J. (as the learned Chief Justice then was) in *N.G. Dastane v. S. Dastane* [*N.G. Dastane v. S. Dastane*, (1975) 2 SCC 326] held : (SCC pp. 335-36, para 24)

“The belief regarding the existence of a fact may thus be founded on a balance of probabilities. A prudent man faced with conflicting probabilities concerning a fact situation will act on the supposition that the fact exists, if on weighing the various probabilities he finds that the preponderance is in favour of the existence of the particular fact. As a prudent man, so the court applies this test for finding whether a fact in issue can be said to be proved. *The first step in this process is to fix the probabilities, the second to weigh them, though the two may often intermingle. The impossible is weeded out at the first stage, the improbable at the second.* Within the wide range of probabilities the court has often a difficult choice to make but it is this choice which ultimately determines where the preponderance of probabilities lies. *Important issues like those which affect the status of parties demand a closer scrutiny than those like the loan on a promissory note: ‘the nature and gravity of an issue necessarily determines the manner of attaining reasonable satisfaction of the truth of the issue* [Per Dixon, J. in *Wright v. Wright*, (1948) 77 CLR 191 (Aust).] , CLR at p. 210’; or as said by Lord Denning, ‘*the degree of probability depends on the subject-matter*’. In proportion as the offence is grave, so ought the proof to be clear [*Blyth v. Blyth*, 1966 AC 643 : (1966) 2 WLR 634 : (1966) 1 All ER 524 (HL)] , All ER at p. 536’. But whether the issue is one of cruelty or of a loan on a pronote, the test to apply is whether on a preponderance of probabilities the relevant fact is proved. In civil cases this, normally, is the standard of proof to apply for finding whether the burden of proof is discharged.”

(emphasis supplied)

33. Perusal of impugned judgment would show that the trial Court has given finding in respect of readiness and willingness on the part of the plaintiff to perform his part of contractual obligation. However, any specific issue on 'readiness and willingness' has not been framed during trial. Hence, now the question that arise for consideration is whether non-framing of a specific issue is fatal and requires remand of the matter.

34. In case of **Sayed Akhtar vs Abdul Ahad**, reported in **(2003) 7 SCC 52**, Hon'ble Supreme Court has observed that omission to frame an important issue may sometimes cause prejudice to parties resulting in failure to lead evidence on the point. But where the parties were not only aware of the point in controversy but also led evidence and advanced their submissions, this Court held that the High Court was not justified in interfering with the finding of facts of the courts below.

35. In a civil appeal arising out of **SLP (C) No.20779/2025**, parties being **Pramod Shroff vs Mohan Singh Chopra**, decided on **18.4.2026**, Hon'ble Supreme Court while dealing with the issue whether the absence of formal framing of issues vitiates such proceedings, has observed thus:-

“24. The true scope for framing issues is that evidence let in on issue on which the parties actually went to trial should not be the foundation for decision of another and different issue, which was not present to the minds of the parties and on which they had no opportunity of adducing evidence. But that rule has no application to a case where the parties go to a trial with knowledge that a

particular question is in issue, though no specific issue has been framed thereon and adduce evidence relating thereto...”

28. Though framing of issues, as mentioned above, although, is not mandatory yet, if the omission to frame the same causes prejudice to the parties, then the same can vitiate the trial. The test for finding as to omission to frame the issues have caused prejudice to the parties or not can be laid down on the touchstone as to whether parties that go to trial had knowledge that (i) a particular question is in issue and (ii) had opportunity to lead evidence on that issue.”

36. Reading of above decisions makes it abundantly clear that an order of remand should not be adopted as a matter of routine. When the parties are fully aware of their respective cases, lead all the necessary evidence not only in support of their case but in refutation of the claim of other side, an appellate court cannot routinely remand the matter merely on the premise that specific distinct issue was not explicitly framed. Non-framing of issues is not fatal or requires remand, unless it causes prejudice to either party or results in mistrial, which vitiates the proceedings.
37. In case at hand, the pleadings of the parties demonstrate that plaintiff specifically pleaded that he had always been ready and willing and possessed the requisite funds. The defendants, on the other hand, specifically pleaded that the plaintiff had failed to pay the balance consideration and had failed to take necessary steps for completion of the transaction. They led evidence on the payment of consideration, the mortgage, demarcation, the conduct of the parties and the plaintiff's asserted preparedness to complete the transaction.

38. Thus, though the trial court had not framed the issue regarding readiness and willingness of the plaintiff to perform his part of the agreement, but conjoint reading of pleadings and evidence on record reveals that the parties having understood the pleadings, went on with the trial and led the evidence not only in support of their contentions, but in refutation of those of other side, including plea of readiness and willingness without a specific issue thereon. Hence, in the considered opinion of this Court, non-framing of specific issue of readiness and willingness does not vitiate the entire trial.
39. For the foregoing discussions and in view of the law laid down by the Hon'ble Supreme Court in above referred decisions, we are of the considered view that learned trial Court was justified in coming to the conclusion that plaintiff proved that he was not ready and willing to perform his part of contract.
40. Now, the question that arises for our consideration is whether the plaintiff can be granted decree for refund of advance amount paid by him to defendant No.1.
41. Section 22 of the Act of 1963 permits a plaintiff suing for specific performance to seek, in an appropriate case, an alternative relief including refund of earnest money or deposit paid by him in case his claim for specific performance is refused. However, the provision specifically contemplates that such relief has to be claimed. Where the plaintiff has not claimed refund, the Court cannot ordinarily grant such relief *suo motu*; the statutory scheme permits the plaintiff to seek amendment for incorporating such relief. Section 22 of the Act of 1963 is extracted below for ready reference:-

“22. Power to grant relief for possession, partition, refund of earnest money, etc.—(1) Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908 (5 of 1908), any person suing for the specific performance of a contract for the transfer of immovable property may, in an appropriate case, ask for-

(a) possession, or partition and separate possession, of the property in addition to such performance; or

(b) any other relief to which he may be entitled, including the refund of any earnest money or deposit paid or made by him, in case his claim for specific performance is refused.

(2) No relief under clause (a) or clause (b) of sub section (1) shall be granted by the Court unless it has been specifically claimed:

Provided that where the plaintiff has not claimed any such relief in the plaint, the Court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just for including a claim for such relief.”

42. In the matter of **Desh Raj v. Rohtash Singh**, reported in **(2023) 3 SCC**

714, Hon’ble Supreme Court has held thus:-

"35. On a plain reading of the above reproduced provision, we have no reason to doubt that the plaintiff in his suit for specific performance of a contract is not only entitled to seek specific performance of the contract for the transfer of immovable property but he can also seek alternative relief(s) including the refund of any earnest money, provided that such a relief has been specifically incorporated in the plaint. The court, however, has been

vested with wide judicial discretion to permit the plaintiff to amend the plaint even at a later stage of the proceedings and seek the alternative relief of refund of the earnest money. The litmus test appears to be that unless a plaintiff specifically seeks the refund of the earnest money at the time of filing of the suit or by way of amendment, no such relief can be granted to him. The prayer clause is a sine qua non for grant of decree of refund of earnest money.

"36.....In the absence of such a prayer, it is difficult to accept that the courts would suo-moto grant the refund of earnest money irrespective of the fact as to whether Section 22(2) of SRA Act is to be construed directory or mandatory in nature."

43. In case of **K.R. Suresh vs. R.Poornima and others**, reported in **2025 SCC OnLine SC 1014**, Hon'ble Supreme Court has observed thus:-

"58. It is thus a settled position of law that the plaint may be amended at any stage of the proceedings to enable the plaintiff to seek an alternative relief, including that of refund of earnest money, and the courts have been vested with wide judicial discretion to permit such amendments. However, under Section 22 of the 1963 Act, the courts cannot grant such relief suo moto, since the inclusion of the prayer clause remains a sine qua non for the grant of such a relief. In other words, when an 'appropriate case' exists for seeking the said relief under this provision, it must be specifically sought either in the original plaint or by way of an amendment. This has been emphatically held by this Court in *Desh Raj v. Rohtash Singh*, (2023) 3 SCC 714."

44. From perusal of plaint it is clear that the plaintiff has not sought for refund of earnest money of Rs.2,00,000/- nor has he sought amendment of the plaint for incorporating such alternative relief during trial. Even during course of hearing of this appeal, learned counsel for

plaintiff/appellant has not argued that in case this Court is not inclined to grant the decree for specific performance, the relief of refund of advance amount may be granted. In the absence of such a prayer and particularly when the issue of refund has not been tried as an independent relief, no decree for refund can be granted *suo motu* in the present appeal. We may clarify that our conclusion regarding refund is not a finding that the plaintiff has forfeited any legally available independent remedy; rather, it is confined to the reliefs which have been claimed and adjudicated in the present suit. The Court cannot travel beyond the relief sought in the plaint and grant an alternative substantive relief in the absence of the statutory requirements governing such relief.

45. Learned counsel for the appellant has relied upon several decisions of the Hon'ble Supreme Court. We have carefully considered the said authorities. There can be no dispute with the principles laid down therein; however, the same do not advance the case of the appellant, as the factual foundation of those decisions is materially different from the facts obtaining in the present case.
46. In *Beemaneni Maha Lakshmi (supra)*, the purchaser's readiness and willingness was established from the evidence and the vendor's failure to perform her corresponding obligations was found to be responsible for non-completion of the transaction. Similarly, the other decisions relied upon by the appellant emphasize that mere lapse of the stipulated period or failure to tender the balance consideration within the specified time cannot, by itself, defeat a claim for specific performance where readiness and willingness are otherwise established. In the present case, however, the plaintiff's claim does not fail merely

because the balance consideration was not paid in December, 2016 or because time is treated as non-essential. Even after taking into consideration the mortgage over the property and the conduct attributed to defendant No.1, the plaintiff has failed to satisfactorily establish his financial capacity or concrete arrangement to pay the balance consideration of Rs.25,75,000/- and his continuous readiness and willingness to perform the agreement. Thus, the factual predicates upon which the aforesaid authorities proceeded are absent in the present case.

47. As regards *V.S. Ramakrishnan (supra)*, the Hon'ble Supreme Court has emphasised the importance of framing an issue regarding readiness and willingness. However, in the present case, the pleadings of both parties specifically raised the question of readiness and willingness, and evidence was led on the payment of balance consideration, mortgage, demarcation and the plaintiff's financial preparedness. The appellant has also failed to demonstrate any prejudice caused to him by the omission to frame a separate issue. Hence, the said decision also does not warrant interference or remand in the facts of the present case.
48. The decision in *Shenbagam (supra)*, in fact, reiterates that readiness and willingness have to be determined from the financial capacity as well as the conduct of the plaintiff. The existence of a mortgage may explain some delay, but it does not dispense with the statutory requirement of proving readiness and willingness. The facts of the present case, therefore, have to be tested on their own evidentiary foundation. Thus, the authorities relied upon by the appellant lay down principles which are well settled and have been kept in view by this

Court. However, those decisions do not lay down that the existence of a prior agreement or a vendor's subsequent conduct automatically entitles the purchaser to specific performance. In the present case, the essential requirement of Section 16(c) of Act of 1963 has not been satisfactorily established. The reliance placed upon the aforesaid judgments, therefore, does not assist the appellant.

49. Upon an overall consideration of the pleadings, the evidence on record, the contractual terms and the surrounding circumstances, we are satisfied that the plaintiff has failed to establish his entitlement to the relief of specific performance. Therefore, the learned Trial Court committed no error in dismissing the suit.
50. Consequently, we find no sufficient ground to interfere with the impugned judgment and decree dated 14.06.2024 passed by the learned Additional District Judge, Gariyaband, District Gariyaband in Civil Suit No.1A of 2021.
51. The appeal is accordingly **dismissed**. The impugned judgment and decree is hereby affirmed. The parties to bear their own costs.
52. A decree be drawn accordingly.

Sd/-

(Parth Prateem Sahu)
JUDGE

Sd/-

(Sachin Singh Rajput)
JUDGE

H.Ansari

HIFZURRAHMAN
ANSARI

Digitally signed by
HIFZURRAHMAN
ANSARI
Date: 2026.10.01
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