



A.S(MD)No.2 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 13.11.2025

Pronounced on : 12.02.2026

CORAM

THE HONOURABLE MR.JUSTICE P.VADAMALAI

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K.V.R.Kannan,
S/o.K.V.Raju Thevar,
1, Raj Bhavan, K.V.R.Garden,
via Samayalkudi Mariamman Koil,
Theni Main Road,
Madurai – 625 016.

...Appellant/Plaintiff

Vs.

G.Ramachandran (Died)

Saradha,
W/o.Muthuraman,
Back side to K.V.R.Garden,
Kochadai,
Madurai – 625 016.

...Respondent/Defendant

PRAYER :- This Appeal Suit is filed under Section 96 of the Civil Procedure Code, to set aside the judgment and decree, dated 31.08.2017 passed in O.S.No.78 of 2010 by VI Additional District Judge, Madurai and to decree the suit in O.S.No.78 of 2010 as prayed for by allowing this appeal.

For Appellants : Mr.K.R.Laxman
For Respondent : Mr.V..Ramakrishnan



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JUDGMENT

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This Appeal is directed against the judgment and decree, dated 31.08.2017 made in O.S.No.78 of 2010 on the file of the learned VI Additional District Judge, Madurai.

2.The appellant is the plaintiff in O.S.No.78 of 2010 on the file of the learned VI Additional District Judge, Madurai. The respondent is the defendant in that suit.

3.For the sake of convenience, the parties are referred to as per their rank before the trial Court.

4. The brief facts are as below:

(a) The case of the plaintiff (appellant herein):-

The suit property measuring a total extent of 51 cents in S.No.110/4 of Kochadai Village, Madurai South Taluk, belonged to the original defendant G.Ramchandran. He agreed to sell the suit property to the plaintiff at the rate of Rs.25,000/- per cent. The plaintiff and the defendant entered into a sale agreement on 09.03.2006. The plaintiff paid Rs.1,00,000/- to the defendant as



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advance. As per the terms of the sale agreement, the time for completing the performance is fixed at one year from the date of the agreement.

The Government of Tamil Nadu announced a scheme road through the suit property to an extent of 14 cents. The defendant agreed to receive the sale price fixed by the government. If the said 14 cents is not acquired, the plaintiff will pay the cost of Rs.25,000/- per cent. Further, it was agreed that if the plaintiff sold the said 14 cents for more than Rs.25,000/- per cent, the excess amount will be shared equally. The defendant has to assist the plaintiff in converting the suit property into house sites and the defendant has to furnish the required documents. The defendant further received Rs.3,50,000/- on 26.12.2006 and he received another Rs.30,000/-. Thus, the defendant received a total sum of Rs.4,80,000/- towards advance out of sale consideration. In the first week of January 2007, the plaintiff met the defendant to fix the date for registering the sale and stated that he is willing to pay the balance sale consideration. The defendant replied that he would fix it after Pongal. Then, the plaintiff prepared a draft sale deed through his counsel and arranged to purchase stamp papers. Since the plaintiff had not received any reply from the defendant, he met the defendant in the last week of January 2007. The defendant suddenly demanded the plaintiff to pay the cost for the proposed acquired land of



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14 cents by the government and the plaintiff promised to repay the compensation awarded by the government. The defendant again agreed to execute the sale deed during the third week of March, 2007. The plaintiff waited patiently as the defendant is relative. The plaintiff has been ready and willing to perform his part, but the defendant has been evading. So, the plaintiff issued a legal notice on 21.03.2007 to the defendant, asking him to execute the sale deed on receipt of the balance sale consideration. On 22.03.2007, the plaintiff came to know that the defendant was taking steps to sell the suit property to a third party. Hence, the plaintiff filed a suit in O.S.No.336 of 2007 on the file of the Additional District Munsif Court, Madurai Town, against the defendant for a permanent injunction restraining him from alienating the suit property. The plaintiff reserved his right to file a separate suit for specific performance. The plaintiff filed a petition under Order II Rule 2 of CPC., for filing separate suit for other reliefs. In that suit, the defendant filed the written statement admitting the sale agreement, but he falsely contended that the plaintiff could not mobilize the funds for completing the sale. Thereafter, the plaintiff has filed this suit. During the pendency of the suit, the original defendant died on 08.12.2014, leaving his only daughter, the 2nd defendant herein. His wife predeceased him. So, the plaintiff prayed that



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he may be granted the relief of specific performance.

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(b) The case of the defendant (Written Statement and Additional

Written Statement):-

The averment that the plaintiff and the defendant entered into a sale agreement on 09.03.2006 is correct. The sale agreement gets expired by 08.03.2007. The plaintiff has not mobilized the balance amount for getting the sale deed registered. Without seeking for specific performance, the plaintiff filed a suit in O.S.No.336 of 2007 only for a bare injunction. The plaintiff has not complied with the conditions of the sale agreement and has not taken any steps to get the execution of sale deed. So, the suit is not maintainable. The said suit in O.S.No.336 of 2007 was dismissed as not pressed and no leave was granted to the plaintiff under the provisions of Order 23 Rule 1(3) of CPC., to withdraw the suit with liberty to file the present suit by retaining the same cause of action. Hence, the plaintiff cannot file the present suit, as the same is hit by the provisions of Order II Rule 2 of CPC. The suit is barred under the provisions of Order II Rule 2 of CPC. The judgment and decree passed in O.S.No.336 of 2007 would operate as resjudicata for this suit. The plaintiff was not ready and willing to perform his part of the contract



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during the tenure of the sale agreement. The alleged willingness and readiness were not properly pleaded as stipulated under Form 47 in the annexure of CPC, and also as per the provisions of Section 16(c) of the Specific Relief Act. So, the suit is liable to be dismissed.

5.The trial Court framed the following issues upon the pleadings of both parties.

(1)Whether the plaintiff could not mobilize funds and not taking any steps to purchase the property as per the agreement, dated 09.03.2006?

(2)Whether the plaintiff is entitled for an order of specific performance by depositing Rs.7,95,000/- against the defendant?

(3)Whether the plaintiff is entitled for an order of permanent injunction against the defendant not to alienate the property?

(4) To what other relief and cost, the plaintiff is entitled to?

6.During trial, the plaintiff has examined himself as P.W.1 and marked nine exhibits as Ex.A.1 to Ex.A.9. The second defendant was examined herself as D.W.1 and Ex.B.1 to Ex.B.4 were marked.



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7. On appreciation of evidence and the submissions made on behalf of the parties, the trial Court concluded that the plaintiff was not ready and willing to perform his part of the contract and hence, he is not entitled to the relief of specific performance, however, the plaintiff is entitled to get refund of the advance amount. Accordingly, the trial Court has passed a judgment on 31.08.2017, granting alternative relief of refund with 6% p.a. interest.

8. The judgment and decree of the trial Court, dated 31.08.2017 are under challenge in this appeal.

9. On hearing both sides and on perusing the material records along with the grounds of appeal, both sides admitted that they have entered into an unregistered sale agreement, dated 09.03.2006, in respect of the suit property measuring 51 cents for Rs.25,000/- per cent i.e., for a total sale consideration of Rs.12,75,000/-. Time for completion was fixed as one year from the date of sale agreement. It is admitted that the plaintiff paid advance of Rs.1,00,000/- to the defendant on the date of sale agreement and further paid Rs.3,50,000/- on 26.12.2006 and another sum of Rs.30,000/-. Totally, Rs.4,80,000/- was paid towards advance. Prior to this suit, the plaintiff



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has filed a suit in O.S.No.336 of 2007 for a bare injunction restraining the defendant from alienating the suit property, later the suit was dismissed as not pressed. From their arguments and records, the learned counsel for either side have made submissions mainly on the point of readiness and willingness and the provisions under Order II Rule 2 of CPC.

10. The points for consideration in this appeal are:

- 1) Whether the plaintiff has been ready and willing to perform his part of the contract?*
- 2) Whether the provisions of Order II Rule 2 will be a bar to the present suit?*
- 3) Whether the trial court erred in dismissing the suit, whether the finding of the trial Court is liable to be set aside?*
- 4) Whether the present appeal is to be allowed?*

Points 1 to 4:

11. The learned counsel for the appellant/plaintiff submitted that the plaintiff and the defendant entered into Ex.A.1 sale agreement, dated 09.03.2006, for selling the suit property measuring 51 cents for Rs.25,000/- per cent. Out of 51 cents, 14 cents were subject to be acquired by the



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Government scheme. So, the sale agreement is a sale agreement with contingencies. It was agreed that in case the government acquired the said 14 cents, the said 14 cents would be deducted from the sale deed and sale consideration, whereby the compensation would be received by the defendant further, it was agreed that if the government released it from acquisition the plaintiff would purchase the same at Rs.25,000/- per cent, thereafter, if the plaintiff sold the 14 cents for an amount exceeding Rs.25,000/-, the profit amount would be shared between themselves equally. In such circumstances, if the scheme road's implementation was whether coming or not coming and was not ascertainable till the last date agreed upon one year, then what is to be done and in case the scheme road occupies more than the said 14 cents, what is to be done at that stage. These contingencies are found missing in the sale agreement. The defendant has not denied these particulars, but he demanded the sale consideration of entire 51 cents even before the acquisition of the 14 cents for the scheme road, for which the plaintiff was ready and willing to purchase 37 cents, less 14 cents for the government scheme. This was also specifically mentioned in the legal notice on 21.03.2007. This fact was not denied by the defendant. The plaintiff was always ready to perform his part of the contract. When the plaintiff met the defendant and expressed his



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willingness to purchase the remaining 37 cents, the defendant demanded the entire sale consideration for 51 cents even before knowing whether the scheme road was coming or not. This violated the conditions of the sale agreement. Thereafter, the plaintiff issued a legal notice, dated 21.03.2007 to the defendant. The defendant sent a reply without denying these facts. Since the defendant attempted to alienate the suit property to a third party, to protect his right, he filed the earlier suit in O.S.No.336 of 2007 for an injunction and thereafter filed this present suit. The defendant has not specifically denied the pleadings mentioned above regarding the willingness to purchase and the demand for the sale price of 14 cents. Hence, it is presumed that the pleadings of the plaintiff are admitted by the defendant and nothing is required to be proved further.

12.In support of this argument, the learned counsel for the plaintiff has relied on the judgment of the **Supreme Court** rendered in **Thangam and Anr. /v/ Navamani Ammal's case in Cvl.Appeal No.8935 of 2021**, it is held paragraph Nos.6.1 and 15.1 as follows:

“6.1 In the written statement filed by the appellants, there was no specific denial to the claim made by the respondent/plaintiff.



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No parawise reply was given. In the absence thereof, the allegations in the plaint were deemed to be admitted.

15.1. Order VIII Rules 3 and 5 CPC clearly provides for specific admission and denial of the pleadings in the plaint. A general or evasive denial is not treated as sufficient. Proviso to Order VIII Rule 5 CPC provides that even the admitted facts may not be treated to be admitted, still in its discretion the Court may require those facts to be proved. This is an exception to the general rule. General rule is that the facts admitted, are not required to be proved.”

13.The learned counsel for the plaintiff further argued that the plaintiff is a man of means. The plaintiff is a landlord and also the owner of a cinema theatre. These facts were specifically admitted by the defendant. D.W.1 has admitted in her evidence about the plaintiff that he is the owner of a cinema theatre and is having lands. So, the plaintiff has sufficient means to pay the sale consideration amount. It is a settled legal position that to prove readiness and willingness, a purchaser need not necessarily produce the money or carry it with him or vouch for a concluded scheme of finance. Moreover, the plaintiff filed the present suit within three years. But, the trial Court has not considered



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all these aspects, it simply dismissed the suit on the ground that the plaintiff was not ready and willing to perform his part of the contract and that the plaintiff was not in possession of sufficient means. It is a total error on the part of the trial Court.

14.It is further argued that the plaintiff and the defendant are distant relatives and the defendant must have known about the financial status of the plaintiff. The trial Court has not considered these facts. Therefore, the plaintiff has clearly established his readiness and willingness and also his possession of means. The object of Order II Rule 2 of CPC is to prevent a multiplicity of suits. Since there was acquisition proceeding for the government scheme for acquiring 14 cents, the sale could not be registered without determining the possibility or impossibility of acquisition. In these circumstances, the defendant attempted to sell the suit property, defeating the rights of the plaintiff. The plaintiff was constrained to file a suit for bare injunction, which was not barred under the provisions of Order II Rule 2 of CPC. Moreover, there is an impossibility to register the sale deed due to the proposed acquisition of 14 cents for the scheme road. Even if the defendant is going to execute the sale deed, an order from the Writ Court is required, as observed in



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W.P(MD)No.10659 of 2012 in ‘G.Virudhachalam and two Others /v/ The Director of Town, and Country Planning, Chennai and Anr.’ case and W.P. (MD)No.25229 of 2022 in “M.Jeyamuthu & 2 Others /v/ The District Collector, Madurai and 2 Others” case. The conduct of the plaintiff prior to filing the suit and after the filing of the suit has to be considered regarding his readiness and willingness, but the trial Court has failed to consider them. Though the trial Court has found at the initial stage of the judgment that the plaintiff is a resourceful man, but dismissed the suit by holding that the plaintiff had no sufficient money and the plaintiff failed to prove his readiness and willingness. The plaintiff has filed the suit within three years. The plaintiff should not be blamed for the delay arising from the inaction of the defendant, the relief of specific performance has to be granted in favour of the plaintiff.

15.In support of his argument, the learned counsel for the plaintiff has relied on the following rulings:

(1) Judgment of Supreme Court in Cvl.Appeal Nos.373-373 of 2025 in case of ‘Cuddalore Powergen Corporation Ltd /v/ M/s.Chemplast Cuddalore Vinyls Limited and Anr.” wherein it is held in paragraph Nos.47, 74 and 86 as follows:



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“47. On a conspectus of the aforesaid discussion, what follows is that:

i. The object of Order II Rule 2 is to prevent the multiplicity of suits and the provision is founded on the principle that a person shall not be vexed twice for one and the same cause.

ii. The mandate of Order II Rule 2 is the inclusion of the whole claim arising in respect of one and the same cause of action, in one suit. It must not be misunderstood to mean that all the different causes of action arising from the same transaction must be included in a single suit.

iii. Several definitions have been given to the phrase “ cause of action ” and it can safely be said to mean – “every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court”. Such a cause of action has no relation whatsoever to the defence that may be set up by the defendant, nor does it depend upon the character of the relief which is prayed for by the plaintiff but refers to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour.

iv. Similarly, several tests have been laid out to determine the applicability of Order II Rule 2 to a suit. While it is acknowledged that the same



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heavily depends on the particular facts and circumstances of each case, it can be said that a correct and reliable test is to determine whether the claim in the new suit is in fact founded upon a cause of action distinct from that which was the foundation of the former suit. Additionally, if the evidence required to support the claims is different, then the causes of action can also be considered to be different. Furthermore, it is necessary for the causes of action in the two suits to be identical in substance and not merely technically identical.

v. The defendant who takes shelter under the bar imposed by Order II Rule 2 (3) must establish that (a) the second suit was in respect of the same cause of action as that on which the previous suit was based; (b) in respect of that cause of action, the plaintiff was entitled to more than one relief; and (c) being thus entitled to more than one relief, the plaintiff, without any leave obtained from the Court, omitted to sue for the relief for which the second suit had been filed.

vi. The defendant must also have produced the earlier plaint in evidence in order to establish that there is an identity in the causes of action between both the suits and that there was a deliberate relinquishment of a larger relief on the



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part of the plaintiff.

vii. Since the plea is a technical bar, it has to be established satisfactorily and cannot be presumed merely on the basis of inferential reasoning.

II. Status/Stage of the first suit is immaterial for the applicability of Order II Rule 2 CPC

74. There may arise a situation where the plaintiff may be entitled to a relief but such a relief was not available at a certain point in time. In other words, that obtaining such a relief was impossible due to the circumstances which existed during the institution of the first suit. It is our opinion that, in such scenarios, Courts must give such an interpretation to the principles under Order II Rule 2 that is not bogged down by mere technicalities.

86. It is established law that the principles governing the applicability of the provisions of Order II Rule 2 do not operate as a bar when the subsequent suit is based on a cause of action different from that on which the first suit was based and that the identity of the causes of action in both the suits must be the material consideration before the court which decide the applicability of this provision to a second suit filed by the plaintiff.



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(2) 2025 SCC Online SC 2378, the Hon'ble Supreme Court held in paragraph No.83 of judgment in “**K.S.Manjunath and Others** /v/ **Moorasavirappa alias Muttanna Chennappa Batil**,” case as follows:

“83. Further, in the case of Satya Jain v. Anis Ahmed Rushdie, reported in (2013) 8 SCC 131 : (2013) 3 SCC (Civ) 738, this Court had further observed that the test of readiness and willingness would depend on the overall conduct of the plaintiff both prior to and subsequent to the filing of the suit for specific performance and such conduct of the plaintiff has to be viewed in light of the conduct of the defendant. The relevant observation is as under:

“36. The principles of law on the basis of which the readiness and willingness of the plaintiff in a suit for specific performance is to be judged finds an elaborate enumeration in a recent decision of this Court in J.P. Builders v. A.Ramadas Rao [(2011) 1 SCC 429: (2011) 1 SCC (Civ) 227]. In the said decision several earlier cases i.e. R.C. Chandiok v. Chuni Lal Sabharwal [(1970) 3 SCC 140], N.P. Thirugnanam v. R. Jagan Mohan Rao [(1995) 5 SCC 115] and P. D'Souza v. Shondrilo Naidu [(2004) 6 SCC 649] have been noticed. To sum up, no straitjacket



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formula can be laid down and the test of readiness and willingness of the plaintiff would depend on his overall conduct i.e. prior and subsequent to the filing of the suit which has also to be viewed in the light of the conduct of the defendant. Having considered the matter in the above perspective we are left with no doubt whatsoever that in the present case Plaintiff 1 was, at all times, ready and willing to perform his part of the contract. On the contrary it is the defendant who had defaulted in the execution of the sale document. The insistence of the defendant on further payments by the plaintiff directly to him and not to the Income Tax Authorities as agreed upon was not at all justified and no blame can be attributed to the plaintiff for not complying with the said demand(s) of the defendant.”

(3) 2025 SCC Online SC 1438 B in the case of **Kishan Gopal /v/ Gurmeet Kaur (Dead), through Lrs. and Others**, the Hon’ble Supreme Court held in paragraph No.13 as follows:

"13. Well settled is the legal proposition that, to prove his readiness and willingness, a purchaser need not necessarily produce the money or carry it with him or vouch a concluded scheme



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of finance. [See Nathulal vs. Phoolchand; and Sukhbir Singh & Ors. vs. Brij Pal Singh & Ors.]. It is equally well settled that readiness and willingness is to be inferred from the conduct of the parties. [See His Holiness Acharya Swami Ganesh Dassji vs. Sita Ram Thapar; and Bibi Jaibunisha vs. Jagdish Pandit & Ors.]"

(4) 2025 SCC Online SC 2300 in the case of “Annamalai /v/ Vasanthi & Ors.’, the Hon’ble Supreme Court held in paragraph Nos.37 and 38 as follows:

“37. In the case on hand, the High Court declined discretionary relief of specific performance on two counts: (a) time was the essence of contract, no steps were taken by the plaintiff to get the sale deed executed within six months; and (b) the plaintiff could not prove payment of additional Rs.1,95,000 and had set up a false plea of being in possession of the suit property therefore, it had not approached the court with clean hands which disentitled the plaintiff/appellant for a decree of specific performance.

38. In our view, both grounds to decline the relief of specific performance are not sustainable.



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Because, while deciding issue A (supra), we have already held that High Court erred in law by setting aside finding of fact returned by the first appellate court that D-1 and D-2 were paid additional Rs.1,95,000/-, which they acknowledged by making an endorsement on the back of the agreement. In our view, acceptance of additional money not only signified waiver of the right to forfeit advance money/consideration but also acknowledged subsistence of the agreement.”

(5) (2024) 7 Supreme Court Cases 515 in the case of **“Pydi Ramana Alias Ramulu /v/ Davarasety Manmadha Rao’** the Hon’ble Supreme Court held in paragraph No.17 as follows: **(this ruling itself against plaintiff/appellant)**

"17. As rightly pointed out by the trial court, the respondent-plaintiff has not produced any satisfactory evidence to prove his readiness and willingness. As regards “willingness” of the plaintiff to perform his part of the contract, the conduct of the plaintiff warranting the performance has to be looked into. The following conduct of the plaintiff warrants consideration:

(a) plaintiff got issued legal notice nearly after two years after the expiry of one year period



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as prescribed in the agreement.

(b) Plaintiff has not brought anything on record to prove that he contacted the defendant after the expiry of one year period and was interested in finalising the deed.

(c) There was total inaction of the plaintiff from 06.06.1994 (expiry of one year period) to 30.05.1996 (date of issuance of legal notice)

(d) Suit was filed on 09.06.1997 i.e. after a period of more than one year from the date of issuing of legal notice. Said delay has not been sufficiently explained by the plaintiff.

16.Per contra, the learned counsel for the respondent/defendant vehemently argued that, of course, the sale agreement, payment of advance and issuance of the legal notice are admitted. But, as per Ex.A.2 legal notice, dated 21.03.2007, the plaintiff described the property as 51 cents contrary to the sale agreement that out of 51 cents, 14 cents were subject to acquisition by the government. Regarding the alleged contingencies, the plaintiff has not made any pleading and has not adduced any evidence, so there is no contingency at all. The suit is filed for specific performance, as such the plaintiff must prove his readiness and willingness, but the plaintiff has not proved. Mere non denial



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of the plaintiff's pleadings will not prove readiness and willingness, the plaintiff has to prove the same by letting in acceptable evidence. The plaintiff's side argument are not relevant to the facts of this case. The sale agreement was made on 09.03.2006, fixing the time for completion of the contract as one year. The plaintiff issued a legal notice on 21.03.2007, for which the defendant issued Ex.A.3 reply notice on 28.03.2007 with specific denial that "the plaintiff has not approached the defendant to get the sale deed registered by paying the balance sale consideration, the period mentioned in the sale agreement expired on 08.03.2007, in such circumstances the plaintiff lost his right to purchase the said property and also forfeited the advance amount as the defendant was ready and willing to perform his part of the contract during the stipulated period in the agreement'. So, the cause of action arose on 28.03.2007, immediately the plaintiff has not filed a suit for specific performance, but he filed a simple suit in O.S.No.336 of 2007 for a bare injunction and the same was also dismissed as not pressed. The legal notice must be sent within the stipulated period of one year, i.e., on or before 08.03.2007, but the plaintiff has issued Ex.A.2 notice on 21.03.2007. The present suit was filed on 02.12.2009, i.e., after the expiry of 2 years and 3 months after the specific denial by the defendant. The said delay has not been properly explained with acceptable reasons by the plaintiff nor



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has he proved his readiness and willingness. Hence, the plaintiff failed to prove his readiness and willingness. The present suit is hit by the provisions of Order II Rule 2 of CPC. Of course, the plaintiff might be the owner of the theatre or lands, but he has to prove his means for paying the balance sale consideration. The plaintiff has offered only words, and has not demonstrated his willingness and readiness to perform his contract. Even at the time of filing the present suit, the plaintiff has not deposited the balance of the sale consideration into the Court, which shows his unreadiness and unwillingness to perform his contract. There is no proper explanation for the delay in filing the present suit. The acts of the plaintiff show inaction on his part. So, he is not entitled to the discretionary relief of specific performance. The trial Court has correctly appreciated the evidences of both sides and correctly rejected the relief of specific performance, which does not warrant interference. Therefore, the appeal is liable to be dismissed.

17.In support of this contention, the learned counsel relied on the following citations:

(1) 1997 2 Supreme 597, the Hon'ble Supreme Court held in 'K.S.Vidyanadam & Ors. /v/ Variravan' case in paragraph No.9 as follows:



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“9. The defendants consistent refrain has been that the prices of house properties in Madurai have been rising fast, that within the said interval of 2 ½ years, the prices went up by three times and that only because of the said circumstance has the plaintiff (who had earlier abandoned any idea of going forward with the purchase of the suit property) turned round and demanded specific performance. Having regard to the above circumstances and the oral evidence of the parties, we are inclined to accept the case put forward by defendants 1 to 3. We reject the story put forward by the plaintiff that during the said period of 2½ years, he has been repeatedly asking the defendants to get the tenant vacated and execute the sale deed and that they were asking for time on the ground that tenant was not vacating. The above finding means that from 15.12.1978 till 11.07.1981, i.e. for a period of more than 2 ½ years, the plaintiff was sitting quiet without taking any steps to perform his part of the contract under the agreement though the agreement specified a period of six months within which he was expected to purchase stamp papers, tender the balance amount and call upon the defendants to execute the sale deed and deliver possession of the property. We are



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inclined to accept the defendants case that the values of the house property in Madurai town was rising fast and this must have induced the plaintiff to wake up after 2 ½ years and demand specific performance.”

(2) 2011 5 Supreme 1 in the case of **“Saradamani Kandappan /v/ S.Rajalakshmi & Ors.”** the Hon’ble Supreme Court held in paragraph No.28 as follows:

"28.Till the issue is considered in an appropriate case, we can only reiterate what has been suggested in K.S. Vidyadnam (supra) :

(i) Courts, while exercising discretion in suits for specific performance, should bear in mind that when the parties prescribe a time/period, for taking certain steps or for completion of the transaction, that must have some significance and therefore time/period prescribed cannot be ignored.

(ii) Courts will apply greater scrutiny and strictness when considering whether the purchaser was ‘ready and willing’ to perform his part of the contract.

(iii) Every suit for specific performance need not be decreed merely because it is filed within the period of limitation by ignoring the



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time-limits stipulated in the agreement. Courts will also 'frown' upon suits which are not filed immediately after the breach/refusal. The fact that limitation is three years does not mean a purchaser can wait for 1 or 2 years to file a suit and obtain specific performance. The three year period is intended to assist purchasers in special cases, as for example, where the major part of the consideration has been paid to the vendor and possession has been delivered in part performance, where equity shifts in favour of the purchaser".

(3) The Division Bench of this Court in A.S.No.12 of 2013 of M.Duraipandi /v/ K.Pandian' case held in paragraph Nos.9 and 10 as follows:

"9. Therefore, if Ex.A.1 is taken as genuine, still he has to establish that he is ready and willing to perform his part of the contract from the time which the contract stipulates for performing the plaintiff's part and on every successive date. This aspect of the law is taken care of in paragraph No.7 of the plaint. To state it differently, while it is not always mandatory that the plaintiff in a suit for specific performance should literally lift and reproduce the very



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statutory statements in Sec.16(c) of the Specific Relief Act, still, it is necessary that the pleadings should more than convey this idea, but this is absent in this case.

10.The only ground on which the plaintiff loses in his suit, is his inability to establish his readiness and willingness to perform his part of contract. Lack of pleadings apart, even the plaintiff has not established the same, except the statement his counsel has repeatedly made. Here, this Court heard a very novel argument from the counsel for the defendant. She argued that the earlier suit for bare injunction which the plaintiff had laid (but not taken on record by trial Court) restraining the defendant from alienating the property is essentially intended to gain time for him to mobilise funds. This is absolutely an out of box thinking and it would have very easily paled into insignificance, if only the plaintiff had established his wherewithal or that he possessed the sale consideration for performing his part of the contract. Since the plaintiff has not demonstrated that he is ready with the balance sale consideration, the argument of the defendant that the suit for bare injunction was attempted



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only to gain time to mobilise funds, can gain merit serious consideration.”

(4) 2024-4 Law Weekly 948 in “M.K.Srinivasan & Ors. /v/ R.Ramasamy & Ors.” case, the Division Bench of this Court held in paragraph Nos.13 and 14 as follows:

“13. When the Court expects the plaintiffs to be ready and willing, it means that the plaintiff possess legal money ready for legal tender/agreement.

14.1. The titleholders of the suit property were in need of money, and agreed on a cut off date for performance, it is only plausible to infer that the parties had chosen 05.04.2010 specifically for the performance of mutual contractual obligations, if the sale by defendants 2 to 11 is a kind of distress sale as they were anxious to negotiate their financial crisis, what respect will their difficulties receive if only the time as fixed for performance was not considered as an essential term of contract? This is backed up by the fact that in Ex.A.37 reply notice, the plaintiffs themselves acknowledge that the time as stipulated in Ex.A.4 for performance was an essential term of the contract.....”.



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(5) 2023 1 CTC 641, the Division Bench of Madras High Court held in paragraph Nos.33, 34 & 35 in the case of “G.Banumithra /v/T.Santhakumar’ as follows:

“33)In *Saradamani Kandappan vs. Rajalakshmi and Others* reported in *AIR 2011 SC 3234*, the Hon'ble Court has held as follows:
(As stated supra)

34.The above judgment has been quoted with approval in many cases by Hon'ble Supreme Court including the case in *Smt.Katta Sujatha Reddy & Another Vs. Siddamsetty Infra Projects Pvt. Ltd. & Others* by a Larger Bench.

35. In this case the plaintiff issued the suit notice nearly after the period of 2 ½ months after expiry of period specified in the agreement. The defendant in the reply notice specifically mentioned that the agreement stands cancelled because of non payment of balance within the time agreed. However, the suit is filed nearly after six months after the intimation that the Agreement is cancelled and the advance amount is returned in accordance with the terms of agreement. The unexplained delay in filing the suit is also an important factor which would disentitle the plaintiff from getting equitable relief of specific



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performance especially having regard to the steep rise in price of properties in Kancheepuram District. Having regard to the conduct of plaintiff, the injustice that will be done to defendants if decree for specific performance is granted and the various circumstances pointed out in this judgement, we have no hesitation to hold that the plaintiff is not entitled to the relief of specific performance. The findings the Trial Court without looking into the admitted facts and the principles settled by courts are erroneous, perverse and unsustainable in law. Though several precedents are referred to in the written submissions of the learned counsel for the plaintiff, this Court is unable to find relevance on the facts of this case."

18.On hearing both sides and on perusal of records, both parties admitted that to the sale agreement, the payment of advance, fixing of time for completion of sale as one year, and the filing of the suit within the limitation period. But, both parties have mainly focused their respective arguments upon the point of readiness and willingness and the provisions under Order II Rule 2 of CPC. The sale agreement is dated 09.03.2006. Time fixed as one year, which expires on 08.3.2007. On perusal of Ex.A.1 sale agreement, it is mentioned as follows:



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“நாளது தேதி முதல் 1 (ஒன்று) வருட கால வாய்தாவுக்குள் 1வது பார்ட்டி கோரும் நிலையில் நம்மில் 1வது பார்ட்டிக்கோ அல்லது அன்னார் கூறும் நபரின்/நபர்களின் பெயருக்கோ 2வது பார்ட்டியார் கிரையம் பதிந்து கொடுக்கவேண்டியது என்று நாமிரு பார்ட்டிகளும் இதன் மூலம் தீர்மானிக்கின்றோம்”

19.It is the case of the plaintiff that he has always been ready and willing to perform his part of the contract. As the contract was not effected within the stipulated time, the plaintiff issued Ex.A.2 legal notice on 21.03.2007. However, after the issuance of Ex.A.2 notice, dated 21.03.2007, the plaintiff filed a suit in O.S.No.336 of 2007 on 22.03.2007 against the defendant seeking for bare injunction restraining him from alienating the suit property. The receipt of the reply notice by the plaintiff was not denied. The defendant sent Ex.A.3 reply notice on 28.03.2007. On perusal of Ex.A.3, it is specifically replied in paragraph No.4 as follows:

“4. That as per agreement your client has not approached my client to get the sale deed paying the balance of sale consideration to my client. The period mentioned in the sale agreement expired by 08.03.2007. In the said circumstances your client has lost his right of purchase of the said property and also forfeited



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the advance amount as my client was ready and willing to perform his part of contract during the stipulated period in the agreement. It is only your client breached the said agreement. In the said situation my client is not bound to intimate the date of registration to your client as demanded in your notice.”

From the above reply, it is specifically mentioned by the defendant that the plaintiff was not ready and willing to perform his part of the contract, whereas the defendant has been ready and willing to perform his part of the contract during the stipulated period. Later, the plaintiff not pressed the earlier suit in O.S.No.336 of 2007, and it was dismissed on 07.04.2010.

20.The plaintiff has filed this present suit on 02.12.2009 and the suit was taken on file on 07.04.2010. On perusal of the cross examination of P.W.1, it is as follows:

“அந்த வழக்கிற்கு முன்பே நான் பிரதிவாதிக்கு அறிவிப்பு அனுப்பியிருந்தேன். அவரும் பதில் அனுப்பியிருந்தார். அந்த பதிலில் கிரைய ஒப்புந்தம் காலாவதியாகிவிட்டது என்றும், எனவே அது செல்லாது என்றும் கூறியிருந்தார் என்றால் சரிதான். ஒ.எஸ்.336/2007 வழக்கில் பிரதிவாதி தரப்பில் ஒப்புந்தம் காலகெடு



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முடிந்து விட்டது என்றும், எனவே ஒப்பந்தப்படி
நடந்துகொள்ள இயலாது என்றும் எதிர்வாதம்
செய்யப்பட்டது என்றால் சரிதான்....” .

From the above evidence, it is clear that the plaintiff knew very well that the defendant took the stand that the sale agreement was invalid, as the plaintiff had breached the contract. In such circumstances, the plaintiff ought to have amended the prayer for specific performance or ought to have filed a suit for specific performance by paying the balance of the sale consideration or by depositing the balance of the sale consideration. But the plaintiff has filed the suit two years and three months after issuance of notice and the plaintiff has not established his readiness and willingness during all these said periods, as rightly held by the trial Court.

21.The copy of the plaint in O.S.No.336 of 2007 was filed and marked as Ex.A.4 and Ex.A.6. On perusal of the plaint in O.S.No.336 of 2007 and the present plaint in O.S.No.78 of 2010, the cause of action para has been mentioned as one and the same. If it is so, the plaintiff ought to have filed suit for specific performance along with the injunction suit, but the plaintiff not pressed the suit and later filed the present suit for specific performance.



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Order II Rule 2 of CPC reads thus:

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ORDER II *Frame of suit*

1. *Frame of suit.*—Every suit shall as far as practicable be framed so as to afford ground for final decision upon the subjects in dispute and to prevent further litigation concerning them.

2. *Suit to include the whole claim.*—

(1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) *Relinquishment of part of claim.*—

Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) *Omission to sue for one of several reliefs.*—A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all



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such reliefs, he shall not afterwards sue for any relief so omitted.

From the above provision, the plaintiff cannot sue for the same cause of action once again. Therefore, the present suit is hit by Order II Rule 2 of CPC.

22.It is argued by the plaintiff's counsel that the trial Court did not properly decide on the issue of readiness and willingness. It is admitted by both parties that the performance should be completed within one year, i.e., on 08.03.2007, from the date of Ex.A.1 sale agreement on 09.03.2006. It is also admitted that the plaintiff paid part of the sale consideration Rs.1,00,000/- on 09.03.2006, Rs.3,50,000/- on 26.12.2006 and another Rs.30,000/-. However, upto the year 2006, the plaintiff paid Rs.4,80,000/- towards the advance. Thereafter, there was no attempt to pay the sale amount till the filing of the previous suit for injunction and this suit for specific performance. Of course, the plaintiff need not necessarily produce the money or carry it with him. But, when the defendant specifically denied in his Ex.A.3 reply notice that the plaintiff was not ready and willing to perform his part of the contract, it is for the plaintiff to pay the balance of the sale consideration and has to produce evidence by way of bank balance or otherwise to show his legal



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means. But, the plaintiff filed a suit for injunction on 22.03.2007, and then filed this present suit for specific performance on 02.12.2009. In between this period, there is no valid reason for not possessing or paying the balance sale consideration to the defendant. Even after filing the suit, the plaintiff did not deposit the balance of the sale consideration into Court, at least less than 14 cents out of 51 cents, since 14 cents are stated to be acquired for the scheme road.

23.In such facts and circumstances, the ruling relied on by the defendant's side **2023 1 CTC 641** where the **Division Bench of the Madras High Court** held in paragraph **Nos.33, 34 & 35** in the case of “**G.Banumithra /v/ T.Santhakumar**’ is squarely applicable to the present case. In that case, the Division Bench of this Court following the decision of the Hon’ble Supreme Court in the case of *Saradamani Kandappan vs. Rajalakshmi and Others* reported in *AIR 2011 SC 3234* and in *Smt.Katta Sujatha Reddy & Another Vs. Siddamsetty Infra Projects Pvt Ltd., & Others* by a Larger Bench, held that

"in that case, the plaintiff issued the suit notice nearly after the period of 2½ months after expiry of the period specified in the agreement. The defendant in the



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reply notice specifically mentioned that the agreement stands cancelled because of non payment of the balance within the time agreed. However, the suit is filed nearly six months after the intimation that the Agreement is cancelled and the advance amount is returned in accordance with the terms of the agreement. The unexplained delay in filing the suit is also an important factor which would disentitle the plaintiff from getting equitable relief of specific performance, especially having regard to the steep rise in price of properties in Kancheepuram District. Having regard to the conduct of the plaintiff, the injustice that will be done to defendants if decree for specific performance is granted and the various circumstances pointed out in this judgment, we have no hesitation to hold that the plaintiff is not entitled to the relief of specific performance.”

In this case also, the plaintiff has not given a proper and acceptable explanation for the delay of two years and three months in filing the suit that too without payment of the balance sale consideration. Therefore, the trial Court has correctly decided in paragraph No.17 that

“இவ்வழக்கில் வாதி தியேட்டர் உரிமையாளராகவும், நிலக்கிழாராகவும். வசதியானவருமாக இருந்தபோதிலும்



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1ம் பிரதிவாதியின் அவசர பணதேவையை கருத்தில் கொள்ளாமல் அவருடைய கடன்களை தீர்க்கும் அளவிற்கு மட்டும் அவருக்கு முன்பணம் கொடுத்துவிட்டு ஒப்பந்தப்படி கிரையம் செய்துகொள்வதை தாமதப்படுத்தி வந்துள்ளார் என்பதை அவருடைய நடவடிக்கைகளிலிருந்து காணமுடிகிறது. ஒப்பந்தத்தை நிறைவேற்ற பிரதிவாதி தயாராக இல்லை என்பதற்கான காரணங்கள் போதுமான அளவிற்கு நிரூபிக்கப்படவில்லை. அதாவது சொத்தின் மதிப்பு உயர்ந்துவிட்டதாகவோ, வாதி மேற்படி சொத்தை கிரையம் பெற 1ம்பிரதிவாதி என்ன என்ன நிபந்தனைகளை செய்யவேண்டியிருந்ததால் வாதி உடனடியாக பதிவு செய்ய இயலவில்லை என்றோ ஒப்பந்த சட்டப்பிரிவு 53, 54ன்படி பிரதிவாதி ஒப்புக்கொண்ட சில உறுதிமொழியை அவர் செய்ய தவறியவர் என்பதால் கிரைய ஒப்பந்தம் பூர்த்தி செய்யப்படவில்லை என்றோ வழக்குரையிலும் சாட்சியத்திலும் கூறவில்லை....”

This finding given by the trial Court is a correct one.

24.The Hon’ble Supreme Court has held in Kirshnamurthy case reported in (2023) 11 Supreme Court Cases, 775, that the discretionary relief of specific performance cannot be granted in favour of a person who failed to prove readiness & willingness and also 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. On perusal of the records, there is no



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proper reason for nonpayment of the balance sale consideration to the defendant from 21.03.2007 to 02.12.2009. Except the averment and evidence as to the relationship between the plaintiff and the defendant which is not sufficient.

25. Moreover, the plaintiff, in his cross examination categorically deposed that

“பிரதிவாதி எனது உறவினர் அல்ல. நான் அனுப்பிய அறிவிப்புதான் வா.சா.ஆ.1 என்றால் சரிதான். அதில் பிரதிவாதி எனது தூரத்து உறவினர் என்று கூறியுள்ளேன் என்றால் சரிதான். அதனால்தான் கிரைய பத்திரம் எழுதி பெறுவது சம்பந்தமாக அஜாக் கிரையாக இருக்க வேண்டிய நிலை ஏற்பட்டது என்று கூறியுள்ளேன் என்றால் சரிதான்.....”.

The plaintiff himself admitted his negligence and unwillingness. From the above material facts and evidence, it is very clear that the plaintiff has not been ready and willing to perform his part of the contract.

26. It may not be necessary or essential for the plaintiff to actually tender money to the defendant or to deposit money in Court unless it is directed by the Court, to prove readiness and willingness, in view of Explanation [i] to Clause



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[c] of Section 16 of the Specific Relief Act. Nevertheless, he must prove his readiness to perform his part of the contract [to pay the balance] by acceptable evidence. In the case of **Man Kaur Vs. Arthar Singh Sangha** reported in **2010 [6] CTC 652**, the Hon'ble Supreme Court has held as follows:-

“23. 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



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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 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.”

From the illustration given by the Hon’ble Supreme Court, it can be held that the proof of continuous readiness and willingness from the date of contract to the time of hearing, is mandatory before a person seeks the relief of specific performance. In **Umabai Vs. Nilkanth Dhondiba Chavan** reported in **2005 [6] SCC 243**, the Hon’ble Supreme Court has held that there must be a finding by the Court regarding the continuous readiness and willingness of the plaintiff to perform his part of the contract before granting specific performance.

27.It is settled law that for the 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



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plaintiff to prove his readiness and willingness by adducing evidence.

This crucial facet has to be determined by considering all circumstances, including the availability of funds and a mere statement or averment in the plaint of readiness and willingness would not suffice. And also, from several judgments of Hon'ble Supreme Court, this Court has no difficulty in holding that Section 16[c] of the Specific Relief Act is a personal bar and that the mandatory requirement of readiness and willingness cannot be dispensed with merely because the defendants have repudiated the contract or they were not in a position to perform their part of the contract. Section 51 of the Contract Act does not dispense with the proof of readiness of the plaintiff to perform his part of the contract. In the instance case, the appellant/plaintiff has not let in any evidence to show that he was ready with the money to complete the transaction within the time stipulated in the Sale Agreement Ex.A.1. Therefore, this Court further holds that the plaintiff has not established his continuous readiness and willingness to perform his part of the contract. Regarding the decree for the repayment of the advance amount, there is no objection or cross appeal filed by the defendant. Therefore, the same need not be interfered in this appeal.



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28.From the above facts and circumstances conjoined with oral and documentary evidence adduced in this case, the trial Court correctly found that the plaintiff has not established his readiness and willingness and thereby he is not entitled to the discretionary relief of specific performance. Hence, the finding of the trial Court need not be interfered with by way of this appeal. Thus, the first appeal is liable to be dismissed. The points are answered against the appellant/plaintiff.

29.In the result, this Appeal Suit is dismissed. The judgment and decree, dated 31.08.2017 made in O.S.No.78 of 2010 on the file of the learned VI Additional District Judge, Madurai, is confirmed. No costs.

12.02.2026

NCC : Yes / No

Internet : Yes / No

Index : Yes / No

VSD

To

1.The VI Additional District Judge,
Madurai.

2.The Record Keeper,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

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P.VADAMALAI, J.

VSD

**Pre-Delivery Judgment made in
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