



**207 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA-3196-1996

Date of Decision: 07.07.2026

KISHAN CHAND AND OTHERS

...APPELLANTS

VERSUS

RASHID AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE PARMOD GOYAL

Present: Mr.Rajinder Goel, Advocate
Mr. Purusharth Dhull, Advocate
for the appellants.

Mr. Sandeep Vermani, Advocate
Mr. Aditya Vermani, Advocate
Mr. Ajay Pal Singh Gill, Advocate
for the respondents.

PARMOD GOYAL, J. (ORAL)

Present regular second appeal has been preferred by appellants/defendants being aggrieved by judgment of reversal dated 19.09.1996, passed by learned District Judge, Gurgaon vide which judgment and decree dated 02.08.1995 passed by the then learned Additional Senior Sub Judge, Ferozpur, Jhirka was set aside and suit of plaintiffs/respondents which was dismissed by learned Court of first instance was decreed in favour of plaintiffs and against present appellants/defendants.

2. Plaintiffs/respondents had preferred a suit for specific performance wherein they claimed that an agreement to sell dated 12.06.1985 was executed by defendant No.3 Mool Chand who was general power of attorney of defendants No.1 and 2 who were the owners of suit property in favour of father of plaintiffs-Sultan who died prior to filing of the suit. Last date to honour agreement was agreed as 11.06.1986, however

despite presence of their father in office of Sub-Registrar, none came from side of defendants to execute sale deed. The suit was filed on 12.06.1989 for specific performance of agreement dated 12.06.1985.

3. The suit was contested by appellants/defendants primarily on the ground that appellants/defendants had duly offered to execute the sale deed on 30.06.1986 by issuing notice dated 20.06.1986 and sale deed could not be executed as it was plaintiffs/respondents who were not ready and willing to get the sale deed executed and, therefore, suit for specific performance was liable to be dismissed. Dismissal of suit was also sought being barred by limitation.

4. Replication was also preferred by respondents/plaintiffs wherein they had denied having received the notice.

5. Following issues were framed by learned Court of first instance :-

1. Whether the defendants No.1 and 2 through their general power of attorney defendant No.3 executed the agreement of sale dated 12.06.1985 in favour of the plaintiffs' father Sultan as alleged? OPP
2. If issue No.1 is proved what total amount was to be paid as sale price and what amount was paid or adjusted as earnest money? OPP
3. Whether plaintiff's father always ready and willing to perform his part of agreement as per terms and conditions laid down in the agreement? OPP
4. Whether the defendant No.1 acknowledged the alleged agreement by his own letters? OPD
5. Whether the suit is not maintainable? OPD
6. Whether the suit is bad for mis-joinder of parties? OPD
7. Whether the suit is time barred? OPD
8. Whether the suit is liable to be rejected? OPD
9. Whether the plaintiff has no right to file the present suit?

OPD

10. Whether the defendants are ready to perform their part of contract and plaintiff's father had no money to perform the contract? OPD
11. Whether the defendant No.3 as general power of attorney served a legal notice dated 20.06.1986 to execute the contract? OPD
12. Relief.

6. Issues No.1, 2, 3 and 10 were decided in favour of plaintiffs. Issue No.7 was decided in favour of defendants. Issues No.4, 5, 6, 8 and 9 were also decided in favour of plaintiffs. Suit was dismissed by learned Court of first instance being time barred. Appellate Court had reversed the finding of learned Court of first instance and had decreed the suit.

7. In the present case, facts as regards to execution of agreement dated 12.06.1985 by appellant/defendant No.3 are not in dispute. Agreement was for total consideration of Rs.46,000/- out of which Rs.5,000/- were paid as earnest money. It is also not in dispute that appellant/defendant No.3 being general power of attorney was duly entitled to execute agreement to sell as well as to execute sale deed.

8. Plaintiffs/respondents had claimed that they were ready and willing to get the sale deed executed and therefore, on the last date fixed for execution of sale deed i.e. on 11.06.1986, father of plaintiff-Sultan had duly appeared before office of Sub Registrar and got his presence marked, however, none had appeared on behalf of appellants/defendants.

9. On the other hand, case of appellants/defendants is that though appellants/defendants could not appear on 11.06.1986, however, immediately on 20.06.1986 a registered legal notice was issued by appellant/defendant No.3 who was the general power of attorney of

failure to appear on 11.06.1986 as he had fallen ill when he was away to Faridabad and had shown his readiness and willingness to perform his part of contract within 10 days from the date of issuance of notice on 30.06.1986. It is worth noticing that this very ground was duly taken by appellants/defendants in their written statement.

10. In *U. N. Krishnamurthy Vs. A. M. Krishnamurthy, (2023) 11 SCC 775*, the Hon'ble Supreme Court had noticed as under:-

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

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

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

If any of the conditions is not met, suit for specific performance cannot be decreed.

11. In present case, due execution of agreement is concerned, it is not being disputed by either of the parties. Therefore, same stands proved. The only dispute is whether plaintiffs/respondents were ready and willing to perform their part of contract especially in view of plea taken by appellants/defendants that they duly asked respondents/plaintiffs to get sale deed executed on 30.06.1986, however despite offer by appellants/defendants, respondents/plaintiffs had failed to get the sale deed executed in their favour which shows that they are not ready and willing to perform their part of contract.

12. The issue of readiness and willingness is also not *res integra*.

Hon'ble Supreme Court in number of judgments had considered the scope of

term readiness and willingness. In *U. N. Krishnamurthy v. A. M. Krishnamurthy* (supra), it was held as under:-

“22. The primary question for determination is whether the respondent-plaintiff has proved his readiness and willingness to perform his part of the contract or not?

23. Section 16 of the Specific Relief Act, 1963, as it stood at the material time (prior to amendment with effect from 1-10-2018), *inter alia*, provides:

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

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

(b) who has become incapable of performing, or violates any essential term of, the contract that on his part remains to be performed, or acts in fraud of the contract, or wilfully acts at variance with, or in subversion of, the relation intended to be established by the contract; or

(c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.

Explanation.—For the purposes of clause (c),—

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

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

24. 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.

25. 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.

26. In **Man Kaur v. Hartar Singh Sangha**, (2010) 10 SCC 512, this Court held that:

“40. ... A person who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him (other than the terms the performance of which has been prevented or waived by the defendant) is barred from claiming specific performance. Therefore, even assuming that the defendant had committed breach, if the plaintiff fails to aver in the plaint or prove that he was always ready and willing to perform the essential terms of contract which are required to be performed by him (other than the

terms the performance of which has been prevented or waived by the plaintiff), there is a bar to specific performance in his favour. Therefore, the assumption of the respondent that readiness and willingness on the part of the plaintiff is something which need not be proved, if the plaintiff is able to establish that the defendant refused to execute the sale deed and thereby committed breach, is not correct. Let us give an example. Take a case where there is a contract for sale for a consideration of Rs 10 lakhs and earnest money of Rs 1 lakh was paid and the vendor wrongly refuses to execute the sale deed unless the purchaser is ready to pay Rs 15 lakhs. In such a case there is a clear breach by the defendant. But in that case, if the plaintiff did not have the balance Rs 9 lakhs (and the money required for stamp duty and registration) or the capacity to arrange and pay such 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.”

27. In Pt. Prem Raj v. DLF Housing Co. Construction (P) Ltd. and Anr., AIR 1968 SC 1355 cited by Mr Venugopal, this Court speaking through Ramaswamy, J. held that :

“5. ... It is well settled that in a suit for specific performance the plaintiff should allege that he is ready and willing to perform his part of the contract...” and if the fact is traversed, he is required to prove a continuous readiness and willingness from the date of the contract to the time of the hearing, to perform the contract on his part. For such conclusion the learned Judge relied upon the opinion of Lord Blanesburgh, in Ardeshir Mama v. Flora Sassoon 55 IA 300 at pg. 372: AIR 1928 PC 208..

27. In DLF Housing Co. Construction (P) Ltd. (supra), in the absence of an averment on the part of the plaintiff in the plaint, that he was ready and willing to perform his part of the

contract, it was held that the plaintiff had no cause of action so far as the relief for specific performance was concerned. In this case, of course, there is an averment in the plaint that the respondent-plaintiff was all along ready and willing to perform his obligations under the contract. The question is whether the respondent-plaintiff had proved his readiness and willingness to perform his obligations under the contract.

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

29. This Court, in effect, held that for determining whether the plaintiff was ready and willing to perform his part of the agreement it is necessary for the Court to consider the conduct of the plaintiff prior and subsequent to filing the suit for specific performance. The relevant part of the judgment is extracted hereinbelow:

“5. ... Section 16(c) of the Act envisages that plaintiff must plead and prove that he had performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than those terms the performance of which has been prevented or waived by the defendant. The continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of specific performance. This circumstance is material and relevant and is required to be considered by the court while granting or refusing to grant the relief.”

30. In *Umabai v. Nilkanth Dhondiba Chavan*, (2005) 6 SCC

243, this Court held that a finding as to whether the plaintiffs were all along and still ready and willing to perform their part of the contract, was a mandatory requirement under Section 16(c) of the Specific Relief Act. The Court would necessarily have to arrive at the finding that the plaintiff all along were, and still are ready and also willing to perform their part of the contract, taking into account the entirety of the pleadings as also the evidence brought on record. To quote this Court :

“So far there being a plea that they were ready and willing to perform their part of the contract is there in the pleading, we have no hesitation to conclude, that this by itself is not sufficient to hold that the appellants were ready and willing in terms of Section 16(c) of the Specific Relief Act. This requires not only such plea but also proof of the same. Now examining the first of the two circumstances, how could mere filing of this suit, after exemption was granted be a circumstance about willingness or readiness of the plaintiff. This at the most could be the desire of the plaintiff to have this property. It may be for such a desire this suit was filed raising such a plea. But Section 16(c) of the said Act makes it clear that mere plea is not sufficient, it has to be proved.”

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

13. In **C.S. Venkatesh v. A.S.C. Murthy**, 2020 (3) SCC 280, Hon’ble Supreme Court, had culled out what is implied by the words 'ready and willing' as under :

"16. The words "ready and willing" imply that the plaintiff was

prepared to carry out those parts of the contract to their logical end so far as they depend upon his performance. The continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of performance. If the plaintiff fails to either aver or prove the same, he must fail. To adjudge whether the plaintiff is ready and willing to perform his part of contract, the court must take into consideration the conduct of the plaintiff prior, and subsequent to the filing of the suit along with other attending circumstances. The amount which he has to pay the defendant must be of necessity to be proved to be available. Right from the date of the execution of the contract till the date of decree, he must prove that he is ready and willing to perform his part of the contract. The court may infer from the facts and circumstances whether the plaintiff was ready and was always ready to perform his contract.

17. In **N.P. Thirugnanam v. R. Jagan Mohan Rao** [N.P. Thirugnanam v. R. Jagan Mohan Rao, 1995 (5) SCC 115, it was held that continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant of the relief of specific performance. This circumstance is material and relevant and is required to be considered by the court while granting or refusing to grant the relief. If the plaintiff fails to either aver or prove the same, he must fail. To adjudge whether the plaintiff is ready and willing to perform his part of the contract, the court must take into consideration the conduct of the plaintiff prior to and subsequent to the filing of the suit along with other attending circumstances. The amount of consideration which he has to pay to the defendant must necessarily be proved to be available.

18. In **Pushparani S. Sundaram v. Pauline Manomani James** [Pushparani S. Sundaram v. Pauline Manomani James, 2002 (9) SCC 582, this Court has held that inference of readiness and willingness could be drawn from the conduct of the plaintiff and the totality of circumstances in a particular case.

It was held thus:

"5. ...So far these being a plea that they were ready and willing to perform their part of the contract is there in the pleading, **we have no hesitation** to conclude, that this by itself is not sufficient to hold that the appellants were ready and willing in terms of section 16(c) of the Specific Relief Act. This requires not only such plea but also proof of the same. Now examining the first of the two circumstances, how could mere filing of this suit, after exemption was granted be a circumstance about willingness or readiness of the plaintiff. This at the most could be the desire of the plaintiff to have this property. It may be for such a desire this suit was filed raising such a plea. But Section 16(c) of the said Act makes it clear that mere plea is not sufficient, it has to be proved."

14. In **Madhukar Nivrutti Jagtap v. Pramila Bai Chandulal Parandekar**, 2020 (15) SCC 731, Hon'ble Supreme Court held that 'readiness and willingness' of the plaintiff to perform his part of the contract has to be examined with reference to all the facts and circumstances and held as under:

"13. When the agreements in question were for the sale of suit property, the plaintiffs were entitled to take up the action seeking specific performance. However, in order to succeed in their claim, the plaintiffs were required to aver and prove that they were always ready and willing to perform their part of the contract.

.....

13.2. The question as to whether the plaintiff seeking specific performance has been ready and willing to perform his part of the contract is required to be examined with reference to all the facts and the surrounding factors of the given case. The requirement is not that the plaintiff should continuously approach the defendant with payment or make incessant requests for performance. For the relief of specific performance,

which is essentially a species of equity but has got statutory recognition in terms of the Specific Relief Act, 1963 [Its forerunner being the Specific Relief Act, 1877.], the plaintiff must be found standing with the contract and the plaintiff's conduct should not be carrying any such blameworthiness so as to be considered inequitable. The requirement of readiness and willingness of the plaintiff is not theoretical in nature but is essentially a question of fact, which needs to be determined with reference to the pleadings and evidence of parties as also to all the material circumstances having bearing on the conduct of parties, the plaintiff in particular. ...

... ..

*13.5. ... when the plaintiffs had the limitation of three years for filing the suit for specific performance, it cannot be said that during the aforesaid period, the plaintiffs were required to show overt act by them in furtherance of the agreement in question. ... In **Pushparani S. Sundaram** [**Pushparani S. Sundaram v. Pauline Manomani James**, (2002) 9 SCC 582], the basic requirements of Section 16 of the 1963 Act were reiterated. In contrast to what is suggested on behalf of the appellants, **we may point out that recently, in R. Lakshmikantham v. Devaraji** [**R. Lakshmikantham v. Devaraji**, (2019) 8 SCC 62], this Court has again explained that when the suit for specific performance is filed within the period of limitation, delay cannot be put against the plaintiff. This Court has said: (SCC p. 66, para 11)*

*"11. ... In the aforesaid circumstances, the High Court was also incorrect in putting a short delay in filing the suit against the plaintiff to state that he was not ready and willing. In India, it is well settled that the rule of equity that exists in England, does not apply, and so long as a suit for specific performance is filed within the period of limitation, delay cannot be put against the plaintiff -- See **Mademsetty Satyanarayana v. G. Yelloji Rao** [**Mademsetty Satyanarayana v. G. Yelloji Rao**, AIR*

1965 SC 1405] (para 7) which reads as under: (AIR p. 1409)

'7. Mr. Lakshmaiah cited a long catena of English decisions to define the scope of a court's discretion. Before referring to them, it is necessary to know the fundamental difference between the two systems--English and Indian--qua the relief of specific performance. In England the relief of specific performance pertains to the domain of equity; in India, to that of statutory law. In England there is no period of limitation for instituting a suit for the said relief and, therefore, mere delay--the time lag depending upon circumstances--may itself be sufficient to refuse the relief; but, in India mere delay cannot be a ground for refusing the said relief, for the statute prescribes the period of limitation. If the suit is in time, delay is sanctioned by law; if it is beyond time, the suit will be dismissed as barred by time; in either case, no question of equity arises.'"

15. Again in **Rajesh Kumar v. Anand Kumar and Others, (2024) 13 SCC 80 Hon'ble Supreme Court** while denying the relief of specific performance on account of long delay in filing the relief of specific performance held as under:

*"23. The effect of filing a suit for specific performance after long delay, may be at the fag end of period of limitation fell for consideration before this Court in **K.S. Vidyanadam v. Vairavan [K.S.Vidyanadam v. Vairavan, (1997) 3 SCC 1]** wherein this Court held thus in para 10: (SCC p. 7)*

"10. It has been consistently held by the courts in India, following certain early English decisions, that in the case of agreement of sale relating to immovable property, time is not of the essence of the contract unless specifically provided to that effect. The period of limitation prescribed by the Limitation Act for filing a suit is three

*years. From these two circumstances, it does not follow that any and every suit for specific performance of the agreement (which does not provide specifically that time is of the essence of the contract) should be decreed provided it is filed within the period of limitation notwithstanding the time-limits stipulated in the agreement for doing one or the other thing by one or the other party. That would amount to saying that the time-limits prescribed by the parties in the agreement have no significance or value and that they mean nothing. Would it be reasonable to say that because time is not made the essence of the contract, the time-limit(s) specified in the agreement have no relevance and can be ignored with impunity? It would also mean denying the discretion vested in the court by both Sections 10 and 20. As held by a Constitution Bench of this Court in **Chand Rani v. Kamal Rani** [**Chand Rani v. Kamal Rani**, (1993) 1 SCC 519] : (SCC p. 528, para 25)...."*

24. In **Azhar Sultana v. B. Rajamani** [**Azhar Sultana v. B. Rajamani**, (2009) 17 SCC 27 : (2011) 1 SCC (Civ) 761], this Court held thus in para 28: (SCC p. 35)

"28. ... The court, keeping in view the fact that it exercises a discretionary jurisdiction, would be entitled to take into consideration as to whether the suit had been filed within a reasonable time. What would be a reasonable time would, however, depend upon the facts and circumstances of each case. No hard-and-fast law can be laid down therefor. The conduct of the parties in this behalf would also assume significance."

25. In **Saradamani Kandappan v. S. Rajalakshmi** [**Saradamani Kandappan v. S. Rajalakshmi** (2011) 12 SCC 18 : (2012) 2 SCC (Civ) 104], this Court held that every suit for specific performance need not be decreed merely because it is filed within the period of limitation by

ignoring time-limits stipulated in the agreement. The 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 that a purchaser can wait for one or two years to file a suit and obtain specific performance.

26. *In Atma Ram v. Charanjit Singh [Atma Ram v. Charanjit Singh, (2020) 3 SCC 311 : (2020) 2 SCC (Civ) 107], this Court has observed in para 9 thus: (SCC p. 316)*

"9. ... No explanation was forthcoming from the petitioner for the long delay of three years, in filing the suit (on 13-10-1999) after issuing a legal notice on 12-11-1996. The conduct of a plaintiff is very crucial in a suit for specific performance. A person who issues a legal notice on 12-11-1996 claiming readiness and willingness, but who institutes a suit only on 13-10-1999 and that too only with a prayer for a mandatory injunction carrying a fixed court fee relatable only to the said relief, will not be entitled to the discretionary relief of specific performance."

16. The impact of unexplained delay on claiming an equitable relief was considered by Hon'ble Supreme Court in **Rajesh Kumar Vs. Anand Kumar & Ors. (supra)** in following terms.

"39. Now, let us examine the conduct of the appellant/plaintiff on the aspect of approaching the Court for relief of specific performance at a belated stage.

40. It is settled that for claiming an equitable relief such as that of specific performance, the conduct of the party claiming it must be beyond reproach. This includes that the plaintiff approaches the Court on time, which does not merely mean within the period of limitation itself but also promptly with diligence and equitability.

43. After examining the entire facts of the case and the evidence produced on record, we are of the definite view that this is not a fit case where the discretionary relief of

specific performance can be granted in favour of the appellants. Keeping in view the twin statutory mandate of 'readiness' and 'willingness', the appellants not only failed to demonstrate their readiness and willingness but also failed to approach the Court with quite promptitude, which disentitle them from grant of the equitable relief of specific performance.”

17. Therefore, it is not in doubt that suit for specific performance can be decreed by the Courts only if following facts are duly established on record.

- (i) Due execution of agreement between the parties;
- (ii) That plaintiff/purchaser was and has been willing to perform his part of contract throughout;
- (iii) That purchaser had sufficient financial capacity to pay balance consideration amount can be looked into by Courts to find readiness and willingness on the part of purchaser;
- (iv) That plaintiff/purchaser had not slept over his right and delayed the matter taking advantage of passing of time by not preferring suit within reasonable time.

18. To prove that plaintiffs are not entitled to specific performance as they had failed to get sale deed executed and to prove due issuance of notice, appellants/defendants had duly examined Advocate Sh. Moti Lal Gupta, author of legal notice as DW2. Perusal of evidence of DW2 goes to show that he had duly asserted to have issued notice dated 20.06.1986 on behalf of defendants through general power of attorney (defendant No.3) and the fact that it was sent through registered post and registered envelop was received back with report of postal authorities that the addressee namely Sultan i.e. predecessor-in-interest of respondents/plaintiffs had refused to

receive the same. DW2 had duly proved the postal receipt as Ex.D2, notice as Ex.D3 and envelop received back unserved upon refusal by Sultan-predecessor of respondents/plaintiffs with report of postal authorities as Ex.D1. Evidence of DW2 was supported by DW3-Postman who had duly stated that he had taken the registered letter to the addressee-Sultan and met him, however, Sultan had refused to receive the same. There is no rebuttal to the evidence of appellants/defendants in the shape of evidence of DW2 and DW3.

19. Appellants/defendants have therefore, succeeded in proving that they had issued notice on 20.06.1986, wherein they had clearly shown their willingness to execute the sale deed on 30.06.1986. Mool Chand, the general power of attorney of appellant/defendant No.1 also appeared as DW4 and had clearly stated to have issued notice on 20.06.1986 for executing the sale deed as was stated by DW2. Nothing from cross-examination of DW2 or DW3 or DW4 could be made out as to doubt their assertions in examination-in-chief. Issuance of notice has therefore, has gone unchallenged and un rebutted.

20. In the present case, once it is proved that appellants/defendants were ready to execute sale deed on 30.06.1986 after initial default on their part on 11.06.1986, it was incumbent upon plaintiffs/respondents to explain as to why the said offer was not accepted and why they had preferred the suit not within the reasonable time but on the last date of limitation as admittedly suit for specific performance for which last date was 11.06.1986 was preferred by plaintiffs/respondents only on 12.06.1989 (11.06.1989 being Sunday) during summer vacations.

21. Faced with above, learned counsel for plaintiffs/respondents argued that the delay in filing the suit was on account of the fact that father

of plaintiffs/respondents who had entered into agreement dated 12.06.1985 had died and all the above facts were not known to plaintiffs/respondents and it was subsequently, when they came to know about execution of agreement and failure on the part of appellants/defendants to execute the same, they had preferred the suit. It is also argued that since in the agreement the only remedy available to plaintiffs/respondents was to get the sale deed executed through Court of law, therefore, plaintiffs/respondents were not bound to appear and get the sale deed executed on 30.06.1986.

22. Learned counsel for appellants/defendants however states that the argument being raised by learned counsel for plaintiffs/respondents is in direct contradiction with pleadings of plaintiffs/respondents wherein they have claimed that immediately after death of their father, they had approached appellants/defendants for execution of sale deed but they had refused.

23. In the present case, since appellants/defendants have succeeded in proving that they had issued notice dated 20.06.1986 showing their willingness to execute the sale deed on 30.06.1986, therefore, it was incumbent upon plaintiffs/respondents to show justification for not getting the sale deed in their favour. Not accepting the offer of appellants/defendants to execute the sale deed on 30.06.1986 goes to show that it was plaintiffs/respondents who had defaulted as they have failed to get the sale deed executed in their favour when so offered by appellants/defendants. This failure on the part of plaintiffs in fact establishes that plaintiffs were not ready and willing to perform their part of contract and they have slept over their rights till last day of limitation. The discretion to allow specific performance, therefore, cannot be exercised in favour of plaintiffs.

24. Moreover, no evidence was led by plaintiff to show that plaintiffs i.e. their predecessor-in-interest had financial capacity to honour his part of contract. Except for assertion that Sultan (predecessor-in-interest) was present on 11.06.1986, no evidence to show that Sultan had means to pay balance consideration was led. Failure to accept offer to execute sale deed on 30.06.1986 by defendant No.3 would raise adverse inference regarding his capacity to pay balance consideration. Learned Court below failed to take notice of this aspect of the case and had failed to conclude that it was plaintiffs who were not ready and willing throughout to perform their part.

25. In present case, last date for execution of sale deed was 11.06.1986. Legal notice dated 20.06.1986 was issued to predecessor of plaintiffs i.e. Sultan by defendants asking him to get sale deed executed on 30.06.1986. Thereafter, no steps were taken to get the agreement enforced. The suit was preferred after three years. No notice to get the sale deed executed was issued. No explanation as to why no steps to enforce the agreement is forthcoming. This conduct of plaintiff in fact goes to show that plaintiff had no financial capacity to perform his part of agreement and therefore, he delayed the matter. Out of Rs.46,000/- only, Rs.5,000/- was paid as earnest money. Therefore, delay in filing suit immediately after refusal by appellants/defendants would go against plaintiffs/respondents seeking specific performance.

26. In view of above discussion, learned Appellate Court has erred in not appreciating that plaintiffs/respondents have failed to prove their readiness and willingness throughout to succeed in the suit for specific performance. However, since agreement was never cancelled by appellants/defendants and time is not the essence in an agreement to sell,

therefore, the amount of earnest money of Rs.5,000/- has to be returned by appellants/defendants along with interest @ 9% p.a. from the date of receipt till its realization.

27. Present appeal is allowed in above terms. Judgment and decree passed by First Appellate Court is set aside. Judgment and decree of learned Court of first instance is restored subject to above modification. Suit of plaintiffs/respondents is dismissed, subject to recovery rights of recover earnest money.

28. Pending application(s), if any, is/are disposed of accordingly.

07.07.2026
Chiranjeev/Sunil

(PARMOD GOYAL)
JUDGE

Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No