IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

TUESDAY, THE 1ST DAY OF SEPTEMBER 2015/10TH BHADRA, 1937

RFA.No. 117 of 2013 ()

AGAINST THE ORDER/JUDGMENT IN OS 685/2009 of PRINCIPAL SUB COURT, PALAKKAD DATED 29-11-2012

APPELLANT(S)/DEFENDANT:

E.C. CHANDRAN
MANNAMPALLAM, MARUTHA ROAD AMSOM, MARUTHA ROAD DESOM
PALAKKAD TALUK

BY ADV. SRI.LEO GEORGE

RESPONDENT(S)/PLAINTIFF:

VARKEY OMMAN
SON OF OMMEN CHACKO, 11/386, TAGORE NAGAR
KALMANDAPAM, KUNNANUR AMSOM, KUNNANUR DESOM
PALAKKAD TALUK.

R1 BY ADV. SRI.V.M.KURIAN

THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON 20-7-2015, THE COURT ON 1/9/2015 DELIVERED THE FOLLOWING:

T.R. RAMACHANDRAN NAIR &
K.P. JYOTHINDRANATH, JJ.

\- -

R.F.A.No.117 of 2013

\- -

Dated this the 1st day of September, 2015

JUDGMENT

Ramachandran Nair, J.

This appeal is filed by the defendant in O.S.No.685/2009 on the file of the Principal Sub Court, Palakkad. The relief sought for by the plaintiff in the suit was for specific performance of the agreement Ext.A1. It was alleged that the defendant had agreed to sell the plaint schedule property (25 cents in extent approximately) for a sum of Rs.9,25,000/-. The consideration thus fixed will come to Rs.37,500/- per cent. Rs. 1,00,000/- was paid as advance. The period provided in the agreement for completion of the transaction was four months. The Trial Court as per the impugned judgment decreed the suit.

2. We heard the learned counsel for the appellant and the learned counsel for the respondent.

3. The learned counsel for the appellant mainly contended that the conclusions of the trial court on various aspects are faulty. It is

submitted that the suit was filed only on 3.12.2009, viz. 2½ years after the date of the agreement and in spite of the said time lag, the trial court did not consider the hardship of the defendant and the guiding factors for exercise of discretion as provided under Section 20 of the Specific Relief Act have not been followed. Therefore the decree cannot be supported. The plaintiff has breached the terms of contract. It is further submitted that the residential property is the only item which the defendant is having and the total extent is only 28 cents and therefore there will be irreparable injury and hardship if he is asked to part away with the property in favour of the plaintiff. The plaint schedule is shown, by including the residential portion, which is not correct. It is further submitted that the plaintiff has to prove, going by Section 16(c) of the Specific Relief Act, about the capacity, readiness and willingness to perform the contract and the same has also not been proved. Thus, it is only due to the fault of the plaintiff the document was not executed within the period provided in the agreement.

4. The learned counsel further submitted that the plaintiff relied upon Ext.A1 (a) an endorsement in the agreement, allegedly in the

handwriting of the defendant. It is submitted that the same was disputed by the defendant. The trial court, without having any opinion of an expert, compared his signature with other admitted signatures which is not a legally acceptable method.

5. With regard to the endorsement Ext.A1(a), it is submitted that the same is hit by the provisions of Kerala Stamp Act especially Sections 14 and 15. The endorsement therein cannot stand scrutiny in the eye of law and hence on relying upon the same, no decree could have been granted. The document Ext.A1 itself became void. Thus, the plaintiff alone will be answerable for the considerable delay in filing the suit for which there is no other explanation.

6. The learned counsel for the plaintiff submitted that the trial court has rightly found that the plaintiff has proved his case to the hilt. It was the defendant who had committed breach of the terms of the agreement. It is submitted that the defendant had executed an earlier agreement with one Shri Gopalakrishnan which led to the filing of a civil suit before the same court. The same was not disclosed to the plaintiff when Ext.A1 agreement was executed. Only when the

plaintiff approached the defendant on 20.10.2007, he was informed that there was a case pending before the Additional Sub Court, Palakkad relating to the plaint schedule property. The endorsement in Ext.A1 was made by the defendant agreeing to perform the contract, on disposal of the said case pending before the Additional Sub Court. Therefore, it is submitted that it is not a case where there is any delay on the part of the plaintiff in arranging the money or seeking execution and registration of the document. It is also submitted that the defendant had to measure the property, clear encumbrances, if any, and take steps which he had failed to do. Therefore, it is submitted that the findings by the trial court on various aspects are justified. The learned counsel submitted that the plaintiff was ready and willing throughout for payment of the money and for executing the document.

7. We have considered the rival submissions. Going by the averments in the plaint, the plaintiff came to know that the defendant is willing to sell the plaint schedule property which led to the execution of the agreement on 28.6.2007. The property is having an extent of approximately 28 cents with a house. As per by the averments in

paragraph 2 of the plaint, the agreed purchase price is Rs.37,000/- per cent for the measured extent and he paid Rs. 1 lakh on the same day towards total sale consideration. The agreement was to convey 25 out of 28 cents. Before the expiry of the period, namely four months, he approached the defendant for many times including on 20.10.2007. On that day he was informed by the defendant that a case is pending, relating to the property, before the Additional Sub Court, Palakkad. The further details with regard to the number and year of the case have not been communicated to him, in spite of repeated demands. The request for extension of time for executing the sale deed made by the defendant was agreed by the plaintiff which led to the recording of the endorsement in the agreement itself on the said date.

8. Subsequently also, the defendant did not inform him about the results of the case and on 29.11.2009 he went and demanded the defendant to perform his part of the contract and informed him that the plaintiff was ready to pay the balance sale consideration. But there was failure still from the part of the defendant. It is in those circumstances the suit was filed.

9. In the written statement, the defendant denied the averments of the plaintiff. It is pointed out that due to heavy financial difficulties incurred by him for meeting the expenses of the marriage of the daughter, he had executed the agreement, but the default is on the part of the plaintiff. Actually the property was having the value of Rs.14 lakhs at that time, but it was agreed to be sold at Rs.10,36,000/- to the plaintiff, so as to pay off his debts. Even though four months time was provided in the Karar, it was the oral understanding that within one month after giving the balance sale consideration, the document can be registered. Actually the plaintiff is a real estate broker and he could not get a purchaser for resale and as he failed to collect the required money, he could not get the document executed. It is not for any reason like failure to measure out the property or to satisfy about the documents concerning the property. Actually after measurement of the property and after verifying the documents, the plaintiff has executed the agreement. It is also his case that the averments in the plaint that the plaintiff contacted him on 29.11.2009 is not correct. The defendant had to suffer a loss to the tune of Rs.4,000/- per month as interest. The

defendant denied the averment that the plaintiff met him on 20.10.2007. He denied the averment that on the said day, the information regarding the case pending was informed to the plaintiff and thereafter an endorsement was made in Ext.A1 extending the period. It is submitted that all the averments are without any merit.

10. It is also the case of the defendant that even at the time when the agreement was executed, he had informed that already there is an agreement executed with one Shri Gopalakrishnan for sale of the property and the details of the case were fully disclosed by him. Only since the plaintiff is having real estate business, the agreement was executed for a higher price. It is also the case of the defendant that there is failure on the part of the plaintiff to get the document executed by payment of balance sale consideration and he has not taken any steps for the same. It is also provided in the agreement that if there is any failure on the part of the plaintiff to get the sale deed executed after paying balance sale consideration, the advance amount can be realised as loss by the defendant and consequently the agreement will also lose its validity. There is no breach of contract on the part of the defendant.

The points that arise for consideration are:-

(a) Whether the plaintiff has satisfied the stipulations in Section 16(c) of the Specific Relief Act?

(b) Whether Ext.A1(a) is valid and operative? and

(c) Whether the reliefs sought for are liable to be granted in favour of the plaintiff?

11. The plaintiff has filed a proof affidavit in tune with the averments in the plaint. In the light of the argument raised by the learned counsel for the respondent that there is no offer by the plaintiff to pay the balance consideration at any time, necessarily it has to be considered whether the plaintiff has complied with the stipulations of Section 16(c) of the Specific Relief Act. What is stated in paragraph 3 is that he had met the defendant several times seeking execution and registration of the document. It is also stated that on 20.10.2007 he met the defendant and then only the pendency of the case was informed to him and thereafter extension of the period was asked for and the endorsement to that effect was agreed to and both have signed it in the back side of the original of Ext.A1. It is also the case that the

details of the case were not actually communicated in spite of repeated requests made to him. He has stated in paragraph 4 that he met the defendant on 29.11.2009 in person and demanded the defendant to execute the document after receiving the payment. But he did not accede to it and refused to divulge the details. Finally, in paragraph 6 it is stated that in tune with the conditions in Ext.A1 he was already ready and willing and even now he is ready and willing.

12. We have gone through the agreement Ext.A1. Going by the said agreement, what is agreed upon by the parties is to transfer 25 out of 28 cents of land in R.S. No.67 of Kunnanoor amsom. There is no schedule in the document along with the measurements. It is described as the portion lying close to the road of the northern and eastern portion of 28 cents. It is also mentioned that the rate is fixed for the property actual in extent on measurement. The plaint schedule, going by the description, is approximately 25 cents of land along with improvements and building. The measurements on the four sides have also been shown as 81 ft. on the east, 72 ft. on the west, 114 ft. on the south and 114 ft. on the north. The suit has been decreed by the trial

court by directing the defendant to transfer by way of sale of the plaint schedule property. We have referred to these aspects since a question has been mooted by the learned counsel for the defendant as to whether 25 cents have actually been identified and measured and without which how the plaint schedule description be correct.

13. Before going further, we will refer to the well settled principles concerning grant of decree for specific performance of an agreement relating to sale of immovable property relied on by both sides. The Apex Court in **Arumugam v. Chinnappan** (2005 (2) KLT SN 40, C. No.49 - SC) has held that grant of specific relief is a discretionary relief and it is not a matter of right. In **Madhavan v. Thankam** (2007 (2) KLT SN 17), this Court by relying upon the decisions of the Apex Court in **Nirmala Anand v. Advent Corporation (P) Ltd. and others** {(2002) 8 SCC 146}, **Tejram v. Patirambhau** {(1997) 9 SCC 634} and **A.C. Arulappan v. Smt. Ahalya Naik** (AIR 2001 SC 2783) held that "grant of decree of specific performance lies in the discretion of the court" and it is also well settled that it is not always necessary to grant specific performance

simply for the reason that it is legal to do so. The same legal position was reiterated in **Lalithambika v. Varghese** (2004 (3) KLT 892). Therein, it was also held that "if the circumstances in which agreement was executed are such that the defendant was compelled to execute the agreement in unfortunate circumstances and the plaintiff was taking advantage of the same it is a case where specific performance can be denied."

14. In **Shamsher Singh v. Rajinder Kumar** (2014 (4) KLT Suppl. 71 - SC) the Apex Court held that if the plaintiff has an unfair advantage over the defendant, the discretion has to be exercised not to grant specific performance.

15. In **K. Narendra v. Riviera Apartments (P) Ltd.** {(1999) 5 SCC 77}, the importance of subsequent events viz. the factum of subsequent rise in the value of land which none of the parties could have contemplated at the time of entering into the agreement, was stated as material. The applicability of doctrine of comparative hardship was also stated therein. In the two recent judgments of the Apex Court also the very same principles have been reiterated. They

are: **K. Prakash v. B.R. Sampath Kumar** (AIR 2015 SC 9) and **Zarina Siddiqui v. A. Ramalingam alias R. Amarnathan** (AIR 2015 SC 580). In **Nirmala Anand's case** {(2002) 8 SCC 146} also a similar issue was considered.

16. In the first of these cases, viz. **K. Prakash's case** (AIR 2015 SC 9) it was held that subsequent rice in price would not be treated as hardship entailing refusal of decree for specific performance. But the court may take notice of the fact that there has been an increase in the price of the property and can impose such condition which will compensate the defendant-owner of the property.

17. In **Zarina Siddiqui's case** (AIR 2015 SC 580) the very same aspect was considered in paragraph 39. It was held that the phenomenal increase in price during the period of pendency of the matter in different courts is an important aspect to be considered while moulding the relief. From paragraph 19 onwards there is a detailed discussion on the relevant principles contained in earlier judgments of the Apex Court.

18. As regards Section 16(c) of the Specific Relief Act and its

compliance, it was held by the Apex Court in **Bal Krishna v. Bhagwan Das** (2008 (2) KLT SN 88 - SC) that the compliance of the requirement of Section 16(c) is mandatory and in the absence of proof of the same that the plaintiff has been ready and willing to perform his part of the contract suit cannot succeed. The first requirement is that he must aver in the plaint and thereafter prove those averments made in the plaint.

19. **Aniglase Yohannan v. Ramlatha and others** {(2005) 7 SCC 534} also discussed the various principles regarding the requirement concerning Section 16(c) of the Specific Relief Act and Explanation (ii) thereof. It was held in para 13 that Section 16(c) mandates the plaintiff to aver in the plaint and establish the fact by evidence that he has always been ready and willing to perform his part of the contract.

20. In **Saradamani Kandappan v. Rajalakshmi** (2011 (3) KLT SN 43 - SC) the Apex Court has emphasised and reiterated the matters to be considered by the court while exercising the discretion in a suit for specific performance.

21. **Adimakutty Hydu Ali v. Ambujam** (2003 (2) KLT 328) is

by a Division Bench of this Court wherein it has been held that "it is obligatory on the part of the court to consider whether by decreeing specific performance any unfair advantage would result for the plaintiff over the defendant and the extent of hardship that may be caused to the defendant.

22. In **Aliyas v. Aboobacker** (2006 (4) KLT 282) this Court held that "unsustainable defence cannot be a ground for denial of equitable consideration in all circumstances." The court has to consider all the facts and circumstances of the case in order to exercise the discretion to decree or not to decree specific performance and in that process can take into account equitable considerations as well.

23. Before going further to the finding regarding the crucial aspects, we will have to consider the finding by the court below on the endorsement Ext.A1(a). In this case, as already noticed, the agreement provided an initial period of four months for executing the sale deed. According to the plaintiff, Ext.A1(a) is the endorsement on the reverse side of the first page of Ext.A1 by which the period of performance was extended till the disposal of the case between the defendant and

one Shri Gopalakrishnan which was pending before the Additional Sub Court, Palakkad. The same is crucial to the case of the plaintiff since according to the plaintiff, the present suit is filed after the disposal of the suit filed by Shri Gopalakrishnan, the judgment of which is produced as Ext.A2. The present suit is filed, as per the endorsement on the plaint, on 3.12.2009. To explain the period from the date of agreement upto 3.12.2009 heavy reliance is placed by the plaintiff on Ext.A1(a). The defendant is disputing the correctness of the entry and denies his signature. Even though names of two witnesses are shown under the entry, nobody has been examined by the plaintiff. The trial court went on to compare the signature in Ext.A1(a) with that of the admitted signatures of the defendant which method is under attack by the learned counsel for the appellant. The finding entered is that in the admitted documents like Ext.A1, written statement and additional written statement, the subscribed signature is by writing his name, but in Ext.A1(a) apart from the name, signature is also there. In the vakalath and page 5 of the deposition, it is identical with the endorsement Ext.A1(a).

24. Apart from the same, learned counsel for the appellant submitted that the said endorsement will make the agreement itself void, in the light of Sections 14 and 15 of the Kerala Stamp Act. We extract hereinbelow Sections 14 and 15 of the Kerala Stamp Act:

> **“14. Only one instrument to be on same stamp**.-- No second instrument chargeable with duty shall be written upon a piece of stamped paper upon which an instrument chargeable with duty has already been written:
>
> Provided that nothing in this section shall prevent any endorsement which is duly stamped or is not chargeable with duty being made upon any instrument for the purpose of transferring any right created or evidenced thereby, or of acknowledging the receipt of any money or goods the payment or delivery of which is secured thereby.
>
> **15. Instruments written contrary to Section 13 or 14 deemed unstamped**.-- Every instrument written in contravention of Section 13 or Section 14 shall be deemed to be unstamped.”

Going by Section 14, learned counsel explains that no second instrument chargeable with duty shall be written upon a piece of stamped paper upon which an instrument chargeable with duty has already been written. It is also submitted that the proviso and the situation indicated therein are not applicable herein. By the effect of Section 15, such an instrument will be deemed to be unstamped. It is therefore submitted that the document itself became invalid. The learned counsel for the plaintiff contended that the same argument is not correct at all and that the trial court was right in entering a finding after comparison of signatures.

25. The question now raised under the Stamp Act is not one considered by the trial court. Whether the document itself will become invalid or whether the defect can be remedied by payment of penalty or otherwise, is a matter for consideration. Since the same has not been considered by the trial court, it will be a matter for consideration afresh.

26. Apart from the same, great attack is made by the learned counsel for the appellant to the method adopted by the trial court in comparing the signatures of the defendant with various documents. Learned counsel for the respondent submitted that there is no illegality in the same. What has been done by the trial court, going by paragraph

9(b) of the judgment, is to compare the signature in Ext.A1(a) endorsement with that of his signatures in the written statement and additional written statement. It is stated that in these documents the signature is put by merely writing his name and in Ext.A1(a) apart from his name, there is signature also. When the defendant denies the signature itself and contends that it is a concocted one, there should be at least the evidence of an expert to give sanctity to the proceedings. That method was not adopted by the plaintiff. The document was not sent for expert's opinion. But before considering whether it should be sent for comparison by an expert, the impact of Sections 14 and 15 of the Stamp Act also will have to be considered.

27. Learned counsel for the respondent submitted that it was a case where the defendant was trying to sell the property by executing different agreements and no bonafides are there in the matter. Learned counsel therefore submitted that the comparison made by the court of the signature is a valid one.

28. Comparison of signature by court itself is unscientific, especially since the case of the plaintiff fully depends on it. The lone

evidence is by way of comparison itself which makes it shaky. Therefore, the finding by the trial court that Ext.A1(a) endorsement in the handwriting of the defendant, will have to be set aside and we leave open the question for a decision of the trial court itself, after hearing both sides.

29. In sub para (c) of paragraph 9, relying upon Ext.A2 judgment in a suit filed by one Shri Gopalakrishnan against the defendant himself demanding specific performance, certain conclusions have been arrived at by the trial court. In the said suit a decree for specific performance was not granted and only a decree for return of advance money was granted after finding that the defendant was in a disadvantageous position for various reasons. The trial court, in this case was of the view that as the defendant has not disclosed the existence of the previous agreement and in the light of the fact that the suit leading to Ext.A2 judgment was pending and there was mutual extension of the period for performance as per Ext.A1(a) endorsement, it can be safely concluded that the defendant agreed that he would execute a sale deed in favour of the plaintiff by accepting the balance consideration on

disposal of the suit filed by Shri Gopalakrishnan. It is further pointed out that these circumstances are in tune with the case set up by the plaintiff. In the course of discussion, the trial court also stated that no evidence was adduced that actually the marriage of the daughter of the defendant was scheduled to be taken place within the four months period mentioned in Ext.A1. According to us, the same is misreading of the contentions taken in the written statement. In the written statement the contention raised is that the agreement was executed for sale of the property for a value of Rs.10,36,000/- whereas the actual value was Rs.14 Lakhs, for enabling the defendant to settle the liabilities incurred in connection with the marriage of his daughter. Therefore, it is not a case where he has pleaded that the marriage was scheduled to take place within the four months period. Thus, the said finding that he has not proved that the marriage was scheduled nearby to the four months period is not correct.

30. The trial court was of the view, in the light of these facts, that the defendant was a defaulting party. The question as to whether the plaintiff or defendant is in default, will further depend upon the

validity and other aspects of Ext.A1(a) endorsement. Therefore, we are of the view that the finding on this aspect also will have to be vacated. Both these aspects are interdependent, at least.

31. In paragraphs 11 and 12 of the judgment, after referring to various decisions of the Apex Court, it was considered as to whether the escalation of land value will be a matter for consideration by the court. The view substantially taken is that the defendant is not entitled for escalation and consequent refixation of price.

32. We have noted the decisions of the Apex Court in **K. Prakash's case** (AIR 2015 SC 9) and **Zarina Siddiqui's case** (AIR 2015 SC 580) and other earlier decisions. The escalation in value is a matter which will have to be considered by the court. Herein, the plaintiff has filed the suit only on 3.12.2009 whereas the agreement is dated 28.6.2007. In a recent judgment of this Court in **Wellingdon B. v. D. Shyama Prasad and others** (2014 (3) KHC 560) the whole aspects concerning the escalation of price during various periods and the method by which the same has to be considered by the court have been explained. We do not agree with the view of the trial court that

escalation is not a matter which should be considered in this case. Such a view was taken obviously, by relying on Ext.A1(a) endorsement. We have already held that the issue concerned with the validity of Ext.A1(a) requires reconsideration afresh.

33. The next aspect to be considered is the ear-marking of 25 cents. The agreement does not contain the schedule. Ext.A1 gives the description of the property covered by the agreement as follows:

> "ഇതിലെ 2-ാം നമ്പറുകാരൻ സ്വന്തമായി തൻെറ പേരിൽ പാലക്കാട് സബ് റജിസ്ട്രാർ ആഫീസിൽ 1991 ൽ 2660-ാം നമ്പറായി റജിസ്ട്രാക്കിച്ചു വാങ്ങിയ ജന്മം തീരാധാര പ്രകാരം തീരുവാങ്ങിയതും 2-ാം നമ്പറുകാരന്ന് മാത്രം അവകാശപ്പെട്ടതും 2-ാം നമ്പറുകാരൻെറ കൈവശത്തിൽ നിന്നു വരുന്നതും ജന്മാവകാശമായതുമായ കുന്നനൂർ അംശം ദേശത്ത് റിസർവ്വെ 67 ൽ പ്പെട്ട 28 സെൻറിൻെറ വടക്കു ഭാഗത്തും കിഴക്കുഭാഗത്തും 11 അടി റോഡിനോടു ചേർന്ന് കിടക്കുന്ന 25 സെൻറ് വഹകളും തന്നിലെ എല്ലാ കുഴിക്കൂർ ചമയങ്ങളും (മരങ്ങൾ), വീട്, കിണർ, കുളിമുറി അതിൻെറ പടിഞ്ഞാറുഭാഗത്തുള്ള ചാർത്തിനുള്ള ഇരുമ്പ് പൈപ്പുകൾ ഒഴികെയുള്ളവയേയും കൂടി അളന്നു കാണുന്ന സ്ഥലത്തിന്ന് സെൻറ് ഒന്നിന് 37,000ക (മുപ്പത്തി ഏഴായിരം ഉറുപ്പിക) വീതം വില നിശ്ചയിച്ച് 2-ാം നമ്പറുകാരൻ 1-ാം നമ്പറുകാരന്ന് തീരുകൊടുപ്പാനും ടി

വിലക്ക് 1-ാം നമ്പറുകാരൻ തീരു വാങ്ങുവാനും ഇതിനാൽ കരാർ ചെയ്യുകയും ടി തീരുവിലയുടെ ഭാഗമെന്ന നിലക്ക് 2-ാം നമ്പറുകാരൻ 1-ാം നമ്പറുകാരനോട് 1,00,000ക (ഒരു ലക്ഷം ഉറുപ്പിക) അഡ്വാൻസായി ഇന്ന് റൊക്കം വാങ്ങുകയും ചെയ്തിരിക്കുന്നു."

The total extent of the property is 28 cents. Now the decree granted is to transfer the 25 cents without earmarking or measuring. Learned counsel for the appellant submitted that the decree therefore cannot be supported whereas learned counsel for the respondent submitted that it can be easily identified. The description in Ext.A1, even though gives the extent as 25 cents out of 28 cents, only after measuring alone, the property can be earmarked. Therefore, without evidence regarding the true description of the portion to be sold out of 28 cents in whole, there cannot be a conveyance. This is one of the other reasons for setting aside the judgment and decree. The decree granted is by directing the defendant to execute a sale deed with respect to the plaint schedule property. Going by the description in Ext.A1 and the plaint schedule, according to us, as regards the extent with proper measurements, there is no definite data.

34. The compliance of Section 16(c) of the Specific Relief Act also requires close scrutiny. As far as readiness and willingness is concerned, it is axiomatic, going by the decisions of the Apex Court and this Court, that the same has to be pleaded and proved. The trial court went on to consider the said aspect as in favour of the plaintiff in the light of the alleged default on the part of the defendant. In paragraph 12 there is a finding that, there is no evidence to the effect that the plaintiff was unable to raise the balance consideration. It has been held by this Court in **Muhammed v. Chandrika** (2010 (3) KLT 306) that merely because there is a finding with regard to the default of the defendant to perform a term of the contract, that will not absolve the court from considering the various aspects under Sections 16(c) and 20 of the Specific Relief Act. Whether the plaintiff was truly ready and willing will have to be considered on the basis of the evidence and the pleadings of the parties. It was further held that on failure to prove his readiness and willingness, the suit must fail. Whether the discretionary relief of specific performance has to be granted, is another aspect which may have to be considered going by the various

decisions which we have already referred to.

35. Herein, learned counsel for the respondent submitted that the plaintiff has clearly stated in the plaint that he was ready and willing. Readiness and willingness will have to analysed as readiness and willingness to go on with the transaction throughout the period. This will also depend upon the question of validity of Ext.A1(a) endorsement.

36. For all these reasons, we are of the view that the matter will have to be considered afresh by the trial court and accordingly the decree and judgment are set aside and the appeal is allowed. The matter is remanded to the trial court for fresh consideration in the light of the observations made above. The court fee paid on the memorandum of appeal will be refunded to the appellant.

The parties will suffer their costs in the appeal.

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(K.P. JYOTHINDRANATH, JUDGE.)

kav/