

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 16.7.2015

DELIVERED ON: 29.7.2015

CORAM:

THE HON'BLE MR.JUSTICE V.RAMASUBRAMANIAN
AND
THE HON'BLE MR.JUSTICE T.MATHIVANAN

A.S.No.272 of 2013

and

M.P.No.1 of 2015

R.Aravindhan

... Appellant/Defendants

Vs

1.K.R.S.Janakiraman (A.K.A.)
Johnny Shanmugam

2.Smt.Nithya Janakiraman

... Respondents/Plaintiffs

APPEAL under Section 96 read with Order XLI Rule 1 of the Civil Procedure Code against the judgment and decree dated 15.9.2012 made in O.S.No.148 of 2005 on the file of the Fourth Additional District and Sessions Court, Coimbatore.

For Appellant : Mr.R.Thiagarajan, SC for Mr.R.N.Amarnath

For Respondents : Mr.C.Krishnan, SC for Mr.M.Mayakrishnan

JUDGMENT

V.RAMASUBRAMANIAN, J

The appeal arises out of a decree for specific performance granted by the Fourth Additional District and Sessions Court, Coimbatore.

2. We have heard Mr.R.Thiagarajan, learned Senior Counsel appearing for the appellant and Mr.C.Krishnan, learned Senior Counsel appearing for the respondents.

3. The respondents herein filed a suit in O.S.No.148 of 2005 on the file of the Fourth Additional District Court, Coimbatore for specific performance of an agreement of sale dated 27.1.2005.

4. The case of the respondents in the plaint was that the appellant offered to sell three items of properties more fully described in the plaint schedule for a total consideration of Rs.1,85,01,000/-; that an agreement of sale was entered into on 27.1.2005 and an advance of Rs.28 lakhs was paid, at the time of execution of the agreement; that out of the three items of properties agreed to be sold, two belonged to the appellant herein and the third belonged to the appellant's mother; and that under Clause 9 of the agreement, the appellant agreed to have the third item of property also conveyed to him by his mother before the execution and registration of the sale; that under the agreement of sale, the appellant agreed to make all the six tenants except one, enter into fresh deeds of lease with the respondents/plaintiffs.

5. It is the further case of the respondents/plaintiffs that since they had spent considerable time in the United States of America and returned to India within a view to settle down permanently in India, they made all arrangements to pay the sale consideration by taking necessary steps to draw the amounts from the bank; that the respondents/plaintiffs were having sufficient funds to pay to the appellant at any time; that the respondents/ plaintiffs were always ready and willing to perform their part of the contract, but the appellant/defendant was unnecessarily postponing the execution of the sale deed; that therefore, the plaintiffs issued a legal notice dated 21.3.2005 informing the defendant about their readiness and willingness and the notice was received by the defendant only on 28.3.2005; that time was not the essence of the contract and in any case, there was no delay on the part of the plaintiffs; that even if the defendant was unable to get a sale deed from his mother in respect of the third item of the property, the plaintiffs were willing to purchase the other two items, for proportionate value; that the plaintiffs were willing to have the value of the third item of property fixed by the defendant himself; that defendant did not take any steps for getting fresh lease executed by the tenants in favour of the plaintiffs; that the plaintiffs received a letter from the defendant, in which, the

defendant had taken a stand that the agreement was one sided and not enforceable in law and that therefore, the plaintiffs were constrained to file the suit for specific performance of the agreement of sale.

6. The appellant herein, who was the sole defendant in the suit, filed a written statement contending inter alia that the defendant took immediate steps after the execution of the agreement, to have the third item of property conveyed to him; that his mother conveyed the third item in favour of the defendant under a settlement deed dated 31.1.2005 and the plaintiffs were also apprised of the said act; that Clause 14 of the agreement of sale contained two important conditions namely that if the plaintiffs failed to perform their obligations within the time stipulated, the agreement would stand automatically cancelled and the defendant would not be answerable for the non-performance in such an event; and that it is true that the defendant promised to have the portion in the occupation of the tenant - Airlinks Enterprises vacated before the sale and also get attornment of tenancies from the other tenants.

7. It was the further case of the appellant/defendant that the averments contained in the plaint as though the plaintiffs had sufficient funds and that they were always ready and willing to perform their part of the agreement are false; that the defendant had sent a reply to the notice dated 21.3.2005 disputing the plaintiffs' claim of readiness and willingness; that as per Clause 14, time was the essence of the contract, that when the talks for the sale of the properties were held, the defendant expressed a desire to have an outright sale, but the plaintiffs requested two months' time; that the defendant was in need of money in connection with his son's education abroad and also in connection with some other commitments; that however, the defendant reluctantly agreed to the time stipulated in the agreement in the fond hope that the plaintiffs would complete the sale within 30 days; and that on his part, the defendant had performed the obligations imposed upon him; that the defendant not only got a settlement from the mother in respect of the third item of property, but also got the tenants in occupation of the portions, vacated within a short period.

8. It was also the case of the appellant/defendant that what remained under the agreement was only the obligation on the part of the plaintiffs to pay the balance consideration of Rs.1,57,01,000/-, which ought to have been paid within two months' time; that due to the failure of the plaintiffs to make payment, the contract automatically failed; that the defendant had one tenant, who was a

foreigner and who was paying a monthly rent of Rs.75,000/-, vacate on 31.1.2005 with the hope that the plaintiffs would complete the transaction; that due to the failure of the plaintiffs to honour their commitments, the defendant suffered irreparable loss.

9. The appellant/defendant also filed an additional written statement that due to the failure of the plaintiffs to complete the transaction within two months, the defendant and his wife had to sell their properties to meet their commitments including their commitment towards education of his son abroad; that subsequent to the execution of the sale agreement, the price of real estate underwent a steep hike, which continued even till date in great proportions; that the Government itself contemplated to bring new guideline value, to be in tune with the market value; and that therefore, it will be highly inequitable and unfair to grant a decree for specific performance.

10. The respondents/plaintiffs filed a reply to the written statement and additional written statement contending inter alia that the plaintiffs had sufficient funds even in January 2005, though some of it had to be transferred from America; that the defendant was also obliged to vacate a tenant by name Ollys' India Apparels Private Limited and have the other tenancies attorned in favour of the plaintiffs; that the defendant took a substantial advance of Rs.28 lakhs only on account of the fact that the defendant was obliged to pay a sum of Rs.8 lakhs on or before 15.1.2005 and a sum of Rs.54,197/- before 31.1.2005 to the tenant Ollys' India Apparel Private Limited; that the settlement of the third item of property by the mother in favour of the defendant was not brought to the notice of the plaintiffs; that even before the expiry of the period of two months contemplated under Clause 14 of the agreement, the defendant issued a letter dated 23.3.2005 expressing unwillingness to honour the agreement, but seeking to cancel the agreement on the ground that it was one sided; that the plaintiffs were always ready and willing to complete the sale even before the expiry of the two months period as seen from the lawyer's notice dated 21.3.2005, that the foreigner tenant had decided to vacate the premises long before the agreement and it had nothing to do with the agreement; and that the claim as though there was steep rise in the price of real estate, making it inequitable and unfair to grant a decree of specific performance, was baseless.

11. On the above pleadings, the Trial Court framed three issues namely

(i) as to whether the plaintiffs are entitled for a decree of specific performance as prayed for in the suit ?

- (ii) as to whether the plaintiffs are entitled for an alternate relief as prayed for in the suit ? and
(iii) To what other reliefs ?

12. The first plaintiff examined himself as P.W.1 and filed 15 documents as Ex.A.1 to Ex.A.15 on his side. Ex.A.1 was the loan agreement dated 27.1.2005. Ex.A.2 was the legal notice dated 21.3.2005. Ex.A.3 was a letter dated 23.3.2005 sent by the defendant. The loan offer letter issued by Sundaram Home Finance dated 14.3.2005 was marked as Ex.A.4. The voucher issued by Sundaram Home Finance dated 25.3.2005 was marked as Ex.A.5. Yet another loan offer letter issued by Standard Chartered Bank on 1.3.2005 was marked as Ex.A.6. The receipts and letter issued by Global Trust Bank were filed as Ex.A.7. An e-mail sent by Global Trust Bank on 24.2.2004 was marked as Ex.A.8. The statements of deposits and withdrawals issued by Citi Bank for the period from 12.1.2005 to 9.2.2005 were marked as Ex.A.9 and Ex.A.10. The memorandum of understanding dated 3.11.2004 was marked as Ex.A.11.

13. The appellant/defendant examined himself as D.W.1 and marked about 20 documents. The settlement deed executed by his mother in respect of the third item of property was marked as Ex.B.2. The letter dated 2.2.2005 was marked as Ex.B.3. The letter of the tenant - Airlinks Enterprises dated 21.3.2005 was marked as Ex.B.4. The guideline value for survey numbers dated 21.7.2012 and the guideline value for the street name were marked as Ex.B.13 and Ex.B.14. The notices exchanged were marked as Ex.B.15, Ex.B.16, Ex.B.19 and Ex.B.20.

14. On the basis of the evidence on record, the Trial Court came to the conclusion (i) that time was agreed to be the essence of the contract; (ii) that under Ex.A.1 - agreement of sale, two obligations were imposed upon the defendant namely to acquire title to the third item of property from his mother and to vacate the tenant occupying the portion with RCC and asbestos sheet structures, so as to hand over possession to the plaintiffs; (iii) that both the obligations were duly performed by the defendant, on 31.1.2005 and 2.2.2005 respectively, as seen from Ex.B.2 and Ex.B.3; (iv) that during the period of two months commencing from the date of agreement namely 27.1.2005, both parties were not in touch with each other; (v) that the plaintiffs were not kept informed of the performance of the obligations by the defendant under Ex.B.2 and Ex.B.3 till the filing of the suit, as otherwise, the plaintiffs would not have asked at least for partial performance of the agreement with respect to two items of properties; (vi) that the termination of the agreement by

the defendant under Ex.A.3 on the ground that the agreement provided both for specific performance and for the return of the money and thus proved to be one sided, was not valid; (vii) that the other ground for the termination of the agreement by the defendant namely that Airlinks Enterprises failed to vacate could not also be a valid ground; (viii) that the plaintiffs' readiness and willingness to perform their obligations stood established by Ex.A.2; (ix) that under Section 16(c) of the Specific Relief Act, it was not necessary for the plaintiffs to bring the amount by way of demand draft or cheque to prove their readiness and willingness; (x) that even if money had been tendered by the plaintiffs along with the notice under Ex.A.2, the defendant was in no mind to receive it, as seen from the letter dated 23.3.2005 filed as Ex.A.3, terminating the contract; (xi) that Ex.A.4 to Ex.A.10, Ex.A.13 and Ex.A.14 proved that the plaintiffs had sufficient resources to comply with their obligations before the expiry of the time stipulated in the agreement; (xii) that the steep rise in the price of the properties cannot be a ground for denying the relief of specific performance; and (xiii) that the grant of relief of specific performance would not be inequitable.

15. As a consequence of the above conclusions, the Trial Court recorded a finding that the plaintiffs were entitled to the relief of specific performance. Accordingly, the Trial Court decreed the suit by a judgment and decree dated 15.9.2012 and granted three months' time for the plaintiffs to deposit the balance amount and for the defendant to execute the sale deed. Aggrieved by such a judgment and decree, the defendant has come up with the above appeal.

16. Mr.R.Thiagarajan, learned Senior Counsel appearing for the appellant contended inter alia that the plaintiffs failed to prove their averments in paragraph 8 of the plaint that they had made arrangements to pay the sale consideration by taking necessary steps to draw the money from the bank and that they were having sufficient funds to pay to the defendant at any time after the agreement; and that the plaintiffs failed to prove their averment in paragraph 9 that they were ready and willing to perform their part of the contract, but the defendant was unnecessarily postponing the execution of the sale deed;

17. It is the further contention of Mr.R.Thiagarajan, learned Senior Counsel that the plaintiffs failed to prove the averment in paragraph 10 of the plaint that the defendant was reluctant in executing the sale deed, forcing the plaintiffs to issue a registered notice; that the Trial Court, after having overruled the plea of the plaintiffs in paragraph 11 of the plaint that time was not the

essence of the contract, failed to take such a finding to its logical end; that despite being confronted during cross examination, the first plaintiff, who examined himself as P.W.1, did not produce any evidence to show that he had bank accounts in Indian Overseas Bank, Oriental Bank and Standard Chartered Bank and that he had obtained wire transfer of funds; that the evidence of P.W.1 was wholly unreliable, as he claimed to have got in touch with the defendant at least four times after the agreement, but admitted that he did not know the telephone number of the defendant; and that though he had given evidence to show wire transfer of money from United States of America, he did not produce it in court;

18. Mr.R.Thiagarajan, learned Senior Counsel also contended that Ex.P.14 contains the name Janakiraman Krishna and it is only the second page of the relevant document; that Ex.A.4 is a mere loan offer letter issued by Sundaram Home Finance Limited on 14.3.2005 and hence, it is no proof to show the availability of funds; that even Ex.A.5 is only a voucher, which did not indicate as to whether a cheque was actually issued in favour of the first plaintiff; that Ex.A.6 is also only a loan offer letter issued by the Standard Chartered Bank, without any indication of the property to be purchased; that Ex.A.7 was only a letter issued by the Global Trust Bank Limited giving the details of four fixed deposit receipts, three of which had already been liquidated; that even if Ex.A.9 and Ex.A.10 issued by the Citi Bank are taken into account, the total amount available would come to only Rs.65 lakhs as against the balance sale consideration of Rs.1.57 crores payable by the plaintiffs; that the claim of wire transfer of funds was not established by Ex.A.13, as the amounts transferred under Ex.A.13 were very small, without any indication as to whether they are in Indian currency or U.S. dollars; that survey number guideline value and the street name guideline value marked as Ex.B.13 and Ex.B.14 showed that there was a steep increase in the rates of the properties and that at any rate, specific performance is an equitable relief, which could not have been granted for the mere asking.

19. The learned Senior Counsel for the appellant relied upon several decisions of this Court and the Apex Court to show as to how readiness and willingness on the part of the plaintiffs in a suit for specific performance had to be established and as to how, even if all parameters are satisfied, the court is not obliged to grant the equitable relief of specific performance.

20. We have carefully considered the above submissions.

21. In our considered view, the following points arise for determination in this appeal :

(i) Whether time could be taken to be the essence of the agreement of sale - Ex.A.1 dated 27.1.2005 ?

(ii) Whether the plaintiffs had proved their readiness and willingness in terms of Section 16(c) of the Specific Relief Act, 1963 ? and

(iii) Whether the plaintiffs were entitled to the equitable relief of specific performance in terms of the parameters laid down in Section 20 of the Specific Relief Act ?

Point No.1 :

22. Though an agreement for the sale of an immovable property is also a contract, to which, the provisions of the Indian Contract Act, 1872 should normally apply, the Indian courts generally ignored Section 55 of the Contract Act, when it came to the question of enforcing a contract for the sale of an immovable property. Section 55 of the Contract Act speaks about the effect of failure to perform at a fixed time, both in respect of contracts, which stipulate time to be essential and in respect of contracts where time is not essential. Though Section 55 of the Contract Act by itself did not draw a distinction between contracts for sale of immovable properties and other types of contracts, the courts in India followed English precedents for the past over 150 years.

23. Following the decisions in Gomathinayagam Pillai Vs. Pallaniswami Nadar [1967 (1) SCR 227] and Govind Prasad Chaturvedi Vs. Hari Dutt Shastri [1977 (2) SCC 539], a Constitution Bench of the Supreme Court held in Chand Rani Vs. Kamal Rani [1993 (1) SCC 519] that there is a presumption against time being the essence of the contract. The Court pointed out that under the law of equity, which governs the rights of parties, law looks not at the letter, but at the substance of the agreement, in so far as the contracts for sale of real estate were concerned. Even in cases where the contract stipulated a period for performance, the Supreme Court held that such stipulation may not make time as the essence of the contract.

24. The Constitution Bench pointed out in Chand Rani that where the contract relates to sale of immovable property, it will normally be presumed that the time is not the essence of the contract. Even if the contract stipulates a period within which the contract has to be performed, such fixation of time would not make time the essence of the contract.

25. The Court also held that even if time is not the essence of the contract, the Court may infer that it is to be performed in a reasonable time, either (i) from the express terms of the contract or (ii) from the nature of the property or (iii) from the surrounding circumstances, as for example, the object of making the contract.

26. After nearly four years of the decision of the Constitution Bench in Chand Rani, the continued relevance of the proposition that time cannot be the essence of a contract for the sale of immovable property, came to be doubted in K.S.Vidyanadan v. Vairavan [(1997) 3 SCC 1]. In that case, the Supreme Court pointed out that the rigor of this Rule that time is not the essence, may have to be relaxed if not modified, particularly in the case of urban immovable properties. But the Supreme Court held that they did not wish to undertake the exercise of re-visiting the principle, in that decision.

27. However, a very clear note of discard was struck by a subsequent decision of the Supreme Court in Saradamani Kandappan v. Rajalakshmi [(2011) 12 SCC 18]. In that case the Supreme Court wondered whether the principle that time is not the essence of the contract could be applied in an era of galloping increase in prices. In para 25 of its decision, the Supreme Court pointed out as follows:-

"25. The reality arising from this economic change cannot continue to be ignored in deciding cases relating to specific performance. The steep increase in prices is a circumstance which makes it inequitable to grant the relief of specific performance where the purchaser does not take steps to complete the sale within the agreed period, and the vendor has not been responsible for any delay or non-performance. A purchaser can no longer take shelter under the principle that time is not of essence in performance of contracts relating to immovable property, to cover his delays, laches, breaches and 'non-readiness'. The precedents from an era, when high inflation was unknown, holding that time is not of the essence of the contract in regard to immovable properties, may no longer apply, not because the principle laid down therein is unsound or erroneous, but the circumstances that existed when the said principle was evolved, no longer exist. In these days of galloping increases in prices of immovable properties, to hold that a vendor who took an earnest money of say about 10% of the sale price and agreed for three months or four months as the period for performance, did not intend that time

should be the essence, will be a cruel joke on him, and will result in injustice. Adding to the misery is the delay in disposal of cases relating to specific performance, as suits and appeals therefrom routinely take two to three decades to attain finality. As a result, an owner agreeing to sell a property for Rs.One lakh and received Rs.Ten Thousand as advance may be required to execute a sale deed a quarter century later by receiving the remaining Rs.Ninety Thousand, when the property value has risen to a crore of rupees."

28. Eventually, the Supreme Court elicited three principles in paragraph 28 of its decision in Saradamani Kandappan, which read as follows:-

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

29. Keeping the above principles in mind, if we come back to the facts of the present case, it can be seen that the agreement was dated 27.1.2005. The agreement stipulated a period of two months for the completion of the transaction. In Clause 7, of Ex.A1 Agreement, it was stipulated that both the parties agreed that the period of two months shall be the essence of the contract and that it shall not be extended under any circumstances.

30. The agreement Ex.A1 did not indicate as to why Clause 7 stipulated time to be the essence of the contract. In any case, the time stipulated under Ex.A1 was to expire on 27.3.2005. However, Mr.R.Thiagarajan, learned Senior Counsel for the appellant contended that the time would expire on 26.3.2005. Let us take it to be so.

31. But at least 5 days before the expiry of the time stipulated, the plaintiffs issued a legal notice dated 21.3.2005 calling upon the defendant to receive the balance of sale consideration and to execute the sale deed. Before the service of this legal notice upon him, the appellant/defendant sent a letter under Ex.A3, dated 23.3.2005, cancelling the agreement. The reasons for cancellation as indicated under Ex.A3 were quite strange. It will be useful to extract Ex.A3 dated 23.3.2005, as it would throw light upon the conduct of the appellant/defendant. Hence it is extracted as follows:-

"I have received a letter from Messrs.Airlinks Enterprises, a tenant in a portion of the property covered in the Agreement of sale between us. I find a copy of this letter was also addressed to you. Though we hoped that we will be able to get possession from Messrs. Airlinks Enterprises, his letter shows that he is not inclined to deliver possession despite our requests. I am afraid the contract cannot be gone through.

I also note that as per Clause 14 of the Agreement you have the choice to proceed with the Agreement or not without any obligation on your part and at the same time reserve the right to get back Rs.Twenty Eight Lakhs paid by you. I feel it is a one-sided and partial agreement in your favour which cannot be given effect.

I am ready to return the sum of Rs.Twenty Eight Lakhs paid by you on your handing over the original Agreement of Sale with endorsement of cancellation. Please note that the contract is no more in force and terminated.

Please inform me about the date, time and place to enable us to cancel the agreement and settle the amount of Rs.Twenty Eight Lakhs as full and final settlement and give a quietus to the agreement amicably. Please acknowledge receipt."

32. In the light of such a cancellation made by the appellant/defendant, even before the expiry of the period of two months stipulated in Clause 7 of the agreement, it is futile on the part of the appellant to claim that time was the essence of the contract and that the respondents/plaintiffs were not ready and willing to perform their part of the obligations within the stipulated time.

33. It is contended by Mr.R.Thyagarajan, learned Senior Counsel for the appellants/defendants that Ex.A2 legal notice dated 21.3.2005 sent by the respondents/plaintiffs were received by the appellant/defendant only on 28.3.2005, two days after the expiry of the period of two months stipulated in the agreement of sale. Therefore, it is his contention that the respondents/plaintiffs could not be taken to have offered to make payment within the period of two months stipulated in Clause 7 of the agreement.

34. But, we are not impressed by the said contention. Along with the Office Copy of the legal notice dated 21.3.2005, the respondents/plaintiffs had filed the postal receipt to show that Ex.A2 was sent by Registered Post. The receipt bears the rubber stamp of the concerned Post Office with the date 22.3.2005. Ex.A2 legal notice was sent by an advocate in Coimbatore to the appellant/defendant who is also a resident of Coimbatore. The notice was registered in a Post Office at Coimbatore on 22.3.2005. Therefore, we are completely at a loss to understand as to why the appellant/defendant received the notice only on 28.3.2005. There was no rhyme or reason for the delivery of the said registered letter after six days of registration, especially at a local address.

35. Interestingly, one aspect in this regard, which the trial Court does not appear to have noticed is that the learned counsel for the appellant/defendant served a notice upon the counsel for the plaintiff on 18.8.2012, calling upon him to produce the Acknowledgment Card in respect of Ex.A2 notice. Accordingly, the Acknowledgment Card was produced and it was marked during the cross-examination of the appellant herein as D.W.1. Even the Acknowledgment Card contained the signature of the Registering Official of the Postal Department with the date 22.3.2005, corroborating the date

seal contained in the postal receipt enclosed to Ex.A2. Therefore, it is clear that the respondents/plaintiffs had sent a legal notice at least 5 days before the expiry of the transaction under Ex.A2. In fact the Postal Acknowledgment Card Ex.A15 shows that it was received by one L.Sureshkumar for and on behalf of the appellant/defendant. The counsel for the plaintiffs themselves have received back the Acknowledgment Card on 30.3.2005 as seen from the date seal. In other words, the legal notice dated 21.3.2005 is claimed by the appellant/defendant to have been received after 6 days of its registration, but the Acknowledgment Card was received by the counsel for the plaintiffs within two days. This is mysterious circumstance raises the doubt about the circumstances under which the appellant/defendant attempted to cancel the contract under Ex.A3 letter dated 23.3.2005. Therefore, the appellant/defendant cannot be heard to contend that time was the essence of the contract of sale and that the respondents/plaintiffs failed to perform their obligations within the time stipulated in Clause 7 of the agreement.

36. There is one more reason for our above conclusion. Under Ex.A1 agreement of sale, the appellant/defendant was imposed with certain obligations namely (a) to get item No.3 of the schedule conveyed to him by his mother (b) to vacate the tenant who was in occupation of two West facing asbestos sheet roof structures in one of the two buildings and East facing RCC residential structure consisting of two floors and to keep it ready for handing over to the respondents/plaintiffs at the time of execution and registration of the sale deed and (c) to vacate the tenant by name Airlinks within three months from the date of registration of the sale deed and to have sale deeds executed in favour of the respondents/plaintiffs from the other six tenants.

37. Out of the above obligations, the appellant/defendant claims to have obtained a settlement deed executed by his mother in respect of item No.3 of the schedule on 31.1.2005 itself. But there was not a single scrap of paper from the appellant/defendant to show that the execution of the settlement deed by his mother was ever communicated to the respondents/plaintiffs. Even in that letter of cancellation of agreement Ex.A3 dated 23.3.2005, the appellant/defendant never claimed that he had performed all the obligations cast upon him under Ex.A1 agreement. Under Clause 12 of Ex.A1 agreement dated 27.1.2005, the appellant/defendant was obliged to arrange a meeting between the respondents/plaintiffs and the existing tenants. This obligation was to be performed "prior to the execution and registration of the sale deed." It was not the case of the appellant/defendant that he had performed this obligation within the period of two months and that

even then the plaintiffs were not ready and willing to perform their part of obligation.

38. Therefore, in the light of Exx. A2, A3 and A15, it is clear that the appellant/defendant who had chosen to terminate the agreement for reasons other than the failure of the plaintiffs to perform their obligations within the period of time stipulated in the agreement, cannot raise the plea that time was the essence of the agreement. As a matter of fact, a feeble attempt was made by the appellant /defendant to show that his son was studying abroad and that for the educational expenses of his son, he needed money and that therefore time was stipulated to be the essence of the contract. But such a plea, apart from being one developed at a later point of time, cannot be used by a person who terminated the contract even before the expiry of the period stipulated in the agreement and that too for reasons not attributable to any fault on the part of the respondents/plaintiffs. Hence, the question relating to time being the essence of the agreement of sale is answered against the appellant/defendant.

ISSUE NO.2:

39. The second issue arising for consideration is as to whether the plaintiffs had proved their readiness and willingness in terms of Section 16(c) of the Specific Relief Act, 1963 or not.

40. Section 16(c) of the Specific Relief Act disentitles a person to a decree for specific performance, if he fails to aver and prove that he has always been ready and willing to perform his obligations, except those terms whose performance is either prevented or waived by the defendant. But the Explanation under Section 16(c) makes two things clear namely (i) that it is not essential for the plaintiff to actually tender to the defendant or to deposit into court, any money except when so directed by the court and (ii) that the plaintiff must aver the performance of or readiness and willingness to perform the contract according to its true construction.

41. In *Man Kaur v. Hartar Singh Sangha* [(2010) SCC 512], the Supreme Court held that Section 16(c) of the Specific Relief Act, 1963 bars the specific performance of a contract in favour of a plaintiff 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 of the performance of which has been prevented or waived by the defendant). The court further pointed out that under the Explanation (ii)

to section 16, the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction. In this regard the Supreme Court referred to its previous decisions in N.P. Thirugnanam v. R. Jagan Mohan Rao - AIR 1996 SC 116, Pushparani S.Sundaram v. Pauline Manomani James - 2002 (9) SCC 582, and Manjunath Anandappa v. Tammanasa - 2003 (10) SCC 390. In Man Kaur, the Supreme Court extracted the following passage from its previous decision in N.P.Thirugnanam:

"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. 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 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 of necessity be proved to be available. Right from the date of the execution till date of the decree he must prove that he is ready and has always been willing to perform his part of the contract. As stated, the factum of his readiness and willingness to perform his part of the contract is to be adjudged with reference to the conduct of the party and the attending circumstances. The court may infer from the facts and circumstances whether the plaintiff was ready and was always ready and willing to perform his part of contract."

The above passage from N.P.Thirugnanam was cited with approval even in a subsequent decision of the Supreme Court in J.P.Builders v. A.Ramadas Rao [(2011) 2 MLJ 222].

42. Therefore, we have to see whether the respondents/plaintiffs averred as well as proved both the ingredients namely readiness as well as willingness to perform their part of the obligations.

43. The fact that the plaintiffs specifically averred their readiness and willingness to pay the balance of sale consideration and complete the transaction, is beyond any pale of doubt. In paragraphs 8 and 9 of the Plaint, it is specifically averred that the plaintiffs had the wherewithal as well as the willingness to make

payment of the balance sale consideration. The denial of these averments by the appellant/defendant in his written statement was only general and not specific. Therefore, the first requirement of Section 16(c) was satisfied in this case. Hence, let us now see whether readiness and willingness were also proved.

44. As stated earlier, the agreement was executed on 27.1.2005. Let us go by the period fixed in the agreement itself, for the due performance of the mutual obligations. Even then the last date for performance of the obligations on the part of the plaintiffs was 26.3.2005.

45. It is clear from Ex.A2 legal notice dated 21.3.2005, registered in the Post Office on 22.3.2005, as seen from the Postal Receipt as well as Ex.A15 Acknowledgment Card that the plaintiff had shown his willingness to perform his part of the obligations, even within the period stipulated in the agreement, without getting into the question whether such a stipulation made time as the essence of the contract or not.

46. But in contrast, the appellant/defendant sent Ex.A3 letter dated 23.3.2005, even before the expiry of the period stipulated in the agreement that he preferred to cancel the agreement. We have already extracted Ex.A3. It is not stated anywhere in Ex.A3 that the plaintiffs were neither ready nor willing to perform their part of the obligations. On the contrary, the appellant/defendant took a very frivolous contention in Ex.A3 that the contract was one sided, as it provided a choice under Clause 14 for the plaintiffs to proceed with the agreement or not without any obligation and at the same time entitled them to the refund of Rs.28,00,000/-. The other reasons stated in Ex.A3 was that the tenant Messrs. Airlinks Enterprises refused to vacate. But the obligation for the appellant/defendant under Clause 11 of Ex.A1 agreement was not to vacate the tenant Airlinks Enterprises even before the execution of the sale deed. Clause 11 imposed an obligation upon the defendant to vacate the said tenant only within three months of registration of the sale deed.

47. Therefore, until the time of filing of the written statement, it was not the case of the defendant that the plaintiffs were not ready and willing to perform their part of the obligations. After the filing of the written statement, the appellant/defendant took a very curious stand by filing an additional written statement that there has been a steep increase in prices of real estate. Such a stand, coupled with the attempt of the defendant to cancel the agreement even before the expiry of the period stipulated in the

agreement, showed that the plaintiffs' readiness and willingness were of no relevance for the defendant.

48. Irrespective of the above, the plaintiffs did in fact prove their readiness and willingness by both oral and documentary evidence, which we shall examine now.

49. To prove their readiness, the plaintiffs filed Exx.A-4 to A-10 and A-13 and A-14. Ex.A-4 is a loan offer letter issued by Sundaram Home Finance Limited, sanctioning a loan of Rs.50,00,000/-. This is dated 14.3.2005. Clause 1 of the conditions forming part of the loan offer letter indicates that it was for the purchase of a property. This is why Clause 1 imposed an obligation upon the plaintiffs to offer as security, the property purchased out of the amount financed.

50. Ex.A-5 is a voucher dated 25.3.2005 issued by Sundaram Home Finance Limited, for an amount of Rs.50,00,000/- in favour of the first plaintiff. The voucher contains File No.40004410, which tallies with the File No. given in Ex.A-4. Therefore, it is clear that the plaintiffs had made ready a sum of Rs.50,00,000/- at least by 25.3.2005.

51. Similarly, the plaintiffs filed Ex.A-6 which is a loan offer letter issued by the Standard Chartered Bank on 1.3.2005, offering a loan of Rs.25,00,000/- for a property. Together with this amount, the total amount made ready by the plaintiffs by 25.3.2015 was actually Rs.75,00,000/-.

52. However, it is contended by Mr.R.Thiagarajan, learned Senior Counsel for the appellant/defendant that Exx.A4 and A6 are mere loan offer letters and that by themselves, they would not establish the availability of funds with the plaintiffs. Even Ex.A-5 is sought to be discredited by the learned senior counsel for the appellant on the ground that it does not indicate whether a cheque was actually issued for Rs.50,00,000/-.

53. But, we are of the considered view that Exx.A-4 to A-6 cannot really be pooh-poohed. These documents are issued respectively by a non-banking finance company and a banking company, even before the expiry of the period stipulated in the agreement. It is not the case of the appellant that these documents are fabricated. The law is well settled that it is not necessary for the plaintiff, in a suit for specific performance, to show jingling coins. All that he is required to show is the availability of sufficient resources to pay

the balance of sale consideration. This requirement is fulfilled by Exx. A-4 to A-6 at least to the extent of Rs.75,00,000/-. It is only when the sale deed is executed that Sundaram Home Finance Limited and Standard Chartered Bank could be accepted to issue cheques. As a matter of fact the plaintiffs have paid a sum of Rs.55,000/- to Sundaram Home Finance Limited for processing their loan application, as seen from the third last paragraph of Ex.A-4. The plaintiffs have similarly paid a processing fee of Rs.27,650/- as seen from column No.10 of Ex.A-4 to the Standard Chartered Bank. Therefore, Exx. A-4 to A-6 cannot be belittled as being sham and nominal documents.

54. Coming to Ex-A-7, it is a letter issued by Global Trust Bank Limited to the first plaintiff enclosing 5 Fixed Deposit Receipts. These Deposit Receipts are dated 28.5.2004, 20.5.2004, 23.2.2004, 23.2.2004 and 23.2.2004 respectively for Rs.27,00,000/-, 17,00,000/-, Rs.22,00,000/-, Rs.22,00,000/- and 22,00,000/-. The total amount of principal under all these 5 Fixed Deposits was Rs.1,00,00,000/-.

55. However, Ex.A-7 is sought to be discredited by the learned senior counsel for the appellant/defendant on the basis of certain questions put up to the first plaintiff during his cross-examination as P.W.1. During cross-examination, it was suggested that one of those 5 deposits was liquidated in 2005 for payment of the advance amount of Rs.28,00,000/- under Ex.A-1. P.W.1 also admitted further that two more deposits were liquidated in December 2004 and he had kept cash ready.

56. On the basis of the above admissions made during cross-examination, it was contended by Mr.R.Thiagarajan, learned senior counsel for the appellant/defendant that the plaintiffs had not come to court with clean hands. According to the learned senior counsel, the plaintiffs produced Ex.A-7 without disclosing in paragraph 7 of the proof affidavit (filed in lieu of chief-examination) that three of those Fixed Deposits had already been liquidated and one was utilized for payment of advance money under Ex.A-1.

57. But, we do not think that there was any suppression of any information on the part of the plaintiffs. P.W.1 had clarified even during cross-examination that one of those 5 deposits were liquidated for the payment of advance money under Ex.A-1. However, the other two deposits which he had liquidated in December 2004, were not part of those mentioned in Ex.A-7. P.W.1 was categorical in his assertion that 4 out of 5 deposits mentioned in Ex.A-7 remain intact at the time of execution of the agreement of sale and even thereafter. Therefore, we do not think that the plaintiffs have either misled

the court or came up with unclean hands. The purpose of marking Ex.A-7 was to show that at the time of entering into the agreement of sale, the plaintiffs had an amount of Rs.one Crore readily on hand in the form of Fixed Deposits. Therefore, the liquidation of one of those 5 deposits for the purpose of payment of advance money, cannot be taken to disprove the availability of funds as reflected in Ex.A-7.

58. Ex.A-9, a statement issued by City Bank for the period from 12.1.2005 to 9.2.2005, showed that the plaintiffs had investment to the tune of \$27,474.29. Ex.A-10 is another statement issued by City Bank in favour of the second plaintiff showing that she had savings to the tune of \$1,01,371.77 during the period 14.1.2005 to 13.2.2005.

59. Both these documents namely Exx.A-9 and A-10 are sought to be discredited by the learned senior counsel for the appellant/defendant on the ground that when converted into Indian currency, the amounts indicated therein were not sufficient to pay the balance of sale consideration.

60. But, we do not think that Exx.A-9 and A-10 can be looked at in isolation. These Bank Statements are filed for the purpose of showing that the plaintiffs had sufficient resources at their command. If a plaintiff, in a suit for specific performance, is able to show that he had sufficient resources at his command, then his obligation to prove at least readiness to perform his part of the contract, would stand discharged. Thereafter, the only other obligation to be discharged would be his willingness.

61. Ex.A-13 is a printout of a City Bank online statement indicating that a total amount of 1,01,400/- had been transferred from City Bank to Standard Chartered Bank. The transfer had taken place on 3 different dates namely 15.3.2005, 16.3.2005 and 22.3.2005.

62. This Ex.A-13 is sought to be discredited by the learned senior counsel for the appellant/defendant on the ground that it does not contain the name of any person and it does not even contain an indication whether the amounts mentioned therein are in Indian currency or US Dollars.

63. But the above contention loses sight of one important fact namely that the print-outs of such details from a bank cannot be taken by any person for any other person. These foreign banks maintain confidentiality and since these transfers have happened from

City Bank to the Standard Chartered Bank by way of wire transfers, they can only be in US Dollars.

64. Similarly, Ex.A-14 is a transaction statement which indicates a running balance of Rs.10,569,685/-. In Ex.A-14, the acronym "INR" is used, indicating thereby that the amount mentioned therein is in Indian Currency. As per the deposition of P.W.1, Ex.A-14 is a statement for the period from 16.3.2005 to 11.4.2005.

65. But Ex.A-14 is sought to be discredited on the ground that it contains only page No.2 and not page No.1. A suggestion was put to P.W.1 during cross-examination that he deliberately omitted to file page 1 of Ex.A-14 and that had it been filed, it would have revealed that there was no money. But this suggestion was denied by P.W.1.

66. In our considered view, even if Exx.A-13 and A-14 are discarded, the other documents such as Exx.A-4 to A-7 and A-9 and A-10 clearly establish the availability of sufficient funds. Therefore, the readiness of the plaintiffs stood clearly proved by the oral evidence of P.W.1 and these documents.

67. Coming to the other component namely willingness, it is seen from Ex.A-2 legal notice dated 21.3.2005, that the plaintiffs had offered to pay the balance of sale consideration, even before the date stipulated in Ex.A-1 agreement, without even insisting upon the appellant/defendant to fulfill his obligation under Clause 12, wherein the appellant had agreed to arrange a meeting for the plaintiffs with the existing tenants. Therefore, the trial court was right in its conclusion that the plaintiffs were always ready and willing to perform their part of the obligations under Ex.A-1.

68. Drawing attention to the averments contained in paragraph 8 of the plaint, Mr.R.Thiagarajan, learned senior counsel contended that Exx.A-4 to A-7 were contrary to what was pleaded therein. In para 8 of the plaint, the plaintiffs pleaded that they had made arrangements to pay the sale consideration by taking necessary steps to draw the amount from the bank and that they were having sufficient funds to pay at any time. But Exx.A-4 to A-6 showed that the plaintiffs had only arranged to take loans for the purchase of the property. Therefore, it is contended by the learned senior counsel that Exx.A-4 to A6 went contrary to the pleadings in para 8 of the plaint.

69. But we do not think so. Though the plaintiffs pleaded in para 8 that they were having sufficient funds and that they had taken

steps to draw the money, the plaintiffs were able to prove from the statements from Global Trust Bank and City Bank that they had their own funds. In addition, the plaintiffs also proved through Exx.A-4 to A-6 that they also had arrangements for taking a loan. If one thing is averred and two things are proved, we do not know how the same could be taken to be a contradiction in terms.

70. Therefore, we hold on issue No.2 that the plaintiffs were always ready and willing to perform their part of the obligation and that they had discharged the obligation cast upon them under Section 16(c) of the Specific Relief Act, 1963.

ISSUE NO.3:

71. The third issue arising for consideration is as to whether the plaintiffs are entitled to the equitable relief of specific performance in terms of the parameters laid down in Section 20 of the Specific Relief Act or not.

72. Section 20(1) of the Specific Relief Act, stipulates that the jurisdiction of the Court to grant a decree for specific performance is discretionary. But the Section also prescribes the parameters for the exercise of the discretion. Section 20 of the Specific Relief Act, reads as follows:-

"20. Discretion as to decreeing specific performance. - (1) The jurisdiction to decree specific performance is discretionary, and the Court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the Court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a Court of appeal.

(2) The following are cases in which the Court may properly exercise discretion not to decree specific performance -

(a) where the terms of the contract or the conduct of the parties at the time of entering into the contract or the other circumstances under which the contract was entered into are such that the contract, though not voidable, gives the plaintiff an unfair advantage, over the defendant; or

(b) where the performance of the contract would involve some hardship on the defendant which he did not

foresee, whereas its non performance would involve no such hardship on the plaintiff; or

(c) where the defendant entered into the contract under circumstances which though not rendering the contract voidable, makes it inequitable to enforce specific performance.

Explanation 1 Mere inadequacy of consideration, or the mere fact that the contract is onerous to the defendant or improvident in its nature, shall not be deemed to constitute an unfair advantage within the meaning of Clause (a) or hardship within the meaning of Clause (b).

Explanation 2 The question whether the performance of a contract would involve hardship on the defendant within the meaning of Clause (b) shall, except in cases where the hardship has resulted from any act of the plaintiff subsequent to the contract, be determined with reference to the circumstances existing at the time of the contract.

(3) The Court may properly exercise discretion to decree specific performance in any case where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.

(4) The Court shall not refuse to any party specific performance of a contract, merely on the ground that the contract is not enforceable at the instance of the other party."

73. It is seen from sub-section (1) of Section 20 that it makes three things very clear viz.,

- (i) that the discretion given to the court is not arbitrary, but sound and reasonable;
- (ii) that it is guided by judicial principles; and
- (iii) that it is capable of correction by a Court of Appeal.

74. Without elaborating on (i) what is sound and reasonable exercise of discretion and (ii) what are judicial principles that should guide the exercise of discretion and which are capable of correction by a Court of Appeal, sub-sections (2), (3) and (4) of Section 20, lay down three indications. They are as follows:-

(i) Under sub-section (2), the cases in which a Court may exercise the discretion not to decree specific performance are indicated.

(ii) Under sub-section (3), the case in which the Court may exercise the discretion to grant specific performance, is indicated.

(iii) In sub-section (4), a stray case where the Court shall not refuse specific performance, is indicated.

75. The cases in which the Court is entitled to exercise the discretion not to grant specific performance, as listed in sub-section (2) of Section 20 are as follows:-

(I) Cases where - (a) either the terms of the contract (b) or the conduct of the parties at the time of entering into the contract (c) or the other circumstances under which the contract was entered into, are such that the contract gives the plaintiff, an unfair advantage over the defendant.

(II) Cases where the performance of the contract would involve some hardship on the defendant that he did not foresee, while the non performance would involve no such hardship on the plaintiff.

(III) Cases where the defendant entered into the contract under circumstances, which though not rendering the contract voidable, makes it inequitable to enforce the specific performance.

76. The test of "unfair advantage" prescribed under Clause (a) of sub-section (2) and the test of "hardship" prescribed under Clause (b) of sub-section (2), are qualified by the two Explanations under sub-section (2). By virtue of Explanations 1 and 2 -

(i) The mere inadequacy of consideration would not constitute an unfair advantage or hardship.

(ii) The mere fact that the contract is onerous to the defendant would not constitute an unfair advantage or hardship.

(iii) The mere fact that the contract is improvident in its nature would not constitute an unfair advantage or hardship.

(iv) The question whether the performance of the contract would involve hardship on the defendant, is to be determined only with reference to the circumstances existing at the time of the contract, except in cases where the hardship has resulted from any act of the plaintiff subsequent to the contract.

77. In *Parakunnan Veetill Joseph's Son Mathew vs. Nedumbara Kuruvila's Son* [1987 Supp. SCC 340], the Supreme Court held as follows:-

"14. Section 20 of the Specific Relief Act, 1963, preserves judicial discretion of Courts as to decreeing specific performance. The Court should meticulously consider all facts and circumstances of the case. The Court is not bound to grant specific performance merely because it is lawful to do so. The motive behind the litigation should also enter into the judicial verdict. The Court should take care to see that it is not used as an instrument of oppression to have an unfair advantage to the plaintiff."

78. Therefore, the third issue arising for consideration, namely as to whether the plaintiffs are entitled to the discretionary relief of specific performance, has to be decided on the basis of the parameters laid down in Section 20. As seen from Section 20, the discretion exercised by the trial Court is capable of correction by a Court of Appeal. In this case, the trial Court has exercised the discretion to grant the relief of specific performance. Therefore, as per Section 20(1), we are obliged to see whether the exercise of discretion by the trial Court in favour of the plaintiffs was not arbitrary. We are obliged to see whether the discretion by the trial Court was based upon sound and reasonable judicial principles, keeping in mind the fact that as a Court of Appeal, the exercise of discretion by the trial Court is capable of correction by us.

79. A careful look at the judgment of the Court below shows that the exercise of discretion by the trial Court in this case was not arbitrary, but was sound and reasonable. From paragraphs 77 to 80 of its judgment, the trial Court has gone into the question of exercise of discretionary jurisdiction. After finding that the plaintiffs were ready and willing to perform their part of the obligations within the period stipulated in the contract and after finding that the defendant terminated the contract even before the expiry of the period stipulated in the contract, without any valid reasons, the trial Court found that the defendant had had a change of mind only in the hope that there was an increase in the price of properties. Therefore, the trial Court found that to deny the discretionary relief of specific performance, would only put a seal of approval upon the conduct of the defendant. Hence, the Court below exercised the discretion to grant the relief of specific performance.

80. Having found that the exercise of jurisdiction by the trial Court was not arbitrary, but sound and reasonable, let us now see whether the case on hand would fall either within Sub-section (2) or within Sub-section (3) or within Sub-section (4).

81. The case on hand will not fall within the parameters laid in Sub-section (2) of Section 20. This is not a case where either the terms of contract or the conduct of the parties at the time of entering into the contract or the other circumstances under which the contract was entered into, are such that the grant of relief in favour of the plaintiffs would give an unfair advantage to them over the defendant. It was never the case of the defendant that the terms of the contract put the plaintiffs in an unfairly advantageous position. Under Ex.A3, the defendant tried to plead that the provision for refund of the entire advance money made the contract one sided. But, the clause to which the defendant chose to take exception, is a clause which is normally incorporated in every agreement of sale and this clause did not give any unfair advantage to the plaintiffs. On the contrary, the defendant appears to have attempted to gain an unfair advantage over the plaintiffs. The eviction of six tenants within a short duration of two months, could not have been possible but for the defendant getting an advance of Rs.28.00 Lakhs from the plaintiffs on 27.01.2005. Therefore, neither the terms of the contract, nor the conduct of the parties at the time of entering into the contract, gave any unfair advantage to the plaintiffs over the defendant. There was also no pleading nor proof to show the existence of other circumstances under which the contract was entered into, which eventually put the plaintiffs to an unfair

advantage over the defendant. Hence, the case on hand would not fall under any of the criteria fixed in Sub-section (2) of Section 20, so as to compel the Court not to exercise the discretion to grant the relief of specific performance.

82. The case on hand would not also fall under Sub-section (4). As a matter of fact, the first letter issued by the defendant on 23.3.2005, under Ex.A3, attempting to terminate the contract, was actually an attempt at pleading that the contract was almost voidable. But, the defendant was not able to say that the contract was entered into under certain circumstances which, though not rendering the contract voidable, made it inequitable to enforce specific performance. Only two reasons were stated in Ex.A3 for the defendant to seek cancellation of the contract. Both of them did not make it inequitable to enforce specific performance of the contract. Hence, Sub-section (4) of Section 20 would also not be attracted.

83. The case on hand would not also fall under the category of one that would involve some hardship on the defendant, which he did not foresee. On the contrary, there are pleadings and there is also evidence to show that the non performance would involve hardship to the plaintiffs. The plaintiffs were actually residing in United States of America up to the year 2003. They returned to Coimbatore in the year 2004 and the first plaintiff established a company by name Cellogic Wireless Systems Private Limited. The certificate of incorporation of the company was also filed as Ex.A12. Therefore, the plaintiffs were persons of Indian Origin who had settled in the United States of America and who had returned in the year 2004 with a view to settle down here. The defendant had taken an advance of Rs.28.00 Lakhs from the plaintiffs. Therefore, the non performance of the contract would certainly involve hardship on the plaintiffs. On the contrary, the only hardship pleaded by the defendant, if the contract was performed, was that he would not be able to take advantage of the increase in prices.

84. But, the fact that the prices of real estate keep increasing, is not something that the defendant could not have foreseen, so as to make the case fall within the parameters of Section 20(2)(b). Moreover, the plaintiffs were ready to complete the transaction within the period of two months stipulated in the contract, without questioning whether time was the essence of the contract or not. But, by repudiating the contract within two months for unacceptable reasons, the defendant invited trouble for himself. Therefore, he cannot now plead hardship.

85. Therefore, we are of the considered view that the trial Court was a right in decreeing the suit as prayed for. Hence, the first appeal is dismissed with costs throughout.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

RS/gr/kpl

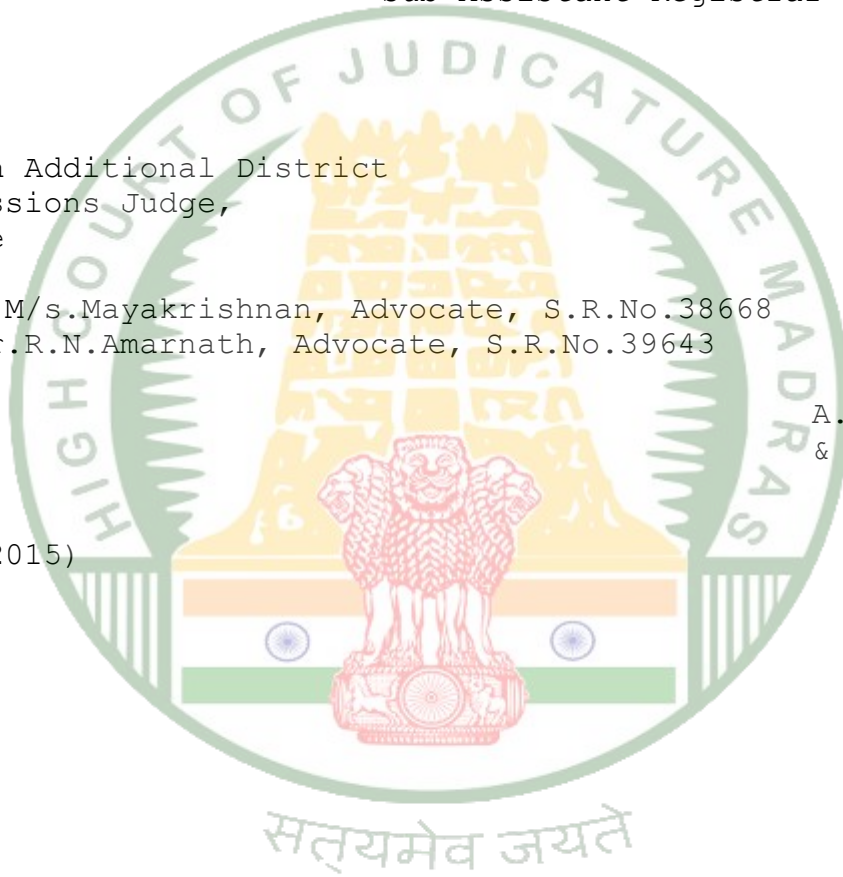
To

The Fourth Additional District
and Sessions Judge,
Coimbatore

+2cc's to M/s.Mayakrishnan, Advocate, S.R.No.38668
+1cc to Mr.R.N.Amarnath, Advocate, S.R.No.39643

A.S.No.272 of 2013
& MP.No.1 of 2015

RJ(CO)
CA(25/09/2015)



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