

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

**Regular Second Appeal No.3865 of 2012 (O&M)**  
Date of decision: 25.08.2015

Kashmir Singh

.... Appellant

versus

Ashok Kumar

.... Respondent

**CORAM: HON'BLE MR. JUSTICE K. KANNAN**

----

Present: Mr. Manjit Singh Uppal, Advocate,  
for the appellant.

----

1. Whether reporters of local papers may be allowed to see the judgment ? **Yes.**
2. To be referred to the reporters or not ? **Yes.**
3. Whether the judgment should be reported in the digest ? **Yes.**

----

**K.Kannan, J.** (Oral)

1. The plaintiff, who filed a suit for specific performance of an agreement to sell dated 20.06.2000, succeeded in the suit. The defendant, who admittedly received ₹ 60,000/- on the date of the agreement and where ₹40,000/- was liable to be paid before 17.05.2001, had a defence to make that the plaintiff had not been ready and willing to perform his part of the contract. It was the contention that the plaintiff did no more than issuing a notice on 23.02.2004 which was literally at twilight hours of the period of limitation and filed a suit on 18.03.2004 without adequately explaining the delay. The defence was rejected and against the

decree, he had preferred an appeal. The appellate Court confirmed the decision of the appellate court.

2. The learned counsel for the appellant says that the plaintiff's conduct clearly showed that he was not ready and willing to perform his part of the contract. There was no explanation at all given why he did not secure the sale deed on 17.05.2001 and why he delayed in filing the suit upto 18.03.2004. To a query from the court of whether there had been an averment of the plaintiff's readiness and willingness in the plaint as well as at the time of trial whether the plaintiff had declared his readiness and willingness, the counsel says that there are such affirmations and such evidence. It is also admitted by the defendant that the execution of agreement itself is an admitted fact. It is not even a defence that the plaintiff did not have adequate resources to pay the balance of ₹40,000/-. The readiness and willingness is always seen through the prism of whether the plaintiff had the necessary resources to pay the balance and whether he was willing to have the sale made in his favour. If the plaintiff sticks by the legal mandate of having to make an averment regarding the readiness and willingness in the manner required under Section 16(c) of Specific Relief Act and expresses his readiness and also affirms in evidence that he had always been ready and willing and if such a contention were to be found to be hollow and make-believe, it ought to be elicited in the cross-examination that all the necessary

inferences that would be possible if a person was not ready and willing. A thorough probe about his financial capabilities, the efforts taken by him during the time when the period for performance had fallen and the laxity shown by him in getting the sale executed would all be relevant. It is no doubt true the burden of proof is only on the plaintiff to prove the readiness and willingness. That proof will be available through the averment in the plaint and affirmed through the evidence. The strength of the evidence of the readiness and willingness has to be busted by effective cross-examination if the defendant were to succeed that the plaintiff's assertion was not true. If the plaintiff's assertion that he had been ready and willing remains un-refuted or if no dent had been made to doubt such an affirmation then the provision of Article 54 of the Limitation Act itself takes care. It has been observed by the Supreme Court in the decision in **Mademsetty Satyanarayana Versus G. Yelloji Rao and others-AIR 1965 Supreme Court 1405** that all delays cannot go for disentitling the plaintiff to secure the relief for specific performance and if there is a delay, it is a delay sanctioned by law. The delay must be such as to show forfeiture of interest in the property. The readiness and willingness must be tested in the context of whether by a delay the plaintiff was trying to take advantage or whether the defendant had been subjected to any special hardship which would be relevant for consideration in the manner Section 20 of the

Specific Relief Act deals with. If the hardship of the defendant or the relative advantage of the plaintiff is not brought out, the court cannot decline the relief, for, Section 10 of the Specific Relief Act itself is the norm that in respect of immovable properties, relief of specific performance alone is a substantial remedy and not damages.

3. I find no error in the judgments of the courts below for interference in second appeal. Second appeal is dismissed.

**(K.KANNAN)**  
**JUDGE**

25.08.2015  
sanjeev