

HIGH COURT OF CHHATTISGARH, BILASPUR**First Appeal No. 08 of 2008**

Daya Ram Soni S/o late Rameshwar Soni, aged about 64 years, occupation 'Goldsmith', Bharkapara, Ward No. 25, Rajnandgaon, Near Kamal Talkies, Tahsil & District Rajnandgaon, Chhattisgarh.

---- Appellant/Plaintiff

Versus

1. Smt. Gyarsi Bai Khandelwal wife of Late Radheshyam, abed about 64 years, Caste-Khandelwal, Occupation – House Work.
2. Smt. Ganga Khandelwal, D/o Late Radheshyam, aged about 43 yeas, Caste – Khandelwal Occupation – House Work.
3. Shri Divakar Mullick S/o Late Mukund Bihari Mullick, aged about 45 years, Caste Bengali, Occupation- Service, Dena Bank, Resident of Kamal Talkies Road, Bharkapara, Rajnandgaon, Tehsil and District Rajnandgaon (C.G.)

---- Respondents/Defendants

For Appellant	: Shri R.N. Jha, Advocate
For Respondents No.1&2	: Shri Praful Bharat and Shri Anand Shukla, Advocates
For Respondent No.3	: None, though served.

Hon'ble The Chief Justice
Hon'ble Shri Justice P. Sam Koshy

C.A.V. JUDGMENT

Per P. Sam Koshy, J.

16/02/2016.

1. This is Plaintiff's First Appeal filed under Section 96 of Code of Civil

Procedure, 1908 (for short, CPC) against the judgment and decree dated 24.10.2007 passed by the District Judge, Rajnandgaon in Civil Suit No.15-A/2005 whereby his suit for specific performance of contract has been rejected.

2. The Plaintiff filed a suit for specific performance seeking enforcement of agreement to sell (Exhibit P/1) executed between the Plaintiff and Defendant No.1 on 18.05.2005. The dispute pertains to 2000 sq.ft. of land situated in Sheet No.48, Plot No.52 in Ramadhin Marg, Rajnandgaon (hereinafter referred to as 'the suit property').
3. As per Plaintiff, Defendants No.1&2 have around 400 square meters of land at the aforementioned location, of which the Plaintiff and Defendant No.1 vide Exhibit P/1 agreed for a sale of 2000 sq. ft. of land on a sale consideration of Rs.690/- per sq.ft. and the Plaintiff paid a sum of Rs.2,01,001/- towards earnest money. The agreement for sell was notarized on 20.05.2005. As per agreement, the Defendant No.1 on receipt of earnest money had agreed to hand over the possession of the Godown in the suit premises and it was also agreed that the balance amount of sale consideration was to be paid by the Plaintiff to the Defendant No.1 within a period of 91 days starting from 18.05.2005 i.e. till 17.08.2005.
4. As per Plaintiff, after the agreement to sell was entered, he came to know through paper publication that the Defendant No.3 had also entered into agreement to sell with the Defendant No.2 for the same property. He immediately sent a legal notice to the Defendant No.1 for enforcement of agreement and also informed him that he is ever

willing and ready to perform his part of contract. It was also informed that he is ready for execution of sale deed on 17.08.2005 and on which date he shall be present before of the Office of Sub Registrar (Stamp) for execution of sale deed. In spite of such clear intimation and notice to the Defendant No.1, she did not appear before the Office of Sub Registrar and neither did she hand over the possession of the Godown as agreed upon in the agreement for sale.

5. Subsequently, the Plaintiff also sent repeated legal notice to the Defendant No.1 for enforcement of agreement yet the Defendant did not pay heed to the notice. On the contrary, the Defendant blamed the Plaintiff for breach of the conditions stipulated in the agreement to sell and defaulted from enforcement of sale deed. According to Plaintiff, the Defendants had deliberately and with malafide intention not got the agreement to sell enforced in spite of fact that Plaintiff was ever willing and ready for the enforcement of the agreement to sell leading to filing of the Civil Suit. The Plaintiff had also claimed for damages against the Defendants No.1&2 @ Rs. 200/- per day for not handing over the possession of Godown.
6. It is next submitted that before the Plaintiff had filed a Civil Suit, the Defendant No.3 had in fact filed a suit for specific performance against the Defendants No.1&2 which was registered as Civil Suit No.7-A/2005, in which, the Plaintiff had moved an application for impleadment as a necessary party which got rejected reserving the liberty to file a suit, if he so wishes.
7. After the suit was filed and notices were issued, the Defendants

submitted their reply respectively in which the claim/averment made by the Plaintiff was categorically denied. According to Defendant No.1, in fact it was the Plaintiff who had failed to perform his part of contract, inasmuch as, the Plaintiff never showed any interest in paying the balance amount of Rs.11,78,999/- within the agreed period of 91 days in spite of repeated request and reminders being sent to him and as such he failed to fulfill his part of the contract. According to Defendants No.1&2 they had already requested the Plaintiff for taking over possession of the Godown part of the suit premises and yet the Plaintiff did not take possession of the same. As the Plaintiff failed to get the agreement to sell executed by getting the suit property registered in his name within the period agreed between the parties, the contract itself stands cancelled. The Defendants had also taken a plea of certain interpolations being made in the agreement to sell (Exhibit P/1) so far as handing over possession of Godown to the Plaintiff is concerned.

8. After the pleadings were complete and the defendants led their evidence and filed the document in support of their claims, the Trial Court finally vide its judgment and decree dated 24.10.2007 found that the Plaintiff failed to establish a case for grant of a decree of specific performance and dismissed the suit. However, it was decreed that Defendant No.1 shall return back the earnest money to the Plaintiff. It is this judgment and decree which is under challenge in this Appeal.
9. Along with the First Appeal, the Plaintiff has also filed an application

IA No.2 under Order 41 Rule 27 CPC for taking additional documents on record. The Plaintiff wanted to bring on record a document dated 17.08.2005 which is alleged to be a document to prove his case that he was present in the office of Sub-Registrar so that the agreement to sell between the parties could be finalized and registered on the said date. According to Plaintiff, due to inadvertence he could not file the said document before the court below and because of non filing of the said document, the court below has taken adverse inference while decreeing the suit against the Plaintiff. Therefore, the Plaintiff prayed that the said document be taken on record and he be permitted to rely upon the same.

10. Counsel for the Defendants opposes the said document and submits that said application does not have any substance and deserves to be rejected. According to Defendants No.1&2, no case is made out by the Plaintiff to accept the same as is required under Order 41 Rule 27 CPC. The document which the Plaintiff seeks to bring on record was available with him even before filing of the suit, but neither stated anything in this regard in his plaint nor in his evidence. As such, the document which was in possession of the Plaintiff and which he was well aware that it was one of the most relevant documents in support of his case and still if he had deliberately not produced the same, he cannot take shelter by invoking the provisions of Order 41 Rule 27 CPC.
11. Before entering into the merits of the Appeal, we shall first decide the application under Order 41 Rule 27 CPC.

12. So far as application under Order 41 Rule 27 CPC filed before the appellate court is concerned, before accepting the same in trial court, the party has to first establish and meet the requirements as envisaged under Order 41 Rule 27 CPC. Unless the requirement so envisaged has been met by the party seeking to produce additional evidence, the document cannot be taken on record. A perusal of document would reveal that the said document admittedly was of the period prior to filing of the suit and no justification/plausible reasons have been offered by the Plaintiff for not being able to produce the same during the course of trial. The Plaintiff has also not made any reference about such document either in the plaint or in the evidence. Thus, the requirement under Order 41 Rule 27 CPC has not been fulfilled by the Plaintiff.
13. A perusal of document which the Plaintiff intends to brought on record reveal that the same was obtained after the judgment of trial court which indicates that the said document was obtained by the Plaintiff so as to cover up the weakness, lacuna and shortcomings which have been detected by the trial court while adjudicating the suit for specific performance. The same is not permissible under the provisions of law for the reason that the suit for specific performance is a discretionary relief in the factual matrix of the case. The Plaintiff at the appellate stage cannot take advantage by improving his case each time with fresh and new document. Such is not an intention and mandate under Order 41 Rule 27 CPC. Thus, the Plaintiff has failed to convince this court as to how he was prevented from

producing this document before the trial court and also how this application meets the requirement of law as required under Order 41 Rule 27 CPC. In the absence of any substantive, cogent and plausible reasons and justification, the application cannot be accepted and as such the Plaintiff cannot be permitted to rely on the same.

14. The Supreme Court in 2001(7) SCC 503 (N. Kamalam (dead) and Another Vs. Ayyasamy and Another) in a very categorical terms has held that the provisions under Order 41 Rule 27 have not been engrafted in the Code so as to patch up the weak points in the case and to fill up the omissions in the court of Appeal. It does not authorize any lacuna or gaps in evidence to be filled up. It was also held that said provision of law does not entitle the Appellate Court to lead any fresh evidence only for the purpose of pronouncement of judgment in a particular way.
15. In view of the aforesaid judicial pronouncement and the fact that the Plaintiff has not been able to give sufficient cogent grounds for entertaining the application under Order 41 Rule 27 CPC, the same being devoid of substance deserves to be and is accordingly rejected.
16. Coming to the merits of the case, Counsel for the Plaintiff submitted that the findings of the trial court rejecting his suit was mainly on following four grounds:
 - Non payment of balance amount of sale consideration within the agreed period of 91 days from 18.05.2005.

- Failure on the part of the Plaintiff to appear before the Office of Sub Registrar (Stamp) for executing the sale deed despite valid notice served upon him by the Defendant No.1.
- Failure on the part of Plaintiff in taking possession of the Godown situated in the suit premises in spite of the efforts being made by the Defendant No.1 asking the Plaintiff to take possession.
- Failure on the part of Plaintiff to show his ever willingness and readiness to perform his part of obligation under the contract.

17. According to Plaintiff, the trial court has committed an error of fact as well as in law while dealing with the suit for specific performance of contract. The Plaintiff placed heavy reliance on document Exhibit P/1, agreement to sell. According to the Plaintiff, the admitted position as it stood was the acceptance on either side of the agreement to sell. The agreement for the purchase of 2000 sq.ft. of land on a sale consideration of Rs.690/- per sq.ft. That, the balance payment was to be paid within a period of 91 days from the date of agreement i.e. 18.05.2005 and possession of Godown situated in the suit premises was to be handed over to the Plaintiff. It is submitted that though in the agreement it was agreed to give possession of Godown to the Plaintiff, but in spite of best efforts and repeated request being made to the Defendants, possession was not given,

and therefore, the restriction of handing over possession within a period of 91 days by paying the balance amount loses its significance as there was clear cut default on the part of the Defendant No.1. Time was never deemed to be essence of the contract.

18. It is also submitted that while executing the sale deed the Plaintiff had mentioned the suit property to be free of all encumbrances, but barely a few days later there was a paper publication published by the Defendant No.3 about an agreement of sale entered into between Defendants No.1&2 with the Defendant No.3 agreeing to sell 1500 sq.ft. of land from the suit premises. Thus, the Defendants No.1&2 themselves had committed breach of contract. Further, according to Plaintiff, the court below did not appreciate the facts that unless the Defendant No.1 would have given possession of the Godown, the period of 91 days for payment of balance amount for completing the specific performance of contract would not start rather it would start only from the date when the Defendant No.1 would give possession of the Godown to the Plaintiff.
19. According to Plaintiff, the conditions were put on both sides for performance of contract and that there were reciprocal promises which ought to have been fulfilled by either side before the sale deed could have been registered. The Defendant No.3 was already staying in a portion of the suit property as a tenant which establishes the fact that property was not free of encumbrances.
20. It is further submitted that in the plaint as well as in the evidence on oath before the court below, the Plaintiffs has sufficiently proved his

readiness and willingness to perform his part of contract by willing to pay balance amount of Rs.11,78,999/- to the Defendant No.1 on the given date i.e. 17.08.2005 when the Plaintiff had sent telegram as well as notice to the Defendants to remain present before the Office of Sub-Registrar for registration of the suit property. According to the Plaintiff, to the said averment made in the plaint as well as in the evidence, no specific cross-examination has been made by the Defendant No.1 so as to disprove the same, and therefore, it becomes an admissible piece of evidence to the extent proving the claim of the Plaintiff of his readiness and willingness to execute the sale deed by paying the balance amount before the office of Sub-Registrar. Thus, the findings of the trial court that the Plaintiff has not been able to prove and establish his readiness and willingness is bad in law and perverse finding which deserves to be set aside.

21. Counsel for the Plaintiff relied upon 1996(6)SCC 337 (Syed Dastagir Vs. T.R. Gopalakrishna Setty), AIR 2003 SC 2418 (Roop Kumar Vs. Mohan Thedani) and 2004(8)SCC 689 (Swarnam Ramachandran (Smt.) and Another Vs. Aravacode Chakungal Jayapalan).
22. Counsel for the Defendants No.1&2 opposing the appeal submitted that a plain reading of judgment and decree would itself reveal that the trial court while dismissing the Plaintiff's suit has considered all the submissions and the evidence that has been led by the parties in respect of their contentions and there is no scope of interference in this First Appeal and the same deserves to be dismissed.

23. It is next submitted that from the transaction that transpired between the parties, the admitted factual position, not disputed by the either side are that there was an agreement of sale entered into between the parties on 18.05.2005; consideration of sale amount was mentioned in the agreement; the area of sale was also mentioned; there was clear acknowledgement of Rs.2,01,001/- paid by the Plaintiff to Defendant No.1 as earnest money and that there was a condition stipulated for payment of balance amount within a period of 91 days from the date of agreement i.e. 18.05.2005. Thus, from the aforesaid admitted factual position what is enumerated is that time was essence of the contract. There was reciprocal condition to be performed by either side and upon completion of performing the condition on either side, the Defendants agreed to hand over possession of the Godown area of the suit premises to the Plaintiff. It was never agreed nor was it intended between the parties while the execution of agreement to sale (Exhibit P/1) was being scribed that the period of 91 days shall commence from the date of taking over the possession of the Godown by the Plaintiff. Handing over possession of Godown was incidental in nature and was not a condition precedent or a pre-condition for the commencement of the period of 91 days for payment of balance amount.
24. It is also submitted on behalf of Defendants that in the evidence paragraph 17 of PW/1, Daya Ram Soni, it would clearly reflect that the Plaintiff all along was aware of the fact that the Defendant No.3

was in fact staying at the portion of the suit premises as a tenant of Defendants No.1&2. Thus, the Plaintiff now cannot turn around by saying that the property was not free from encumbrances. The sole ground on the basis of which the suit was filed and pressed upon by the Plaintiff was alleging non performance of the part to be played by the Defendants No.1 and in turn, the Plaintiff was ever willing and ready to perform his part of the contract. The Defendants submitted that in fact non performance was on the part of the Plaintiff on two counts, firstly; in spite of specific notice and reminders being issued to the Plaintiff for taking over possession of the Godown he did not turn up. Secondly, despite notices Exhibit P/4 & P/9, the Plaintiff did not appear in the office of Sub-Registrar for execution of sale deed to prove his willingness and preparedness for performing his part of the contract.

25. The statement of the Plaintiff that he went to the office of Sub-Registrar and waited for the Defendants to get the sale deed executed is only a bald statement which is not supported by any documentary proof or by any independent witness or for that matter any factual details such as purchase of Stamp Papers and other related documents. On the contrary, the Defendants have been able to produce evidence of their presence with relevant documents showing their bonafide about performing their part of the contract. According to Defendants, in paragraph-7 of the plaint, the Plaintiff has made certain claims to establish his defence, but his conduct is

just contrary to the averment made in paragraph-7, inasmuch as, in not taking possession of Godown in spite of repeated offers and reminders and secondly in not reaching the office of Sub-Registrar on 17.08.2005 for execution of sale deed.

26. In addition, relying upon the documents Exhibit P/4 & P/9, it is submitted by the Defendants that by sending two legal notices, he tried to get the sale deed registered, but the Plaintiff has failed to perform his part of contract. The possession of Godown was not a pre-condition to payment nor was it part of the reciprocal promise. The possession of Godown was not a condition precedent is also established from the fact that the agreement to sale clearly indicates that 91 days would start from the date of agreement and has nothing to do with the date on which the Plaintiff would have taken possession of the Godown.
27. The fact that the Defendants had with an intention to get the sale deed executed and for which they made themselves available in the office of the Sub-Registrar is established and proved by the evidences of DW-2, Mohd. Salim and DW-3, Dinesh Khandelwal. The independent witnesses have accepted the fact that the Defendants were present in the office of the Sub-Registrar along with document Exhibit D/2 required for the purpose of registration of the sale deed.
28. It is lastly submitted that the Defendants in compliance to the judgment and decree of the trial court has deposited the earnest

money received by them at the time of agreement which would further establish the fact that the Defendants at no point of time had any malafide intention.

29. Having heard the rival contentions put forth by the either side and on perusal of records and evidence, the admitted position is that agreement to sale was executed on 18.05.2005 between the Plaintiff and Defendants No.1&2. As per the agreement, the Plaintiff had paid an amount of Rs.2,01,001/- as earnest money to the Defendants. That the balance amount was to be paid by the Plaintiff within a period of 91 days and meanwhile the Defendants shall also hand over possession of the Godown to the Plaintiff.
30. The suit was for enforcement of specific performance of contract under the Specific Relief Act, 1963 (for short, the Act, 1963). The Plaintiff primarily had to prove two things. Firstly the Plaintiff had to establish that there was a valid agreement which is enforceable under the law and secondly, the Plaintiff had all along been ready and willing to perform his part of contract/agreement from the date of agreement till the date of decree. The suit for specific performance can be decreed only in the event if the Plaintiff is able to establish both the above referred two conditions convincingly.
31. In addition, the Defendants have also stressed upon the fact that after the fulfillment of the aforesaid two conditions, the Plaintiff would also have to meet the requirement under Section 16 of the Act, 1963,

which creates a bar in grant of specific relief. One such bar is under Section 16(c) of the Act, 1963, which clearly stipulates that the Plaintiff has to aver and prove that he has performed or has always been ready and willing to perform the initial terms of the contract which are to be performed by him.

32. Likewise, it was also submitted that the decision under the Act, 1963, is a discretionary power exercised by the trial court and Section 20 of the Act, 1963 clearly enumerates the condition which has to be made for the court to properly exercise the discretion while decreeing a specific performance. The Plaintiff had also miserably failed to meet the test as is required under Section 20 of the Act, 1963. By referring to plaint filed by the Plaintiff as also the evidence which have been led on behalf of Plaintiff, it is submitted on behalf of the Defendants that the Plaintiff has not established the readiness and willingness to perform his part of contract.
33. The language of Section 16(c) of the Act, 1963 clearly stipulates that the Plaintiff must aver that he has performed or has always been ready and is willing to perform his part of contract. The readiness and willingness has to be in spirit and substance and not in letter and form. The trial court while deciding the suit in paragraph-32 has categorically given a finding showing bonafide on the part of the Defendants so far as his willingness and readiness for performing his part of contract is concerned.

34. The law in respect of Section 16(c) of the Act, 1963 is now well settled. The Supreme Court in 1995 (5) SCC 115 (N.P. Thirugnanam (dead) By LRs Vs. Dr. R. Jagan Mohan Rao and Others) in a very categorical term has held as under:

“.....the continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of specific performance. 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. 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.”

35. So far as Section 20 of the Act, 1963 is concerned, the wording of the said section itself denotes the nature of power which the Judge deciding the suit for specific performance has. It clearly shows the nature of power exercised by the court to be discretionary in nature. Section 20(2) of the Act, 1963 enumerates certain circumstances where the court may properly exercise discretion not to decree specific performance. Clause-a of Section 20(2) of the Act, 1963 also envisages the courts to appreciate the conduct of the parties at the time of entering into contract and also the other circumstances related to the contract while denying a decree of specific performance.
36. The Supreme Court in 2008(12) SCC-145 (Bal Krishna and Another Vs. Bhagwan Das (dead) by LRs and Others) relying upon its earlier

judgments while dealing with Section 16(c) and 20 of the Act, 1963 held as under :

“13.the person seeking specific performance of the contract, must file a suit wherein he must allege and prove that he has performed or has been ready and willing to perform the essential terms of the contract, which are to be performed by him. The specific performance of the contract cannot be enforced in favour of the person who fails to aver and prove his readiness and willingness to perform essential terms of the contract. Explanation (ii) to clause (c) of Section 16 further makes it clear that plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction. The compliance with 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 plaint and thereafter prove those averments made in the plaint. The readiness and willingness of the plaintiff to perform the essential part of the contract would be required to be demonstrated by him from the institution of the suit till it is culminated into decree of the court.

14. It is also settled by various decisions of this Court that by virtue of Section 20 of the Act, the relief for specific performance lies in the discretion of the court and the court is not bound to grant such relief merely because it is lawful to do so. The exercise of the discretion to order specific performance would require the court to satisfy itself that the circumstances are such that it is equitable to grant decree for specific performance of the contract. While exercising the discretion, the court would take into consideration the circumstances of the case, the conduct of parties, and their respective interests under the contract. The courts discretion to grant specific performance is not exercised if the contract is not equal and fair, although the contract is not void.”

37. In one of the recent decision in 2015 (8) SCC-695 (Padmakumari and Others Vs. Dasayyan and Others) the Supreme Court has re-iterated the legal position laid down in the aforesaid cases.
38. So far as the judgment referred to by the counsel for the Plaintiff, if we take into consideration the case of Syed (Supra), it would clearly demonstrate that the facts of that case was entirely different and the point of consideration was also under different background. In that case, the Plaintiff had been able to establish the essential ingredients required in a suit for specific performance, like agreeing the execution of agreement between the parties and by virtue of said agreement, the Defendants had initially paid advance amount and subsequently the balance amount was also paid, but the Defendants refused to accept the final amount of Rs.120/- which also the Plaintiff had deposited in the court. Thus, the essential requirement of specific performance of contract was specifically avered in the pleadings and had also proved that he has performed his part of obligation. Whereas, in the instant case, except for the first part of the essential requirement of agreeing execution of agreement to sale and received the earnest money of Rs.2,01,001/-, however, the subsequent part required for fulfilling the contract by making the complete balance payment to the Defendants and also proving the readiness and willingness on the part of the Plaintiff to perform his part of contractual agreement is missing and has not been properly proved and established. Thus, the said judgment would not come to

the aid of the Plaintiff.

39. Roop Kumar (Supra) is also distinguishable from the facts of the present case for the simple reason that the said judgment was also decided in a different factual background and except for the legal proposition the fact still remains that the Plaintiff in the instant case has not been able to make out the essential requirement for getting a decree under the provisions of Specific performance. The Plaintiff though has averred in his pleadings so far as the claim on the suit property is concerned, but has failed to adduce oral evidence cogent enough to accept and believe that he had been able to establish his readiness and willingness in performing his part of the contract. Thus, this judgment would also not come in the aid of the Plaintiff.
40. So far as Swarnam Ramchandran (Supra) is concerned, the said judgment primarily was to show that time was not the essence of the contract. However, if we look into the agreement to sell and the evidence which has been led on either side, it would clearly establish that the time was in fact the essence of the present contract, inasmuch as, it was emphatically laid down in the agreement that the balance amount of sale consideration was to be paid by the Plaintiff to the Defendants within a period of 91 days and the agreement also had reference to the consequence if there is failure on the part of parties in not fulfilling the contractual obligation within 91 days. This clearly proves the fact that time was the essence of the contract and since the Plaintiff has not been able to show his readiness and

willingness to perform his part of contract for getting the sale deed executed by paying the balance amount to the the Defendants, thus, there appears to be grave default on the part of the Plaintiff leading to automatic rescinding of the contract and further, after the decree was passed, the earnest money had also been deposited by the Defendants in the court. Thus, the ratio of law laid down in this case rather goes against the Plaintiff.

41. It is well established dictum of the Evidence Act that misplacing burden of proof would vitiate the judgment. The burden of proof may not be of much consequence after both the parties lay evidence, but while appreciating the question of burden of proof, misplacing of burden of proof on a particular party and recording findings in a particular way definitely vitiate the judgment as it has happened in the instant matter. The onus is on the Plaintiff to positively establish its case on the basis of the material available and it can not rely on the weakness or absence of defence to discharge the onus.
42. Thus, from the aforesaid findings, what is culled out is that the Plaintiff has not been able to establish and prove his readiness and willingness to perform his part of contract both by way of pleadings as well as from his evidence. On the contrary, the Defendant No.1 supported by the evidence of DW-2, Mohd. Salim and DW-3, Dinesh Khandelwal has been able to prove her stand that as per the agreement to sell she was present in the court of Sub-Registrar for execution of sale deed with necessary documents, but the Plaintiff

did not turn. Similarly, the Defendants have also been able to establish before the court that the Defendants on repeated occasions had requested the Plaintiff to take over the possession of the Godown part of the suit premises, but the Plaintiff refused to accept the same.

43. In view of the aforesaid facts and circumstances of the case and taking note of the decisions of the Supreme Court referred to in the foregoing paragraphs, this court is of the opinion that, no illegality or infirmity has been committed by the trial Judge while rejecting the Plaintiff's suit for specific performance.
44. The appeal fails and is accordingly dismissed affirming the judgment and decree passed by the Trial Court.
45. Decree be drawn accordingly.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE