

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED : 01.07.2016

ORDERS DELIVERED : 20.07.2016

DATED: 20.07.2016

CORAM

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

Second Appeal No.378 of 2009

Kadali Venu Sankar ... Appellant/Defendant

Vs.

Pydikondala Lakshmi ... Respondent/Plaintiff

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the Judgment and Decree of the learned Principal District Judge, Puducherry made in A.S.No.40 of 2007 dated 13.02.2009 reversing the judgment and decree of the learned Subordinate Judge, Yanam made in O.S.No.8 of 2006 dated 27.04.2007.

For Appellant : Mr.S.V.Jayaraman
Senior Counsel
for Mr.M.Aravind Subramaniam
For Respondent : Mr.M.Ravi

J U D G M E N T

The defendant in a suit for specific performance of agreement of sale is the appellant and the respondent herein is the plaintiff.

2.The case of the plaintiff is as follows:

The defendant is the owner of the suit property and entered into an agreement of sale with the plaintiff on 09.12.2002, agreeing to sell the suit property for a total consideration of Rs.2,25,000/- and received a sum of Rs.1,75,000/- as advance. The balance sale consideration was agreed to be paid within one year. Though the plaintiff made ready the balance sale consideration within the stipulated time and requested the defendant on several occasions to perform his part of the contract, he postponed the same on one reason or other. The plaintiff issued a notice to the defendant on 26.09.2005. Since no acknowledgement was received, she once again issued a notice on 08.12.2005. The defendant replied on 28.01.2006 with false allegations. The plaintiff issued a rejoinder on 15.02.2006. The plaintiff is always ready to perform her part of contract.

3.The case of the defendant is as follows:

The defendant borrowed a sum of Rs.50,000/- from the plaintiff and agreed to pay the said sum with interest at 24% p.a. At the time of borrowing the said sum, the plaintiff obtained signatures of the defendant on blank promissory notes, cheques, signed stamp and white papers. The defendant never executed any agreement of sale. The original parent document relating to the suit property was deposited with the plaintiff as security for the debt. The plaintiff is the money lender and the transaction between the parties was a loan transaction without any intention to sell or purchase the suit property. If really the plaintiff had paid Rs.1,75,000/- on the date of agreement, she could have not kept quiet for more than 2 ½ years to issue the suit notice and file the suit after 3 years of execution of the agreement.

4.The plaintiff has not examined herself as a witness. On the other hand, she examined her husband as PW1 and one of the attester of the sale agreement as PW2. She marked Exs.A1 to A13 on her side. The defendant examined himself as DW1. He has not marked any exhibits on his side.

5.The trial court, after considering the pleadings of the parties, evidence let in by them and on appreciation of the entire facts and circumstances, found that Ex.A1 sale agreement was not executed for the purpose of sale and on the other hand, the same was created towards the loan transaction and thus, the same is not true and valid. The trial court thus dismissed the suit in so far as the relief of specific performance is concerned. However a decree for a sum of Rs.50,000/- with interest was granted.

6.Challenging the judgment and decree of the trial court, the plaintiff filed the appeal before the First Appellate Court. The defendant did not challenge the money decree. The Appellate Court reversed the finding of the trial court and found that there is a valid sale agreement and that the plaintiff was always ready and willing to perform her part of the contract. The Appellate Court also pointed out that though there is an abnormal delay in filing the suit, it cannot be presumed that the plaintiff has waived her right to get the sale deed executed. Thus, the Appellate Court allowed the appeal and directed the defendant to execute the sale deed after receiving the balance consideration of Rs.50,000/-.

7.Aggrieved against the reversing finding of the Appellate Court, the defendant filed the present second appeal which came to be admitted by raising the following substantial questions of law:

"1.Whether the first appellate court was perverse in analysing the evidence and construing that there was no delay on the part of the plaintiff in seeking specific performance of the agreement to sell?

2.Whether the first appellate court failed to consider that the non-examination of the plaintiff was fatal to her case?"

8.The learned Senior Counsel Mr.S.V.Jayaraman, who appeared on behalf of the appellant submitted as follows:

a) There is no strict compliance of requirement under Section 16 (c) of the Specific Relief Act in this case. The plaintiff has averred in the plaint only her "readiness" and not her "willingness". Unless both are pleaded and proved, the plaintiff is not entitled to the relief of specific performance. The following decisions support such contention:

- i) 2010(6) CTC 901, J.P.Builders vs A.Ramadas Rao;
- ii) 2008 (5) CTC 428, M.Ranganathan vs M.Thulasi Naicker (Deceased);
- iii) 2006 (2) LW 249, E.A.Thirugnanam vs V.P.Rajagopal,

b) The transaction between the parties was only a loan transaction which is evident from the conduct of the parties.

c) Even assuming that the agreement was executed with an intention to sell, there was an inordinate delay of three years on the part of the plaintiff in approaching the court. In respect of the agreement dated 09.12.2002, the suit notice itself came to be issued only on 08.12.2005, after three years and the suit was filed on 15.03.2006, nearly after 3 ½ years from the date of agreement. This inordinate delay on the part of the plaintiff would show and prove that she was not ready and willing to perform her part of the contract. In support of the above submissions, the following decisions are relied on,

- i) 2006(2) LW 249; E.A.Thirugnanam vs V.P.Rajagopal,
- ii) 2012 (2) LW 917, A.S.M.Balasubramanian vs S.P.Swaminathan.

9. Per contra, Mr.M.Ravi, learned counsel appearing for the respondent submitted as follows:

The defendant admitted his signature in the suit agreement. Therefore, it is for him to prove his contention that it was not entered into with an intention to sell the property. The defendant has not proved such contention. The recitals under Exs.A2, A5 and A9 would show the plaintiff's readiness and willingness. The defendant, even otherwise, has not raised any plea about readiness and willingness. When more than 2/3rd amount of total consideration was paid by the plaintiff as advance, the question of doubting about her readiness and willingness does not arise. PW1 is the husband of the plaintiff and hence non examination of the plaintiff is not fatal to the case. Unless there is a serious prejudice caused to the other side, the delay cannot be a ground to reject the relief of specific performance.

10. In support of the above submissions, the following decisions are relied on:

- i) 2008(2) MLJ 1104 (SC), Ramakrishna Pillai vs Muhammed Kunju;
- ii) 2000(6) SCC 420; Motilal Jain vs Ramdasi Devi
- iii) 2002(5) SCC 481, Nirmala Anand vs Advent Corporation (P) Ltd;
- iv) 1997 (2) MLJ 484; Kantilal C. Shah vs A.G. Devarajulu Reddiar,

11. Heard the learned Senior Counsel for the appellant and the learned counsel for the respondent and perused the materials placed before this Court.

12. Aggrieved against the reversing judgment and decree of the Appellate Court, the defendant has filed the present second appeal. The trial court dismissed the suit for specific performance and however, granted a decree for money of Rs.50,000/-. The trial court found that the suit agreement was not a true and valid document with an intention to be acted upon. Since the trial court has found that the suit agreement was not proved, it has not gone into the question of readiness and willingness in detail. The Lower Appellate Court reversed the findings of the trial court and found that the suit agreement was entered into with an intention to be acted upon. The Lower Appellate Court also found that the delay is not fatal to the case of the plaintiff.

13. From the above contra views expressed by the courts below in respect the suit agreement, this court has to now find out as to whether the appellant herein is entitled to succeed based on the questions of law framed as stated supra.

14. The suit agreement is said to have been entered into on 09.12.2002. Though the plaintiff claimed the agreement as a genuine sale agreement, the defendant disputed such claim by contending that the agreement was entered into towards a loan transaction and not with an intention to sell or buy the suit property. The defendant has not disputed his signature in Ex.A1 Agreement. Therefore, it is for him to disprove the claim of the plaintiff and establish that the suit agreement was not intended to be acted upon. It is seen that the defendant, except examining himself as DW1, has not examined any third party independent witness or marked any document in support of such contention. Thus his interested testimony alone cannot be taken as a proof of his contention. Therefore, it is evident that the defendant has failed to prove his contention with regard to the intention of the parties to the agreement and thus, the suit agreement is to be held as a document entered into with an intention to act upon. Hence, I reject the contention of the learned Senior Counsel for the appellant on this aspect. Thus, the next question that would arise is as to whether the plaintiff was ready and willing to perform her part of the contract.

15. Before answering the above question, let me consider the preliminary objection raised by the learned senior counsel on the question of readiness and willingness. It is his contention that mere averment of 'readiness' is not sufficient unless the 'willingness' is also specifically pleaded and proved. He invited this court's attention to Section 16(c) of the Specific Relief Act, 1963.

16. Pointing out the above requirement of law, the learned Senior Counsel invited this court's attention to the plaint averments at paragraph Nos. 5 and 6 and contended that the plaintiff, except stating that she was always ready to perform her part of the contract, has not specifically pleaded anywhere about her willingness to perform so.

17. Per contra, Mr. M. Ravi, the learned counsel for the respondent submitted that the word 'ready' referred to in the plaint would also indicate that the plaintiff is willing to perform and hence mere omission to specifically include the word willing cannot be put against the plaintiff. Thus, he submitted that there is full compliance of Section 16(c).

18. I have given careful consideration to the above submissions. Section 16 (c) of the Specific Relief Act reads as follows:

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

(a)...

(b)...

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

Under the said provision of law, it is specifically contemplated that specific performance of a contract cannot be enforced in favour of a person who fails to aver and prove that he has performed or he has always been ready and willing to perform the essential terms of the contract. Thus, it is manifestly clear that the person who seeks specific performance of a contract has to necessarily make averments not only about his readiness and also about his willingness to perform his part of the contract. The coining of the words under the above said provision would clearly indicate that mere 'readiness' is not sufficient but the 'willingness' also should be pleaded and proved.

19. One may wonder as to what is the great difference between these two actions. It may also superfluously sound as though both are conveying same meaning and indication. To certain extent, it may appear that the meaning and indication of the word "readiness" includes the "willingness" of the party and that the latter is forming part and parcel of the former. Thus, it may appear to one's mind that mere pleading of readiness and proving the same itself

would satisfy the requirement of Section 16(c) of the said Act. In my considered view, it is not so and the reasons for such view are as follows:

20. A deep appreciation of the intention of the legislation and the thorough study of the intricacies of those two words used in the said provision would certainly go to show that both are not one and the same and they have been inserted to convey their own independent and distinct meaning, differentiating one from the other. If both would convey the same meaning, there is no need for the legislatures to coin the language of the said provision in such a manner. At this juncture, it is to be noted that the language used in a provision of law is to be applied as it indicates and is intended upon. An interpretation of a provision of law has to be made only to enlighten the scope of the provision based on the intention of its legislators and not to deviate or subtract or substitute such scope, intention and ambit.

21. Thus by keeping the above principle in mind, if we look at the words "readiness" and "willingness", the intention of the legislation in coining the language in such a way will come to light. What is "readiness"? Undoubtedly, it is nothing but to indicate the financial capacity of the agreement holder to fulfill his obligation under the contract. In other words, the word "readiness" would sound like jingling of coins! No doubt, he does not require to physically do so and it is enough if he pleads and establishes that he was and is capable of making such sound at all the times. Thus, by doing so, the agreement holder satisfies one part of his obligation or requirement under Section 16(c). But is that sufficient to hold that he is also willing to perform his part of the contract in the absence of specific pleading to that effect? At this juncture, it is very crucial to note one aspect. An agreement holder, after entering into the agreement, at any time later, may change his mind and give up the contract for so many reasons, even though he is financially sound to fulfill his part of the contract. Therefore, his readiness pleaded and established by his financial capacity alone is not sufficient, unless it is also pleaded and proved that he is willing to put such readiness into action to complete the transaction within the time stipulated. Unless such intention of the agreement holder is also pleaded with material averments and proved, it cannot be said that the plaintiff has satisfied the requirement of Section 16(c) in its strict sense. The 'readiness' and 'willingness' being both sides of a coin, should co-exist and survive throughout commencing from the date of agreement till the decree is passed. If "readiness" is the "cart carrying the coins", the "willingness" is the "horse", dragging the cart to its destination. Needless to say, a cart loaded with coins is useless, unless there is a horse to carry it. Equally, existence of a healthy horse is also not sufficient, unless there is a cart loaded with coins for the horse to carry.

22. In this aspect, the following decisions are relevant to be quoted. In 2010(6) CTC 901, J.P. Builders vs A. Ramadas Rao, the Apex Court at paragraph Nos. 9 and 12 has observed as follows:

"9. The words 'ready' and 'willing' imply that the person was prepared to carry out the terms of the contract. The distinction between 'readiness' and 'willingness' is that the former refers to financial capacity and the latter to the conduct of the plaintiff wanting performance. Generally, readiness is backed by willingness.

..12. Section 16(c) of the Specific Relief Act, 1963 mandates 'readiness and Willingness' on the part of the plaintiff and it is a condition precedent for obtaining relief of grant of Specific Performance. It is also clear that in a suit for Specific Performance, the Plaintiff must allege and prove a continuous 'readiness and willingness' to perform the contract on his part from the date of the contract. The onus is on the plaintiff. It has been rightly considered by this Court in R.C. Chandiook & Anr. v. Chuni Lal Sabharwal & Ors., 1970(3) SCC 140, that 'readiness and willingness' cannot be treated as a strait jacket formula. This has to be determined from the entirety of the facts and circumstances relevant to the intention and conduct of the party concerned. It is settled law that even in the absence of specific plea by the opposite party, it is the mandate of the statute that plaintiff has to comply with Section 16(c) of the Specific Relief Act and when there is non-compliance with this statutory mandate, the Court is not bound to grant Specific Performance and is left with no other alternative but to dismiss the suit. It is also clear that readiness to perform must be established throughout the relevant points of time. 'Readiness and Willingness' to perform the part of the contract has to be determined/ascertained from the conduct of the parties."

23. In a decision of this court reported in 2008(5) CTC 428, M. Ranganathan vs M. Thulasi Naicker (Deceased), at paragraph Nos. 22, 25 and 26, it has been observed as follows:

"22. No doubt, Section 16(c) of the Specific Relief Act provides that performance of a contract cannot be enforced in favour of a person, who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract, which are to be performed by him, other than the terms, the performance of which has been prevented or waived by the defendant. Further Explanation (ii) therein also says that the Plaintiff must aver and prove readiness and willingness to perform, the contract according to the true construction.

.....25. Drawing attention of Court to the pleadings, learned counsel for Appellant contended that there is pleadings and evidence to show that Plaintiff was always

ready and willing to perform his part of the contract. "Readiness" means the capacity of the Plaintiff to perform the contract which include his financial ability to pay the purchase prices. But for determining his "willingness" to perform his part of the contract, Plaintiff's conduct has to be properly scrutinised.

26. Exs.A4, A5 and A8 might indicate that the Plaintiff had sufficient means to pay the purchase price. But as rightly observed by the Lower Appellate Court, "Readiness" to perform the contract is different from "Willingness" to perform the contract. To get the relief of specific performance, plaintiff has to prove two constituents, viz., readiness to perform contract and also willingness to perform the contract. Referring to evidence and conduct of the plaintiff, Lower Appellate Court held that there is no lack of evidence showing continuous willingness on the part of the plaintiff to get the sale deed executed and there is no reason to take a different view."

24. In 2006 (2) LW 249, E.A.Thirugnanam vs V.P.Rajagopal, this Court at paragraph No.14, has observed as follows:

"14. I have carefully considered the rival submissions made by the learned counsel. It is unfortunate that the Trial Court has not framed the issue regarding readiness and willingness on the part of the plaintiff in performing his part of the contract. The Trial Court has also not considered the legal effect of the plaintiff initially filing the suit for refund of the advance amount. The Trial Court has only considered the readiness on the part of the plaintiff i.e. the means possessed by the plaintiff to perform his part of the contract, but erred in not considering the vital aspect of willingness on the part of the plaintiff to perform his part of the contract."

25. Considering these legal aspects, there cannot be any doubt that the plaintiff has to specifically aver and prove both his/her readiness and willingness to perform his/her part of the contract. As rightly pointed out by the learned Senior Counsel, the plaintiff in this case, except stating at paragraph Nos.5 and 6 of the plaint that she was always ready to perform her part of the contract, she failed to make the specific averment of willingness as required under section 16(c) of the Act. The readiness and willingness apart from such pleadings, can be established through the conduct of the party. In this case, going by the facts, even the conduct of the plaintiff is also not in her favour, as admittedly the very suit notice under Ex.A5 itself came to be issued only on 08.12.2005, i.e., after three years from the date of agreement, when admittedly one year was fixed as the time for performance. Therefore, what prevented the plaintiff from issuing the demand notice and filing a suit thereafter

immediately on the denial or evasion of the defendant in performing his part of the contract, is not explained. Needless to say that a person who alleged to have parted with a sum of Rs.1,75,000/- as advance out of the total consideration of Rs.2,25,000/-, will not wait to pay the balance sale consideration of Rs.50,000/- for such a long time of three years and issue notice to the defendant calling upon him to perform his part of the contract after such long wait. Once the time limit fixed in the agreement is over, the plaintiff should have immediately acted upon and resorted to legal remedies. It has not been done so in this case.

26. At this juncture, it is better to refer to the observation made by this court in a decision reported in 2012(2) LW 917, A.S.M. Balasubramanian vs S.P. Swaminathan, at paragraph No.33 which reads as follows:

"33. The precedents referred to supra would unambiguously and unequivocally indicate and connote that the agreement holder should with all due diligence approach the court within the shortest possible time, so to say, even without availing the full limitation period contemplated under Article 54 of the Indian Limitation Act. The agreement holder cannot be heard to contend that inasmuch as he had three years' limitation period to file the suit, he waited till the last date of limitation to file the suit."

27. In a recent decision, this court has considered the same issue in a case reported in 2016(2) TLNJ 629, Johnson vs E. Pushpavalli, wherein under similar circumstances, the claim for specific performance was rejected by observing in paragraph No.8 and 9, as follows:

8. In a suit for specific performance of an agreement of sale, the following are the necessary factors to be pleaded and proved by the plaintiff:

(a) that there is a valid agreement entered into between the parties in respect of the suit property; (b) that the plaintiff is always ready and willing to perform his part of the contract, whereas the defendant is not doing so within the time prescribed for completion of the transaction; (c) that the suit is filed within the period of limitation; and (d) that there is no inordinate or unexplained delay in filing the suit from the date of expiry of the time prescribed under the agreement for the purpose of completion of contract, even though, the suit is filed within the period of limitation. The inordinate or unexplained delay referred to above, though may not be relevant for the purpose of deciding the question of limitation in filing the suit, however, the same would be very much relevant for the purpose of deciding the issue as to whether the plaintiff is always ready and willing to

perform his part of the contract from the date of the agreement till the date of filing the suit.

9. In this case, it is true that the suit was filed within the period of limitation. At the same time, the undisputed fact is that six months time was shown as the maximum time limit in the agreement for the parties to perform their respective obligation under the contract and thus, it is evident that time is the essence of the contract. It is not the case of the plaintiff that the defendant by his own conduct altered the terms of the contract to presume that the time was not the essence of contract. On the other hand, it is contended that the defendant was evasive. Even though an attempt is made by the plaintiff to contend that though a draft sale deed was sent in the month of September 2003 to the defendant, it is seen that such contention was not proved before the Courts below by adducing any evidence and thus, such contention of the plaintiff was not accepted by the courts below. Therefore, the only evidence available to show the readiness and willingness by the plaintiff is the suit notice dated 06.07.2004 which was admittedly sent after one year from the date of the agreement. Therefore, nothing is there on record or evidence to show that the plaintiff was ready and willing to perform his part of the contract not only within the stipulated period and also thereafter. In fact, the notice sent by the plaintiff was immediately replied by the defendant under Ex.A5 on 16.07.2004, denying his liability. Therefore, the very filing of the suit on 15.12.2006 i.e., after 2 1/2 years from the date of receipt of the said reply notice would show that the plaintiff was not at all ready and willing to perform his part of the contract and on the other hand, he slept over the matter beyond the time limit fixed in the agreement. At this juncture, it is to be noted that the readiness and willingness on the part of the plaintiff in performing his part of the contract would consist of several actions at different point of time commencing from the date of the agreement. One of such action showing such readiness and willingness would be the filing of the suit itself within the shortest time immediately after the denial by the other side. In other words, the bonafide of readiness and willingness must be evident apparently from every action of the plaintiff after the agreement. At the same time, it should not be mistaken as if this Court holds that not filing the suit immediately after the denial even though limitation period has not expired, has to be construed as fatal to the case of the plaintiff. If there is a long time gap between such denial and filing of the suit and the same is properly explained with convincing reasons, the Court can always decide such issue based on the facts and circumstances of each case. It is well settled that in a suit for specific performance, the bounden duty of the

plaintiff is to prove that he is ready and willing to perform his part of the contract all throughout the proceedings commencing from the date of agreement till the date of the decree and such readiness and willingness must be specifically pleaded and established by adducing evidence and not by making mere pleading alone. In this case, even by way of pleading, the plaintiff has not stated as to why there was a delay of one year in issuing the suit notice and further delay of 2 1/2 years in filing the suit. Therefore, I find that the Courts below have rightly rejected the case of the plaintiff and dismissed the suit, more particularly, when the relief of specific performance is the discretionary one. At this juncture, it is relevant to note the decision of this Court reported in 2007 (1) CTC 243 (Ramalingam, G. vs. T. Vijayarangam) wherein at paragraph Nos. 19 and 20, it has been observed as follows:

19. Even assuming that the plaintiff had enough means to complete the sale transaction that itself is not sufficient unless the plaintiff established that he was ready and willing to pay the balance sale consideration and complete the sale transaction right from the date of the execution till the date of decree. As laid down by the Apex Court, the plaintiff has not proved his continuous readiness and willingness at all stages from the date of agreement till the date of hearing of the suit.

(emphasis supplied)

28. The learned counsel for the respondent relied on the decision of the Apex Court reported in 2008(2) MLJ 1104 (SC), Ramakrishna Pillai vs Muhammed Kunju and contended that when the defendant has not raised any plea about the readiness and willingness on the part of the plaintiff, the court below ought not to have considered the said issue against the plaintiff. Perusal of the said decision would show that the Apex Court has pointed out that there cannot be any quarrel with the position in law about the parameters to be considered while dealing a suit for specific performance. After observing so, the Apex Court has further pointed out that the facts of that case revealed that the plaintiffs therein had categorically stated in the plaint that they were and are always willing to fulfill their part of obligations. I have already pointed out about the requirement of law under section 16(c) of the Specific Relief Act. Such requirement of law has also been noted by the Apex Court in the above decision. Only based on the factual aspects of that matter, the Apex Court has observed so. In this case, evidently the pleading of the plaintiff in respect of the readiness and willingness was not complete and in accordance with the requirement of law as contemplated under section 16(c) of the Specific Relief Act. When that being the distinguishable feature, I do not think that the above decision of the Apex Court helps the respondent in any manner.

29. Learned counsel for the respondent further relied on the decision reported in 2000(6) SCC 420, Motilal Jain vs Ramdasi Devi, wherein the Apex Court has pointed out that the averment of readiness and willingness in the plaint is not a mathematical formula and if the averments in the plaint as a whole clearly indicates readiness and willingness, the fact that they are differently worded will not militate against the readiness and willingness of the plaintiff. Paragraph No.9 of the said decision reads as follows:

"9. That decision was relied upon by a three Judge Bench of this Court in Syed Dastagir case, wherein it was held that in construing a plea in any pleading, courts must keep in mind that a plea is not an expression of art and science but an expression through words to place fact and law of one's case for a relief. It is pointed out that in India most of the pleas are drafted by counsel and hence they inevitably differ from one to the other; thus, to gather true spirit behind a plea it should be read as a whole and to test whether the plaintiff has performed his obligations, one has to see the pith and substance of the plea. It was observed: (SCC Headnote)

"Unless a statute specifically requires a plea to be in any particular form, it can be in any form. No specific phraseology or language is required to take such a plea. The language in Section 16(c) of the Specific Relief Act, 1963 does not require any specific phraseology but only that the plaintiff must aver that he has performed or has always been and is willing to perform his part of the contract. So the compliance of 'readiness and willingness' has to be in spirit and substance and not in letter and form".

It is thus clear that an averment of readiness and willingness in the plaint is not a mathematical formula which should only be in specific words. If the averments in the plaint as a whole do clearly indicate the readiness and willingness of the plaintiff to fulfil his part of the obligations under the contract which is the subject-matter of the suit, the fact that they are differently worded will not militate against the readiness and willingness of the plaintiff in a suit for specific performance of contract for sale."

30. It is true that the averment of readiness and willingness in a suit for specific performance need not necessarily be in specific words or terms or expressions and such conduct of the party can be culled out from the reading of the entire plaint as well. Therefore, to decide the question with regard to the question of readiness and willingness, no uniform formula need be applied in all cases, as it is for the court to consider and decide each case on such issue based on the facts and circumstances of such case. In this case, I have already discussed the conduct of the plaintiff in keeping quiet for

more than 2 ½ years even for issuing the suit notice and filing the suit thereafter without there being any acceptable explanation for such inordinate silence. Such inaction will certainly go against the plaintiff while considering the question of readiness and willingness, though the suit was filed within the period of limitation.

31.2002(5) SCC 481, Nirmala Anand vs Advent Corporation (P) Ltd was cited to contend that grant of relief of specific performance is a rule and its refusal an exception. A careful perusal of the said decision would show that refusal of the relief of specific performance has to be made on valid and cogent grounds. In this case, I have pointed out as to how the plaintiff is not entitled to such relief based on the facts and circumstances of the present case. Hence, the said case is not helping the respondent in any manner while applying the facts on hand, more particularly when it is also the settled position of law that the relief of specific performance is a discretionary one.

32.A Division Bench decision of this court reported in 1977(2) MLJ 484, Kantilal C.Shah vs A.G.Devarajulu Reddiar, was relied on by the respondent's counsel wherein at paragraph No.6, it has been observed as follows:

"6....It is no doubt true that more delay in seeking for the relief of specific performance by itself cannot be a ground for the Court to refuse to exercise its judicial discretion to grant the equitable relief. But wanton delay and unexplained silence cannot be equated to more delay and in such cases the burden is very heavy on the plaintiff to show that he had a purpose and not a design when he kept silent and did not demand performance. It is by now established that the delay simplicitor without any breach caused to the defendant or which would not amount to abandonment or waiver does not empower the Court to refuse specific performance. But what then is abandonment? Proof of abandonment or waiver of right could be established by a course of conduct demonstrated in a given case or an attitude of wanton drift adopted by the plaintiff which by itself is an indicia of his unwillingness to involve himself further in the bargain."

33.Perusal of the said decision would show that if the delay is unexplained and wanton, it has to be construed that the plaintiff has abundant and waived of his right over the agreement. Thus, the above decision distinguishable on facts, is also not helping the respondent.

34.Considering all these aspects, I am of the view that the appellant is entitled to succeed by answering the questions of law raised in this case in his favour. Accordingly, the same are answered. Consequently, the second appeal is allowed and the judgement and decree of the lower Appellate Court are set aside and

the judgement and decree passed in O.S.No.8 of 2006 on the file of the Sub Court, Yanam, are restored. No costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1.The Principal District Judge,
Puducherry.

2.The Subordinate Judge,
Yanam.

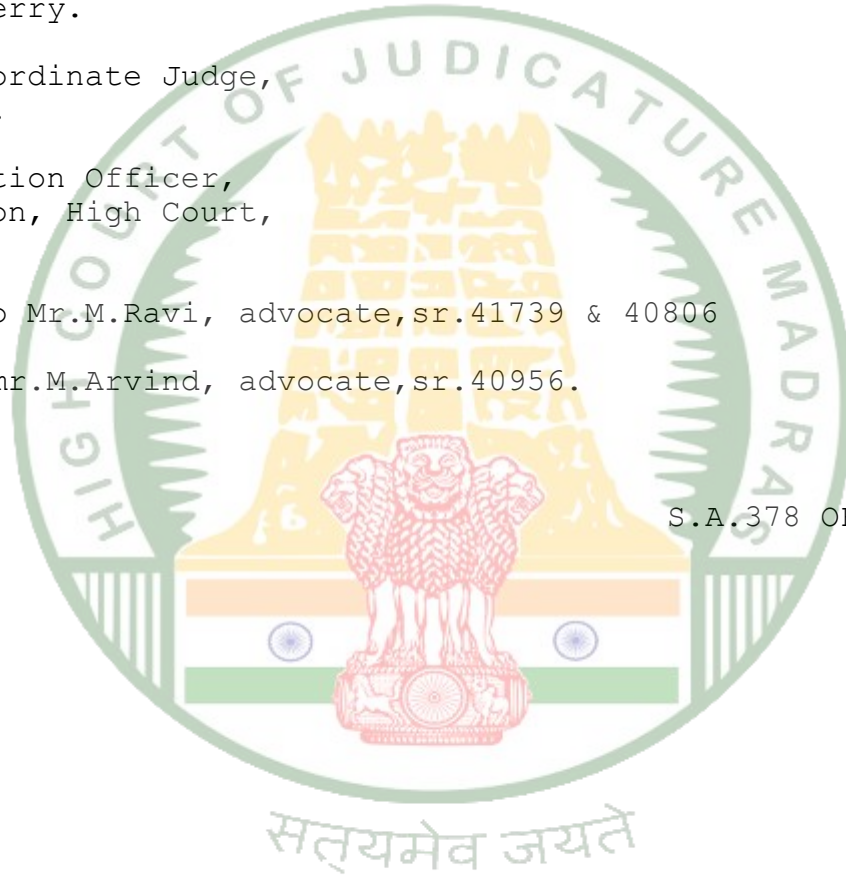
3.The Section Officer,
V.R.Section, High Court,
Madras.

+2 cc's to Mr.M.Ravi, advocate,sr.41739 & 40806

+1 cc to mr.M.Arvind, advocate,sr.40956.

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