

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.171 of 2015

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1. Smt. Dhira Mishra @ Dhira Devi, Wife of Murlidhar Mishra, Daughter of Late Shyama Devi
 2. Smt. Runa Mishra @ Runa Devi, Wife of Ghanshyam Mishra, Daughter of Late Shyama Devi,
Sl. No. 1 & 2 are Resident of Village - Khokha Tola, Balu Tal, Paikpara, P.S. K. Nagar, District - Purnea
 3. Smt. Sheela Jha @ Sheela Devi, Wife of Keshav Deo Jha @ Krishandeo Jha, Daughter of Late Shyama Devi, Resident of village & P.O. Ramai, P.S. Purnea, District - Purnea
 4. Dulal Chand Thakur, Son of Prafulla Chand Thakur
 5. Neeraj Kumar Thakur @ Neeraj Thakur, Son of Prafulla Chand Thakur
Sl. No. 4 to 5 are Resident of Village-Guagachhi, P.O. Budhijagir, Via-Islampur, District-West Dinajpur (W.B.)

... .. **Appellants**

Versus

1. Md. Laique Ahmad, Son of Late S.K. Tajuddin
 2. Md. Hasim Son of Late Karamat Ali
Both Resident of village - Khokhattola, Fariyani No. 2, P.S. Nagar, District – Purnea
- **Respondents 1st Set**
3. Md. Kasim, Son of SK. Masleuddin, Resident of village - Paikpara, P.S. K. Nagar, District – Purnea
- **Respondent 2nd Set**
4. Krishna Devi, Wife of Radha Mishra, Resident of village - Teghra, P.S. Sadar, District - Purnea
- **Respondent 3rd Set**

Appearance :

For the Appellant/s	:	Mr. Dhanendra Chaubey Mr. Rakesh Tiwary
For Resp. Nos. 1 & 2	:	Mr Kamal Nayan Choubey, Sr. Adv Mr. Shobha Nath Jha
For Respondent No. 3	:	Mr. Akash Chaturvedi

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

JUDGMENT AND ORDER

Date : 03-10-2017

In the present second appeal, under Section 100 of the Civil Procedure Code, 1908 (hereinafter referred to as ‘the Code’), the



appellants are aggrieved by the judgment and decree, dated 19.06.2015/06.07.2015, passed by learned Additional District Judge II, Purnea, in Title Appeal No. 49 of 2007 (Tr. No. 14 of 2015), whereby he has reversed the judgment and decree, dated 25.06.2001/07.07.2001, passed in Title Suit No. 479 of 1990, by learned Munsif, Sadar, Purnea, and has decreed the suit in favour of plaintiffs/respondents 1st set.

2. The appellants are the contesting defendants. The suit was filed by the plaintiffs for specific performance of contract with a direction to the defendant No. 1/respondent No. 4 herein to execute sale deed with respect to the suit land in favour of the plaintiffs on receipt of balance consideration money, asserting his right, based on execution of a registered agreement to sell the suit land, dated 22.09.1990, by the Defendant No.1 in favour of the plaintiffs.

3. The land has been described as R.S. Plot No. 2606, area 33 decimals, R. S. Plot No. 7328, area 1.03 acres, R. S. Plot No. 2726, area 1.56 acres (total area 2.92 acres) under Khata No. 503, Mouza Khokha, thana no. 156/1, Police Station K. Nagar, District Purnea. In the present judgment, parties have been generally described as per the party-position in the suit, for convenience and clarity.

CASE OF THE PLAINTIFFS



4. It is the plaintiffs' case that upon an agreement having been reached between the plaintiffs and defendant no. 1, a contract to sell was finalized between them on 21.09.1990 on consideration amount of Rs. 28,000/-. The defendant no. 1 received the amount of Rs. 2100/-, in cash, as earnest money from the plaintiffs on 22.09.1990 and executed a registered *zarbayanama* (Agreement to sell on payment of earnest money) in favour of the plaintiffs on 22.09.1990 and promised to execute the sale deed with respect to the suit land in favour of the plaintiffs, on receipt of balance consideration money, by December, 1990. The defendant no. 1, however, avoided to execute the sale deed on one pretext or the other when the plaintiffs requested him to execute the sale deed. On 18.12.1990, the plaintiffs learnt that the defendant no.1 had sold the suit land to one Shyama Devi, defendant no. 2, who appears to have died during the pendency of the proceedings and is being represented by her legal heirs, who are the appellants herein. When the plaintiffs enquired from the defendant no. 1 as to whether she had sold the suit land to defendant no. 2, she did not give any definite answer, whereafter upon enquiry from the Registry Office, the plaintiffs learnt that defendant no. 1 had executed the two sale deeds on 31.10.1990/01.11.1990 in respect of the same suit land in favour of defendant no. 2. The plaintiffs



pleaded that defendant no. 2 had full knowledge about the contract to sell the suit land by the defendant no. 1 to the plaintiffs and about receiving of earnest money of Rs. 2100/- from the plaintiffs on execution of *zarbayanama*, dated 22.09.1990. The plaintiffs also pleaded that defendant no. 1 did not ever make any agreement to sell the suit land in favour of defendant no. 2 prior to execution of the sale deed, dated 31.10.1990/01.11.1990 in favour of defendant no. 2 nor she had executed any *zarbayanama* in favour of defendant no. 2. The plaintiffs also took specific plea in their plaint that the defendant no. 1 wrongly recited in the sale deed, dated 31.10.1990/01.11.1990 that she had finalized to sell the suit land to defendant no. 2 in the month of June, 1990 and she executed a *zarbayanama*, dated 06.06.1990, in favour of defendant no. 2. The plaintiffs also pleaded that if there be any such *zarbayanama*, the same must be *ante* dated, collusive and fraudulent act of defendant no. 1. The plaintiffs term the sale deeds, dated 31.10.1990/01.11.1990, to be sham and collusive transactions, without any consideration.

5. There is specific assertion, in paragraphs 4, 14 and 15 of the plaint, that the plaintiffs were always ready and willing and were so, even on the date of institution of the suit and in future also, they are ready and willing to perform their part of the



contract, but defendant no. 1 is not ready and willing to perform the contract, as she flatly refused to execute the sale deed in favour of the plaintiffs in respect of the suit lands.

6. The defendant no. 1, despite service of notice, did not appear nor did she file any written statement nor otherwise contested the suit.

7. During the pendency of the suit, defendant no. 2 sold a portion of the disputed land to Md. Kasim, who came to be impleaded as defendant no. 3 in the suit. The defendant nos. 2 and 3 filed their separate written statements.

CASE OF DEFENDANT NO. 2

8. The alleged *zarbayanama*, dated 22.09.1990 (Exhibit 1) is not binding on the defendants as defendant no. 2 had already taken possession of the suit land on the date of execution of a *zarbayanamas*, dated 06.06.1990 (Exhibits A and A/1) by defendant no. 1 in favour of defendant no. 2, on the basis of which defendant no. 2 purchased the suit land through two sale deeds, dated 01.11.1990 (Exhibits B and B/1) and defendant no. 2 is enjoying the usufructs of the purchased land ever since the date of execution of the *zarbayanama*, dated. 06.06.1990. It is, accordingly, the plea of defendant no. 2 that subsequent *zarbayanama*, dated 22.09.1990, executed by the defendant no. 1



in favour of plaintiffs is not binding on the defendants. The two *zarbayanamas* (Exhibits A and A/1), dated 06.06.1990, one for an area of 1.36 acres and the other for an area of 1.56 acres (total area 2.92 acres) was executed by defendant no. 1 in favour of defendant no. 2 on receiving earnest money of Rs. 10,000/- separately for each *zarbayanama* in presence of the local Mukhiya and other witnesses and delivery of possession thereof was made. After realizing the balance consideration money, these two sale deeds were executed on 01.11.1990 (Exhibits B and B/1). The defendant No.2 had no knowledge of the said *zarbayanama*, dated 22.09.1990, at the time of execution of registration of sale deed (Exhibits B and B/1).

CASE OF DEFENDANT NO. 3

9. According to this defendant, he purchased 1.03 acres of land out of the said land through registered sale deed, dated 16.01.1991, executed by defendant no. 2. According to him, he paid the consideration amount not only to defendant no. 2, but also to one Mukhtar Ahmed, a mortgagee of the said land. He supported the case of the defendant no. 2 that he had purchased the suit land through registered sale deeds, dated 01.11.1990 and after the said purchase, the land was mortgaged to Mukhtar Ahmed and



thereafter he had sold the land to defendant no. 3, directing him to pay the mortgaged amount to Mukhtar Ahmed.

FINDING OF THE TRIAL COURT

10. On the basis of the pleadings of the parties, the Trial Court framed following issues, inter alia, which are significant for the purpose of the adjudication of the present second appeal.

“(v) Whether the zarbayanamas dated 22.09.1990 alleged to have been executed by Krishna Devi in favour of the plaintiffs is genuine, valid and for consideration and the same is binding upon the defendant no. 2?

“(vi) Whether the defendant no. 2 had got knowledge about zarbayanama, dated 22.09.1990, executed by Krishna Devi in favour of the plaintiffs at the time of execution and registration of kewala of suit land in favour of defendant no. 2?

“(vii) Whether zarbayanama, dated 06.06.1990, executed in favour of defendant no. 2 is forged, fabricated, collusive and antedated?

“(viii) Is the Kewala executed in favour of defendant no. 3 valid?”

11. The parties to the suit adduced their evidence, both oral and documentary. On appreciation of the evidence, the trial court conclusively held that the onus to prove that the *zarbayanama*, dated 22.09.1990, executed in favour of the plaintiffs being a registered document was forged or invalid was on the defendants,



to challenge it. The Trial Court held that the defendants could not adduce any evidence to prove that the said *zarbayanama*, dated 22.09.1990, was a forged and fabricated document. The Trial Court held that defendant no. 1, being the only competent person to say whether she had received the earnest money or not, having not been examined, it could not be held that the said *zarbayanama*, dated 22.09.1990, was not genuine. The Trial Court, on the question of readiness and willingness of the plaintiffs to pay the balance consideration money, took note of the fact that no such plea had been taken by defendant no. 2 in her written statement denying averment of the plaintiff, apropos; whereas, defendant no. 3, in his written statement, had averred that when he consulted defendant nos. 1 and 2, they had replied that the plaintiffs were never willing to pay the balance consideration money.

12. The Trial Court, at the same time, concluded that *zarbayanamas* (Exhibits A and A/1), executed on 06.06.1990, in favour of defendant no. 2 by defendant no. 1, having been found to be executed prior to the execution of registered *zarbayanama* in favour of the plaintiffs, dated 22.09.1990, the same is meaningless and not binding on defendant no. 2.

13. Be it noted that the said *zarbayanamas*, dated 06.06.1990, are not registered documents.



14. The Trial Court, not only held that the *zarbayanama*, dated 22.09.1990, was genuine, valid and for consideration, but also that the defendant no. 2 had got knowledge of the same at the time of execution of registered sale deeds (Exhibits B and B/1) on 01.11.1990.

15. While deciding issue nos. 5, 6 and 7, the Trial Court concluded, in paragraph 20, as follows:-

“20. In view of my above discussions, I reach on the conclusion that Exhibit 1 *zarbayanama*, dated 22.09.1990, executed by Smt. Krishna Devi in favour of the plaintiff with respect of suit land is genuine, valid and for consideration and the defendant has got knowledge of same at the time of execution of sale deed (Exhibits B and B/1) on dated 01.11.1990. Exhibit A and A/1, *zarbayanamas*, dated 06.06.1990, executed by Krishna Devi in favour of defendant no. 2 is neither forged nor fabricated, nor collusive nor antedated and, as such, the said issues are decided in affirmative.”

16. Having held thus, learned Trial Court held the *kewala*, executed in favour of defendant no. 3 to be valid and genuine and accordingly decided issue no. 8 in affirmative.

17. The Trial Court, accordingly, dismissed the suit on contest and directed defendant no. 1 to pay the said earnest money of Rs. 2100/- to the plaintiffs within two months from the date of



judgment with 13 per cent interest, compoundable annually, till realization of money. If the defendant no. 1 failed to pay the said money to the plaintiffs, the plaintiffs shall have the right to realize the same from defendant no. 1 through the process of the Court, on the cost of the defendant no. 1, the Trial Court ordered.

FINDINGS OF THE LOWER APPELLATE COURT

18. The plaintiffs preferred appeal, giving rise to Title Appeal No. 49 of 2006 (TR No. 14 of 2014, CIS No. 406 of 2013).

19. The lower appellate court has, however, reversed the finding recorded by the Trial Court with respect to the genuineness of the *zarbayanamas*, dated 06.06.1990 (Exhibits A and A/1).

20. Before coming to the said conclusion, the lower appellate court noticed the sale deeds, dated 31.10.1990/01.11.1990 (Exhibits B and B/1), containing recital of execution of *zarbayanama* and found that the date “06.06.1990”, was subsequently inserted at a place which was left blank by the Deed Writer. The lower appellate court noticed apparent discrepancy in the said sale deeds, clearly indicating that the date, ‘06.06.1990’, was subsequently inserted. The lower appellate court also concluded that the said *zarbayanamas*, dated 06.06.1990 (Exhibits A and A/1) were prepared after preparation of Exhibits B and B/1 and were thus *ante* dated. There is, thus, conclusive finding



recorded by the lower appellate court with respect to issue no. 7, which has been decided in affirmative in favour of plaintiffs, holding that the *zarbayanamas*, dated 06.06.1990, in favour of defendant no. 2, were forged, fabricated, collusive and *ante* dated.

21. The lower appellate court, thus, on analysis of evidence decided issue Nos. 5, 6 and 7 in favour of plaintiffs and accordingly set aside the judgment and decree, dated 25.06.2001/07.07.2001, and decreed the suit in favour of the plaintiffs.

DISCUSSIONS

22. This is the background in which the present second appeal has been filed by the successors-in-interest of the deceased defendant no. 2.

23. While admitting the present second appeal, by order, dated 19.05.2017, this Court framed only substantial question of law involved in the case in following words:-

“The substantial question of law arises for consideration in this appeal is as to whether before granting the decree for specific performance of contract for sale of the land, the court below was enjoined to frame an issue and record a finding on the question of readiness and willingness of the plaintiff to perform his part of the contract in view of the decision of the apex court in the case of **J. P.**



Builders v. A. Ramdas Rao, reported in **(2011) 1 SCC 429**, laying down that even if such plea was not raised, still the court before granting the decree was required to record a finding?”

24. Mr. Dhanendra Choubey, learned Counsel appearing on behalf of the appellants has placed great reliance on the Supreme Court’s decision, in the case of **J. P. Builders** (supra), in support of his plea. He has, relying on the said decision, submitted that it is incumbent upon a party who wants to enforce specific performance of contract to aver and prove that he has performed, or has always been ready and willing to perform, the essential terms of contract. He has submitted that such is the mandate of law under Section 16 (c) of the Specific Performance of Contract Act, 1963. He has further submitted that in the absence of framing of an issue as to whether the plaintiffs had always been ready and willing to pay the rest of the consideration amount in terms of the zarbayanama, dated 22.09.1990, there could not be any finding on this aspect. He has further submitted that in any case, the decree could not have been granted by the lower appellate court without recording a finding that the plaintiffs were ready and willing to perform their part of the contract. He has submitted that even at the stage of trial, the plaintiffs did not show any readiness or



willingness to pay the rest of the balance consideration amount by their conduct or by depositing the amount in Court.

25. Mr. Dhanendra Choubey, learned Counsel, has also attempted to submit that the suit was not duly framed inasmuch as the plaint was not in accordance with the Form 48 of Appendix A of the Code and, therefore, in violation of Order VI Rule 3 of the Code. The said submission is devoid of any merit. Order VI Rule 3 of the Code reads thus:-

“3. Forms of pleading – The forms in Appendix A when applicable, and where they are not applicable forms of the like character, nearly as may be, shall be used for all pleadings.”

(Emphasis *mine*)

26. Order VI Rule 3 of the Code evidently permits departure from the language used in the forms prescribed in Appendix A. The Supreme Court, in the case of **Syed Dastagir v. T.R. Gopalakrishna Setty** (AIR 1999 SC 3029), while interpreting the same provision, has held that compliance of ‘readiness and willingness’ has to be in spirit and substance and not in letter and form. The Supreme Court has held that absence of form cannot dissolve an essence, if already pleaded.

27. Similar view has been taken, in the case of **Dipo v. Wassan Singh** (AIR 1983 SC 846), dealing with Section 16 (c) of



the Specific Performance of Contract Act, 1963, holding that the form prescribed under Order VI Rule 3 of the Code is procedural, which has for its object, advancement of cause of justice and not intended to short-circuit decision on merit.

28. The said submission, made by Mr. Dhanendra Choubey, being completely devoid of any merit, is hereby rejected at this stage itself.

29. Mr. Kamal Nayan Choubey, learned Senior Counsel, appearing on behalf of the plaintiffs, has relied on Supreme Court's decision, in the case of **Nagubai Ammal v. B. Shama Rao (AIR 1956 SC 593)**, to submit that the parties had gone to trial with full knowledge that the question of readiness and willingness of the parties was in issue and non-framing of specific issue thereon can, at the best, be said to be an irregularity, which has not caused any prejudice to the appellants.

30. He has submitted that there was specific averment in the plaint that the plaintiffs were ready and willing to perform their part of the contract. The defendant no. 1 was the only competent person to controvert the part of the specific averment made in paragraph 8 of the plaint. The defendant no. 2, in his written statement, did not deny this specific averment. He has submitted, in that background, that there is no illegality in the impugned



judgment and decree, passed by the lower appellate court in this regard. He has also placed reliance on the Supreme Court's decision, in the case of **Coromandel Indag Products Private Limited v. Garuda Chit, Trading Company Private Limited and another**, reported in (2011) 8 SCC 601, and has submitted that the plaintiffs could establish their readiness and willingness to perform their part of contract in the absence of any denial by the defendants of specific averment made in this regard in the plaint. Referring to decision of the Supreme Court, in the case of **State of Orissa v. Sudhansu Sekhar Misra (AIR 1968 SC 647)**, Mr. K.N. Chaubey argues that a decision is only an authority for what it actually decides and what is of the essence in a decision is its ratio and not other observation made in it. With the aid of this decision, he has submitted that the Supreme Court, in the case of **J. P. Builders** (supra) does not improve the case of the appellants.

31. In that background of the submissions so advanced on behalf of the appellants and the respondents, I am required to answer the substantial question of law framed by this Court by order, dated 19.05.2017, as noted above.

32. To answer the said question, I must take note of the specific averment made in paragraphs 4, 14 and 15 of the plaint,



which has been taken note of by the Courts below also. Paragraphs 4, 14 and 15 of the plaint reads thus:

“(4) That on 22.09.1990 the defendant 1st party took a sum of Rs. 2,100/- (Rupees Two thousand One hundred) only in cash from the plaintiffs as advance towards the consideration money and executed and registered a zarbayanama in favour of the plaintiff on 22.09.1990 and further agreed and promised to execute and register the sale-deed with respect to the suit land in favour of the plaintiff on receipt of balance consideration money amounting to Rs. 25,900/- by the month of December, 1990.

(14) That on 14.12.1990 the defendant No. 1 flatly refused to execute and register the sale-deed with respect to the suit land in favour of the plaintiff on receipt of balance consideration money.

(15) That the plaintiff beg to submit that they were and are always ready and willing and even today and in future also is ready and willing to perform their part of the contract but the Defendant no. 1 is not ready and willing to perform her part of the contract.”

33. The defendant no. 1, despite service of notice, chose not to appear, file written statement and contest the suit. The defendant no. 2, in his written statement, did not deny the specific plea, taken in the plaint. Be it noted that there is conclusive finding recorded by the Courts below that the defendant no. 2 had the knowledge of



execution of *zarbayanama*, dated 22.09.1990, on the date when the defendant no. 1 executed the sale deeds in favour of the defendant no. 2 on 31.10.1990/01.11.1990. The plea of the defendant no. 2 is that registered *zarbayanama*, dated 22.09.1990, being subsequent to *zarbayanamas*, dated 06.06.1990, in favour of defendant no. 2 was not binding. There was, thus, no occasion for the defendant to counter the position, in view of such plea. The defendant nos. 1 and 2 did not at all deal with specific averment of the plaintiffs that they were ready and willing to perform their part of the contract.

34. Coming to the question whether it was mandatory for the Trial Court to have framed an issue on the question of readiness and willingness of the plaintiffs to perform their part of the contract, I must take note of Order XIV Rule 1 of the Code, which reads thus:-

**“ORDER XIV-SETTLEMENT OF ISSUES
AND DETERMINATION OF SUIT ON ISSUES
OF LAW OR ON ISSUES AGREED UPON :-**

1. Framing of issues—

(1) Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other.

(2) Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence.



(3) Each material proposition affirmed by one party denied by the other shall form the subject of distinct issue.

(4) Issues are of two kinds :

(a) issues of fact,

(b) issues of law.

(5) At the first hearing of the suit the Court shall, after reading the plaint and the written statements, if any, and after examination under rule 2 of Order X and after hearing the parties or their pleaders], ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend.

(6) Nothing in this rule requires the Court to frame and record issues where the defendant at the first hearing of the suit makes no defence.”

35. On a close reading of Order XIV Rule 1 of the Code, it is easily discernible that an issue arises only when a material proposition of fact or law is affirmed by the one party and denied by the other. It can be readily inferred from Clause (1) of Order XIV Rule 1 of the Code that unless there is denial by the other side of a material proposition of fact affirmed by one party, no issue will arise. The material propositions have been defined in Clause (2) of Order XIV Rule 1 of the Code as those propositions of law or fact which a plaintiff must allege in order to show a right to sue



or a defendant must allege in order to constitute his defence. In the present case, the averment made by the plaintiffs in the plaint that they were ready and willing to perform their part of the contract is a 'material proposition of fact' to show their right to sue. Clause (3) of Order XIV Rule 1 of the Code reiterates that each material proposition affirmed by one party and denied by the other shall form the subject of a distinct issue. In the present case, there being no denial by the defendants of material proposition affirmed by the plaintiffs of their readiness and willingness to perform their part of contract, non-framing of distinct issue in this regard cannot be said to be in teeth of the Supreme Court's decision, in the case of **J. P. Builders** (supra).

36. Clause (5) of Order XIV Rule 1 of the Code makes the position clearer, which requires that Court, at the first hearing of the suit, after reading the plaint and the written statements, if any, ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend. Meaning thereby, there is duty cast upon the Court under Clause (5) of Order XIV Rule 1 of the Code to ascertain as to on what material propositions of fact or law, the parties are at variance before proceeding to frame and record issues. If, in



respect of a particular material proposition of fact or law, the parties are not at variance, the Court will not be obliged to frame distinct issue in respect of other material proposition of fact or law.

37. Clause (6) of Order XIV Rule 1 of the Code leaves no scope of doubt that requirement of framing of issue will arise when 'material proposition' of fact or law affirmed by one party is denied by the other. Where the defendants, at the first hearing of the suit, makes no defence, there will be no requirement for the Court to frame and record issues, Clause (6) of Order XIV Rule 1 of the Code states.

38. Further, in my view, the doctrine of *non-traverse*, as contemplated under Order VIII Rule 5 of the Code, comes into play in the present case, which lays down that every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted. Though, there is exception to this rule, which does not have any application in the present case.

39. The Supreme Court's decision, in the case of **J. P. Builders** (supra), does not at all support the case of the appellants where the Supreme Court held, referring to Clause (c) of Section 16 of the Specific Performance of Contract Act, 1963, that the



person seeking specific performance must prove that he had performed or had been ready and willing to perform the essential terms of contract, which are to be performed by him. In the present case, the specific plea of the plaintiffs of their readiness and willingness to perform their part of contract remained uncontroverted throughout, at the trial. It is true that Section 16 (c) of the Specific Performance of Contract Act, 1963, mandates readiness and willingness on the part of the plaintiff and it is condition precedent for obtaining relief of grant of specific performance and that in a suit for specific performance, the plaintiff must allege and prove a continuous readiness and willingness to perform the contract, relief under the Act cannot be denied on the ground of non-framing of issue on the question of readiness and willingness if the defendant does not controvert specific averment made by the plaintiff in this regard, as required under Section 16 (c) of the Specific Performance of Contract Act, 1963.

RESULT

40. In view of the discussions as above, I answer the substantial question of law framed by the Court in the following terms:-



41. In view of the provisions under Order XIV Rule 1 of the Code, in the absence of any denial by the defendants of specific averment made in the plaint that the plaintiffs were ready and willing to perform their part of the contract, no distinct issue was required to be framed since the parties could not be said to be at variance on the said material proposition of fact.

42. The aspect of readiness and willingness has been discussed by the Trial Court in paragraph 19 of its judgment to show that the plaintiffs were able to prove that they were ready and willing to pay the balance consideration amount, indicated in the said *zarbayanama*, dated 22.09.1990.

43. Having answered the substantial question of law as above, I do not find any substance in the present second appeal. The impugned judgment and decree do not require interference by this Court. It is accordingly dismissed.

44. However, there shall be no order as to costs.

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	04-10-2010
Transmission Date	N/A

