

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2017

CORAM

THE HON'BLE MR. JUSTICE R.SUBRAMANIAN

A.S.No. 493 of 2010
and MP Nos.1, 2 and 3 of 2010

1. N.Kunjarammal (Deceased)
2. B.Rajalakshmi
3. B.Ganesh Kumar
4. B.Karthikeyan
5. Rani Gayathri ..Appellants/Defendants 1to4

5th Appellant brought on record as LRs. of the deceased 1st Appellant and Appellants 2 to 4 already recorded as LRs. of the deceased 1st Appellant vide order of Court dated 12.04.2017 by NSKJ made in CMP No.6165 of 2017 in AS No.493 of 2010.

vs.

1. Kalpana Ethiraj
Rep. By Power Agent Rajalakshmi
4/112, Karuppan Thottam,
Kondayampalayam Viz.,
Coimbatore 641 110. ..Respondents/Plaintiffs
2. M/s. Indian Bank
Ram Nagar Branch,
Sarojini Street,
Coimbatore 641 009. 5th defendants

Appeal suit has been filed under Section 96 and Order 41 Rule of the Civil Procedure Code, against the judgment and decree dated 18.01.2010 made in O.S.No.306 of 2006 on the file of the Additional District Judge/Fast Track Court No.1 at Coimbatore.

For Appellants : Mr.K.V.Ananthakrushan
For 1st Respondent : Mr.S. Parthasarathy, Sr.Counsel
for Mrs.Jayakumari
For 2nd Respondent : Mr.Jayesh Dolia
for M/s.Aiyar & Dolia

J U D G M E N T

The defendants in OS. No.306 of 2006 on the file of the Additional District Judge/Fast Track Court 1, Coimbatore, are the appellants. The said suit was filed by the 1st respondent, through her Power Agent seeking specific performance of the agreement of sale dated 09.03.2005.

2. According to the plaintiff, the defendants 1 to 4 have agreed to sell land measuring an extent of 6.07 acres in Kondayampalayam Village, Coimbatore for a total consideration of Rs.6,75,000/- and an advance of Rs.50,000/- was paid by the plaintiff on the date of the agreement. Since the defendants were indebted to the 5th defendant and subjected the property to a mortgage in favour of the 5th defendant, the agreement provided one month time for performance, which is to commence from the date of discharge of the Bank loan. Since the plaintiff did not perform her part of the contract, the defendants sent a notice cancelling the agreement on 23.02.2006. The plaintiff sent a reply on 28.02.2006 claiming that she has been ready and willing to perform her part of the contract and followed it with the suit which was filed on 24.04.2006. It is also claimed that the suit was decreed ex-parte on 19.07.2007, and pursuant to the said decree, the plaintiff had paid to the bank a sum of Rs.12,35,767/- on 27.07.2007. It is also stated that said sum of Rs.12,35,767/- has been adjusted towards the borrowing of defendants 1 to 4. However, subsequently the ex-parte decree was set aside.

3. The defendants 1 to 4 resisted the suit contending that the plaintiff was not ready and willing to perform her part of the contract. It is also contended that the defendants were in acute financial crisis after the death of Balasubramanian, who is the son of the 1st defendant, husband of the 2nd defendant and father of the defendants 3 and 4. It was at that point, the plaintiff expressed her willingness to purchase the property. The fact that the property was mortgaged with the 5th defendant, was also disclosed to the plaintiff, and the plaintiff agreed to negotiate with the bank and arrive at one time settlement by reducing their liabilities. It is contended that the 5th defendant had filed a suit in OS No.564 of 2004 for recovery of money due on mortgage. It is also claimed that one Venkatachalapathy had filed the suit in OS No.544 of 2004, for recovery of money due on promissory note against the defendants. The defendants would further contend that the said Venkatachalapathy is closely associated with the father of the plaintiff namely V.R. Balasundaram. Therefore, the plaintiff was aware of the entire transaction and only with the knowledge of the impediments, the plaintiff had entered into an agreement dated 09.03.2005. According to the defendants, the plaintiff did not take any steps to settle the money with the 5th defendant bank and that resulted in a preliminary decree being passed in OS No.564 of 2004 for recovery of more than a sum of Rs.8,00,000/-. It is the further claim of the defendants that Venkatapathy sought attachment of the properties belonging to defendants 1 to 4, the plaintiff demanded return of the advance money of Rs.50,000/- and wanted to cancel the sale agreement. The defendants have agreed for return of advance amount, and they sought for some time. Therefore, the defendants would contend that the plaintiff was not ready and willing for more than a period of 11 months and hence, notice

was issued by the defendants on 05.03.2006 cancelling the said agreement and calling upon her to desist from exercising her right under the agreement dated 09.03.2005.

4. The sum and substance of the defendants claim is that the plaintiff, who had agreed to pay the balance amount due to the Bank by entering into one time settlement had failed to do so, which resulted in the increase of the liability on the part of the defendants. It is also contended that the deposit of a sum of Rs.12,35,767/- by the plaintiff with the 1st defendant bank after the ex-parte decree is wholly unauthorised in as much as the said decree did not authorize the plaintiff to pay the Bank and discharge the loan availed by the defendants 1 to 4.

5. The 5th defendant Bank filed a separate written statement contending that they had obtained a preliminary decree against the defendants 1 to 4 in OS No.565 of 2004 and contended that it has not, any point of time agreed for any settlement. It would also submit that it is ready to return the documents to the plaintiff and is ready and willing to pay the adjust loan due by defendants 1 to 4.

6. The plaintiff also filed a reply statement mostly reiterating whatever was stated in the plaint. The claim of the defendants 1 to 4 that the plaintiff wanted the agreement to be cancelled and the advance amount returned after the suit was filed by Venkatapathy has been stoutly denied.

7. The defendants 1, 3 and 4 filed an additional written statement, In the additional statement, it was mainly contended that the defendants had been facing severe financial crisis and several suits were filed by third parties against them which forced them to dispose of some other properties and clear the debts. The photo studio business was also closed because the landlord demanded for additional advance. It is also reiterated that it is the plaintiff who negotiated with the bank for settlement of the loan due to the Bank at Rs.4,75,000/- did not proceed further to effect a one time settlement.

8. On the above pleadings, the learned Additional District Judge Fast Track Court 1, Coimbatore, framed the following issues:

1. Whether the suit agreement dated 09.03.2005 is true, valid and enforceable in law?
2. Whether the plaintiff is ready and willing to purchase the suit property as per the terms of the agreement?
3. Whether the plaintiff is entitled to get the sale deed executed by the 1 to 4 defendants as per the agreement?
4. Whether the plaintiff is entitled to the alternative prayer of refund of Rs.60,125/- with

18% as prayed to?
5. To what other relief?

9. At the trial, on behalf of the plaintiff P.Ws 1 and 2 were examined and Exhibits A1 to A22 were marked. D.Ws. 1 and 2 examined on the side of the defendants, two documents were marked as Ex.B1 ad B2.

10. On consideration oral and documentary evidence, the learned Trial Judge concluded that the agreement is true and valid. It was also concluded that plaintiff is ready and willing to perform her part of the contract. The payment of sum of Rs.12,35,767/- made by the plaintiff pursuant to the ex-parte decree was also taken into account. The Trial Judge also considered the evidence adduced on the side of the plaintiff to show that she had money readily available for purchase of the property. On the said findings, the learned Trial Judge decreed the suit for specific performance of the contract. In view of the said decree, prayer relating to repayment of advance amount was rejected by the Court.

11. Aggrieved, the defendants 1 to 4 are on appeal.

12. The 1st defendant/1st appellant Kunjarammal died pending suit and the 5th defendant was brought on record as the legal representative of the deceased 1st appellant and her legal heirs are already on record as defendants 2 to 4.

13. I heard Mr.K.V.Ananthakrushnan, learned counsel appearing for the appellants and Mr.S.Parthasarathy, learned Senior Counsel appearing for Mrs.S.Jayakumari, learned counsel appearing for the 1st respondent and Mr.Jayesh Dolia, learned counsel for M/s.Aiyar and Dolia, appearing for the 2nd respondent.

14. Mr.Ananthakrushnan, learned counsel appearing for the appellants would vehemently contend that the agreement, marked as Ex.A5, provides that the plaintiff had agreed to settle the dues under the mortgage with the 5th defendant Bank. The learned counsel Relied upon the following clause in the agreement, which reads as follows:-

“இந்த ஒப்பந்தப்படியுள்ள சொத்தை ஈடுகாட்டி நம்மில் 1ம் பார்ட்டி பெற்றிருந்த கடன் தொகையை நம்மில் 2ம் பார்ட்டி மேற்படி வங்கிக்கு நேர் செய்யும் வகைக்காக டை கடன் தொகையை மேற்படி வங்கிக்கு செலுத்தும் தொகை நீங்கலாக மீதமுள்ள தொகையை மேற்படி வங்கியில் இருந்து அசல் ஆவணங்கள் அனைத்தும் வாபஸ் பெற்ற நாள் முதல் 1 (ஒரு) மாத காலக் கெடுவிற்குள் நம்மில் 1ம் பார்ட்டிக்கு செலுத்தி கிரையம் தனது பெயருக்காவது தான் கோரும் நபர் நபர்கள் பெயருக்காவது கிரையம் பெற்றுக் கொள்பவர்களது செலவில் கிரையம் பெற்றுக்கொள்ள வேண்டியது.”

15. The learned counsel would contend that a duty is cast upon the plaintiff to settle the amounts due to the Bank and thereafter, pay the balance within one month's time and take the sale deed in her favour. The plaintiff, according to him, had not performed her part of the contract by negotiating with Bank to pay the balance loan amount by way of one time settlement by reducing the amount. This according to him, would show that the plaintiff was never ready and willing to perform her part of the contract. Due to the failure of the plaintiff to settle the Bank Loan of the defendants 1 to 4, their debt due to the Bank had increased, therefore they have been put to substantial loss. It is also contended by Mr.K.V.Ananthakrishnan, learned counsel that the plaintiff did not do anything in furtherance of the agreement from 09.03.2005 till 22.03.2006, for nearly a period of 11 months. It is only after the defendants issued a notice cancelling the agreement on 22.03.2006, the plaintiff, issued a notice stating that she has been ready and willing to perform her part of the contract. This according to the learned counsel would result in the plaintiff being guilty of non performance and therefore, she is not entitled the discretionary relief of specific performance.

16. Per contra, Mr. S.Parthasarathy, learned Senior Counsel appearing for the 1st respondent/plaintiff contended that the plaintiff being a third party, cannot be expected to have the loan settled with the Bank. It is for the defendants 1 to 4 to negotiate with the Bank and attempt to effect one time settlement in order to enable the plaintiff to pay the amount due to the Bank. He would further contend that the time fixed under the agreement namely the period of one month begins from the date on which the bank comes forward to accept the settlement. Therefore, according to him, the plaintiff has been ready and willing to perform her part of the contract. It is the defendants 1 to 4 who did not take any steps to settle the bank, thereby enabling the plaintiff to take the sale deed.

17. Mr.S.Parthasarathy, learned Senior Counsel would also contend that pursuant to the ex-parte decree, plaintiff has paid a sum of Rs.12,35,767/- which is almost double the sale consideration agreed, to the Bank on 27.07.2007, thereby discharging the liability of the defendants 1 to 4. Therefore, according to him, the plaintiff cannot be said to be not ready and willing to perform her part of the contract.

18. Mr. Jayesh Dolia, learned counsel appearing for the 5th defendant bank would submit that the Bank never agreed for one time settlement. It is only after the ex-parte decree, the plaintiff paid a sum of Rs.12,35,767/- which was adjusted towards the loan accounts of the defendants, and the original documents relating to title have been produced by the Bank in the present suit. Though the plaintiff paid the amount, the Bank did not enter up full satisfaction and return the title

deed to the plaintiff. Therefore, according to him, Bank bonafide received the sum of Rs. 12,82,767/- and such a receipt by the Bank is in fact beneficial to the defendants 1 to 4. He would also submit that the Bank will abide by any decision that may be arrived at by this Court in this appeal.

19. On the above rival submissions, the following points arise for consideration in this appeal.

1. Whether the agreement dated 09.03.2005 cast an obligation on the plaintiff for settling the amount due to the bank under the decree in OS.No.565 of 2004? and

2. Whether the plaintiff was ready and willing to perform her part of the contract as required under Section 16 (C) of the specific Relief Act?

Point No.1:

20. The agreement dated 09.03.2005 is admitted. But the defendants would plead that the very agreement was entered into in view of the liability on the part of the defendants 1 to 4 to pay to the Bank and therefore, the sale price was agreed at a lesser rate. The Plaintiff has to settle the bank by invoking one time settlement and the failure on the part of the plaintiff to effect the onetime settlement had the effect of the failure to fulfil the obligations contained in the agreement.

21. The relevant portion of the agreement which has been extracted above would show that the plaintiff has to negotiate with the Bank for one time settlement. For arriving at such settlement, the plaintiff must have taken some steps for negotiating with the bank. The agreement itself provides that the Bank has to be settled before the execution of the sale deed. A preliminary decree had been passed on 31.01.2005 i.e., even prior to the agreement. The said suit was decreed for a sum of Rs.7,65,643/-with future interest at 8.25% from the date of receipt till the date of reliasation. Therefore the liability of the defendants 1 to 4 was above Rs.8,00,000/- on the date of the agreement itself. From the above it is clear that the intention of the parties was to settle and negotiate the onetime settlement with the Bank thereby the sale price payable by the plaintiff, has to be adjusted towards the loan payable to the bank. The plaintiff would claim that it was not her obligation to negotiate with the Bank and she would contend that she being a third party to the loan transaction, she cannot enter into a settlement with the Bank for the debts due and payable by the defendants 1 to 4. Therefore, she would submit that the it was the defendants who had undertaken to settle the dispute with the bank and arrive at a figure so that the plaintiff can pay the money and discharge the loan due to the Bank.

22. Mr. Ananthakrushnan, learned counsel appearing for the appellants would however contend that in the light of the specific clause in the agreement the plaintiff cannot contend that she could not pay the Bank because of the failure on the part of the defendants 1 to 4 to negotiate the settlement with Bank.

23. A reading of the clauses contained in the agreement would show the parties had intended that the amount due under the preliminary decree in OS No.565 of 2004 should be discharged before the sale transaction takes place. As could be seen from the sale agreement, the total consideration was Rs.6,75,000/- and an advance of Rs.50,000/- was paid by the plaintiff. As per the preliminary decree in OS No.565 of 2004, the amount due as on 31.01.2005 payable by the defendants 1 to 4 to the 5th defendant Bank was more than Rs.8,00,000/- . Therefore it is clear that the parties contemplated working out one time settlement with the Bank and for that purpose, a lesser sale consideration was contemplated so as to enable them to sell the property to the plaintiff free of encumbrance.

24. P.W.1 had in fact deposed that the plaintiff being a non resident Indian with huge amount deposits with the 5th defendant Bank, the Bank officials were also known to her. The above admission would only show that the plaintiff had in fact assured the defendants that she would be in a position to settle the Bank at lesser amount to the benefit of the defendants 1 to 4.

25. Mr.S.Parthasarathy, learned Senior Counsel, would however contend that the relevant clause in the agreement cannot be read in a manner in which Mr. Ananthakrushnan, the learned counsel, wants the Court to read it. He would submit that the defendants 1 to 4 to have negotiated with the Bank for one time settlement. It is claimed that the plaintiff had deposited 12,000 US Dollars and it is approximately equivalent to Rs.5,00,000/- with the 5th defendant in another account.

Though such claim was made, in fact, there is no evidence of such deposit having been made by the plaintiff. The said fact is admitted by P.W.1 in cross examination. P.W.1 would in cross examination depose that she does not know as to why the said 12,000 US Dollars was remitted to the 5th defendant Bank.

26. Mr.S.Parthasarathy, learned Senior Counsel appearing for the first respondent would rely upon the letter dated 09.03.2005 marked as Ex.A22 wherein the defendants 1 to 4 had written to the 5th defendant Bank stating that they entered into an agreement with the plaintiff and the plaintiff agreed to buy the land for Rs.4,75,813/- and requested the Bank to accept the same as full and final settlement of the dues and the relevant document pertaining to the same was handed over to the

plaintiff. Therefore, the learned Senior Counsel would submit that it was the defendants 1 to 4 who had agreed to negotiate with the Bank and settle with the Bank at a lesser amount than the one contained in the agreement. This letter dated 09.03.2005 really shows that there was an understanding between the parties that the plaintiff would negotiate with the bank to settle the dues of defendants 1 to 4. Perhaps there was need for the defendants 1 to 4 to inform the Bank to receive payment from the plaintiff and hand over the documents to her. Hence the Point No.1 framed is answered to the effect that the parties intended the plaintiff to negotiate with the Bank and pay the dues to the bank under the mortgage as per the decree in OS. No. 565 of 2004.

Point No.2:

27. On the question of readiness and willingness the plaintiff contend that she was always ready and willing to perform her part of the contract. In order to show that she was possessed of money, the plaintiff had filed several documents, namely fixed deposit receipts with various Banks. The financial capacity of the plaintiff to pay the balance sale consideration has never been disputed by the defendants. The defendants would contend that once the plaintiff came to know about the various suits filed by several creditors of N.Balasubramanian, the father of the defendants 3 and 4, the plaintiff wanted to withdraw from the agreement and demanded to return of the advance money. Therefore, the question has to be decided as to whether the plaintiff was in fact willing to pay the sale consideration and take the sale deed. The agreement, already found, cast an obligation on the plaintiff to negotiate with the 5th defendant Bank to pay the money. It is admitted fact that the plaintiff did not negotiate with the 5th defendant Bank or such attempt to negotiate failed. The plaintiff did not take any steps to seek execution of sale deed till the defendants by their notice dated 26.02.2006 cancelled the agreement and inform the plaintiff that she will not be entitled to claim any right under the agreement. Only thereafter, the plaintiff issued a reply notice on 28.02.2006 claiming that she has been ready and willing to perform her part of the contract and she followed it up with the suit on 24.04.2006.

28. Section 16(c) of the Specific Relief Act imposes a duty on the plaintiff who seeks specific performance to plead and prove that he or she was always ready and willing to perform his/her part of the contract. Such readiness and willingness should be continuous right from the date of the agreement till date of performance. The law relating to readiness and willingness is no longer res integrum. The Hon'ble Supreme Court in Saradamani Kandappan v. S.Rajalakshmi & Ors., reported in 2011 (4) CTC 640 while dealing with the question of readiness and willingness has observed as follows:

"23. It is of some interest to note that the distinction between contracts relating to immovable properties and other contracts was not drawn by section 55 of Contract Act (or any other provisions of Contract Act or Specific Relief Act, 1963). Courts in India made the said distinction, by following the English law evolved during the nineteenth century. This Court held that time is not of the essence of the contracts relating to immovable properties; and that notwithstanding default in carrying out the contract within the specified period, specific performance will ordinarily be granted, if having regard to the express stipulation of the parties, nature of the property and surrounding circumstances, it is not inequitable to grant such relief. [vide Gomathinayagam Pillai (supra), Govind Prasad Chaturvedi (supra) and Indira Kaur v. Sheo Lal Kapoor, 1988 (2) SCC 188 and Chand Rani (supra) following the decision of Privy Council in Jamshed Khodaram Irani v. Burjorji Dhunjibhai - AIR 1915 PC 83 and other cases]. Of course, the Constitution Bench in Chand Rani made a slight departure from the said view.

24. The principle that time is not of the essence of contracts relating to immovable properties took shape in an era when market value of immovable properties were stable and did not undergo any marked change even over a few years (followed mechanically, even when value ceased to be stable). As a consequence, time for performance, stipulated in the agreement was assumed to be not material, or at all events considered as merely indicating the reasonable period within which contract should be performed. The assumption was that grant of specific performance would not prejudice the vendor-defendant financially as there would not be much difference in the market value of the property even if the contract was performed after a few months. This principle made sense during the first half of the twentieth century, when there was comparatively very little inflation, in India. The third quarter of the twentieth century saw a very slow but steady increase in prices. But a drastic change occurred from the beginning of the last quarter of the twentieth century. There has been a galloping inflation and prices of immovable properties have increased steeply, by leaps and bounds. Market values of properties are no longer stable or steady. We can take judicial notice of the comparative purchase power of a rupee in the year 1975 and now, as also the steep increase in the value of the immovable properties between then and now. It is no exaggeration to say that properties in cities,

worth a lakh or so in or about 1975 to 1980, may cost a crore or more now.

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

(i) Courts, while exercising discretion in suits for specific performance, should bear in mind that when the parties prescribe a time/period, for taking certain steps or for completion of the transaction, that must have some significance and therefore time/period prescribed cannot be ignored.

(ii) Courts will apply greater scrutiny and strictness when considering whether the purchaser was 'ready and willing' to perform his part of the contract.

(iii) Every suit for specific performance need not be decreed merely because it is filed within the period of limitation by ignoring the time-limits stipulated in the agreement. Courts will also 'frown' upon suits which are not filed immediately after the breach/refusal. The fact that limitation is three years does not mean a purchaser can wait for 1 or 2 years to file a suit and obtain specific performance. The three year period is intended to assist purchasers in special cases, as for example, where the major part of the consideration has been paid to the vendor and possession has been delivered in part performance, where equity shifts in favour of the purchaser."

29. In Padmakumari v. Dasayyan reported in 2015 (6) CTC 545, the Hon'ble Supreme Court had again considered the issue relating to readiness and willingness as well as the question as to whether the time is essence of the contract. After referring to judgment, viz Saradhamani's case, referred to supra, the Hon'ble Supreme Court had pointed out that the plaintiff should aver and prove that she has been always ready and willing to perform her part of the contract and such pleadings should be in conformity with order 6 Rule 3 of the code of Civil Procedure. In the case on hand the plaintiff has in the plaint pleaded as follows:

"5. ... The plaintiff was repeatedly requiring the defendants 1 to 4 to arrive at a settlement with the bank so that she could discharge the liability immediately, pay balance sale price and take sale...."

"7. ... There is absolutely no reason for the defendants to delay or postpone the sale, as she has

always been ready and willing to pay the balance sale price having been possessed of more funds than required...."

30. This in my considered opinion does not satisfy the requirement of Law. The agreement is clear and categorical where it says that the plaintiff must discharge the loan due to the Bank for seeking specific performance under the agreement. The time fixed under the agreement would start running after the plaintiff discharges the loan due to the defendants. From the date of the agreement till the date of the filing of suit, the plaintiff has not chosen to make any efforts to discharge the loan due to the Bank but had chosen to inform the defendants 1 to 4 the refusal by the Bank to accept a proposal for settlement for a lesser amount than the one due and payable by the defendants 1 to 4 as per the preliminary decree in OS No.565 of 2004. The pleading relating to readiness and willing should express the readiness and willingness to perform the contract as agreed between the parties. The pleading relating to readiness and willingness made by the plaintiff in the plaint extracted above would show that she was not ready and willing to perform her part of the contract as it stands. The very fact that she says was not ready and willing to pay balance price and take the sale deed would show that she had not expressed her readiness and willingness to perform her part of the contract under the agreement namely to settle the loan and thereafter pay the balance consideration and take a sale deed. A similar situation has been considered by the Hon'ble Supreme Court in Padmakumari case cited supra, wherein the Supreme Court held the pleading regarding readiness and willingness should be conformity with Order 6 Rule 4 of Code of Civil Procedure as well as the averments in the plaint should be in conformity with what was required to be done by the plaintiff as per the agreement. In Nanjappa V. Ramasami and others reported in 2015 (2) CTC 178, the Hon'ble Supreme Court again reiterated that the discretionary relief of the specific performance should not be granted, if the conduct of the parties was such that they do not deserve such exercise of discretion

31. In the present case it could be seen the plaintiff, who had claimed both in the plaint as well as the in the evidence that she was not prepared to pay anything more than the sale consideration fixed under the agreement had chosen to pay a sum of Rs.12,35,767/- to the Bank upon the suit being decreed ex-parte without there being any specific direction by the Court either in the ex-parte decree or in some other application. The Bank has also accepted the said amount and they discharged the mortgage. This conduct of the plaintiff would show that the properties agreed to be conveyed is more valuable than the actual sale consideration reflected in the agreement. Moreover the sale consideration was fixed during the year 2007 and we are in the year 2017.

32. It will be apt to quote the observation of the Hon'ble Supreme Court in Nanjappan v. Ramasamy and Ors, reported in 2015 (2) CTC 178 which are as follows:-

"12. Under Section 20 of the Specific Relief Act, grant of specific performance of contract is discretionary. Though the decree for specific performance is discretionary, yet the court is not bound to grant such a relief merely because it is lawful to do so. But the discretion of the court is not arbitrary, but sound and reasonable, guided by judicial principles of law and capable of correction by a court of appeal and should be properly exercised keeping in view the settled principles of law as envisaged in Section 20 of the Act. The jurisdiction of decreeing specific performance is a discretion of the court and it depends upon facts and circumstances of each case. The court would take into consideration circumstances of each case, conduct of the parties, recitals in the sale agreement and the circumstances outside the contract have to be seen."

33. The Hon'ble Supreme Court after referring the Judgment in Saradhamani's case, would point out that if the grant of specific performance would given an unfair advantage to the respondent plaintiff the Court will justify in refusing performance. In the case on hand it could be seen from the material available on record the agreement between the parties required the plaintiff to take steps to discharge the loan. The plaintiff did not take any such steps. Having waited till the defendants issued a notice cancelling the agreement, the plaintiff cannot claim she has reflected her readiness and willingness to perform her part of the contract. Even otherwise the very fact that the plaintiff had chosen to pay a sum of Rs.12,35,767/- to the Bank without there being any direction from the Court in full discharge of the mortgage would show that the value of the property was more than Rs.12,35,767/- in the year 2007. Therefore, in my considered opinion, the hardship that would be caused to the defendants by enforcing the agreement will be more than the loss that may be caused to the plaintiff. Hence, I conclude that the plaintiff was not ready and willing to perform her part of the contract. In such view of the matter, I do not think that the trial Court was right in granting the discretionary relief of the specific performance in favour of the plaintiff.

34. However, it has to be now considered as to how the rights of the parties could be balanced in view of the peculiar circumstances in this case. The plaintiff had parted with a sum of Rs.50,000/- on the date of the agreement. She had also paid a sum of Rs.12,35,767/- to the Bank in discharge of the mortgage loan of defendants 1 to 4. Therefore, the plaintiff has to be compensated for the loss caused to her. Even though her action of paying Rs.12,35,767/- to the Bank in full discharge of the mortgage was a voluntary one,

indirectly, the benefit of it has gone to the defendants 1 to 4 in as much as their liability towards the Bank was discharged. It is also brought to my notice that the pursuant to the condition imposed while granting stay of the execution of a decree, the appellants deposited a sum of Rs.12,35,767.96 to the credit of the suit and on such deposit the trial Court has been directed to deposit the amount in any one of the Nationalized Banks for a period of one year. It is also stated that the said amount is lying in fixed deposit as per the direction of this Court. The deposit was made on 23.03.2011, while the plaintiff had deposited a sum of Rs.12,35,767/- on 27.07.2007. Needless to point out that the plaintiff would be entitled to the said sum with interest from 27.07.2007. Hence the plaintiff/1st respondent will be permitted to withdraw the entire amount that stands to the credit of the suit in OS No.306 of 2006. Apart from the above the appellants shall refund the advance amount of Rs.50,000/- with 18% interest from the date of the agreement till the date of repayment. Since the appellants had the benefit of the payment made by the plaintiff to the tune of Rs.12,35,767/- for a period of 3 years and 8 months between 27.07.2007 and 23.03.2011 they are liable to compensate the Plaintiff. Therefore, there will be a direction to the appellants/defendants 2 to 4 to pay 12% simple interest for the sum of Rs.12,35,767/- (Rupees Twelve lakhs thirty five thousand seven hundred and sixty seven only) for the period between 27.07.2007 to 23.03.2011 and the appellants shall also pay the cost of the suit to the plaintiff amounting to Rs.67,050.50.

35. In the result the appeal is allowed and the judgment and decree of the trial Court are set aside. The suit in OS No.306 of 2006 will stand dismissed. There will be no order as to costs in this appeal. There will be a decree in the suit as follows:-

1. The suit in OS No.306 of 2006 is dismissed insofar as the relief of Specific Performance alone. The defendants 2 to 4 shall pay the plaintiff a sum of Rs.50,000/- (Rupees Fifty thousand only) paid as advance with interest at 18% per annum from the date of the agreement, namely 09.03.2005 till the date of the payment.
2. The defendants 2 to 4 shall also pay the interest at 12% per annum on the Rs.12,35,767/- (Rs. Twelve lakhs thirty five thousand seven hundred and sixty seven only) from 27.07.2007 till 23.03.2011.
3. The defendants 2 to 4 shall also pay the plaintiff cost of the suit, namely a sum of Rs.67,050/- (Rupees Sixty seven thousand fifty only).
4. The plaintiff will be entitled to withdraw the sum of Rs.12,35,767/- deposited by the defendants pursuant to conditional order of stay granted by this Court, which is kept in fixed deposit along with accrued interest.

5. The amounts mentioned in Clause 1 to 3 above shall be paid within a period of 6 (six) months from today. On failure, it will be open to the plaintiff to execute the decree and thereby create a charge over the suit property.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

jv

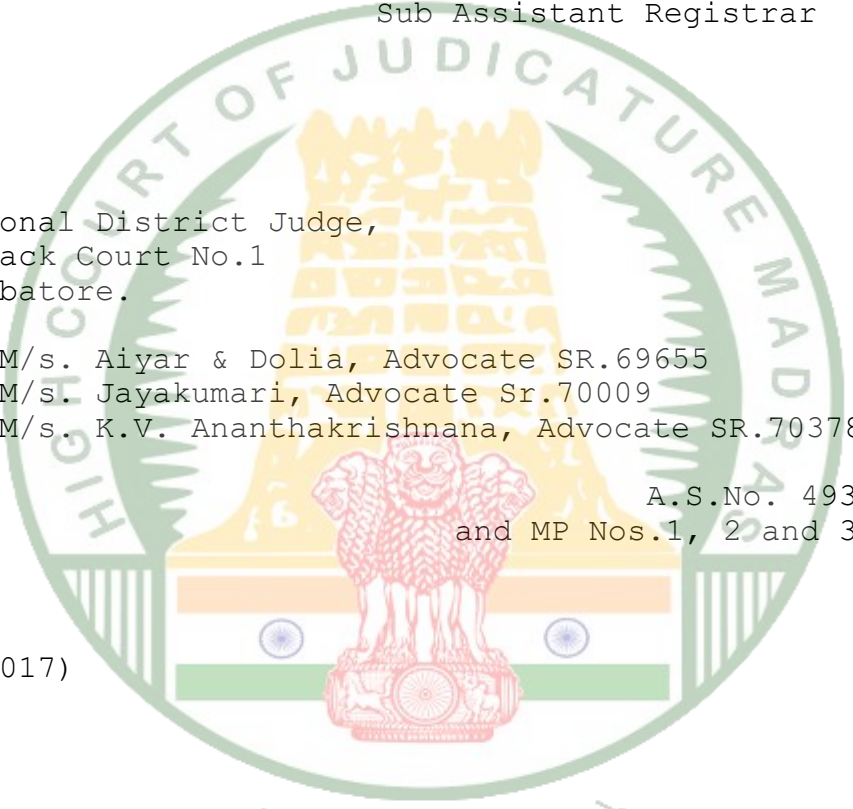
To

The Additional District Judge,
Fast Track Court No.1
at Coimbatore.

+ 1 cc to M/s. Aiyar & Dolia, Advocate SR.69655
+ 1 cc to M/s. Jayakumari, Advocate Sr.70009
+ 1 cc to M/s. K.V. Ananthakrishnana, Advocate SR.70378

A.S.No. 493 of 2010
and MP Nos.1, 2 and 3 of 2010

SAI (CO)
EU (17/11/2017)



सत्यमेव जयते

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