

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RFA No. 882/2017 & CM No.37360/2017**

% **25th October, 2017**

DINESH KUMAR JAIN Appellant
Through: Mr. J.P.Singh with Mr. Jagat Singh,
Ms. Ananya Singh & Ms. Bhawna
Gupta, Advs.

Versus

SANJEEV CHAUDHARY Respondent

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the plaintiff in the suit for specific performance impugning the judgment of the Trial Court dated 6.6.2017 by which the Trial Court has dismissed the suit for specific performance by holding that appellant/plaintiff failed to prove his financial capacity to pay the balance sale consideration of Rs.10 lacs under the agreement to sell dated 17.1.2005.

2. The facts of the case are that the appellant/plaintiff filed the subject suit for specific performance pleading that the parties had entered into an agreement to sell on 17.1.2005 with respect to the suit property bearing No. IX/90, Shyam Block Kailash Nagar, Delhi for a total consideration of Rs.11,20,000/- of which earnest money of Rs.1,20,000/- was sought to be paid and the balance of Rs.10,00,000/- was to be paid on or before 30.4.2005. Earnest money of Rs.1,20,000/- was paid into two parts one of which being a sum of Rs.70,000/- was paid in cash, and Rs.50,000/- was paid by cheque. The appellant/plaintiff pleads that since the respondent/defendant failed to perform his part of contract and did not execute the sale deed of the suit property in favour of the appellant/plaintiff, therefore, after serving a legal notice dated 9.9.2005, the subject suit for specific performance was filed.

3. The respondent/defendant contested the suit and pleaded that in fact no amount of earnest money, i.e Rs. 1,20,000/- including the amount of Rs.50,000/- which was alleged to be paid by cheque by the appellant/plaintiff to the respondent/defendant was paid. The appellant/plaintiff is pleaded to be a tenant in a portion of the first

floor, second floor and third floor of the suit property and without paying a single penny, it was pleaded that the subject suit for specific performance was filed.

4. After completion of pleadings issues were framed on 7.11.2006 and thereafter additional issues were also framed on 25.3.2010. These issues read as under:-

“On 07.11.2006

- (1) Whether plaintiff did not pay advance amount of Rs.1,20,00/- to the defendant in terms of the agreement deed dated 17.01.2005 entered into between the parties as claimed for by the defendant in preliminary objection No.2 of his written statement? OPD.
- (2) Whether the plaintiff is entitled to relief of specific performance as claimed for by him in the present suit? OPP.
- (3) Whether plaintiff is entitled to relief of permanent injunction as claimed for by him in the present suit? OPP.
- (4) Relief.

On 25.03.2010:

- (1) Whether the plaintiff has no locus standi to file the present suit? OPD.
- (2) Whether plaintiff is entitled to specific performance of agreement to sell? OPP.
- (3) Whether plaintiff is entitled to permanent injunction, as prayed? OPP.
- (4) Relief.”

5. Trial Court has held that the appellant/plaintiff failed to prove the readiness and willingness because the appellant/plaintiff failed to prove that he had with him the balance amount of Rs.10,00,000/- to make payment of the balance sale consideration. The relevant findings and observations of the trial court in this regard

are contained in para 7 of the impugned judgment and this para 7 reads as under:-

“Issue no.2 dated 07.11.2006 and 25.03.2010:

Whether the plaintiff is entitled to relief of specific performance as claimed for by him in the present suit? OPP.

Whether plaintiff is entitled to specific performance of agreement to sell? OPP

The onus of proving this issue was on plaintiff. Plaintiff was required to be proved that he was always ready and willing to perform his part of contract as required u/s 16C of the Specific Relief Act. The cross-examination of the plaintiff in this regard is very relevant. The plaintiff in his cross-examination dated 18.09.2013 admits that on 30.04.2005 i.e. on the last date of stipulated period he has no balance of Rs.10 lacs in his bank account. Though he claims voluntarily that he had Rs.10 lacs in cash in his home but he failed to prove the same. Apart from making a bald assertion in the plain that plaintiff was always ready and willing to perform his part of contract no material on record has been placed to show that plaintiff had the balance consideration of Rs.10 lacs with him during the period of executing the sale document from 17.01.2005 to 30.04.2005. If he had sufficient cash at his home, he should have place something on record to prove that fact. It was only on directions of the court that an amount of Rs.10 lacs in the form of FDRs was deposited by the plaintiff in 2012. The relevant period is 30.04.2005 and plaintiff admits that he did not have this amount in his bank account. It is sufficient to hold that plaintiff was not in a position to perform his part of the contract.”

6. I completely agree with the aforesaid discussion and conclusion of the trial court because there is a difference between pleading of the readiness and willingness and the proof of readiness and willingness. Proof of readiness and willingness is on the plaintiff in a suit for specific performance proving that he had the necessary financial capacity to make the payment of balance sale consideration. In the present case, except a self-serving statement that the

appellant/plaintiff had a sum of Rs.10,00,000/- in cash at his home during the relevant period in April 2005, there is no proof that from January, 2005 when the agreement to sell was entered into till 30.4.2005 when the sale deed was to be executed in favor of the appellant/plaintiff, that the appellant/plaintiff ever had any moneys in his bank account or any other properties (particularly liquid properties), to make payment of the balance sale consideration of Rs.10,00,000/-. I, therefore, hold that the trial court has committed no illegality in holding that the appellant/plaintiff had failed to prove his readiness and willingness in terms of Section 16(c) of the Specific Relief Act.

7. Learned counsel for the appellant/plaintiff argues that the appellant/plaintiff has proved his readiness because an amount of Rs.10,00,000/- in the form of FDRs was deposited by the appellant/plaintiff in the trial court, however, it is noted that this amount of Rs.10,00,000/- was deposited in the year 2012 and that too as per the directions in an order passed by the trial court. Having funds in the year 2012 will not prove that the appellant/plaintiff was ready and willing in the relevant period from January to April 2005,

and therefore, a deposit of Rs. 10,00,000/- in the year 2012 in the trial court will not help the appellant/plaintiff to prove his readiness and willingness during the relevant period. In fact, I may note that suit was filed in the year 2005 and the deposit was made much later after seven years in 2012. Therefore, for a long period of seven years, appellant/plaintiff failed to prove that he had the financial capacity to pay the balance sale consideration. Hence, I hold that the appellant/plaintiff was not ready and willing to perform his part of the contract being payment of balance sale consideration of Rs.10,00,000/-, and the findings of the trial court in this regard are upheld.

8. No other issue is urged before this Court.

9. There is no merit in the appeal. Dismissed.

OCTOBER 25, 2017
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VALMIKI J. MEHTA, J