

## IN THE HIGH COURT OF JUDICATURE AT MADRAS

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| <b>Reserved on<br/>25.06.2018</b> | <b>Delivered on<br/>29.06.2018</b> |
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CORAM:

The Honourable Mr.Justice **M.M.SUNDRESH**  
and  
The Honourable Mr.Justice **N.ANAND VENKATESH**

**Original Side Appeal Nos.214, 215 & 309 of 2017**  
**and**  
**CMP No.14590 of 2017**

S.Sarojini

... Appellant  
in OSA No.214/2017

Vs.

P.Mariappan

... Respondent  
in OSA No.214/2017

सत्यमेव जयते

S.Sarojini

... Appellant  
in OSA No.215/2017

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.Vs.

1.P.Mariappan

2.The Assistant Engineer,  
Tamil Nadu Electricity Board-33 KVA-S.S.,  
No.28, Raghava Reddy colony, West Street,  
Jaffer Khanpet,  
Chennai-600 083.

... Respondents  
in OSA No.215/2017

P.Mariappan

..Appellant

in OSA No.309/2017

..Vs..

1.S.Sarojini

2.The Assistant Engineer,  
TNEB,  
Jafferkhanpet,  
Chennai-600 083.

..Respondents  
in OSA No.309/2017

These Original Side Appeals filed under Order XXXVI Rule 1 of the O.S. Rules read with Clause 15 of the Letters Patent against the judgment and decree dated 17.02.2017 made in Tr.C.S.Nos.279 of 2011, C.S.No.329 of 2010.

For Appellant : Mr.T.Karunakaran  
in [OSA Nos.214 & 215/2017]

Mr.A.Thiagarajan, Sr.Counsel for  
Mr.S.Ramesh Kumar  
in [OSA No.309/2017]

For Respondents : Mr.A.Thiagarajan, Sr.Counsel for  
Mr.M.Nallathambi for R-1  
in [OSA Nos.214 & 215/2017]

No Appearance for R-2  
in [OSA Nos.214 & 214/2017]

Mr.T.Karukaran  
in [OSA No.309 of 2017]

**COMMON JUDGMENT****N.ANAND VENKATESH., J.**

These three Original Side Appeals have been filed against the common judgment of the learned Single Judge made in C.S.No.329 of 2010, and Tr.C.S.No.279 of 2011, dated 17.02.2017.

2.The defendant in Tr.C.S.No.279 of 2011 is the appellant in O.S.A.No.214 of 2017. The plaintiff in C.S.No.329 of 2010 is the appellant in O.S.A.No.215 of 2017. The first defendant in C.S.No.329 of 2010 is the appellant in O.S.A.No.309 of 2017. Since the parties are common and the issues involved are common and the property involved is also common, a joint trial has been conducted and a common judgment has been passed covering all the issues in the above said two suits.

3.The appellant in O.S.A.No.309 of 2017 has filed a suit in C.S.No.69 of 2007 [which got transferred to City Civil Court and was renumbered as O.S.No.11331/2010 and thereafter it was re-transferred to this Court and renumbered as Tr.C.S.No.279 of 2011] claiming for the relief of Specific Performance based on two Sale Agreements dated 10.05.2006 and 21.08.2006 and for other consequential reliefs.

4.The appellant in O.S.A.Nos.214 and 215 of 2017 filed a suit in C.S.No.329 of 2010 claiming for the relief of delivery of possession and damages for unlawful use and occupation and for other consequential reliefs.

5.For the sake of convenience the plaintiff in Tr.C.S.No.279 of 2011 will be referred to as the appellant and the plaintiff in C.S.No.329 of 2010 will be referred to as the respondent.

**6.The case of the appellant in brief :**

The appellant and the respondent had entered into an agreement of sale on 10.05.2006 whereby the respondent agreed to sell the suit property for a total sale consideration of Rs.9,10,000/- [Rupees Nine Lakhs Ten Thousand Only] and an advance of Rs.1,50,000/- [Rupees One Lakh Fifty Thousand Only] was also received by the respondent. There was a Bank Loan in respect of the property availed by the respondent and the appellant under the agreement was permitted to verify the Bank documents, ascertain the balance payable towards the loan amount and settle the amount to the Bank and get the original documents released. The agreement stipulated for a period of three months for the execution of the Sale Deed by the respondent immediately after settlement of the dues to the Bank. Thereafter, a new agreement was entered into between the

appellant and the respondent on 21.08.2006 wherein an additional advance amount of Rs.2,60,000/- [Rupees Two Lakhs Sixty Thousand Only] was to be paid by the appellant to the respondent and the balance sale consideration payable by the appellant was fixed at Rs.5,00,000/-[Rupees Five Lakhs Only]. There was a tenant who was living in the suit property who after sometime vacated the suit property during last week of August 2006. Thereafter, the respondent put the appellant in possession of the suit property on 30.08.2006 and the appellant started residing in the suit property. The appellant was ready and willing to pay the balance sale consideration and get the Sale Deed executed in his favour, but however the respondent started giving Police Complaint as if the appellant has illegally occupied the suit property and ultimately the FIR came to be closed after investigation on the ground that the dispute is civil in nature. Even thereafter, the appellant was repeatedly attempting to persuade the respondent to specify the date of registration of the Sale Deed and respondent was insisting that the appellant should take back what ever amount was given by him as advance and that the respondent was not interested in executing the Sale Deed. Left with no other alternative, the appellant filed a suit for Specific Performance along with other consequential reliefs against the respondent.

### **7.The case of the respondent in brief:**



The respondent became the owner of the suit property in the year 2002 and she had purchased the suit property by taking a housing loan in a Bank. On 10.05.2006, an agreement of sale was entered into with the appellant and there is no controversy with regard to the terms and conditions contained in the agreement. The appellant was not able to close the loan account nor was he able to pay the balance sale consideration. The appellant approached the respondent and informed that for his salary, he can avail a loan amount from the Bank only up to a maximum sum of Rs.5,00,000/- [Rupees Five Lakhs Only]. Therefore, he requested the respondent to give another sale agreement showing the total sale consideration as Rs.6,50,000/- [Rupees Six Lakhs Fifty Thousand Only] instead of Rs.9,10,000/- [Rupees Nine Lakhs Ten Thousand Only]. The respondent believing the words of the appellant signed the second agreement also. However, the first agreement dated 10.05.2006 was not cancelled and therefore the total consideration of Rs.9,10,000/-[Rupees Nine Lakhs Ten Thousand Only] remain intact and the same was specifically agreed and understood by the parties. On 30.08.2006, the appellant approached the respondent and requested him give the keys of the property for the reason that the Bank Officials want to physically verify the suit property before sanctioning the loan. Believing the appellant, the keys were handed over to him and without the knowledge of the respondent, the appellant took illegal possession of the property. This resulted in a Police

Complaint, Registration of FIR etc., The appellant did not settle the loan to the Bank and continued to illegally occupy the property. The respondent even without enjoying the property was forced to continue to repay back the loan amount to the Bank. Left with no other alternative, the respondent filed a suit against the appellant praying for delivery of possession, damages and other consequential reliefs.

8.The learned Single Judge on consideration of the entire materials placed before the Court and also after analysing the oral and documentary evidence, decreed the prayer for Specific Performance in favour of the appellant by directing him to deposit a sum of Rs.7,05,000/- [Rupees Seven Lakhs Five Thousand Only] towards damages apart from Rs.16,58,000/- [Rupees Sixteen Lakhs Fifty Eight Thousand Only] which was remaining with the Court deposit and which was deposited by the appellant, covering the balance sale consideration of Rs.4,88,000/-[Rupees Four Lakhs Eighty Eight Thousand Only] and also the damages which the appellant was depositing at the rate of Rs.15,000/- [Rupees Fifteen Thousand Only] per month from May 2010 onwards. On such deposit, the respondent was directed to execute the Sale Deed in favour of the appellant. The learned Single Judge was further pleased to dismiss the suit filed by the respondent insofar as the relief of delivery of possession is concerned. Aggrieved by the decree of Specific Performance and dismissal of the relief of delivery of

possession, the respondent has filed two appeals. As against the decree directing the payment of damages, the appellant has filed one appeal. Since the issues involved are the same between the same parties, we have heard arguments in all the three appeals together and we will proceed to render a common judgment in the above three appeals.

### **SUBMISSIONS**

9. The learned counsel for the respondent would submit that the appellant did not comply with the terms and conditions of the agreement of sale by either settling the loan amount or by taking steps to pay the balance sale consideration to the respondent. The learned counsel for the respondent would further submit that the appellant filed an application in A.No.3795 of 2008 before this Court to grant permission to him to deposit a sum of Rs.4,88,000/- [Rupees Four Lakhs Eighty Eight Thousand Only], being the balance of sale consideration and this Court by an order dated 10.11.2008 directed the appellant to deposit the said amount into the credit of the suit. Even this order was not complied with by the appellant. Therefore, the conduct of the appellant right through shows that he was not ready and willing to perform his part of the contract and therefore he is not entitled for a decree of Specific Performance. The learned counsel



would further contend that the sale agreement did not contemplate handing over of possession of the property to the appellant and it is only at the time of execution of the Sale Deed, the keys were agreed to handed over to the appellant. While so, the appellant in the guise of an inspection to be made by the Bank Officials mislead the respondent to hand over keys and on 30.08.2006, the appellant took illegal possession of the suit property. Even though the learned Single Judge has taken this into account while awarding damages, this conduct of the appellant will dis-entitle the appellant for an equitable relief of Specific Performance and the learned Single Judge ought not to have decreed the relief of Specific Performance. On the other hand, the learned Single Judge ought to have decreed delivery of possession of the suit property which is illegally occupied by the appellant. The learned counsel for the respondent would further contend that a huge loan amount is repayable by the respondent and the respondent has lost her rental income also due to the illegal occupation of the appellant and the respondent has been left high and dry. The learned counsel for the respondent would further contend that the learned Single Judge has specifically directed the appellant to deposit a sum of Rs.7,05,000/- [Rupees Seven Lakhs Five Thousand Only] within a period of three months from the date of the decree and this deposit has been made a condition precedent for getting the Sale Deed executed in his favour. Since this amount has not been deposited till date, by operation of

Section 28 of the Specific Relief Act, the contract will stand rescinded and the appellant on this ground also will not be entitled to the relief of Specific Performance. In view of all these submissions, the learned counsel would urge this Court to interfere with the judgment and decree passed by the learned Single Judge and set aside the decree for Specific Performance and grant the relief of delivery of possession.

10. Per contra, the learned Senior Counsel for the appellant would submit that the appellant was always ready and willing to perform his part of the contract and therefore the learned Single Judge has rightly decreed the relief of Specific Performance. The learned Senior Counsel for the appellant would further contend that the possession of the suit property was consciously handed over by the respondent to the appellant and therefore there is no question of illegally occupying the suit property by the appellant. The learned Senior Counsel would further contend that when the learned Single Judge on appreciation of the evidence available on record has thought it fit to grant the relief of Specific Performance, ought not to have decreed the relief of damages and add it along with the balance sale consideration. It was further contended that the appellant had paid a sum of Rs.4,10,000/- [Rupees Four Lakhs Ten Thousand Only] towards advance under the two agreements and the balance amount that was due and payable was only Rs.2,40,000/- [Rupees Two Lakhs Forty Thousand Only] and where

as pending the proceedings, the appellant was directed to pay a sum of Rs.16,58,000/- [Rupees Sixteen Lakhs Fifty Eight Thousand Only] and to this the Court has further added a sum of Rs.7,05,000/- [Rupees Seven Lakhs Five Thousand Only] towards damages and a total sum of Rs.23,63,000/- [Rupees Twenty Three Lakhs Sixty Three Thousand Only] is sought to be recovered from the appellant and the same is not justified. The learned Senior counsel would therefore contend that the permission given to the respondent to withdraw a sum of Rs.16,58,000/- [Rupees Sixteen Lakhs Fifty Eight Thousand Only] that was lying in suit deposit and directing the appellant to pay a further sum of Rs.7,05,000/- [Rupees Seven Lakhs Five Thousand Only] towards damages is unsustainable in law and requires interference by this Court. Finally, the learned Senior Counsel would contend that a sum of Rs.4,88,000/- [Rupees Four Lakhs Eighty Eight Thousand Only] directed to be deposited towards balance sale consideration, was in fact deposited subsequently when an order was passed in A.Nos.1783 and 1784 of 2010 dated 19.10.2010. Therefore according to the learned Senior Counsel there is no default on the part of the appellant in depositing the balance sale consideration. In reply to the arguments made by the learned counsel for the respondent to the effect that the contract itself stands rescinded by virtue of not depositing the amounts as directed by the learned Single Judge, the learned Senior Counsel would contend that Section 28 of the Specific Relief Act will not apply in

the present case since the appellant has challenged the fixing of damages directed to be paid by the appellant and therefore this amount will not come within the preview of Section 28 and the same cannot be put against the appellant. Therefore, the learned Senior Counsel contended that the decree for Specific Performance must be sustained and the relief of delivery of possession and damages claimed by the respondent should be rejected.

11. We have heard the learned counsel on either side in extenso and also considered the oral and documentary evidence and the entire materials placed before us.

**12. The following points arise for consideration in these appeals:**

a. Whether the appellant was ready and willing to perform his part of the contract from the date of the agreement till the completion of these legal proceedings to be entitled for the relief of Specific Performance?

b. Whether the learned Single Judge has rightly exercised the discretion vested under Section 20 of the Specific Relief Act before decreeing the relief of Specific Performance in favour of the appellant?



c. Whether the learned Single Judge was right in granting the equitable relief of Specific Performance in favour of the appellant after directing the appellant to pay damages on account of such illegal occupation of the suit property?

d. Whether the non deposit of the amount directed to be deposited by the learned Single Judge as a condition precedent for the execution of the Sale Deed, will rescind the contract itself and will dis-entitle the appellant to the relief of Specific Performance?

e. Whether the respondent is entitle for the decree of delivery of possession and damages against the appellant?

## **DISCUSSION**

13.We will consider the first three issues raised as points for consideration together since the same set of facts and evidence will have to be analysed to come to a conclusion in each of these issues.

14.The undisputed facts are that the appellant and the respondent entered into an agreement of sale dated 10.05.2006 [Ex.D-1] wherein the total consideration was fixed at Rs.9,10,000/- [Rupees Nine Lakhs Ten Thousand Only] and the appellant paid a sum

of Rs.1,50,000/- [Rupees One Lakh Fifty thousand Only] as advance to the respondent and three months period was fixed from the date of closing the housing loan by the appellant for the purpose of completing the sale transaction. Subsequently another sale agreement was entered into on 21.08.2006 [Ex.P-1] wherein the sale consideration was shown as Rs.6,50,000/- [Rupees Sixty Lakhs Fifty Thousand Only] and all the other Clauses remained the same. The appellant pursuant to the agreement applied for a loan with State Bank of India and the same was sanctioned vide letter dated 24.08.2006 [Ex.D-1] to the appellant. On 30.08.2006, when the appellant approached the respondent and received the keys of the suit property and took possession of the same. The appellant thereafter issued a telegram dated 17.11.2006 [Ex.P-3] calling upon the respondent to receive the balance sale consideration and execute a Sale Deed in favour of the appellant. The respondent gave a reply telegram dated 24.12.2006 [Ex.P-4] asking the appellant to get back the advance amount of Rs.4,22,000/- [Rupees Four Lakhs Twenty Two Thousand Only] lying with her and to vacate and hand over the suit property.

15. From the above undisputed facts, it is clear that the agreement between the appellant and the respondent came to a deadlock by the end of the year 2006. Subsequently, the appellant had filed the suit for Specific Performance against the respondent on

31.12.2006. It is seen from the records and also from the document marked as Ex.D-2, which is an order passed by this Court in A.No.3795 of 2008, wherein this Court on consideration of an application filed by the appellant to permit him to deposit a sum of Rs.4,88,000/- [Rupees Four Lakhs Eighty Eight Thousand Only], directed the appellant to deposit Rs.4,88,000/- [Rupees Four Lakhs Eighty Eight Thousand Only] to the credit of the suit by an order dated 10.11.2008. Even though the appellant volunteered to deposit the balance sale consideration by way of filing an application, curiously we find that he did not comply with the direction given by the Court and did not deposit the balance sale consideration.

16.From the materials available on record, it can also be seen that even though the appellant was sanctioned a loan amount of Rs.5,00,000/- [Rupees Five Lakhs Only] by the State Bank of India pursuant to the sale agreement to enable the appellant to close the housing loan of the respondent, the appellant never availed of this loan as a result of which the respondent continued to pay the housing loan. This is evident from Exs.D-16, D-19, D-20, D-21, D-22 and D-23.

17.The appellant in this case took possession of the property according to him on 21.08.2006 and according to the respondent on 30.08.2006. The respondent filed a suit in C.S.No.329 of 2010 against

the appellant claiming for the relief of delivery of possession and damages for unlawful use and occupation of the suit property, on the ground that the appellant requested the keys to the property on 30.08.2006 from the respondent on the premise that the Bank Officials will have to inspect the suit property before sanctioning of the loan and believing his words, the respondent handed over the possession of the property to the appellant and the appellant from that date onwards stated illegally occupying the suit property. The respondent was getting rent from the property from a tenant and the tenant was vacated believing that the appellant will purchase the property and as a result of it the respondent was deprived of even a rental income.

18. In the Suit filed by the respondent, an application was taken out by her in O.A.No.352 of 2010 and A.No.1718 of 2010 praying for restraining the Electricity Board from giving Electricity connection in favour of the appellant and for a direction to the appellant to pay damages for unlawful use and occupation of the suit property. On 27.04.2010, a common order was passed in both these applications to the effect that a sum of Rs.15,000/- [Rupees Fifteen thousand Only] will be paid every month to the credit of the suit as security by the appellant pending disposal of the suit. Subsequently, another set of applications were filed in the suit in C.S.No.329 of 2010 by the respondent for a direction to the appellant to furnish security for the



suit claim and also for damages. When these applications were taken up for consideration, it was brought to the notice of the Court that the appellant has not complied with the earlier order passed in A.No.3795 of 2008 wherein he was directed to deposit the balance sale consideration. This Court took note of the said fact and by an order dated 19.10.2010 directed the appellant to deposit Rs.4,88,000/- [Rupees Four Lakhs Eighty Eight Thousand Only] on or before 27.10.2010. It was only pursuant to this order, the appellant deposited a sum of Rs.4,88,000/- [Rupees Four Lakhs Eighty Eight Thousand Only] which he ought to have deposited after the passing of the order in A.No.3795 of 2008, dated 10.11.2008.

19.A careful consideration of the deposition of the appellant who was examined as PW-1, clearly shows that the possession of the suit property was not handed over to the appellant under the sale agreement and it is only at the time of execution of the Sale Deed, keys were agreed to be handed over by the respondent to the appellant. There is no other plausible explanation coming forth from the appellant as to how he took possession of the suit property except by saying that there was a tenant who was in occupation of the suit property and he vacated during August 2006 and the respondent voluntarily handed over the possession of the suit property on 30.08.2006.

20. One clear fact that emerges from the above discussion is that the appellant apart from paying the advance amount at the time of entering into an agreement of sale, did not comply with any of the other conditions in the sale agreement. The appellant did not settle the housing loan of the respondent in spite of a loan of Rs.5,00,000/- [Rupees Five Lakhs Only] sanctioned by the State Bank of India in favour of the appellant. The appellant took possession of the suit property by misleading the respondent as if the Bank Officials are going to inspect the suit property and his explanation that the respondent gave possession of the suit property voluntarily is totally unbelievable since he had not even cleared the housing loan on the date when he took possession of the suit property and there were no other compelling reasons for the respondent to hand over the possession of the suit property to the appellant. The appellant in spite of volunteering an order from this Court to deposit the balance sale consideration of Rs.4,88,000/- [Rupees Four Lakhs Eighty Eight Thousand Only] and getting an order to that effect, never cared to comply with that order and after more than two years when this Court was considering the applications filed by the respondent for a direction to the appellant to furnish security for the suit claim, this Court noticed that the appellant has not complied with earlier order and therefore directed the appellant to deposit the balance sale consideration of Rs.4,88,000/- [Rupees Four Lakhs Eighty Eight Thousand Only]. It was only pursuant to the order

passed on 19.10.2010, the appellant deposited the amount.

21. These facts clearly expose the mind of the appellant. The appellant has approached this Court claiming for an equitable remedy of Specific Performance and therefore the conduct of the appellant will become paramount consideration for this Court to exercise its discretion in granting the said relief.

22. The appellant was not ready and willing to perform his part of the contract which is a mandatory requirement under Section 16 ( c ) of the Specific Relief Act, 1963. Readiness and willingness connote independent meaning to each of those terms. Readiness signifies financial possession of the purchaser and willingness signifies the frame of mind of the purchaser. In this case the appellant did not have the financial wherewithal and there is absolutely no evidence on his side to show his financial status. From the materials available on record it can be seen that the appellant even for the purpose of settling the housing loan of the respondent was taking steps to get a loan from the State Bank of India. That apart when this Court directed the appellant to deposit a sum of Rs.4,88,000/- [Rupees Four Lakhs Eighty Eight Thousand Only] towards balance sale consideration in his application by an order dated 10.11.2008, the appellant did not comply with that order. This only shows that the appellant did not have the financial

wherewithal. That apart the conduct of the appellant right through, which has been explained supra, clearly exposes his frame of mind and he was not willing to perform his part of the contract.

23. The law is now fairly well settled by means of a catena of decisions of the Hon'ble Supreme Court and this Court and also of various other High Court's that the Readiness and Willingness on the part of the agreement holder must be continuously shown at all stages right from the date of agreement, till the date of decree that is passed in the suit. The conduct of the agreement holder must be blemish less through out to entitle him for the equitable relief of Specific Performance. In this case the singular factor wherein the appellant failed to comply with the order passed by this Court directing him to deposit the balance sale consideration, is enough to dis entitle the appellant for the relief of Specific Performance. At every stage, the appellant was defaulting and there are absolutely no materials on the side of the appellant to show his Readiness and Willingness to perform his part of the contract.

24. In a suit for Specific Performance, the Court has to keep in mind that the discretionary power vested in it is by virtue of Section 20 of the Specific Relief Act. It is now a well settled principle of law that the Court is not bound to grant Specific Performance merely because it



is lawful to do so. The Court should meticulously consider all the facts and circumstances of the case and ensure that it is not used as an instrument of oppression to have an unfair advantage to the plaintiff. Since the relief of Specific Performance is given exercising the equity jurisdiction, the conduct of the plaintiff should be fair. The discretion that is exercised by the Court is not arbitrary but it is guided by sound and reasonable judicial principles.

25. Section 20 (2) of the Specific Relief Act contains a stipulation as to when the Court may exercise its discretion not to grant Specific Performance. Sub Section (2) of Section 20 of the Specific Relief Act reads as follows:

**“(2)** The following are cases in which the Court may properly exercise discretion not to decree specific performance-

(a) where the terms of the contract or the conduct of the parties at the time of entering into the contract or the other circumstances under which the contract was entered into are such that the contract, though not voidable, gives the plaintiff an unfair advantage over the defendant; or

(b) where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff;

(c) where the defendant entered into the contract under circumstances which though not

rendering the contract voidable, makes it inequitable to enforce specific performance.

It will be useful to extract explanation 2 which reads as follows:

**Explanation.2** - The question whether the performance of a contract would involve hardship on the defendant within the meaning of clause (b) shall, except in cases where the hardship has resulted from any act of the plaintiff subsequent to the contract, be determined with reference to the circumstances existing at the time of the contract.

26. In the instant case, from the facts that have been discussed in detail, herein above, it can be seen that the conduct of the appellant is not above board. The appellant has placed himself in an advantageous position while taking possession of the suit property on 30.08.2006, and thereafter he has been enjoying the suit property to the detriment of the respondent. The appellant did not settle the housing loan as agreed in the sale agreement, the appellant did not deposit the balance sale consideration as directed by this Court and the appellant by his conduct eventually made the housing loan of the respondent a non performing asset which had put the respondent to untold hardship. On the other hand, the appellant by merely paying the advance amount to the respondent started enjoying the suit property without any further payment on his side till an order was passed by this Court directing the appellant to pay damages for use and occupation of the suit property.

In other orders, the conduct of the appellant squarely brings this case within the ambit of sub Section (2) of Section 20 of the Specific Relief Act which enables this Court to exercise its discretion not to decree the relief of Specific Performance in favour of the appellant.

27.As stated above, the relief of Specific Performance is granted in exercise of the equity jurisdiction, and therefore, it is incumbent on the part of the Court to satisfy itself that the person who seeks such an equitable relief has acted in such a manner so as to deserve the relief of Specific Performance. The learned Single Judge on an appreciation of evidence has virtually treated the appellant to be in unlawful occupation of the suit property and that is the reason why the learned Single Judge upheld the interim damages fixed by the Court and has proceeded to further direct the appellant to make the payment for the period from August 2006 up to April 2010 also. Admittedly in this case the possession of the appellant is not pursuant to the sale agreement. The fact that the appellant has been directed to pay a sum of Rs.15,000/- [Rupees Fifteen Thousand Only] every month from August 2006 till December 2016 only goes to show that it is in the nature of damages for the use and occupation of the suit property which actually belongs to the respondent. When such is the conduct of the appellant, even if the appellant had fulfilled all the requirements for grant of the relief of Specific Performance, the Court has to refuse to exercise its discretion since the appellant has been put to an unfair advantage over the

respondent as a result of which the respondent has been put to hardship and under the circumstances it will be inequitable to enforce Specific Performance.

28.The above discussion makes this Court to come to a conclusion that the appellant was not ready and willing to perform his part of the contract and the learned Single Judge was not right in exercising the discretion under Section 20 of the Specific Relief Act by granting the relief of Specific Performance in favour of the appellant. Accordingly, we answer the first three issues in the points for determination.

29.In view of our conclusion on the first three issues, there is no need to delve upon the fourth issue regarding the effect of non deposit of the amount by the appellant and whether the same will result in rescinding the contract, since we have already held that the appellant is not entitled for the relief of Specific Performance.

30.The last issue to be decided is with regard to the entitlement of the respondent for a decree of delivery of possession and damages against the appellant. Since we have already held that the appellant is not entitled for the relief of Specific Performance, the appellant is no more entitled to continued to use and occupy the suit property. The



respondent being the lawful owner of the suit property, is entitled to get back the possession of the suit property from the appellant. Consequently, the appellant is directed to hand over possession of the suit property to the respondent within three months from the date of this judgment.

31.Insofar as the right of the respondent to receive damages, we uphold the judgment and decree passed by the learned Single Judge directing the appellant to pay a sum of Rs.15,000/- [Rupees Fifteen Thousand Only] per month. This amount was directed to be paid from August 2006 up to February 2017 i.e., till the date of the judgment. Subsequent to the judgment, the appellant must continue to pay a sum of Rs.15,000/- per month [Rupees Fifteen Thousand Only] from March 2017 till the date of handing over possession of the suit property to the respondent.

32.For all the reasons stated above, the judgment and decree of the learned Single Judge in Tr.C.S.No.279 of 2011 is hereby set aside. The judgment and decree in C.S.No.329 of 2010 insofar as denying the relief of delivery of possession to the respondent is concerned, the same is set aside. The second portion of the judgment and decree in

C.S.No.329 of 2010 relating to damages, stands confirmed in this

appeal.

33. In this case we find that the appellant has paid a sum of Rs.4,22,000/- [Rupees Four Lakhs Twenty Two Thousand Only] to the respondent and the same has been acknowledged by the respondent in her telegram dated 24.12.2006, which has been marked as Ex.P-4. We feel that the appellant will be entitled for refund of this amount with interest. The interest will be payable at the rate of 9% p.a. from December 2006 up to February 2017 and at the rate of 6% p.a from March 2017 till June 2018.

34. The appellant in his suit has not claimed for the alternative relief of refund of the advance money. However, with a view to render complete justice, this Court feels that it is empowered to mould the relief and issue appropriate direction to the respondent for refund of the advance amount. Useful reference in this regard can be made to the decision of the Division Bench in **N. Sekaran and Another .Vs. C.Rajendran** reported in **[2017 (3) MWN (civil) 716 ]**.

35. In the result, all the three appeals are disposed of as follows:

(i) The judgment and decree of the learned Single Judge in

Tr.C.S.No.279 of 2011 is hereby set aside.

(ii)The judgment and decree of the learned Single Judge in C.S.No.329 of 2010 insofar as denying the relief of delivery of possession to the respondent is hereby set aside and the appellant is directed to hand over possession of the suit property to the respondent within three months from the date of this judgment.

(iii)The second portion of the judgment and decree in C.S.No.329 of 2010 relating to damages is confirmed and the appellant is directed to comply with the order of the learned Single Judge viz. Rs.7,05,000/- and further continue to pay the damages at the rate of Rs.15,000/- per month [Rupees Fifteen Thousand Only] from March 2017 till the date of handing over possession of the suit property to the respondent.

(iv)The appellant is entitled to refund of a sum of Rs.4,22,000/- [Rupees Four Lakhs Twenty Two Thousand Only] with interest from December 2006 till February 2017 at the rate of 9% p.a. and at the rate of 6% p.a. from March 2017 till June 2018 and this amount shall be paid by the respondent to the appellant within a period of eight weeks from the date of this judgment.

(v)There is already an amount of Rs.16,58,000/- [Rupees Sixteen

Lakhs Fifty Eight Thousand] lying to the credit of C.S.No.329 of 2010. The total amount of damages payable by the appellant to the respondent can be adjusted in the amount lying to the credit of C.S.No.329 of 2010. The respondent will be permitted to withdraw the amount of damages appropriated from the deposit already lying in the suit. The entire balance amount can be refunded to the appellant.

36.The appeals are accordingly disposed of. In the facts and circumstances of the case, there will be no order as to costs. Consequently, the connected miscellaneous petition is closed.

**(M.M.S.,J.) (N.A.V.,J)**

**29.06.2018**

**Note:** Issue order copy  
on 06.07.208

सत्यमेव जयते

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**M.M.SUNDRESH, J.**  
**and**  
**N.ANAND VENKATESH, J.**

KP



**Pre-Delivery**  
**Common Judgment in**

**OSA Nos.214,215 & 309/2017**  
**and**  
**CMP No.14590/2017**

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**29.06.2018**