

**Review Application No.149-C of 2016 (O&M) in**  
**RSA No.596 of 2012 & XOBJC-10C of 2010**

**{ 1 }**

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

Date of Decision: October 26, 2018

Ranbir Choudhary

...Appellant

Versus

T.D.Vivek Kumar & another

...Respondents

**CORAM: HON'BLE MR.JUSTICE AMIT RAWAL**

Present: Mr. Punjeet Bali, Senior Advocate with  
Mr. Ranjit Saini, Advocate,  
for the applicant-respondents.

Mr. A.K.Jain, Advocate,  
for non-applicant/appellant.

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**AMIT RAWAL, J.**

Applicant-defendant-respondents through the instant application sought the review of the order dated 27.07.2016, whereby the Regular Second Appeal along with cross-objections filed by the applicants have been disposed of and the suit of the non-applicant/appellant for specific performance of the agreement to sell, has been decreed on the premise that the aforementioned order was assailed before the Hon'ble Supreme Court vide Special Leave to Appeal (C) Nos.32215-32216 of 2016 and vide order dated 15.11.2016, by noticing the contention of the applicants, certain points raised in the cross objections were not adverted to, disposed of the petitions.

Mr. Puneet Bali, learned Senior Counsel assisted by Mr.Ranjit Saini, Advocate, representing the applicant-respondents submitted that the respondent-plaintiffs instituted the civil suit on 13.12.2004 for specific performance of the agreement to sell dated 18.07.2004 in respect of plot

bearing No.1233, Sector B measuring 233 sq.yards, situated at Green Field Colony, Faridabad for a total sale consideration of ₹ 17,61,700/- against receipt of ₹ 2,00,000/- as earnest money. The stand of the applicant-defendants throughout had been that the plaintiff-appellant has not been ready and willing to perform the part of the agreement as time was the essence of the agreement, aforementioned, as in lieu thereof, another property was to be purchased at Kochin. The stipulated date for execution and registration of the sale deed was 18.09.2004, but plaintiff did not obtain the permission for sale of the plot in question from M/s Urban Improvement Company Ltd., Connaught Place, New Delhi, nor there was readiness and willingness to perform the agreement, much less not occupied with sufficient money to part with as preparation of draft of ₹ 5,00,000/- was only part of the balance sale consideration as remaining amount of ₹10,00,000/-, odd amount, had not been proved. The address of Delhi indicated in the telegram was incomplete, though the applicant was present in Delhi for performance of the agreement. Both the Courts below confined the relief of compensation by ordering payment of double the amount. The same was assailed in the cross-objections before the Lower Appellate Court and in this court, cross-objections were filed, but the contents thereof were not adverted to. It is in these circumstances, the present application has been filed.

The main plank in the cross-objections has throughout been that no bank statement or any cogent evidence has been produced to perform the part of the agreement as draft of ₹ 5,00,000/- did not amount to discharge of obligation. The Courts did not appreciate the contents of intimation letter Ex.P10 which revealed that the non-applicant-appellant had

not completed pre-requisite condition for getting the plot registered in his name, but yet approached the office of Sub Registrar, which was an attempt to mislead the Courts. The telegram dated 16.09.2004 (Ex.P5 and Ex.P6) pointed to the fact that the plaintiff was not ready and willing. Appearance before the Registrar did not indicate that the plaintiff had sufficient money at his disposal for performing his role, therefore, there is error apparent on record.

Per contra, Mr. A.K.Jain, learned counsel representing the non-applicant/appellant submitted that there is no error apparent on record. Even the cross-objections have also been adverted to, as applicant/respondent No.2, who appeared in person argued the matter. This Court requested him to avail the remedy of lawyer but did not choose. Review application by change of counsel in view of the law laid down in **T.N.Electricity Board and another Versus N.Raju Reddiar and another, 1997 AIR (SC) 1005** is not maintainable.

This Court had already dealt with the point raised in the cross objections with regard to the preparation of the draft. In support of the aforementioned contention, reliance was laid to the latest judgment of the Hon'ble Supreme Court in **Ramathal Versus Maruthathal & Ors., 2017 SCC Online SC 1100** to contend that both the ingredients, i.e., averment qua readiness and willingness and evidence have been brought on record. Availability of ready cash is not a ground to deny the discretion under Section 20 of the Specific Relief Act and, thus, prayed for dismissal of the review application.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no error apparent on record. It is a

matter of record that the defendants were also in Delhi on the date of execution of the agreement to sell. Plaintiff had addressed a letter to General Manager, Urban Improvement Pvt. Ltd. expressing his readiness to perform the part of the agreement. It was clearly indicated that he had prepared a draft for the payment of the plot and the remaining was to be paid in cash. The aforementioned letter has been proved in accordance with law. The telegram was sent at two addresses, one at Delhi and another of Emakulam. The agreement did not envisage it was the plaintiff who had to take permission from the competent authority but only to pay the charges. Applicant-defendants have not been able to prove that he had ever submitted application in this regard.

It would be in the fitness of things to extract paragraph 21 of the judgment in **Ramathal (supra)** . The same reads thus:-

21. The Ld. Senior Counsel appearing for seller contends that the Specific performance being an equitable remedy, condition precedent of 'readiness and willingness' has to be specifically pleaded and proved by the buyer for enforcement of the specific performance [refer [K. Prakash v. B. R. Sampath Kumar](#), 2015 (1) SCC 597]. She further submits that there are only vague averments in the pleading that the buyer was ready and willing to perform his part of the contract. There is no dispute with regard to the proposition that in a suit for specific performance burden is always on the plaintiff to aver and prove that they are always ready and willing to perform their part of the contract throughout. Section 16 (C) of the specific relief act mandates that not only there be a plea of readiness and willingness but it also has to be proved by acceptable evidence. Requirement of fulfilling the conditions under [section 16](#) (C) of the Specific Relief Act, 1963, is a condition precedent for obtaining the relief of specific performance. Whereas in the instant case the

plaint as well as the documents available on record goes to show that it was specifically pleaded that buyer was ready and willing to perform his part of the contract. Additionally the evidence of PW1 also proves readiness and willingness on the part of the buyer. In light of the aforesaid discussion, the contention of the Ld. Senior counsel appearing on behalf of the seller is repelled as being meritless.”

Thus, the averment of readiness and willingness as per the provisions of Section 16(c) of the Specific Relief Act has been proved to the hilt.

I cannot remain oblivious of the judgment where the entire ready cash at the relevant time would not be a ground as in the present case, suit was filed immediately on expiry in December, 2004, i.e., after two months of the expiry of the target date.

The other point that the agreement contained the element of liquidated charges is not being touched, for, no argument of any ground for review has been addressed or supported.

The applicant-defendant had appeared in person, therefore, the objection of Mr. Jain with regard to maintainability of the review application filed by different counsel is misplaced and is hereby rejected.

I do not find any error apparent on record. No ground for review is made out. The same is dismissed.

**October 26, 2018**  
**ramesh**

**( AMIT RAWAL )**  
**JUDGE**

**Whether speaking/reasoned  
Whether Reportable:**

**Yes/No  
Yes/No**