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

+ **RFA 35/2006**

TILAK RAJ

..... Appellant

Through: None.

versus

JAGDISH KUMAR

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

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17.07.2018

1. This Regular First Appeal is filed by the plaintiff in the suit impugning the judgment of the trial court dated 23.9.2005 by which the trial court has dismissed the suit for specific performance filed by the appellant/plaintiff with respect to the Agreement to Sell of the ground floor of the property bearing House No. 31, Indra Nagar, Delhi-33.

2. Issue nos. 4 and 5 which were framed in the suit pertain to the entitlement of the appellant/plaintiff for specific performance and whether the appellant/plaintiff is ready and willing to perform his contract. These issues have been decided against the appellant/plaintiff by holding that appellant/plaintiff was not ready and willing to perform Agreement to Sell.

3. I have gone through the affidavits by way of evidence filed by

the appellant/plaintiff and it is seen that appellant/plaintiff has led no evidence of readiness i.e. his financial capacity to pay the balance sale consideration of Rs.4,90,000/-.

4. Self-serving averments of financial capacity/readiness are not accepted by Courts as held by this Court in the judgment in the case of ***Baldev Behl & Ors. Vs. Bhule & Ors. (2012) 132 DRJ 247.*** The relevant paragraphs being paragraphs 26 (i) and (ii) read as under:-

"26(i). This issue pertains to plaintiff No.1 being ready and willing to perform his part of the agreement to sell. As per Section 16(c) of the Act, every plaintiff in a suit for specific performance must aver and prove that the plaintiff has always been and continues to be ready and willing to perform his part of the contract/agreement to sell. Readiness is financial capacity to go ahead with the agreement to sell and willingness is the intention. I may, at this stage, specifically invite attention to the observations of the Supreme Court in the case of ***Balraj Taneja and Anr. (supra)***, and relevant paras have been reproduced above, and which show that in a suit for specific performance even if there is no defence of the defendant, yet, the aspect of readiness and willingness has to be specifically proved by the plaintiff. This is stated by the Supreme Court in para 30 of the said judgment. The question is whether the plaintiff No.1 has proved his readiness and willingness at the relevant time and also continues to be ready and willing to perform his part of the contract/agreement to sell.

(ii) **Readiness to perform the obligations by a proposed purchaser is a very important aspect and it has to be proved by categorical evidence. Mere oral evidence and self-serving depositions cannot be a substitute for categorical evidence on the specific statutory requirement of Section 16(c).** It is not disputed on behalf of the plaintiff No.1 that plaintiff No.1 has not filed any income tax returns or any bank account or proof of any other assets/properties or any other evidence to show the financial capacity of the plaintiff No.1 to pay the balance sale consideration. As per the case of the plaintiff No.1, the balance sale consideration would be approximately Rs.19.5 lacs and there is no evidence worth the name in the record to show the plaintiff No.1's financial capacity for this amount. Of course, while on this argument, I am

assuming that there is a certainty as to consideration because in reality there is no certainty as to balance sale consideration inasmuch as the plaintiff No.1 has failed to exercise the option in terms of the agreement to sell as to which area of the balance land less the hutment/portion the plaintiff No.1 seeks specific performance of. Also, as already stated above, this area claimed by the plaintiff No.1 has to be further conditioned by an area of 12 bighas which has already been sold to be defendant No.3 under the sale deed dated 8.4.1988. In any case, I need not state anything further inasmuch as there is not a single piece of paper on record or any credible evidence which proves the financial capacity of the plaintiff No.1. I accordingly hold that plaintiff No.1 has miserably failed to prove his readiness to perform his obligations under the agreement to sell dated 27.8.1988. In fact, even willingness on the part of the plaintiff No.1 is absent inasmuch as there is no certainty of any option exercised by the plaintiff No.1 as to specific area which the plaintiff No.1 seeks to purchase, and which specific area had necessarily to be clear inasmuch as there is the issue of lessening the area whether on account of hutments or on account of 12 bighas of land already purchased by the defendant No.3 vide sale deed dated 8.4.1988 and hence of clarity as to for what area and for what price the agreement to sell has to go ahead."

5. In my opinion, therefore the trial court was justified in dismissing the suit for specific performance.

6. Since however no one appears for the appellant, and this appeal is on the Regular Board of this Court since 2.7.2018, this appeal is dismissed in default and for non-prosecution.

7. Let no application for restoration/recall of this order be entertained by the Registry of this Court, unless costs of Rs.25,000/- are first deposited with the website of www.bharatkeveer.gov.in.

VALMIKI J. MEHTA, J

JULY 17, 2018

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