

\$~

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

%

Date of Decision: 28th February, 2019

+ CS(OS) 1284/2011 & I.As. 8529/2011, 15754/2011, 15755/2011,
11621/2018, 12884/2018

OM PRAKASH AGGARWAL Plaintiff
Through: Mr.Neeraj Yadav and Mr.Davesh
Bhatia, Advocates

versus

RAJ KUMAR MITTAL Defendant
Through: Mr.Shiv Charan Garg, Mr.R.K.
Kashyap and Mr.Imran Khan,
Advocates

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

J U D G M E N T

1. The plaintiff has instituted this suit for specific performance of the agreement dated 16th March, 2010 in respect of property bearing No. E-166, Ashok Vihar Phase-I, Delhi-110052, hereinafter referred to as 'the suit property'.
2. On 16th March, 2010, the plaintiff entered into an agreement (Ex.P-1) with the defendant to purchase the suit property for a total consideration of Rs.8,60,00,000/-. The plaintiff paid earnest money of Rs.10,00,000/- to the defendant at the time of the agreement and agreed to pay the balance sale consideration on or before 30th September, 2010. Relevant portion of the agreement dated 16th March, 2010 is reproduced hereunder:

“2. That said property with its vacant possession has been agreed to be sold to the said purchase or his/their nominee’s at the total consideration of Rs.8,60,00,000/- (Rupees Eight Crore Sixty lacs only).

3. The balance of amount of Rs.8,50,00,000/- (Rupees Eight Crore Fifty lacs only) is to be paid by the purchaser/transferee nominee within a period of 200 days i.e. on or before 30/9/10 from the date of this receipt or on the execution of relevant documents in the competent court in the name of the above said purchaser/Nominee.

xxx

xxx

xxx

6. If the purchaser fails to pay the balance money to (comply with the bargain) the earnest money shall be forfeited in favour of the seller.”

(Emphasis supplied)

3. In the first week of September, 2010, the plaintiff instituted a suit for permanent injunction bearing Suit No. 535/2010 against the defendant before the Civil Judge, Rohini for restraining the defendant from selling, transferring or parting with the possession of the suit property on the averments that the defendant has defaulted in supplying the copies of the title documents to the defendant to enable him to take the loan from the bank despite the notice dated 12th August, 2010.

4. The aforesaid suit was listed before the Civil Judge, Rohini on 03rd September, 2010 when the Court issued the notice to the defendant for 07th September, 2010. On 07th September, 2010, the Civil Judge passed an interim order directing the defendant not to sell the suit property till the next date of hearing. On 12th October, 2010, the defendant filed an application under Order VII Rule 10 of the Code of Civil Procedure for return of the plaint. On 23rd May, 2011, the plaintiff withdrew the aforesaid suit for permanent injunction.

5. In May, 2011, the plaintiff instituted the present suit for specific performance against the defendant on the same averments that the plaintiff demanded the copies of the title documents from the defendant in order to seek the loan from the bank to purchase the suit property; the plaintiff wrote a letter dated 01st July, 2010 to HDFC Bank which was replied on 05th July, 2010; the plaintiff issued a letter dated 12th August, 2010 to the defendant demanding the copies of the title documents but the defendant did not supply the said documents to the plaintiff. Relevant portions of the plaint are reproduced hereunder:

“10. That at the time of signing of the above mentioned agreement/bayana receipt the plaintiff asked the defendant to supply the photocopies of the following documents as told by the bank to the plaintiff for the purpose of having loan from the bank for the purchase of the above mentioned property:-

- a. Allotment Letter
- b. Receipts of the payments to the DDA for the purchase of the plot.
- c. Possession Letter
- d. Lease Deed.
- e. Sanctioned Building Plan
- f. Completion Certificate.
- g. Conveyance Deed.

11. That thereafter the plaintiff kept on demanding the above mentioned documents from the defendant through his dealer M/s J K Properties, Ashok Vihar in order to facilitate the loan from the bank for the purchase of the suit property. The plaintiff even wrote a letter to the HDFC bank dated 01.07.10 enquiring about the formalities for the loan which was duly replied by the HDFC bank vide reply dated 05.07.10. When the defendant did not pay heed to the oral requests of the plaintiff for the supply of the above mentioned documents, the plaintiff wrote a letter dated 12.08.10 to the defendant to supply the above mentioned documents to him. It was specifically mentioned in the said

letter that since the date for the execution and registration of the sale deed is approaching fast, the defendant must supply the documents to the plaintiff within 3 days of the receipt of the said letter. The defendant has not supplied the said documents to the plaintiff till date.”

xxx

xxx

xxx

22. That the cause of action arose in favor of the Plaintiff and against the defendants when the plaintiff paid a sum of Rs.10,00,000/- to the defendant on 16.03.10 and the defendant issued the receipt of the same as well as signed the Agreement to Sell/Bayana Receipt. The cause of action further arose when the plaintiff demanded the photocopies of the documents at the time of signing of the said agreement. The cause of action arose on each and every date whenever the plaintiff demanded the photocopies of the documents from the defendant. The cause of action again arose on 12.08.10 when the plaintiff wrote a letter to the defendant asking him to supply the documents within 3 days. The cause of action again arose on 30.08.2010 when the Plaintiff visited the suit property and came to know that the defendant is trying to sell the suit property to someone else. The cause of action again arose when the plaintiff filed the suit for permanent injunction against the defendant. It further arose on various occasions when the plaintiff was ready and willing to make the payment to the defendant. The cause of action is still subsisting and continuing one.”

(Emphasis supplied)

6. The defendant filed the written statement dated 02nd September, 2011 in which the defendant pleaded that the plaintiff defaulted in making the final payment and, therefore, the earnest money has been forfeited. The defendant further pleaded that the plaintiff had no money to pay the balance sale consideration. The defendant further pleaded that he never agreed to give or supply the copy of title documents to the plaintiff for raising the loan and there was no such clause in the agreement. The defendant further pleaded that the letter dated 01st July, 2010 by the plaintiff to the bank does

not record that the plaintiff required a huge loan of Rs.8,50,00,000/- . The defendant further pleaded that the plaintiff did not even aver in the plaint that plaintiff had money to pay and was never ready and willing to perform his part of contract and, therefore, the suit was liable to be dismissed under Section 16(c) of the Specific Relief Act.

7. The hearing on the maintainability of the suit commenced on 27th July, 2018 when the Court partly heard the arguments and directed the plaintiff to produce on 06th August, 2018 the proof of funds available with him on the date of agreement as well as on the date by which the balance sale consideration was payable by him; copy of the loan application filed before HDFC Bank; the Income Tax returns from the date of agreement up to this date and all his Bank passbooks containing the statement of account from the date of agreement up to this date as well as the other investments/FDR held by him from the date of agreement on the next date of hearing.

8. On 06th August, 2018, this Court examined the plaintiff on oath under Section 165 of the Evidence Act when the plaintiff produced the statement of his savings bank account and admitted that the balance sale consideration of Rs.8,50,00,000/- was not available with him from the date of the agreement i.e. 16th March, 2010 till the last date i.e. 30th September, 2011 on which the payment was to be made under the agreement. The statement of the plaintiff recorded on 06th August, 2018 is again reproduced hereunder:-

"I have savings bank account with HDFC Bank, Gujranwala Town, Model Town Branch, Delhi. I have brought the statement of the aforesaid savings bank account for the period 16th March, 2010 up to this date in which the maximum amount available

was Rs.35,00,000/-. The balance on 30th September, 2010 was Rs.96,575/-. The copy of the statement of account is handed over and is marked as Mark A. I had no FDRs at that time. I had national savings certificates worth Rs.18,000/- at the relevant time. I had no other funds available with me in any form.

I had given a loan of Rs.13,14,000/- to my company and the company had the funds available as on 31st March, 2011 to refund the said amount.

I am the Managing Director of company named M/s Jai Shree Rasayan Udyog Limited. In the year ending 31st March, 2010, my taxable income was Rs.24,80,000/- on which I paid Tax of Rs.5,11,740/-. In the year ending 31st March, 2011, my taxable income was Rs.32,08,000/- on which I paid Tax of Rs.6,40,000/-. I produce the copies of the two Income Tax returns which are marked as Mark B and Mark C. On 31st March, 2010, my company had outstanding liabilities including the loan from the banks to the tune of Rs.9,79,94,791/-. As on 31st March, 2011, the outstanding liabilities of my company including the loan from the bank were to the tune of Rs.19,02,51,436/-.”

(Emphasis supplied)

9. Further arguments were heard on 07th August, 2018 and 16th August, 2018. On 16th August, 2018, the plaintiff changed his counsel and the new counsel sought time to prepare the case whereupon the case was adjourned to 21st August, 2018. On 21st August, 2018, the plaintiff's new counsel submitted that he has filed application which was lying in objections whereupon the hearing was adjourned to 27th August, 2018 and then to 30th August, 2018 and 19th September, 2018.

10. The plaintiff has filed two applications namely I.A.12884/2018 under Order VI Rule 17 of the Code of Civil Procedure and I.A. 11621/2018 under Order VII Rule 14 of the Code of Civil Procedure. In I.A. 12884/2018, the plaintiff is seeking permission to amend the plaint to incorporate that the

plaintiff had full authority from M/s Jai Shree Rasayan Udyog Limited to enter into an agreement qua a real estate transaction on behalf of the company; plaintiff along with his family members and his business entity always had enough resources to complete the transaction; plaintiff had approached HDFC Bank as an abundant caution to obtain a loan on the property and the bank demanded certain documents which were intentionally not provided by the defendant; the plaintiff was always ready and willing to perform the transaction and is willing to complete the transaction within a period of one week. In I.A. 11621/2018, the plaintiff is seeking the permission to place the additional documents namely copies of Income Tax Returns and passbooks of the plaintiff, his HUF, his wife, family members and M/s Jai Shree Rasayan Udyog Limited.

Submissions of the plaintiff

11. Learned counsel for the plaintiff urged at the time of the hearing that the plaintiff agreed to purchase the suit property bearing No.E-166, Ashok Vihar Phase-I, Delhi-110052 from the defendant for a total sale consideration of Rs.8,60,00,000/- vide agreement dated 16th March, 2010. The plaintiff paid earnest money of Rs.10,00,000/- to the defendant on 16th March, 2010 and the balance sale consideration of Rs.8,50,00,000/- was payable by 30th September, 2010. At the time of signing of the agreement, the plaintiff asked the defendant to supply the copies of the title documents to enable the plaintiff to obtain the loan from the bank. The plaintiff thereafter kept on demanding the copies of title documents. The plaintiff wrote a letter dated 01st July, 2010 to HDFC Bank to enquire about the formalities for obtaining the loan which was replied by the Bank on 5th July, 2010. The defendant did not supply the copies of title documents whereupon

the plaintiff wrote a letter dated 12th August, 2010 to the defendant to furnish documents within three days but the defendant did not furnish the said documents. The plaintiff instituted a suit for permanent injunction against the defendant before Civil Judge, Rohini which was later withdrawn and this suit for specific performance was instituted. It was submitted that the defendant, his family members and his company had sufficient funds available with them to pay the balance sale consideration and the plaintiff has filed I.A.12884/2018 for amendment of the plaint to incorporate the plea of availability of funds with the plaintiff, his family members and his company, M/s Jai Shree Rasayan Udyog Limited for which the plaintiff had full authority to enter into an agreement qua a real estate transaction.

Submissions of the defendant

12. Learned counsel for the defendant urged at the time of the hearing that there is no cause of action in favour of the plaintiff and, therefore, the suit is liable to be rejected. It was submitted that the balance sale consideration of Rs.8,50,00,000/- was never available with the plaintiff. It was further submitted that the defendant never agreed for the plaintiff to raise loan against the defendant's property and never agreed to furnish the title documents to the defendant and, there was no clause in the agreement to supply the said documents to the plaintiff for raising the loan. It was further submitted that the plaintiff has raised false claims before this Court in the amendment application. The plaintiff is attempting to set up a new contradictory cause of action of availability of funds whereas the reading of the entire plaint shows that the funds were never available with the plaintiff and he wanted to raise loan but could not do so due to non-availability of documents which were not supplied by the defendant. The sole cause of

action pleaded by the plaintiff in para 22 of the plaint is that the defendant defaulted in furnishing the copies of the title documents to the plaintiff who could not obtain the loan to make the payment of the balance sale consideration. During the course of hearing, learned counsel for the defendant submitted that though the defendant has lawfully forfeited the earnest money, the defendant without prejudice to his rights and contentions is willing to refund the earnest money of Rs.10,00,000/- to the plaintiff without interest, to settle the matter. However, the defendant refused to accept the refund of the earnest money.

Legal Position

Section 16(c) of the Specific Relief Act, 1963

13. In a suit for specific performance, the plaintiff has to prove a valid sale agreement; the breach of the contract by the defendant; and readiness and willingness of the plaintiff to perform his part of the contract.

14. Section 16(c) of the Specific Relief Act mandates “**readiness**” and “**willingness**” on the part of the plaintiff as a condition precedent to seek specific performance. Section 16 (c) is reproduced hereunder:-

“Section 16 - Personal bars to relief.-

Specific performance of a contract cannot be enforced in favour of a person-

xxx

xxx

xxx

(c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendants.

Explanation.- For the purposes of clause (c),-

(i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendants or to deposit in court any money except when so directed by the court;

(ii) the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction.”

(Emphasis Supplied)

15. The “**readiness**” and “**willingness**” are two separate issues. The former depends on the availability of requisite funds whereas the latter depends on the intention of the purchaser.

16. The “**readiness**” has to be shown by the purchaser by documents relating to the availability of the funds whereas the intention has to be inferred from his conduct and circumstances.

17. If there is no availability of funds with the purchaser, he can be non-suited on the ground of non-readiness alone.

18. If the plaintiff is able to prove the availability of the balance sale consideration with him at the time fixed for performance in the agreement, it is an indication of his readiness but his willingness/intention to perform cannot be inferred from readiness alone.

19. When the parties enter into an agreement relating to an immovable property, they amicably agree on the sale consideration, earnest money as well as the payment of the balance sale consideration. If both the parties are ready and willing, they usually complete the transaction within the stipulated time in the following manner:-

19.1. The purchaser makes arrangement for the balance sale consideration within the stipulated time.

- 19.2. If the purchaser has to take loan from a bank or other financial institution, the purchaser has to complete all the formalities and obtain the loan before the stipulated date.
- 19.3. The purchaser informs the seller about the arrangement having been made.
- 19.4. The purchaser drafts the sale deed and sends the draft sale deed to the seller for approval.
- 19.5. The seller approves the draft sale deed and returns it back to the purchaser.
- 19.6. The purchaser purchases the requisite stamp duty for the sale deed.
- 19.7. The purchaser prepares the sale deed on the requisite stamp papers.
- 19.8. Both the parties fix the date, time and place for payment of balance sale consideration, execution of sale deed, registration of the sale deed and handing over of the possession.
- 19.9. The parties complete the sale transaction on the agreed date, time and place.
- 19.10. In normal parlance, both the parties remain in touch either personally or through the property dealer.
20. The problem arises when one of the parties turns dishonest. However, the party in breach purports to be ready and willing and creates false evidence to that effect. At times, both the parties visit the office of Sub-Registrar on the last day of performance for obtaining a receipt of having attended the office of the Sub-Registrar to later on contend that they were ready and willing to perform and were waiting for other party. If the seller is

in breach, he creates false evidence of readiness to avoid specific performance by the purchaser and to illegally forfeit the earnest money. On the other hand, if the purchaser is in breach, he creates false evidence of readiness and willingness to file a case of specific performance.

21. It is the duty of the Court to find out which party has not performed and is trying to wriggle out of the contract.

22. The Court has to take into consideration the ordinary course of human conduct and common sense to draw necessary inference. Drawing presumptions is the backbone of the judicial process.

23. The silence or absence of correspondence by any party may be indicative of his dishonest intention. The dishonest intention of the seller can be inferred where the purchaser repeatedly contacts the seller for providing copies of the title documents or approval of the draft sale deed or fixing time for payment of balance sale consideration or execution/registration of the sale deed but the seller does not respond or avoids contact. On the other hand, the dishonest intention of the purchaser can be inferred where the purchaser does not contact the seller for approval of the sale deed and fixing date, time and place for payment of balance sale consideration and execution/registration of the sale deed and unilaterally visits the office of the Sub-Registrar to prepare a false ground that he was ready and willing to complete the sale. At times, the dishonest purchaser relies on an application for loan to the bank or financial institutions without completing the necessary formalities for taking the loan in order to create the false ground of readiness. By the time the suit is finally decreed, the purchaser would get the property at the price fixed in the agreement although the prices would have increased manifold. The Court has to minutely examine the

conduct of the parties in order to ascertain the truth. The purchaser would not be entitled to a decree merely because he had the sale consideration with him and had visited the office of the Sub-Registrar before the time fixed in the agreement.

24. Upon refusal of the seller to complete the sale in terms of the agreement, the purchaser is expected to issue a notice to place on record the refusal on the part of the seller to furnish copies of the documents or giving a response to the draft sale deed or fixing the schedule for execution and registration of sale deed. The purchaser can also notify the date and time for visiting the office of the Sub-Registrar along with the proof of the balance sale consideration to the seller. The purchaser is also expected to immediately file a suit for specific performance. Any delay in this regard may indicate his intention that he was not ready and willing and the Court may refuse to grant specific performance.

25. In a rising market, the purchaser makes a profit by the delay. He may tie down a seller by creating false excuses and use the money for buying some other property. If the purchaser is in a property trade, he may tie down several properties and then decide on which one he can make more profit on. These factors have to be taken into consideration by the Court for deciding the 'readiness' and 'willingness'.

26. Once a seller has entered into an agreement to sell an immovable property, he is looking for the sale consideration within the period stipulated in the agreement. If he does not get the money within the stipulated period, his plan to use the money for whatever purpose he has intended would get frustrated. He may have a plan to buy some other property or for some other purpose. Secondly, the delay in completion of sale also causes injustice to

the seller as the property prices keep on increasing in normal parlance. As such, more the delay, the seller may suffer loss due to rise in property price and greater is the profit which the purchaser would derive by tying down a property and not paying the sale consideration within the stipulated period.

27. In *N.P. Thirugnanam v. Dr. R. Jagan Mohan Rao*, (1995) 5 SCC 115, the Supreme Court held that the Court must take into consideration the conduct of the plaintiff prior and subsequent to the filing of the suit along with other attending circumstances to adjudge the “readiness” and “willingness” of the plaintiff. The amount of balance sale consideration must be proved to be available with the purchaser right from the date of execution till the date of decree. The Court upheld the dismissal of the suit for specific performance on various grounds inter alia that the plaintiff was dabbling in real estate business without means to purchase the suit property and the very contract was speculative in nature. The Court upheld the dismissal of the suit for specific performance on various grounds inter alia that the plaintiff was dabbling in real estate business without means to purchase the suit property and the very contract was speculative in nature. The relevant findings are reproduced hereunder:-

“5. ...Section 16(c) of the Act envisages that plaintiff must plead and prove that he had performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than those terms the performance of which has been prevented or waived by the defendant. The continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of specific performance. This circumstance is material and relevant and is required to be considered by the court while granting or refusing to grant the relief. If the plaintiff fails to either aver or prove the same, he must fail. To adjudge

whether the plaintiff is ready and willing to perform his part of the contract, the court must take into consideration the conduct of the plaintiff prior and subsequent to the filing of the suit alongwith other attending circumstances. The amount of consideration which he has to pay to the defendant must of necessity be proved to be available. Right from the date of the execution till date of the decree he must prove that he is ready and has always been willing to perform his part of the contract. As stated, the factum of his readiness and willingness to perform his part of the contract is to be adjudged with reference to the conduct of the party and the attending circumstances. The court may infer from the facts and circumstances whether the plaintiff was always ready and willing to perform his part of the contract.”

(Emphasis supplied)

28. In **J.P. Builders v. A. Ramadas Rao**, (2011) 1 SCC 429, the Supreme Court explained the distinction between “readiness” and “willingness”. The former refers to financial capacity and the latter to the conduct of the plaintiff wanting performance.

29. In **Kalawati v. Rakesh Kumar** (2018) 3 SCC 658, the purchaser asserted the readiness and willingness on the ground that he had taken loan from his cousin to pay the balance sale consideration. The Supreme Court rejected this plea on the ground that the purchaser had taken loan only for his business and not for paying the balance sale consideration and there was nothing to indicate that the purchaser had the capacity to repay the loan. The Supreme Court held that the purchaser was neither ready nor willing to perform his part of the agreement. The relevant portion of the judgment is as under:

“17. The law on the subject of specific performance of contracts is quite clear and it is not necessary to cite the dozens of judgments delivered

by this Court on the issue. However, it is necessary to refer to two decisions which are quite apposite to the facts of the case before us.

18. In **Acharya Swami Ganesh Dassji v. Sita Ram Thapar**, (1996) 4 SCC 526] this Court drew a distinction between readiness to perform the contract and willingness to perform the contract. It was observed that by readiness it may be meant the capacity of the plaintiff to perform the contract which would include the financial position to pay the purchase price. As far as the willingness to perform the contract is concerned, the conduct of the plaintiff has to be properly scrutinised along with the attendant circumstances. On the facts available, the Court may infer whether or not the plaintiff was always ready and willing to perform his part of the contract. It was held in para 2 of the Report: (SCC p. 528)

“2. There is a distinction between readiness to perform the contract and willingness to perform the contract. By readiness may be meant the capacity of the plaintiff to perform the contract which includes his financial position to pay the purchase price. For determining his willingness to perform his part of the contract, the conduct has to be properly scrutinised. There is no documentary proof that the plaintiff had ever funds to pay the balance of consideration. ... The factum of readiness and willingness to perform the plaintiff's part of the contract is to be adjudged with reference to the conduct of the party and the attending circumstances. The court may infer from the facts and circumstances whether the plaintiff was ready and was always ready and willing to perform his part of the contract. The facts of this case would amply demonstrate that the petitioner/plaintiff was not ready nor had the capacity to perform his part of the contract as he had no financial capacity to pay the consideration in cash as contracted and intended to bide for the time which disentitles him as time is of the essence of the contract.”

19. In **I.S. Sikandar v. K. Subramani**, (2013) 15 SCC 27 this Court noted that the plaintiff is required to prove that from the date of execution of the agreement of sale till the date of the decree, he was always ready and willing to perform his part of the contract. In this case, looking at the attendant facts and circumstances, the Court

upheld the view of the trial Judge that the plaintiff had no money to pay the balance sale consideration and was apparently not capable of making necessary arrangements for payment of the balance consideration. It was held in para 45 and para 47 of the Report: (SCC pp. 41-42)

“45. ... Further, the plaintiff is required to prove the fact that right from the date of execution of the agreement of sale till the date of passing the decree he must prove that he is ready and has always been willing to perform his part of the contract as per the agreement.

xxx

xxx

xxx

47. Further, there is nothing on record to show that the plaintiff could have made arrangement for payment of the balance consideration amount to them. But, on the other hand, the trial court has recorded the finding of fact to the effect that the correspondence between the parties and other circumstances would establish the fact that the plaintiff had no money for payment of balance sale consideration....”

20. Insofar as the present appeal is concerned, the material on record clearly indicates that Rakesh Kumar did not have the necessary funds available with him to pay the balance consideration. His low income and low bank balance indicated his incapacity to make the balance payment. As far as his capacity to arrange for funds is concerned, it has come on record that Rakesh Kumar did take a loan from his cousin but that was only for his business and not for paying the balance consideration for the land in dispute. There is nothing on record to indicate that Rakesh Kumar could have not only repaid the loan taken from his cousin, but additionally, could have arranged sufficient funds to pay the balance consideration. It is very doubtful, and it is easy and reasonable to infer this, that Rakesh Kumar was incapable of meeting both liabilities.

21. On the facts placed before us, we are satisfied that the trial Judge was right in coming to the conclusion that Rakesh Kumar was not in a position to pay the balance consideration to Kalawati and the other vendors, and by necessary implication, it must be held that he was neither ready nor willing to perform his part of the agreement.”

(Emphasis supplied)

30. In **Kamal Kumar v. Premrata Joshi**, 2019 SCC OnLine SC 12, the Supreme Court summarised the principles relating to specific performance contained in Sections 16(c) 20, 21, 22 and 23 of the Specific Relief Act read with Forms 47/48 of Appendix A to C of the Code of Civil Procedure as under:

“10. It is a settled principle of law that the grant of relief of specific performance is a discretionary and equitable relief. The material questions, which are required to be gone into for grant of the relief of specific performance, are First, whether there exists a valid and concluded contract between the parties for sale/purchase of the suit property; Second, whether the plaintiff has been ready and willing to perform his part of contract and whether he is still ready and willing to perform his part as mentioned in the contract; Third, whether the plaintiff has, in fact, performed his part of the contract and, if so, how and to what extent and in what manner he has performed and whether such performance was in conformity with the terms of the contract; Fourth, whether it will be equitable to grant the relief of specific performance to the plaintiff against the defendant in relation to suit property or it will cause any kind of hardship to the defendant and, if so, how and in what manner and the extent if such relief is eventually granted to the plaintiff; and lastly, whether the plaintiff is entitled for grant of any other alternative relief, namely, refund of earnest money etc. and, if so, on what grounds.

11. In our opinion, the aforementioned questions are part of the statutory requirements (See Sections 16 (c), 20, 21, 22, 23 of the Specific Relief Act, 1963 and the forms 47/48 of Appendix A to C of the Code of Civil Procedure). These requirements have to be properly pleaded by the parties in their respective pleadings and proved with the aid of evidence in accordance with law. It is only then the Court is entitled to exercise its discretion and accordingly grant or refuse the

relief of specific performance depending upon the case made out by the parties on facts.”

(Emphasis supplied)

31. In **Gonesh Ram v. Ganpat Rai** AIR 1924 Cal. 461, the agreement pleaded was not proved and plaintiff wanted to prove an antecedent agreement based on correspondence. It was held that in a suit for specific performance, the plaintiff cannot be permitted to abandon the case made out in the plaint and to invite the Court to examine whether a completed agreement may or may not be spelt out of the antecedent correspondence. In that connection, *Sir Asutosh Mookerjee* observed:

"The Court would not in a case of this description permit the plaintiffs to depart from the case made in the plaint as the Court discourages, as a rule, variance between pleading and proof. The test to be applied in such cases is whether if the variance were permitted in favour of the plaintiffs, defendants would be taken by surprise and be prejudiced therebyThis rule is applied with special strictness in cases of specific performance of contracts. In Hawkins vs. Maltby(1867) 3 Ch.A. 188, one contract was alleged and another was proved, with the result that the bill was dismissed. No doubt where there has been part performance, the Court may struggle with apparently conflicting evidence rather than dismiss the suit. This appears to have been the view adopted by Lord Cottenham in Mundy vs. Jolliffe, 5 Myl 8 C167: (1939) 9 LJ ch. 95. In the case before us there is no question of part performance".

(Emphasis supplied)

32. In **Niwas Builders v. Chanchalaben Gandhi**, 2003 (3) Mh.L.J. 312, the purchaser pleaded that a Vikas Sahakari Bank agreed to sanction a loan for Rs.10 lakh for purchase of the suit property but the seller did not co-operate with the purchaser. The Division Bench of Bombay High Court held

that the letter of the bank was not sufficient to infer the availability of finance for purchase of the suit property. The High Court held that the purchaser was not ready to perform his part of the contract and therefore, was not entitled to the specific performance. The relevant portion is as under:

“28. There is no material on record to show that the plaintiff had necessary funds to develop the suit property. What is produced on record is only a letter from the bank, wherein the bank had agreed to make available Rs. 10 lakh for purchase of the property. As a matter of fact, the plaintiff was to develop the property before its purchase. This letter of the bank was not sufficient to infer the availability of finance for development of the property by the plaintiff. This letter at the most only shows that the plaintiff had capacity to raise fund. It is true that it is not essential that the plaintiff should have money ready before the stipulated date of purchase of the immovable property, where the time is not the essence of the contract. It is also not necessary that to prove himself ready and willing to purchase, the vendor has to produce money or to vouch completed scheme finalising the transaction. But, at the same time if any evidence or scheme of finance is produced on record, then such evidence must inspire the confidence of the Court. It must stand to the judicial scrutiny. It was, therefore, necessary for the plaintiff to show that the scheme of finance was genuine and there was nothing to doubt the existence of the scheme to finance the project. It was, thus, obligatory on the part of the plaintiff to examine the representative or officer of the bank to show that actually loan was applied for and the loan application as considered by the board of director. All the terms of finance were settled between the parties.

29. With the aforesaid backdrop, let us now turn to the letter issued by the bank (Exh. 66) which is dated 31st April 1992. It does not bear any outward number. A judicial note can always be taken of the fact that any establishment or commercial organisation; such as banks do maintain inward and outward

registers to make entries of their daily dispatches made and received. Absence of outward number on the letter is one of the fact, which is prima facie sufficient to create doubt that the letter was not issued in the regular course of banking business. Perusal of the aforesaid letter of the bank further shows that no date of the request for loan is to be found in the said letter. The letter further mentions that the amount of Rs. 10 lakh would be advance, subject to the condition, which the plaintiff had agreed, that the property shall be in the name of the bank provisionally. One fails to understand this particular condition put by the bank. No bank would put such a condition while making finance to its customer for purchase of the property. The bank cannot have the title of the property in its own name; that too provisionally. At the most, bank can claim possession of the title-deeds so as to create equitable mortgage or could insist upon a registered mortgage, so as to claim charge over the property by way of security but not the title of the property. All these circumstances, if viewed in the light of the fact that one of the partners of the plaintiff-firm was a Chairman of the bank at the relevant time. The letter issued by the bank appears to have been issued to oblige the Chairman of the bank, a partner of the plaintiff-firm."

(Emphasis Supplied)

33. In **Sri Punny Akat Philip Raju v. Sri Dinesh Reddy**, ILR 2016 Kar 2252, the Division Bench of Karnataka High Court held that mere stepping into the witness box and saying on oath that he is ready with the balance sale consideration or that he is going to borrow money from any financial institution or that he has got sufficient funds in his Bank accounts or that he has kept money in fixed deposit, without the oral evidence being supported by documentary evidence will not prove the plaintiff's readiness to pay the balance sale consideration. If he intends to borrow money from a nationalised bank or from his employer or from any other financial institution, it has to be demonstrated by producing a request for such

financial assistance in writing and sanctioning of the said loan which has to be necessarily in writing. The relevant portion is as under:

“33. Money does not exist in vacuum. Money has to be necessarily in the form of physical object. It is in the nature of document. Money is deposited in banks. Money is in the nature of securities. Money is capable of being raised from borrowing. Money could be raised by sale of properties movable or immovable. When a person claims that he is possessed of sufficient funds, he has to produce some documentary evidence, which proves his capacity to raise the funds or he possess the funds. What are the documents which, the plaintiff can produce to prove his capacity? It may be a passbook issued by a Bank where he has kept the balance sale consideration ready for payment. If he has invested his money by way of securities, he has to produce those securities before Court to show that any time he can encash the same and pay the balance consideration. Similarly, if he has kept the money in Fixed Deposit, in a Bank, that deposit receipt is the proof of his ability to raise the balance sale consideration. If he intends to borrow money from a Nationalized Bank or from his employer or from any other financial institution, it has to be demonstrated by producing a request for such financial assistance in writing, sanctioning of the said loan which has to be necessarily in writing. These instances are only illustrative. There may be several other modes by which the requisite funds are raised. But all of these instances are evidenced by documentary evidence.

34. Therefore, mere stepping into the witness box and saying on oath that he is ready with the balance sale consideration or that he is going to borrow money from any financial institution or that he has got sufficient funds in his Bank accounts or that he has kept money in Fixed Deposit, without that oral evidence being supported by documentary evidence will not prove the plaintiff's readiness to pay the balance sale consideration. It is immaterial whether such oral evidence is challenged in cross-examination or not. The plaintiff has to prove to the satisfaction of the Court that he possessed the requisite funds.

He has to produce such documentary evidence, which would enable the Court to come to the conclusion that plaintiff is ready with the requisite balance sale consideration to complete the sale transaction. If no evidence is adduced in this regard by way of documentary evidence, no prudent man would come to the conclusion that the person has proved the possession of funds. In the absence of any such documentary evidence being produced, it is a case of plaintiff's case being not proved. Plaintiff cannot expect the Court to pass a decree for specific performance of a contract of sale when the plaintiff has not proved his readiness to perform his part of the contract.

35. Therefore, in a case arising under Section 16(c) of the Specific Relief Act, the obligation is cast on the plaintiff to prove that he was ready with the balance sale consideration. When the statute requires the plaintiff must plead and prove his readiness and willingness to perform his part of the contract and that readiness refers to the possession of the requisite funds, there is an obligation cast on that person, who has to prove the possession of funds to produce documents to show possession of funds by him. Though he is not expected to tender or deposit the cash before the Court, he has to produce such evidence to prove his financial capability. Only on production of such documentary evidence, on verification and appreciation of those documents, Court could come to the conclusion that the plea of readiness is proved. Mere assertion on oath that he is ready with the balance sale consideration, even if it is not challenged in the cross-examination; is not the proof of the plaintiff's readiness with the balance sale consideration. He should produce such evidence to show either he possess the requisite funds or he is capable of raising such funds within the time stipulated. If such evidence is not forthcoming it is a case of, the plaintiff's case being not proved."

(Emphasis supplied)

34. In **Ganuga Ranganath v. Hotel Garudadri (Private) Ltd.**, MANU/AP/0999/2017, the purchaser relied upon three loan offer letters

from two banks and a finance company to show the readiness of the sale consideration. It was also pleaded that the purchaser also had the sale consideration amount in his house at the relevant time. The Andhra Pradesh High Court held that the purchaser had not completed the formalities for availing the loan. The High Court also rejected the plea that the purchaser had the amount available with him in his house on the ground that if the amount was available with him there was no necessity for the purchaser to apply for the loan. The Court held that the purchaser was neither ready nor willing to perform his obligations under the agreement.

35. In *Shubh Laxmi Grih Nirman Sahakari Sanstha v. Suresh*, MANU/MP/0141/2018, the Madhya Pradesh High Court held that the purchaser has to show “readiness” and “willingness” and has to conform to the requirements prescribed in Form 47 and 48 of the First Schedule of the Code of Civil Procedure. The Court further held that in the absence of categorical averment that the plaintiff has performed and is always ready and willing to perform essential terms of the contract, suit for specific performance is liable to be dismissed and a decree cannot be granted keeping in view the statutory provisions as contained in Section 16(c) of the Specific Relief Act, 1963 read with Appendix A Form 17 of the Code of Civil Procedure, 1908. Relevant portion of the said judgment is as under:-

“17. This Court has carefully gone through the entire record of the case and has also given a patient hearing to all the parties. The plaint before this Court reveals that with respect to readiness and willingness to perform contract / agreement by the appellant, Sec. 16(1)(c) of the Specific Relief Act, 1963 read with Form 47 is very material in the peculiar facts and circumstances of the case. In a suit for specific performance of contract the plaintiff has to plead and prove readiness and

willingness who is seeking performance of the contract against the defendant and in case readiness and willingness of fact is not pleaded in the plaint then no evidence can be adduced in support of such pleadings nor any findings can be recorded by the trial Court for want of pleadings, meaning thereby, if there are no pleadings, no evidence can be adduced or can be looked into to prove the case.

18. The apex Court in the case of **Abdul Khader Rowthwe Vs. P. K. Sarabai**, (1989) 4 SCC 313, in paragraph 10 and 12 has held as under :

10. As regards the second contention, namely, the question of specific performance, the High Court says- Even by putting a liberal construction on the various statements contained in the plaint, it is difficult to hold that there has been even a faint attempt to make it to conform to the requirements prescribed in Forms 47 and 48 of the First Schedule in the Civil Procedure Code, that the plaintiff had applied to the defendants specifically to perform the agreement and that he had been and is still ready and willing to specifically perform his part of the agreement....

12. In **Ouseph Varghese v. Joseph Aley and Ors.** MANU/SC/0493/1969MANU/SC/0493/1969:[1970]1SCR 921 , this Court stated-

This takes us to the decree passed by the High Court in respect of plaint item No. 1. This decree is purported to have been passed on the basis of the admission made by the defendant. It may be noted that the agreement pleaded by the defendant is wholly different from that pleaded by the plaintiff. They do not refer to the same transaction. The plaintiff did not at any stage accept the agreement pleaded by the defendant as true. The agreement pleaded by the plaintiff is said to have been entered into at the time of the execution of Exh. P-1 whereas the agreement put forward by the defendant is one that is said to have been arrived at just before the filing of the suit. The two are totally different agreements. The plaintiff did not plead either in the plaint or at any subsequent stage that

he was ready and willing to perform the agreement pleaded in the written statement of defendant. A suit for specific performance has to conform to the requirements prescribed in Forms 47 and 48 of the 1st Schedule in the Civil Procedure Code. In a suit for specific performance it is incumbent on the plaintiff not only to set out agreement on the basis of which he sues in all its details, he must go further and plead that he has applied to the defendant specifically to perform the agreement pleaded by him but the defendant has not done so. He must further plead that he has been and is still ready and willing to specifically perform his part of the agreement. Neither in the plaint nor at any subsequent stage of the suit the plaintiff has taken those pleas. As observed by this Court *Pt. Prem Rai v. The D.L.F. Housing and Construction (Private) (Ltd.) and Anr.* [Civil Appeal No. 37/66, decided on 4.4.1968.] that it is well settled that in a suit for specific performance the plaintiff should allege that he is ready and willing to perform his part of the contract and in the absence of such an allegation the suit is not maintainable.

19. Hon'ble the apex Court has taken a similar view in the case of **H.P. Pyarejan Vs. Dasappa (dead) by L.Rs., and others** reported in MANU/SC/0951/2006 : (2006) 2 SCC 496. The apex Court in paragraphs 8 to 14 has held as under:

xxx

xxx

xxx

...In **Ardeshir H. Mama v. Flora Sassoon** (AIR 1928 PC208), the Privy Council observed that where the injured party sued at law for a breach, going to the root of the contract, he thereby elected to treat the contract as at an end himself and as discharged from the obligations. No further performance by him was either contemplated or had to be tendered. In a suit for specific performance on the other hand, he treated and was required by the Court to treat the contract as still subsisting. He had in that suit to allege, and if the fact was traversed, he was required to prove a continuous readiness and willingness from the date of the contract to the time of the hearing, to perform the contract on his part. Failure to make good that

averment brings with it and leads to the inevitable dismissal of the suit. The observations were cited with approval in Prem Raj v. The D.L.F. Housing and Construction (Private) Ltd. and Anr. (AIR 1968 SC 1355).

The requirements to be fulfilled for bringing in compliance of the Section 16(c) of the Act have been delineated by this Court in several judgments. While examining the requirement of Section 16(c), this Court in **Syed Dastagir v. T.R. Gopalakrishna Settty** (1999 (6) SCC 337) noted as follows:

"So the whole gamut of the issue raised is, how to construe a plea specially with reference to Section 16(c) and what are the obligations which the plaintiff has to comply with in reference to his plea and whether the plea of the plaintiff could not be construed to conform to the requirement of the aforesaid section, or does this section require specific words to be pleaded that he has performed or has always been ready and is willing to perform his part of the contract. In construing a plea in any pleading, courts must keep in mind that a plea is not an expression of art and science but an expression through words to place fact and law of one's case for a relief. Such an expression may be pointed, precise, sometimes vague but still it could be gathered what he wants to convey through only by reading the whole pleading, depending on the person drafting a plea. In India most of the pleas are drafted by counsel hence the aforesaid difference of pleas which inevitably differ from one to the other. Thus, to gather true spirit behind a plea it should be read as a whole. This does not distract one from performing his obligations as required under a statute. But to test whether he has performed his obligations, one has to see the pith and substance of a plea. Where a statute requires any fact to be pleaded then that has to be pleaded may be in any form. The same plea may be stated by different persons through different words; then how could it be constricted to be only in any particular nomenclature or word. Unless a statute

specifically requires a plea to be in any particular form, it can be in any form. No specific phraseology or language is required to take such a plea. The language in Section 16(c) does not require any specific phraseology but only that the plaintiff must aver that he has performed or has always been and is willing to perform his part of the contract. So the compliance of "readiness and willingness" has to be in spirit and substance and not in letter and form. So to insist for a mechanical production of the exact words of a statute is to insist for the form rather than the essence. So the absence of form cannot dissolve an essence if already pleaded."

Again in **Motilal Jain v. Ramdasi Devi** (2000 (6) SCC 420) it was noted as follows: "7. The other contention which found favour with the High Court, is that plaint averments do not show that the plaintiff was ready and willing to perform his part of the contract and at any rate there is no evidence on record to prove it. Mr. Choudhary developed that contention placing reliance on the decision in Varghese case ((1969) 2 SCC 539). In that case, the plaintiff pleaded an oral contract for sale of the suit property. The defendant denied the alleged oral agreement and pleaded a different agreement in regard to which the plaintiff neither amended his plaint nor filed subsequent pleading and it was in that context that this Court pointed out that the pleading in specific performance should conform to Forms 47 and 48 of the First Schedule of the Code of Civil Procedure. That view was followed in **Abdul Khader** case (1989) 4 SCC 313.

xxx

xxx

xxx

9. That decision was relied upon by a three- Judge Bench of this Court in **Syed Dastagir** case ((1999) 6 SCC 337) wherein it was held that in construing a plea in any pleading, courts must keep in mind that a plea is not an expression of art and science but an expression through words to place fact and law of one's case for a relief. It is pointed out that in India most of the pleas are drafted by counsel and hence they inevitably differ from one to the other; thus, to gather the true spirit

behind a plea it should be read as a whole and to test whether the plaintiff has performed his obligations, one has to see the pith and substance of the plea. It was observed : "Unless a statute specifically requires a plea to be in any particular form, it can be in any form. No specific phraseology or language is required to take such a plea. The language in Section 16(c) of the Specific Relief Act, 1963 does not require any specific phraseology but only that the plaintiff must aver that he has performed or has always been and is willing to perform his part of the contract. So the compliance of 'readiness and willingness' has to be in spirit and substance and not in letter and form."

It is thus clear that an averment of readiness and willingness in the plaint is not a mathematical formula which should only be in specific words. If the averments in the plaint as a whole do clearly indicate the readiness and willingness of the plaintiff to fulfil his part of the obligations under the contract which is the subject-matter of the suit, the fact that they are differently worded will not militate against the readiness and willingness of the plaintiff in a suit for specific performance of contract for sale." Lord Campbell in Cork v. Ambergate etc. and Railway Co. (1851) 117 ER 1229 observed that in common sense the meaning of such an averment of readiness and willingness must be that the non-completion of the contract was not the fault of the plaintiffs, and that they were disposed and able to complete it had it not been renounced by the defendant.

The basic principle behind Section 16(c) read with Explanation (ii) is that any person seeking benefit of the specific performance of contract must manifest that his conduct has been blemishless throughout entitling him to the specific relief. The provision imposes a personal bar. The Court is to grant relief on the basis of the conduct of the person seeking relief. If the pleadings manifest that the conduct of the plaintiff entitles him to get the relief on perusal of the plaint he should not be denied the relief. Section 16(c) of the Act mandates the plaintiff to aver in the plaint and establish as the fact by evidence aliunde that he has always

been ready and willing to perform his part of the contract. The principles were recently elaborated in **Aniglase Yohannan v. Ramlatha and Ors.** (2005 (7) SCC 534).

20. The Apex Court keeping in view the provisions of the Code of Civil Procedure, 1908 and the provisions of Specific Relief Act, has held that it is mandatory for the plaintiff to make an averment in the plaint and to establish as a fact by evidence that the plaintiff was always ready and willing to perform his part of the contract.

21. Hon'ble apex Court in the case of *Man Kaur (dead) by Lrs., v. Hartar Singh Sangha* reported in (2010) 10 SCC 512, in paragraph 12 has held as under :

12. Section 16(c) of the Specific Relief Act 1963 ('Act' for short) bars the specific performance of a contract in favour of a plaintiff who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him (other than terms of the performance of which has been prevented or waived by the defendant). Explanation (ii) to section 16 provides that for purposes of clause (c) of section 16, the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction. Thus in a suit for specific performance, the plaintiff should not only plead and prove the terms of the agreement, but should also plead and prove his readiness and willingness to perform his obligations under the contract in terms of the contract. (See : **N.P. Thirugnanam to R. Jagan Mohan Rao** - AIR 1996 SC 116; **Pushparani S.Sundaram v.Pauline Manomani James** - 2002 (9) SCC 582; and **Manjunath Anandappa v. Tammanasa** - 2003 (10) SCC 390)

22. The Hon'ble Supreme Court has held in the aforesaid case that the plaintiff should not only plead and prove the terms of agreement but also plead and prove the factum of readiness and willingness to perform his obligation under the contract in terms of the contract keeping in view the statutory provisions as contained under the Specific Relief Act, 1963.

23. *Hon'ble Supreme Court of India in the case of J. Samuel v. Gattu Mahesh and others reported in (2012) 2 SCC 300, in paragraph 14 has held as under :*

14..... It is clear that in a suit for specific performance of a contract, unless there is a specific averment that he has performed or has always been ready and willing to perform the essential terms of the contract, the suit filed by him is liable to be dismissed. In other words, in the absence of the above said claim that he is always ready and willing to perform his part of the contract, the decree for specific performance cannot be granted by the Court.

24. *Hon'ble Supreme Court of India in the aforesaid case has held that in absence of categoric averment that the plaintiff has performed and is always ready and willing to perform essential terms of the contract, suit for specific performance is liable to be dismissed and a decree cannot be granted keeping in view the statutory provisions as contained u/S. 16(c) of the Specific Relief Act, 1963 read with Appendix A Form 17, of the Code of Civil Procedure, 1908.*

25. *This Court is of the considered opinion that after going through the plaint, this Court has not been able to notice such averment much less proper averments in respect of readiness and willingness of the plaintiff in relation to the contract in question. It was certainly obligatory upon the plaintiff to have pleaded that he was throughout ready and willing to perform his part of the contract and, therefore, in absence of the aforesaid material pleadings, the trial Court was justified in dismissing the suit, as basic requirement of pleadings, as provided u/S. 16(1)(c) of the Specific Relief Act, 1963 read with Form 17 Appendix A of the Code of Civil Procedure, 1908 was not fulfilled.*

26. *The another issue which deserves consideration is that the suit for specific performance of the contract was filed in the year 1996. The agreement to sell is dated 12/11/93. The respondent No.2 has disputed the agreement in March, 1994. Nothing prevented the appellant - plaintiff to approach the trial Court in time. However, for the reasons best known to the plaintiff, the suit was filed only in March, 1996. It is also*

noteworthy to mention that the appellant had never addressed any notice either to respondent No.1 or to respondent No.2 to perform agreement dated 12/11/1993. Conduct of the plaintiff establishes that he was never ready and willing to get the agreement executed. There are no averments with regard to readiness and willingness in clear and unequivocal terms.

27. The apex Court has considered filing of such belated suits in respect of specific performance. Hon'ble Supreme Court of India in the case of **Vimaleshwar Nagappa Shet v. Noor Ahmad Shariff** reported in (AIR 2011 SC 2057), in paragraph 9 has held as under:

9) It is settled law that Section 20 of the Specific Relief Act, 1963 confers discretionary powers. [vide: M. Meenakshi & Ors. vs. Metadin Agarwal (2006) 7 SCC 470, Nirmala Anand vs. Advent Corporation (P) Ltd. & Ors. (2002) 5 SCC 481, Parakunnan Veetill Joseph's Son Mathrew vs. Nedumbara Karuvila's Son & Ors. (1987) Supp. SCC 340].

It is also well settled that the value of property escalates in urban areas very fast and it would not be equitable to grant specific performance after a lapse of long period of time.

28. Even our own High Court in the case of **Mohini Vs. Vidhyawati Rathore** reported in [2004 (2) MPLJ 169] in paragraphs 14 to 16 has held as under :

14. It may be noted that in December, 1987 Nanku Ram died and according to the plaintiff, he insisted the deceased to execute the sale-deed which was avoided by him. The suit was filed on 10-3-1989 meaning thereby after near about one year and three months of the date of the death of the deceased. According to the plaintiff, deceased avoided to execute the sale-deed, in other words impliedly he denied to execute the sale-deed, but the suit was not filed and the plaintiffs waited for a year and three months. In a suit for specific performance of contract, delay plays a vital role and in order to infer the readiness and willingness of plaintiff, the delay of a great extent, in the present case, would be a relevant factor to refuse the exercise of the discretion in favour of plaintiff. Under Section 20 of the

Specific Relief Act, the discretion has been vested in the Court to allow or disallow a decree of specific performance of contract and the Court is not bound to grant the relief of specific performance merely because it is lawful to do so. Though there is a rider put by the statute on the Court that the discretion should not be exercised arbitrarily.....

15. On testing the above said law on the anvil of present factual scenario as there is a great delay in filing the suit, this has put a deep dent on plaintiff's conduct in respect to his readiness and willingness.

16. As discussed hereinabove, plaintiff Krishna Kumar insisted deceased Nanku Ram when he was alive to execute the sale deed and he avoided then why notices were sent after the expiry of one year and two months. This would be an additional factor not to exercise the discretion in favour of plaintiff and equity also so demands. The Supreme Court in the case of S. Rangaraju Naidu v. S. Thiruvarakkarasu, 1995 Supp (2) SCC 680, has laid down that relief of specific performance is discretionary one. It is thus clear that the relief is equitable one and when the plaintiff did not bother to issue notices immediately after when Nanku avoided to execute the sale deed and they were sent soon before filing of the suit, would go to show that just to bring the suit in the clutches of readiness and willingness two notices were sent and immediately the suit was filed on 10-3-1989. A civil suit has to be decided not only on the basis of the evidence and its impact with technicality, but, also by applying the principles of "probabilities and preponderance".

29. Hon'ble the apex Court in the case of **K.S. Vidyadnam v. Vairavan** reported in (AIR 1997 SC 1751), in paragraphs 13 and 15 has held as under:

13. In the case before us, it is not mere delay. It is a case of total inaction on the part of the plaintiff for 2 1/2 years in clear violation of the term of agreement which required him to pay the balance, purchase the stamp papers and then ask for execution of sale deed within six months. Further, the delay is coupled with substantial rise in prices - according to the defendants, three times - between the date of

agreement and the date of suit notice. The delay has brought about a situation where it would be inequitable to give the relief of specific performance to the plaintiff.”

Section 20 of the Specific Relief Act, 1963

36. Section 20 of the Specific Relief Act, 1963 provides that the jurisdiction to decree of specific performance is discretionary and the Court is not bound to grant such relief merely because it is lawful to do so. Section 20 is reproduced hereunder:-

“Section 20 - Discretion as to decreeing specific performance.-

(1) The jurisdiction to decree specific performance is discretionary, and the court is not bound to grant such 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 and capable of correction by a court of appeal.

(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 void able, gives the plaintiff an unfair advantage over the defendants; or

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

(c) Where the defendants entered into the contract under circumstances, which though not rendering the contract void able, makes it inequitable to enforce specific performance.

(3) The court may properly exercise discretion to decree specific performance in any case where the plaintiff has

done substantial acts or suffered losses in consequence of a contract capable of specific performance.

(4) The court shall not refuse to any party specific performance of a contract merely on the ground that the contract is not enforceable at the instance of the party.”

37. The specific performance is an equitable relief. Section 20 of the Specific Relief Act, 1963 preserves judicial discretion. The Court is not bound to grant specific relief merely because it is lawful to do so. The relief sought under Section 20 is not automatic as the Court is required to see the totality of the circumstances which are to be assessed by the Court in the light of facts and circumstances of each case.

38. The specific performance is usually granted where substantial sale consideration has been paid and the possession of the property has been delivered to the purchaser.

39. In the event of any delay/inaction on the part of the purchaser, it would be inequitable to give the relief of specific performance to the purchaser. The rationale behind refusal of the Court to grant the specific performance where long time has elapsed is that the prices of the property may have increased many times with the passage of time and it would be injustice to a person who has not received the sale consideration within the time stipulated in the agreement.

40. If under the terms of the contract, the plaintiff gets an unfair advantage over the defendant, the Court may not exercise its discretion in favour of the plaintiff. Specific relief may not be granted if the defendant would be put to undue hardship which he did not foresee at the time of agreement. If it is inequitable to grant specific relief, then also the Court would desist from granting a decree to the plaintiff.

41. If the sale consideration fixed under the agreement is given to the seller years after the agreement, great prejudice may be caused to the seller who may have intended to purchase another property with the sale consideration.

42. While a purchaser cannot be made to suffer because of Court delays, one cannot lose sight of the fact that he retained the sale consideration with him and the seller could not use the money when he wanted. The Court also has to consider that whereas the value of the property may have risen manifold with the passage of time, the value of the sale consideration would have reduced due to inflation. These factors have to be taken into consideration by the Court.

43. The party who seeks specific performance being an equitable relief, must come to the Court with clean hands. In other words, the party who makes false allegations and/or does not come with clean hands is not entitled to the equitable relief.

44. While exercising the discretion, the Court would take into consideration the circumstances of the case, the conduct of parties and the motive behind the litigation.

45. In ***K.S. Vidyanadam v. Vairavan***, (1997) 3 SCC 1, the Supreme Court held that in case of delay/inaction on the part of the plaintiff for two and a half years, it would be inequitable to give a relief of specific performance to the plaintiff. The finding of the Supreme Court is reproduced hereunder:

“13. In the case before us, it is not mere delay. It is a case of total inaction on the part of the plaintiff for 2½ years in clear violation of the terms of agreement which required him to pay the balance, purchase the stamp papers

*and then ask for execution of sale deed within six months. Further, the delay is coupled with substantial rise in prices – according to the defendantss, three times – between the date of agreement and the date of suit notice. **The delay has brought about a situation where it would be inequitable to give the relief of specific performance to the plaintiff.***”

(Emphasis supplied)

46. In *Saradamani Kandappan v. S. Rajalakshmi*, (2011) 12 SCC 18, the Supreme Court declined to grant the discretionary relief of specific performance to the purchaser who had made payment of nominal advance to the seller. The finding of the Supreme Court is reproduced hereunder:-

“25. The reality arising from this economic change cannot continue to be ignored in deciding cases relating to specific performance. The steep increase in prices is a circumstance which makes it inequitable to grant the relief of specific performance where the purchaser does not take steps to complete the sale within the agreed period, and the vendor has not been responsible for any delay or non-performance. A purchaser can no longer take shelter under the principle that time is not of essence in performance of contracts relating to immovable property, to cover his delays, laches, breaches and ‘non-readiness’. The precedents from an era, when high inflation was unknown, holding that time is not of the essence of the contract in regard to immovable properties, may no longer apply, not because the principle laid down therein is unsound or erroneous, but the circumstances that existed when the said principle was evolved, no longer exist. In these days of galloping increases in prices of immovable properties, to hold that a vendor who took an earnest money of say about 10% of the sale price and agreed for three months or four months as the period for performance, did not intend that time should be the essence, will be a cruel joke on him, and will result in injustice. Adding to the misery is the delay in disposal of

cases relating to specific performance, as suits and appeals therefrom routinely take two to three decades to attain finality. As a result, an owner agreeing to sell a property for Rs. One lakh and received Rs. Ten Thousand as advance may be required to execute a sale deed a quarter century later by receiving the remaining Rs. Ninety Thousand, when the property value has risen to a crore of rupees.

xxx

xxx

xxx

36....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.

37. The reality arising from this economic change cannot continue to be ignored in deciding cases relating to specific performance. The steep increase in prices is a circumstance which makes it inequitable to grant the relief of specific performance where the purchaser does not take steps to complete the sale within the agreed period, and the vendor has not been responsible for any delay or non-performance. A purchaser can no longer take shelter under the principle that time is not of essence in performance of contracts relating to immovable property, to cover his delays, laches, breaches and 'non-readiness'. The precedents from an era, when high inflation was unknown, holding that time is not of the essence of the contract in regard to immovable properties, may no longer apply, not because the principle laid down therein is unsound or erroneous, but the circumstances that existed when the said principle was evolved, no longer exist. In these days of galloping increases in prices of immovable properties, to

hold that a vendor who took an earnest money of say about 10% of the sale price and agreed for three months or four months as the period for performance, did not intend that time should be the essence, will be a cruel joke on him, and will result in injustice. Adding to the misery is the delay in disposal of cases relating to specific performance, as suits and appeals therefrom routinely take two to three decades to attain finality. As a result, an owner agreeing to sell a property for rupees one lakh and received rupees ten thousand as advance may be required to execute a sale deed a quarter century later by receiving the remaining rupees ninety thousand, when the property value has risen to a crore of rupees.

xxx

xxx

xxx

43. *Till the issue is considered in an appropriate case, we can only reiterate what has been suggested in K.S. Vidyanadam [(1997) 3 SCC 1]:*

(i) *The 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) *The 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. The 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 that 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 the 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.”*

(Emphasis supplied)

47. In **B. Vijaya Bharathi v. P. Savitri**, 2017 (4) Civil Court Cases 291 (S.C.), the Supreme Court declined the specific performance to the purchaser who stayed quiet for one year and eleven months after the repudiation of the agreement by the seller. The Supreme Court held that no prudent person would stay quiet for such a long period if he was interested in completing the sale. The Supreme Court drew the inference from the plaintiff's conduct that he cannot possibly be said to be ready and willing to perform the agreement. The relevant portion of the Supreme Court judgment is reproduced hereunder:

“12. One crucial fact that stares us in the face is that on 13.03.1992 the first defendant ran away from the Registering Authority making it clear that she did not want to act in furtherance of the Agreement in executing a General Power of Attorney in favour of the plaintiff's husband. The High Court was right in stating that no prudent person would stay quiet for a period of one year and eleven months after such an unequivocal repudiation of the agreement if they were really interested in going ahead with the sale transaction. The only inference, therefore, from this is that the plaintiff cannot possibly be said to be ready and willing throughout to perform their part of the agreement.”

48. In **Parakunnan Veetill Joseph's Son Mathew v. Nedumbara Kuruvila's Son**, 1987 Supp SCC 340, the Supreme Court held that the motive behind the litigation should also enter into the judicial verdict. The Court should take care to see that it is not used as an instrument of oppression to have an unfair advantage to the plaintiff.

49. In **Lourdu Mari David v. Louis Chinnaya Arogiaswamy**, (1996) 5

SCC 589, the Supreme Court held that the party seeking equitable jurisdiction and specific performance being equitable relief, must come to the Court with clean hands. In other words the party, who makes false allegations and/or does not come with clean hands is not entitled to the equitable relief.

50. In *K. Narendra v. Riviera Apartments (P) Ltd.*, (1999) 5 SCC 77, the Supreme Court held that the performance of the contract involving some hardship on the defendant which he did not foresee while non-performance involving no such hardship on the plaintiff, is one of the circumstances in which the Court may properly exercise discretion not to decree specific performance. However, mere inadequacy of consideration or the mere fact that the contract is onerous to the defendant or improvident in its nature, shall not constitute an unfair advantage to the plaintiff over the defendant or unforeseeable hardship on the defendant.

51. In *A.C. Arulappan v. Ahalya Naik (smt)*, (2001) 6 SCC 600, the Supreme Court held that if under the terms of the contract the plaintiff gets an unfair advantage over the defendant, the Court may not exercise its discretion in favour of the plaintiff. Also, specific relief may not be granted if the defendant would be put to undue hardship which he did not foresee at the time of agreement. If it is inequitable to grant specific relief, then also the Court would desist from granting a decree to the plaintiff.

52. In *Bal Krishna v. Bhagwan Das*, (2008) 12 SCC 145, the Supreme Court held that while exercising the discretion, the Court would take into consideration the circumstances of the case, the conduct of parties, and their respective interests under the contract. No specific performance of a contract, though it is not vitiated by fraud or misrepresentation, can be

granted if it would give an unfair advantage to the plaintiff and where the performance of the contract would involve some hardship on the defendant, which he did not foresee.

53. In ***G. Jayashree v. Bhagwandas S. Patel***, (2009) 3 SCC 141, the Supreme Court held that the plaintiff is expected to approach the Court with clean hands. His conduct plays an important role in the matter of exercise of discretionary jurisdiction by a Court of law. The Courts ordinarily would not grant any relief in favour of the person who approaches the Court with a pair of dirty hands.

54. In ***Krishna Sweet House v. Gurbhej Singh***, MANU/DE/2851/2012, this Court held that in certain cases where substantial consideration i.e. at least 50% of the consideration is paid, or possession of the property is delivered under the agreement to sell in addition to paying advance price, the proposed buyer is vigilant for his rights and he files the suit soon after entering into the agreement to sell, then in accordance with totality of facts and circumstances, Courts may decree specific performance.

55. In ***Laxmi Devi v. Mahavir Singh***, MANU/DE/1930/2012, this Court held that unless substantial consideration is paid out of the total amount of sale consideration, the Courts would lean against granting the specific performance inasmuch as by the loss of time, the balance sale consideration which is granted at a much later date, is not sufficient to enable the proposed seller to buy an equivalent property which could have been bought from the balance sale consideration if the same was paid on the due date.

56. In ***Jinesh Kumar Jain v. Iris Paintal***, MANU/DE/3387/2012, this Court held that the plaintiff is entitled to a decree of specific performance where the plaintiff has done substantial acts in consequence of a

contract/agreement to sell. Substantial acts obviously would mean and include payment of substantial amounts of money. The plaintiff may have paid 50% or more of the consideration or having paid a lesser consideration he could be in possession pursuant to the agreement to sell or otherwise is in the possession of the subject property or other substantial acts have been performed by the plaintiff, and acts which can be said to be substantial acts under Section 20(3) of Specific Relief Act. However, where the acts are not substantial i.e. merely 5% or 10% etc. of the consideration is paid i.e. less than substantial consideration is paid, (and for which a rough benchmark can be taken as 50% of the consideration), and/or plaintiff is not in possession of the subject land, the plaintiff is not entitled to the discretionary relief of specific performance.

57. In ***Sushil Jain v. Meharban Singh***, 2012 (131) DRJ 421, this Court held that the plaintiff cannot be held entitled to the discretionary relief of specific performance inter alia for the reasons that not only the prices would have gone up about 20 to 30 times during this period but also that the plaintiff has taken benefit of the balance of about 87% of the consideration which he would have wisely invested in any other assets including in an immovable property.

58. In ***Gulshan Kumar v. Sat Narain Tulsian***, 206 (2014) DLT 443, this Court following ***K.S. Vidyanadam*** (supra) and ***Saradamani Kandappan*** (supra) held that the Courts will frown upon suits which are not filed immediately after breach/refusal and the fact that limitation is three years does not mean that a purchaser can wait for one or two years to file a suit and obtain specific performance. It was further held that the three year period is provided to assist the purchasers in special cases, as where major

part of the consideration has been paid and possession delivered in part performance. The relevant portion of the judgment is as under:-

“30. The relief of specific performance is undoubtedly a discretionary one. The facts of the present case are such which also require the discretion to be not exercised in favour of the appellants/plaintiffs. The agreement pleaded by the appellants/plaintiffs is of 13th April, 1978 with a date of completion thereof within six months i.e. by 12th October, 1978. The first missive as aforesaid from the appellants/plaintiffs is dated 29th January, 1980 i.e. after nearly one year and three months of the date stipulated for completion. The Supreme Court in K.S. Vidyanadam v. Vairavan, (1997) 3 SCC 1 reiterated in Sardamani Kandappan v. S. Rajalakshmi, (2011) 12 SCC 18 has held that the Courts will frown upon suits which are not filed immediately after breach/refusal and the fact that limitation is three years does not mean that a purchaser can wait for one or two years to file a suit and obtain specific performance. It was further held that the three year period is provided to assist the purchasers in special cases, as where major part of the consideration has been paid and possession delivered in part performance. The bare pleas and statements of the appellants/plaintiffs of having approached the defendant from time to time would not suffice. The Supreme Court in Umabai v. Nilkanth Dhondiba Chavan, (2005) 6 SCC 243 has held that mere bare statement in the plaint or in the examination-in-chief of readiness and willingness would not suffice and the Court must take into consideration the conduct of the plaintiff prior and subsequent to the filing of the suit along with other attending circumstances. ”

59. **Summary of principles**

Section 16 (c) of the Specific Relief Act, 1963

- *In a suit for specific performance, the plaintiff has to prove a valid agreement of sale; the breach of the contract by the*

defendant; and readiness and willingness of the plaintiff to perform his part of the contract.

- *Section 16(c) of the Specific Relief Act mandates “readiness” and “willingness” on the part of the plaintiff as a condition precedent to seek specific performance.*
- *The “readiness” and “willingness” are two separate issues. The former refers to financial capacity whereas the latter depends upon the intention of the purchaser.*
- *“Readiness” and “willingness” cannot be treated as a straitjacket formula. It has to be determined from the entirety of facts and circumstances relevant to the intention and conduct of the party concerned.*
- *The Court must take into consideration the conduct of the plaintiff prior and subsequent to the filing of the suit along with other attending circumstances to adjudge the “readiness” and “willingness” of the plaintiff.*
- *When the parties enter into an agreement relating to an immovable property, they amicably agree on the total sale consideration, earnest money as well as the payment of the balance sale consideration. If both the parties are ready and willing, they usually complete the transaction within the stipulated time in the following manner:-*
 - *The purchaser makes arrangement for the balance sale consideration within the stipulated time.*
 - *If the purchaser has to take loan from a bank or other financial institution, the purchaser has to complete all the formalities and obtain the loan on his own responsibility before the stipulated date.*
 - *The purchaser informs the seller about the arrangement having been made.*
 - *The purchaser drafts the sale deed and sends the draft sale deed to the seller for approval.*
 - *The seller approves the draft sale deed and returns it back to the purchaser.*
 - *The purchaser prepares the sale deed on the requisite stamp papers.*

- Both the parties fix the date, time and place for payment of balance sale consideration, execution of sale deed, registration of the sale deed and handing over of the possession.
 - The parties complete the sale transaction on the agreed date, time and place.
- In normal parlance, both the parties remain in touch either personally or through the property dealer.
 - The problem arises when one of the two parties turn dishonest. However, the party in breach purports to be ready and willing and creates evidence to that effect. At times, both the parties visit the office of Sub-Registrar on the last day of performance for obtaining a receipt of having attended the office of the Sub-Registrar to later on contend that they were ready and willing to perform and were waiting for other party. If the seller is in breach, he creates false evidence of readiness to avoid specific performance by the purchaser and to illegally forfeit the earnest money. On the other hand, if the purchaser is in breach, he creates false evidence of readiness and willingness to file a case of specific performance.
 - It is the duty of the court to find out which party has not performed and is trying to wriggle out.
 - The Court has to take into consideration the human probabilities, ordinary course of human conduct and common sense to draw necessary inference. Drawing presumptions is the backbone of the judicial process.
 - The silence or absence of correspondence by any party may be indicative of his dishonest intention. The dishonest intention of the seller can be inferred where the purchaser repeatedly contacts the seller for approval of the draft sale deed and for fixing time for payment of balance sale consideration and execution/registration of the sale deed but the seller does not respond or avoids contact. On the other hand, the dishonest intention of the purchaser can be inferred where the purchaser does not contact the seller for

approval of the sale deed and fixing date, time and place for payment of balance sale consideration and execution/registration of the sale deed.

- *At times, the dishonest purchaser relies on an application for loan to the bank or financial institutions without completing the necessary formalities for taking the loan in order to create the false ground of readiness.*
- *Upon refusal of the seller to complete the agreement, the purchaser is expected to issue a notice and immediately file a suit for specific performance. Any delay in this regard may indicate his intention that he was not ready and willing and the Court may refuse to grant specific performance.*

Section 20 of the Specific Relief Act, 1963

- *The specific performance is an equitable relief. Section 20 of the Specific Relief Act preserves judicial discretion. The Court is not bound to grant specific relief merely because it is lawful to do so. The relief sought under Section 20 is not automatic as the Court is required to see the totality of the circumstances which are to be assessed by the Court in the light of facts and circumstances of each case.*
- *The specific performance is usually granted where substantial sale consideration has been paid and the possession of the property has been delivered to the purchaser.*
- *In the event of any delay/inaction on the part of the purchaser, it would be inequitable to give the relief of specific performance to the purchaser. The rationale behind refusal of the Court to grant the specific performance where long time has gone by is that the prices of the property may have increased many times with the passage of time and it would be injustice to a person who has not received the sale consideration within the time stipulated in the agreement.*
- *If under the terms of the contract, the plaintiff gets an unfair advantage over the defendant, the Court may not exercise*

its discretion in favour of the plaintiff. Specific relief may not be granted if the defendant would be put to undue hardship which he did not foresee at the time of agreement. If it is inequitable to grant specific relief, then also the Court would desist from granting a decree to the plaintiff.

- *The party who seeks specific performance being an equitable relief must come to the Court with clean hands. In other words, the party who makes false allegations does not come with clean hands and is not entitled to the equitable relief.*
- *The Court has to consider whether it would be fair, just and equitable. The Court is guided by the principles of justice, equity and good conscience.*
- *While exercising the discretion, the Court would take into consideration the circumstances of the case, the conduct of parties, and the motive behind the litigation.*

Discussion and Findings

I.A.No. 12884/2018 and 11621/2018

60. As per the plaint, the plaintiff agreed to purchase the suit property from the defendant vide agreement dated 16th March, 2010 for total sale consideration of Rs.8,60,00,000/- out of which the plaintiff paid earnest money of Rs.10,00,000/- and the balance sale consideration of Rs.8,50,00,000/- was payable by the plaintiff on or before 30th September, 2010. The sole cause of action of the plaintiff pleaded in the plaint is that the defendant had failed to supply the copies of title documents of the suit property to the plaintiff to enable him to take the loan from the Bank and, therefore, the plaintiff could not obtain loan from the Bank to pay the balance sale consideration. The time for payment of the balance sale consideration of Rs.8,50,00,000/- was the essence of the contract.

61. The plaintiff neither paid nor offered/tendered the balance sale

consideration of Rs.8,50,00,000/- to the defendant by 30th September, 2010. The plaintiff did not aver in the plaint that the balance sale consideration of Rs.8,50,00,000/- was available with him at any point of time. It is not the plaintiff's case in the plaint that he ever had the balance sale consideration of Rs.8,50,00,000/- available with him.

62. In I.A. 12884/2018, the plaintiff is seeking amendment of the plaint to incorporate that the plaintiff had enough resources to complete the transaction and the plaintiff had approached HDFC Bank as an abundant caution. The plaintiff is further seeking to incorporate a plea that the plaintiff had full authority from M/s Jayshree Rasayan Udyog Ltd. to enter into any agreement qua a real estate transaction on behalf of the company as the agreement entitled him to purchase the property in his own name or nominate some other person for completion of the transaction. The plaintiff is also seeking to incorporate that he was ready and willing to perform the contract. In I.A. 11621/2018, the plaintiff is seeking permission to place on record additional documents namely Income Tax Returns and Bank passbooks of himself and his family members as well as his company.

63. The plaintiff, through the amendment application, is seeking to set up a contradictory cause of action and is also seeking to withdraw certain admissions. The sole cause of action pleaded in the plaint is that the defendant had failed to supply the copies of the title documents of the suit property to the plaintiff to enable him to take the loan from the Bank and, therefore, the plaintiff could not obtain loan from the Bank to pay the balance sale consideration meaning thereby that the plaintiff did not have the sale consideration available with him and he had to take loan from the bank to pay the balance sale consideration for which he requested the defendant to

supply the copies of the title documents. It is nowhere the case of the plaintiff in the plaint that he had the balance sale consideration even available with him and he offered the same to the defendant or that his company wants to buy the property. The plaintiff cannot be permitted to abandon the case set up in the plaint.

64. During the course of the hearings dated 27th July, 2018, 06th August, 2018 as well as 07th August, 2018, no arguments were advanced that the balance sale consideration of Rs.8,50,00,000/- was available with the plaintiff/his family members or his company wanted to buy the suit property. After knowing the mind of this Court, the plaintiff changed his counsel who sought an adjournment to prepare the case on 16th August, 2018 and filed an application for amendment of the plaint to derail the hearing. The practice of the counsels to seek an adjournment after knowing the mind of the Court and thereafter, filing frivolous application to derail the hearing, amounts to interference with the due course of proceedings and the administration of justice. No reasons have been given by the plaintiff as to why the averment sought to be incorporated were not incorporated in the plaint filed in 2011. This Court is of the view that the proposed amendment is patently malafide. The plaintiff has attempted to overreach and mislead this Court after knowing the mind of the Court during the course of the hearings. The plaintiff has no respect for truth and has polluted the fountain of justice with tainted hands. The plaintiff has interfered with the administration of justice and has attempted to impede, undermine and obstruct the free flow of the holy stream of justice. The pleas sought to be raised in the amendment application appear to be a judicial adventurism of the new counsel in an attempt to overreach this Court.

65. The most basic obligation of the litigant and his lawyer is to plead the case truthfully not to deceive or mislead the Court. This responsibility extends to every function including the presentation and interpretation of facts, drafting of pleadings and documents, legal argument and other submissions or communications with the Court. The duty not to intentionally mislead or deceive is only the bare minimum required of the advocate and solicitor. As an officer of the Court, they are expected to advance the public interest in the fair administration of justice even if it would jeopardise his client's interests. Hence, he is required to inform the Court of all relevant decisions and legislative provisions of which he is aware whether the effect is favourable or unfavourable towards his client or the contention for which he argues. In the same context, he is prohibited from advancing submissions, opinions or propositions which he knows are contrary to the well settled law. He is bound not to make any statements which are inaccurate, untrue and misleading.

66. In ***D.P. Chadha v. Triyugi Narain Mishra***, (2001) 2 SCC 221, the Supreme Court held as under:-

“22. ... A lawyer in discharging his professional assignment has a duty to his client, a duty to his opponent, a duty to the court, a duty to the society at large and a duty to himself. It needs a high degree of probity and poise to strike a balance and arrive at the place of righteous stand, more so, when there are conflicting claims. While discharging duty to the court, a lawyer should never knowingly be a party to any deception, design or fraud. While placing the law before the court a lawyer is at liberty to put forth a proposition and canvass the same to the best of his wits and ability so as to persuade an exposition which would serve the interest of his client so long as the issue is capable of that resolution by adopting a process of reasoning. However, a point of law well settled or admitting of no controversy must not

be dragged into doubt solely with a view to confuse or mislead the Judge and thereby gaining an undue advantage to the client to which he may not be entitled. Such conduct of an advocate becomes worse when a view of the law canvassed by him is not only unsupportable in law but if accepted would damage the interest of the client and confer an illegitimate advantage on the opponent. In such a situation the wrong of the intention and impropriety of the conduct is more than apparent..."

(Emphasis supplied)

67. Law with respect to the amendment of the pleadings is well settled. Reference be made to the following principles laid down by the Supreme Court in **Revajeetu Builders and Developers v. Narayanaswamy and Sons**, (2009) 10 SCC 84:

"63. On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment.

(1) Whether the amendment sought is imperative for proper and effective adjudication of the case?

(2) Whether the application for amendment is bona fide or mala fide?

(3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case? And

(6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

These are some of the important factors which may be kept in mind while dealing with application filed under Order VI Rule 17. These are only illustrative and not exhaustive.

64. The decision on an application made under Order VI Rule 17 is a very serious judicial exercise and the said exercise should never be undertaken in a casual manner. We can conclude our discussion by observing that while deciding applications for amendments the courts

must not refuse bona fide, legitimate, honest and necessary amendments and should never permit mala fide, worthless and/or dishonest amendments.”

68. Applying the principles laid down by the Supreme Court, this Court holds that the application for amendment is malafide, the proposed amendment changes the nature and character of the case and would cause such prejudice to the defendant which cannot be compensated in terms of money. The plaintiff has not given any justification for not incorporating the averments made in the application in the plaint. The plaintiff has also not given any justification for not filing the additional documents along with the plaint. The malafides of the application is clear from the fact that the plaintiff has filed these applications after substantial hearing had been taken place on the maintainability of the suit and after knowing the mind of the Court. I.A.12884/2018 and 11621/2018 are therefore, dismissed.

Findings on the maintainability of the Suit

69. Section 16(c) of the Specific Relief Act read with Explanation (ii) of the Specific Relief Act requires the ‘readiness’ as well as ‘willingness’ on the part of the plaintiff to perform the contract according to its true construction. The compliance of ‘readiness’ and ‘willingness’ has to be in spirit and substance and not in letter and form. However, the averments made in the plaint neither show ‘readiness’ nor ‘willingness’ on the part of the plaintiff to make the payment of balance sale consideration of Rs.8,50,00,000/- to the defendant by 30th September, 2010.

70. In *T. Arivandandam v. T.V. Satyapal and Anr.* (1977) 4 SCC 467, the Supreme Court held that frivolous and manifestly vexatious litigation should be shot down at the very threshold. The Supreme Court held that

where a meaningful, not formal, reading of a plaint does not disclose a clear right to sue, the Court should exercise a power under Order VII Rule 11 of the Code of Civil Procedure. If by clear drafting an illusion of a cause of action is created, the Court should nip it in the bud. The Supreme Court further held that an activist Judge is the answer to irresponsible law suits. Relevant portion of the said judgment is as under.

"5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentantly resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving plaints. The learned Munsif must remember that if on a meaningful-- not formal - reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7, Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10, CPC. An activist Judge is the answer to irresponsible law suits. The trial courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage..... The Penal Code (Ch. XI) is also resourceful enough to meet such men, and must be triggered against them....."

(Emphasis supplied)

71. In ***S.P. Chengalvaraya Naidu v. Jagannath***, (1994) 1 SCC 1 the Supreme Court held that a person, whose case is based on falsehood, has no right to approach the Court and he can be thrown out at any stage of the litigation. The Supreme Court held as under:

“5. The High Court, in our view, fell into patent error. The short question before the High Court was whether in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the court. The High Court, however, went haywire and made observations which are wholly perverse. We do not agree with the High Court that “there is no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence”. The principle of “finality of litigation” cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal gains indefinitely.”

72. The sole cause of action pleaded by the plaintiff in the plaint is that the defendant did not furnish the copies of the title documents to the plaintiff and therefore, the plaintiff could not raise a loan from HDFC Bank. Admittedly, there is no clause in the agreement which casts an obligation on the defendant to provide the documents to the plaintiff to enable him to raise a loan against the suit property. In that view of the matter, the plaintiff had to arrange the loan on his own responsibility before the stipulated date.

73. The sale agreement was executed between the parties on 16th March, 2010. No action was taken by the plaintiff for more than four months. The plaintiff addressed the first written communication to the defendant on 12th August, 2010 for supply of the copy of the title documents. The letter dated 01st July, 2010 to HDFC Bank shows that the plaintiff enquired about

the formalities for obtaining the loan but the plaintiff admittedly did not complete any formality for availing the loan from the bank. The Bank replied to the letter on 05th July, 2010 and the plaintiff waited for more than a month to demand the documents from the defendant on 12th August, 2010. If the plaintiff wanted to avail the loan to pay the balance sale consideration, he would have immediately approached the bank in March, 2010 and completed the formalities well before 30th September, 2010. The plaintiff instituted a suit for injunction against the defendant in first week of September, 2010 and obtained an interim injunction against the defendant on the pleadings that the defendant did not furnish the copies of the title documents. Even in that suit, the plaintiff never claimed that he had arrangement for balance sale consideration. The plaintiff filed the present suit for specific performance in May, 2011 on the same averments.

74. The plaintiff has not shown the availability of the balance sale consideration of Rs.8,50,00,000/- with him at any stage. The plaintiff was never “ready” and ‘willing’ to make the payment of the balance sale consideration to the defendant. It appears that the plaintiff issued the letter dated 1st July, 2010 to HDFC Bank and letter dated 12th August, 2010 to the defendant with the dishonest intention of creating a false plea of “readiness” and “willingness”. The plaintiff had no intention to pay the balance sale consideration and he instituted this frivolous suit to grab the defendant’s property in the hope that by the time the litigation is over, he would get the property at the price mentioned in the agreement and would arrange the money by that time. The plaintiff’s plea is inherently unconvincing and cannot be accepted. Reference be made to *Kalawati (supra)*, *Niwas Builders (supra)*, *Sri Punny Akat Philip Raju (supra)* and *Ganuga*

Ranganath (*supra*) discussed above.

75. On a meaningful reading of a plaint, it is apparent that there is no cause of action in favour of the plaintiff as the plaintiff was never ready and willing to make the payment of balance sale consideration of Rs.8,50,00,000/- to the defendant and the suit is manifestly vexatious and meritless. Clever drafting has been used to create an illusion of a cause of action when none exists. This is a fit case to exercise the power under Order VII Rule 11 of the Code of Civil Procedure to nip the vexatious litigation in the bud. The plaintiff has no respect for truth. The plaintiff has misused the process of law and has shamelessly resorted to falsehood and unethical means. This case squarely covered by the principles laid down in the judgments discussed above.

76. Even otherwise, the plaintiff would not be entitled to the discretionary relief under Section 20 of the Specific Relief Act. The plaintiff has only paid a very small amount of the total sale consideration. Constant rise in property prices during the last more than 8 years has been recognized by the Courts to refuse exercise of discretion under Section 20 of the Specific Relief Act. If the sale consideration fixed under the agreement is given to the seller years after the agreement, great prejudice would be caused to the seller. Reference be made to **K.S. Vidyanadam** (*supra*), **Saradamani Kandappan** (*supra*), **B. Vijaya Bharathi** (*supra*), **Parakunnnan Veetill Joseph's Son Mathew** (*supra*), **Lourdu Mari David** (*supra*), **K. Narendra** (*supra*), **A.C. Arulappan** (*supra*), **G. Jayashree** (*supra*), **Krishna Sweet House** (*supra*), **Laxmi Devi** (*supra*), **Jinesh Kumar Jain** (*supra*), **Sushil Jain** (*supra*) and **Gulshan Kumar** (*supra*) discussed above.

77. Once a seller has entered into an agreement to sell an immovable property, he is looking for the sale consideration within the period stipulated in the agreement. If he does not get the money within the stipulated period, his plan to use the money for whatever purpose he has intended would get frustrated. He may have a plan to buy some other property or for some other purpose. Secondly, the delay in completion of sale also causes injustice to the seller as the property prices keep on increasing in normal parlance. As such more the delay, the seller may suffer loss due to rise in property prices and greater is the profit which the purchaser would derive by tying down a property and not paying the sale consideration within the stipulated period.

78. Moreover, the plaintiff has not approached the Court with clean hands and has raised false claims and is, therefore, disentitled to the equitable relief on this ground also. The party, who seeks specific performance being an equitable relief, must come to the Court with clean hands.

79. The plaintiff committed breach of the agreement dated 16th March, 2010 by failing to pay the balance sale consideration of Rs.8,50,00,000/- to the defendant by 30th September, 2010 and is not entitled to the specific performance and damages. With respect to the earnest money of Rs.10,00,000/-, the defendant offered to refund the earnest money to the plaintiff during the course of hearing.

80. False claims and defences are really serious problems with real estate litigation, predominantly because of ever escalating prices of the real estate. Litigation pertaining to valuable real estate properties is dragged on by unscrupulous litigants in the hope that the other party will tire out and ultimately would settle with them by paying a huge amount.

81. It is a matter of common experience that Court's otherwise scarce time

is consumed or more appropriately, wasted in a large number of uncalled for cases. It is the duty of the Courts to see that such wrongdoers are discouraged at every step and even if they succeed in prolonging the litigation, ultimately they must suffer the costs of all these years long litigation. Imposition of actual, realistic or proper costs and/or ordering prosecution in appropriate cases would go a long way in controlling the tendency of filing false cases.

82. The greatest challenge before the judiciary today is the frivolous litigation. The judicial system in the country is choked with false claims and such litigants are consuming Courts' time for a wrong cause. False claims are a huge strain on the judicial system.

83. The Supreme Court and this Court have time and again held that heavy costs should be imposed in frivolous cases and in appropriate cases, prosecution be ordered to maintain purity and sanctity of judicial proceedings.

84. In ***Subrata Roy Sahara v. Union of India***, (2014) 8 SCC 470, the Supreme Court observed that the Indian judicial system is grossly afflicted with frivolous litigation and ways and means need to be evolved to deter litigants from their compulsive obsession towards senseless and ill-considered claims. Relevant portion of the said judgment is as under:

“191. The Indian judicial system is grossly afflicted, with frivolous litigation. Ways and means need to be evolved, to deter litigants from their compulsive obsession, towards senseless and ill-considered claims.

(Emphasis supplied)

85. In ***Maria Margarida Sequeria Fernandes v. Erasmo Jack de Sequeria***, 2012 (3) SCALE 550 the Supreme Court held that false claims

and defences are serious problems with real estate litigation, predominantly because of ever escalating prices of the real estate. The Supreme Court further held that heavy costs and prosecution should be ordered in cases of false claims and defences. The relevant portion of the judgement is reproduced hereunder:-

“False claims and false defences

84. *False claims and defences are really serious problems with real estate litigation, predominantly because of ever escalating prices of the real estate. Litigation pertaining to valuable real estate properties is dragged on by unscrupulous litigants in the hope that the other party will tire out and ultimately would settle with them by paying a huge amount. This happens because of the enormous delay in adjudication of cases in our Courts. If pragmatic approach is adopted, then this problem can be minimized to a large extent.*

85. *This Court in a recent judgment in Ramrameshwari Devi and Ors. (supra) aptly observed at page 266 that unless wrongdoers are denied profit from frivolous litigation, it would be difficult to prevent it. In order to curb uncalled for and frivolous litigation, the Courts have to ensure that there is no incentive or motive for uncalled for litigation. It is a matter of common experience that Court's otherwise scarce time is consumed or more appropriately, wasted in a large number of uncalled for cases. In this very judgment, the Court provided that this problem can be solved or at least be minimized if exemplary cost is imposed for instituting frivolous litigation. The Court observed at pages 267-268 that imposition of actual, realistic or proper costs and/or ordering prosecution in appropriate cases would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants. Imposition of heavy costs would also control unnecessary adjournments by the parties. In appropriate cases, the Courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings.”*

(Emphasis supplied)

86. In ***Dalip Singh v. State of U.P.***, (2010) 2 SCC 114, the Supreme Court observed that a new creed of litigants have cropped up in the last 40 years who do not have any respect for truth and shamelessly resort to falsehood and unethical means for achieving their goals. The observations of the Supreme Court are as under:-

“1. For many centuries, Indian society cherished two basic values of life i.e., 'Satya' (truth) and 'Ahimsa' (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of the justice-delivery system which was in vogue in the pre-Independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-Independence period has seen drastic changes in our value system. The materialism has over shadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.

2. In last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.

(Emphasis supplied)

87. In ***Satyender Singh v. Gulab Singh***, 2012 (129) DRJ 128, the Division Bench of this Court following ***Dalip Singh v. State of U.P.*** (supra) observed that the Courts are flooded with litigation with false and incoherent pleas and tainted evidence led by the parties due to which the judicial system in the country is choked and such litigants are consuming Courts' time for a

wrong cause. The observations of this Court are as under:-

“2. As rightly observed by the Supreme Court, Satya is a basic value of life which was required to be followed by everybody and is recognized since many centuries. In spite of caution, courts are continued to be flooded with litigation with false and incoherent pleas and tainted evidence led by the parties. The judicial system in the country is choked and such litigants are consuming courts’ time for a wrong cause. Efforts are made by the parties to steal a march over their rivals by resorting to false and incoherent statements made before the Court. Indeed, it is a nightmare faced by a Trier of Facts; required to stitch a garment, when confronted with a fabric where the weft, shuttling back and forth across the warp in weaving, is nothing but lies. As the threads of the weft fall, the yarn of the warp also collapses; and there is no fabric left.”

(Emphasis supplied)

88. In ***Padmawati v. Harijan Sewak Sangh***, 154 (2008) DLT 411, this Court noted as under:

“6. The case at hand shows that frivolous defences and frivolous litigation is a calculated venture involving no risks situation. You have only to engage professionals to prolong the litigation so as to deprive the rights of a person and enjoy the fruits of illegalities. I consider that in such cases where Court finds that using the Courts as a tool, a litigant has perpetuated illegalities or has perpetuated an illegal possession, the Court must impose costs on such litigants which should be equal to the benefits derived by the litigant and harm and deprivation suffered by the rightful person so as to check the frivolous litigation and prevent the people from reaping a rich harvest of illegal acts through the Courts. One of the aim of every judicial system has to be to discourage unjust enrichment using Courts as a tool. The costs imposed by the Courts must in all cases should be the real costs equal to deprivation suffered by the rightful person.

xxx

xxx

xxx

9. Before parting with this case, I consider it necessary to pen

down that one of the reasons for over-flowing of court dockets is the frivolous litigation in which the Courts are engaged by the litigants and which is dragged as long as possible. Even if these litigants ultimately loose the lis, they become the real victors and have the last laugh. This class of people who perpetuate illegal acts by obtaining stays and injunctions from the Courts must be made to pay the sufferer not only the entire illegal gains made by them as costs to the person deprived of his right and also must be burdened with exemplary costs. Faith of people in judiciary can only be sustained if the persons on the right side of the law do not feel that even if they keep fighting for justice in the Court and ultimately win, they would turn out to be a fool since winning a case after 20 or 30 years would make wrong doer as real gainer, who had reaped the benefits for all those years. Thus, it becomes the duty of the Courts to see that such wrong doers are discouraged at every step and even if they succeed in prolonging the litigation due to their money power, ultimately they must suffer the costs of all these years long litigation. Despite settled legal positions, the obvious wrong doers, use one after another tier of judicial review mechanism as a gamble, knowing fully well that dice is always loaded in their favour, since even if they lose, the time gained is the real gain. This situation must be redeemed by the Courts.”

(Emphasis supplied)

89. In the present case, the conduct of the plaintiff does not appear to be honest. The plaintiff has raised false pleas with the hope that the plaintiff can, with the Court delays, drag the case for years and the other side would succumb to buy peace.

Conclusion

90. There is no cause of action in favour of the plaintiff and, therefore, the suit is rejected under Order VII Rule 11 of the Code of Civil Procedure with cost of Rs.1,00,000/-. However, the defendant is directed to refund the

earnest money of Rs.10,00,000/- to the plaintiff.

91. The plaintiff is directed to deposit cost of Rs.1,00,000/- with the website www.bharatkeveer.gov.in within two weeks. The proof of deposit of cost be filed within two weeks thereafter. If the plaintiff does not deposit the cost, the defendant shall deposit the same and deduct the same out of the earnest money to be refunded to the plaintiff.

92. Interim stay granted by this Court vide order dated 25th May, 2011 stands vacated.

93. I.A.12884/2018 and I.A. 11621/2018 are dismissed. Other pending applications are disposed of.

FEBRUARY 28, 2019

dk/ds

J.R. MIDHA
(JUDGE)

भारतमेव जयते