

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No.316 of 2015**

Chandan Tripathi S/o Late G. D. Tripathi, Aged About 44 Years R/o
Naya Sarkanda, Tehsil And District Bilaspur Chhattisgarh

---- Appellant/Plaintiff**Versus**

Smt. Neelima Pandey W/o K. K. Pandey, Aged About 35 Years R/o
House No. 11, Behind Of Civil Line Thana, Tehsil And District Bilaspur
Chhattisgarh

--- Respondent/Defendant

For Appellant/Plaintiff	:	Mr. Sudhir Agrawal, Advocate
For Respondent/Defendant	:	Mr. Rakesh Kashyap, Advocate

DB : Hon'ble Shri Justice Manindra Mohan Shrivastava**Hon'ble Smt. Justice Vimla Singh Kapoor****Order on Board by Manindra Mohan Shrivastava, J.****12/06/2020**

Heard.

1. This appeal is directed against impugned judgment and decree dated 22.08.2015 passed by the Sixth Additional District Judge, Bilaspur in Civil Suit No.6A of 2013, by which, appellant's prayer for decree of specific performance of contract has been partly allowed.

2. The appellant/plaintiff filed a suit for grant of decree of specific performance on the pleadings, *inter alia*, that the defendant had entered into an agreement of sale on 26.03.2010 (Ex.P/1) with the plaintiff for sale of 2 parcels of land, one situated in Kh. No.725/15 admeasuring 2028 sq.ft. and the other situated in adjoining Khasra. No.725/13 admeasuring 1934 sq.ft. An advance of Rs.5,00,000/- was also paid to the defendant and it was clearly agreed to between the parties that whatever actual extent of land is found on the spot, in possession of the defendant, would be sold by defendant to the plaintiff @ 900 per sq.ft. Further case of the plaintiff was that under the

agreement, it was implicit that the defendant would get demarcation of the land done and thereafter, he will inform the plaintiff but this was not done and later on, when despite notice given to the defendant for execution of sale deed by receiving balance amount of consideration, followed by notice requiring the defendant to remain present in the office of Registrar on 23.03.2013, sale deed was not executed, the plaintiff was required to file suit.

3. The respondent/defendant, though, did not dispute execution of agreement dated 26.03.2010, the defence of the respondent was that though under the said agreement, one part of the land was sold to the third party at the request of the plaintiff, in respect of the other part of the land (subject land), the plaintiff did not approach the defendant nor took any initiative to get the sale deed executed. According to the defendant, it was defendant, who was making repeated efforts requiring the plaintiff to execute sale deed by paying balance of the sale consideration but despite that, the plaintiff did not do, therefore, in these circumstances, the plaintiff's suit was liable to be dismissed.

4. On the basis of the pleadings of the parties, learned trial Court framed as many as six issues which included the issue as to whether an agreement was executed between the parties and also an important issue as to whether the plaintiff was ready and willing to perform his part of contract.

5. After allowing the parties to lead their respective oral and documentary evidence, learned trial Court concluded that as far as agreement dated 26.03.2010 is concerned, the same is found proved but it held that the plaintiff failed to prove his readiness and wiliness in terms of legal requirement as contained in Section 16(c) of the Specific Relief Act as the plaintiff did not take any steps towards execution of sale deed after 10.08.2010 until filing of the suit. Learned trial Court also held that the plaintiff failed to prove his readiness, i.e. availability of fund or capacity to generate fund for payment of consideration, taking into consideration that the plaintiff failed to lead any evidence regarding availability of fund in any of the accounts or any other clinching evidence proving his capacity to generate fund towards purchase. Thus, even though, the agreement was found proved, learned trial Court held that the plaintiff was not entitled to decree of specific performance of contract. However, the advance amount of Rs.2,50,000/- was directed to be returned and the suit was partly decreed.

6. Learned counsel for the appellant vehemently argued that learned trial Court, having held that agreement is proved, ought to have appreciated that unless defendant got demarcation done, report prepared and duly informed to the plaintiff, it was not the fault of the plaintiff but the default on the part of the defendant that the sale deed could not be executed. It is further contended that it is not only be pleaded but proved by oral evidence that the plaintiff continuously kept on approaching the defendant for execution of sale deed from time to time and the defendant kept on avoiding. Therefore, it cannot be said that the plaintiff was not willing to perform his part of contract. Further, submission is that as far as readiness is concerned, the fact that the plaintiff had paid substantial amount of Rs.5,00,000/- at the time of agreement, is itself sufficient to record a finding of his capacity to generate balance amount of consideration in the event of execution of sale deed. He would submit that the plaintiff had also filed income tax return showing that he earns substantial income on annual basis. He is a businessman. There was no necessity of showing cash in hand by proving availability of fund in the accounts. Learned counsel for the appellant further argued that in the present case, as is reflected from the averments made in the written statement and the evidence of respondent, that the respondent was never willing to execute sale deed and time and again, respondent was resiling from contractual obligation. On one hand, the respondent was neither getting demarcation done nor informing regarding proof of demarcation, on the other hand, the defendant was publishing notices in the newspaper regarding execution of agreement. However, in any case, when first sale deed was executed on 10.08.2010 in respect of part of land, the agreement for execution of sale deed in respect of the subject land stood revived, which is clear from recitals written in the agreement Ex.P/1. Leaned counsel for the appellant further argued that the conduct of the respondent shows that the respondent has not been acting fairly and was not performing his own part of contract to enable execution of sale deed in favour of plaintiff by receiving balance amount of consideration. He would submit that right from the date, agreement was executed till the date of filing of the suit, during the pendency of the suit as also during the pendnecy of the appeal and even today, the appellant is ready and willing to pay balance amount of sale consideration and therefore, a decree of specific performance of contract may be granted in his favour.

7. In support of his contention, learned counsel for the appellant relied upon the judgment of the Supreme Court in the cases of **Silvey & Ors. Vs.**

Arun Varghese & Anr., 2008 AIR SCW 1732, Aniglase Yohannan Vs. Ramlatha and Others, 2005 (7) SCC 534 & K. Prakash Vs. B.R. Sampath Kumar, 2015 (1) SCC 597.

8. On the other hand, learned counsel for the respondent argued that the learned Trial Court has clearly held that the plaintiff did not take any steps after first sale deed was executed. The plaintiff having failed to lead proper evidence of his continued readiness and willingness throughout till the date of filing of the suit, learned Trial Court has rightly held that the plaintiff is not entitled to decree of specific performance. He would also submit that the plaintiff is a broker and, though, he had entered into agreement with the defendant, sale of first parcel of land covered under the agreement was got executed in favour of third party by the plaintiff. The plaintiff failed to lead any evidence of he having in his possession, sufficient fund for payment of balance amount of consideration and has also failed to lead any clinching evidence of his strong financial status or capacity to generate fund.

9. We have heard learned counsel for the parties and perused the records.

10. The only point arising for determination in the present case is whether the learned Trial Court erred in law and on facts in holding that the plaintiff failed to prove his readiness and willingness as per the requirement of law in the matter of claim of grant of decree of specific performance of contract.

11. It is well settled legal position that one who approaches the Court for grant of decree of specific performance has not only to aver but prove by leading clinching evidence that he was and is at all times ready and willing to perform his part of contract. This readiness and willingness has to continue throughout. If it can be shown that the plaintiff's readiness and willingness did not continue, the plaintiff may not be entitled to decree of specific performance of contract in view of personal bar to such relief created under Section 16(c) of the Specific Relief Act. In the case of **Aniglase Yohannan (supra)**, the principles underlined was explained as below :

“12. 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.

13. [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. On considering almost an identical fact situation it was held by this Court in [Surya Narain Upadhyaya v. Ram Roop Pandey and Ors.](#), AIR (1994) SC 105 that the plaintiff had substantiated his plea.”

12. In subsequent decision, in the case of **K. Prakash Vs. B.R. Sampath Kumar (supra)**, it has been held by the Supreme Court that remedy for specific performance is an equitable remedy and the Court while granting relief for specific performance exercises discretionary jurisdiction. It has also been held that Section 20 of the Specific Relief Act specifically provides that the Court's jurisdiction to grant decree of specific performance is discretionary though not arbitrary which has to be exercised in accordance with sound and reasonable judicial principle. It was observed :

“16. The principles which can be enunciated is that where the plaintiff brings a suit for specific performance of contract for sale, the law insists a condition precedent to the grant of decree for specific performance that the plaintiff must show his continued readiness and willingness to perform his part of the contract in accordance with its terms from the date of contract to the date of hearing. Normally, when the trial court exercises its discretion in one way or other after appreciation of entire evidence and materials on record, the appellate court should not interfere unless it is established that the discretion has been exercised perversely, arbitrarily or against judicial principles. The appellate court should also not exercise its discretion against the grant of specific performance on extraneous considerations or sympathetic considerations. It is true, as contemplated under [Section 20](#) of the Specific Relief Act, that a party is not entitled to get a decree for specific performance merely because it is lawful to do so. Nevertheless once an agreement to sell is legal and validly proved and further requirements for getting such a decree is established then the Court has to exercise its discretion in favour of granting relief for specific performance.”

13. In the present case, we find that though learned Trial Court has held agreement dated 26.03.2010, proved, specific finding has been recorded in para 13 to 17 on issue No.3 that the plaintiff has failed to prove his readiness and willingness. If we look into the pleadings of the plaintiff, the plaintiff has averred that he was and is ready and willing to perform his part of contract. To substantiate this pleading, the plaintiff examined himself. In the entire evidence, the plaintiff has failed to lead any specific evidence of clinching

nature to prove that after execution of first sale deed dated 10.08.2010, what steps were taken by him towards execution of sale deed. There is absolutely no evidence led by the plaintiff to prove the aspect and all that proved by him is that the plaintiff before filing of the suit gave registered notice to the defendant for the first time on 19.03.2013. In between, what steps were taken by the plaintiff to get the sale deed executed, have not been deposed anywhere. The plaintiff has not filed any documentary evidence of giving notices to the defendant for getting the sale deed executed. Learned trial Court has rightly observed in para 15 of its judgment that the plaintiff in his cross-examination has admitted that he does not know the place of residence of the defendant, he does not even know phone number nor he had ever gone to the house of the defendant himself or along with any other person. On such an admission made by the plaintiff and in the absence of any clinching evidence, learned Court below has rightly come to the conclusion that after execution of first sale deed dated 10.08.2010, till the date of filing of the suit, the plaintiff, long period of 2½ years was sitting idle and doing nothing towards execution of sale deed.

14. One of the submission of learned counsel for the appellant that learned Trial Court in order to record a finding that the defendant was continuously getting notices published in the newspaper, has admitted in evidence newspaper cutting which were not even admitted in evidence. Even if we were to accept this argument, the defendant has led oral and documentary evidence that as the plaintiff was not prepared and willing to get the sale deed to be executed by balance amount of consideration, the defendant had made various complaints to Tahsildar, Superintendent of Police and Station House Officer of Police Station Civil Lines, which is supported from the documentary evidence of such letters Ex.D/3, Ex.D/4 & Ex.D/5. It would thus be clear that it is rather the defendant, who, time and again, was attempting to get the sale deed executed but the plaintiff was not responding so much so that defendant started sending complaints to various authorities. Irrespective of maintainability of such complaint before different authorities, what is reflected is that for a fairly long time, until filing of the suit, during the period of 2½ years, the plaintiff was lying completely dormant and was not taking any steps towards execution of sale deed.

15. There can be no doubt that the defendant has failed to plead and prove that it ever informed the plaintiff regarding any demarcation done much less

information regarding demarcation dated 14.05.2012. Even if we were to accept that the defendant was not very keen to proceed, however, this would not come to the aid of the plaintiff because in order to get decree of specific performance of contract he is required to plead and prove his readiness and willingness and weakness of the defendant or the conduct of the defendant, would not *ipso facto* entitle the plaintiff to decree of specific performance of contract once it is found that the plaintiff's readiness and willingness is not proved in accordance with law.

16. Reliance has been placed on the decision of the Supreme Court in *Silvey & Ors Vs. Arun Varghese & Anr. (supra)*. That was a case where on facts, the Supreme Court found that despite plaintiff continuously approaching and insisting the defendant to execute sale deed, the defendant was not executing sale deed and it was found that no sale deed could be executed unless statutory licence is issued. In this background, it was held that failure on the part of the defendant to get licence issued in his favour would not disentitle the plaintiff to decree of specific performance of contract. In para 12, the factual aspects were noted as below :

“12. DW1 accepted that possession certificates could not be obtained by the defendants in view of the nature of the property involved in the context of Kerala Land Reforms Act, and the Kerala Private Forest (Vesting and Assignment) Act. The defendants never responded to the letter Exh. A2 issued by the plaintiffs seeking performance of the contract. No response was also sent to the letters Exh. A2 to A10. Exh.A6 was a letter sent through registered post which was refused. The lawyer's notice Exh. A11 was also not responded to.”

17. But in the present case, the plaintiff has totally failed to aver and lead reliable evidence that throughout he was willing. As has already been observed that for a long period of almost 2½ years, the plaintiff did not do anything and kept sitting. Therefore, the aforesaid decision is distinguishable on facts.

18. It is also found that the plaintiff's readiness has also not been proved to the satisfaction of the Court. Though, it is not necessary that the party seeking a decree of specific performance of contract is required to show availability of cash in hand. However, readiness is to be ascertained from the evidence and pleadings, considered as a whole. In the present case, the financial condition of the applicant, itself, does not appear to be very sound. His bank account

also do not show sufficient fund and the plaintiff has failed to lead any evidence with regard to his capacity to raise fund in the event of execution of sale deed, given the huge amount of sale consideration. Rather, this Court finds that the defendant's stand that the plaintiff is a broker appears to be more probable because when agreement was entered into between the plaintiff and the defendant, the plaintiff himself did not purchase one part of the land, which was purchased by a third party.

19. In the result, we do not find any good ground to interfere with the impugned judgment and decree passed by the learned Court below.

20. In the result, the appeal fails and is hereby dismissed.

21. Let appellate decree be accordingly drawn.

22. Parties to bear their respective costs.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Vimla Singh Kapoor)
Judge