

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 556 of 2017**

- Jitendra Kumar Sahu S/o Devendra Nath Sahu Aged About 53 Years Ward No. 43, Mahamaya Chowk Basantpur, Tehsil And District Rajnandgaon Chhattisgarh

---- Appellant**Versus**

- Kishan Chand Panjwani S/o Tara Chand Panjwani Aged About 52 Years R/o Chowkhadiyapara Ward No. 36, Tehsil And District Rajnandgaon Chhattisgarh

---- Respondent

For Appellant : Shri Shobhit Koshta, Advocate

For Respondent : Shri Anup Majoomdar and Shri Saket Pandey, Advocates

D.B.:- Hon'ble Shri Justice Manindra Mohan Shrivastava**Hon'ble Smt. Justice Vimla Singh Kapoor****Order On Board****13/03/2020**

This appeal is directed against impugned judgment and decree dated 20/11/2017 passed by the District Judge in Civil Suit No.46-A/2012 by which, the learned Trial Court has granted decree of specific performance in favour of the respondent / plaintiff.

2. The plaintiff filed a suit seeking decree of specific performance of contract on the pleadings *inter alia* that the defendant – Jitendra Kumar Sahu entered into agreement to sell his house and shop on 22/03/2012, with the plaintiff. Further pleading was that an advance of Rs.2 lakhs was paid. Further pleading was that on 10/04/2012, again, the plaintiff paid another Rs.2 lakhs and thus, advance of Rs.4 lakhs was paid. Though, the agreement was required to be executed within six

months, on plaintiff approaching defendant, the defendant started avoiding. A registered notice was given and message was also communicated but as the defendant was avoiding to execute the sale deed and intending to sell his property on higher consideration, the plaintiff filed suit for grant of decree.

3. The defendant initially came out with a case that he does not know the plaintiff. According to him, he is a drunkard and once, a property broker - Mukesh Soni assured him to get loan released and on his assurance, he obtained his signature on blank papers and two photographs and property papers from the defendant. The defendant never entered into agreement nor received any advance. Further case of the defendant was that the property in dispute did not exclusively belong to him. It was his father's property which was given to him to maintain his family. According to the defendant, in the property, his sister is also a partner and infact, she has filed suit seeking partition. On such pleadings, the plaintiff's claim was denied.

4. On the pleadings of the parties, learned Trial Court framed issues as below -

“1. क्या प्रतिवादी द्वारा दिनांक 22.03.2012 को अपने स्वामित्व एवं आधिपत्य का विवादित मकान एवं दुकान स्थित खसरा नंबर 470/14, रकबा 216 वर्गफुट को विक्रय करने का लिखित सौदा 21,21,000/- रुपये में किया गया था ?

2. क्या प्रतिवादी द्वारा वादी से सौदा दिनांक को 2,00,000/- रुपये तथा बाद में दिनांक 10.04.2012 को पुनः 2,00,000/- रुपये कुल 4,00,000/- रुपये सौदा पेटे अग्रिम में प्राप्त किये गये थे ?

3. क्या प्रतिवादी द्वारा लिखित सौदे का पालन नहीं किया गया एवं वादी सौदा पूरा करने के लिए तत्पर रहा है?

4. क्या वादी संविदा के विशिष्ट पालन की डिक्री प्राप्त करने का

अधिकारी है?

5. सहायता एवं वाद व्यय ?”

5. Learned Trial Court held that the plaintiff succeeded in proving the agreement and further, he is willing to perform his part of contract and the defendant was avoiding and on such finding, decree was granted in favour of the plaintiff, aggrieved by which, this appeal has been filed by the defendant.

6. Learned counsel for the appellant / defendant argued that there was no concluded contract as required under Section 12 of the Contract Act. The defendant pleaded that there was no agreement between him and the plaintiff and even he does not know the plaintiff. In a state of intoxication, Mukesh Soni obtained signature on blank paper. He further submits that present is a case of fraud practiced by the plaintiff in cooperation with Mukesh Soni, the broker, who fraudulently obtained defendant's signature on blank papers on assurance of arrangement of loan for him. Next submission is that the mandatory requirement of Section 16 (C) of Specific Relief Act was not complied with, in as much as, the plaintiff failed to make appropriate pleadings of readiness and willingness, which is *sine qua non* for grant of decree of specific performance. It is submitted that without there being specific plea in that regard, the evidence of the plaintiff with regard to availability of fund, is liable to be ignored as inadmissible. Further submission is that the evidence led by the plaintiff does not prove material terms and conditions of agreement. Therefore, in the eye of law, there is no proof of the agreement between the parties. It is also argued that in the circumstances of the case, learned Trial Court ought not to have exercised his discretion in favour of the plaintiff by granting discretionary relief of specific performance of contract because the property in dispute is only landed property lying in the hands of the defendant and he has a family to maintain and the property consists of a shop also. Further

submission is that the conditions of the agreement were not only onerous on the defendant but also unfair advantage to the plaintiff. Next submission is that the agreement is said to have been executed way back in the year 2010 and 10 years have elapsed by now and due to escalation in prices of the property, it would result in undue hardship to the defendant, if the decree of specific performance is granted in favour of the plaintiff for a very inadequate price. The conduct of the plaintiff also dis-entitles him to get the decree because he himself has pleaded in the plaint that, though, the defendant is not willing, he insisted him to get the property sold. The plaintiff has come out with false plea in as much as in the plaint, which states that Mukesh Soni alone was there during settlement and agreement, whereas in evidence, he states that Mukesh and Vicky both were present. There is also variance in the name of person who purchased stamp paper. It is also submitted that the contents of the agreement was that the plaintiff was not in need of the agreement because it contains recital to the effect that the defendant could execute sale deed either in favour of the plaintiff or in favour of any other person. This shows that the plaintiff is either a broker or he was not in need of shop but was only accumulating the property. In support of his case, learned counsel for the appellant placed reliance on **Diwakar Mullick v. Kumari Ganga Khandelwal and anr., AIR 2016 CG 53, Nandkishore Lalbhai Mehta v. New Era Fabrics P. Ltd. and ors., AIR 2015 SC 3796, Kalawati (D) Through LRs. and ors. v. Rakesh Kumar and ors., AIR 2018 SC 960, C.S.Venkatesh v. A.S.C.Murthy (D) by LRs. and ors., AIR 2020 SC 930 and K. Nanjappa (Dead) by LRs v. R.A. Hameed alias Ameersab (Dead) by LRs. and anr., AIR 2015 SC 3389.**

7. Per contra, learned counsel for the respondent, supporting the judgment and decree passed in favour of the plaintiff, would argue that the defendant's plea was completely false and afterthought. The pleadings that he did not know the plaintiff and signed certain blank papers at the insistence of Mukesh Soni in the state of

intoxication, is wholly unbelievable. There is no clinching evidence led by the defendant to prove this and he has not examined Mukesh Soni. On the other hand, the plaintiff has not only pleaded but led specific evidence supported by the agreement in writing on which, signatures have been admitted by the defendants and execution of both the agreements (Ex.P/1 and Ex.P/2) has been proved by their respective attesting witnesses examined as Girdhari Lal Talreja (PW2) and Ramesh Talreja (PW3) respectively. Next submission is that as far as readiness and willingness is concerned, the plaintiff made pleadings, which upon consideration, in totality, amounts to pleading of readiness and willingness. The plaintiff had paid advance of Rs.4 lakhs, which by itself, is sufficient to prove readiness to pay balance amount. Further submission is that the bank statement (Ex.P/11) proves that at the time of execution of agreement and filing of suit, the plaintiff had available funds of more than Rs.17 lakhs in his account. It is further submitted that even in the evidence, the plaintiff has clearly stated that he is in a position to generate balance amount of fund and looking to the pleadings that the defendant is a beneficiary and that he has generated funds also through various sources, the requirement of law with regard to proof of readiness stands proved. The next submission is that as far as willingness is concerned, the plaintiff has clearly pleaded and proved that he had been paying installments to the defendants on different dates, after the agreement was executed and thereafter, he promptly sent notices to the defendant clearly stating that he is willing to purchase the property and requested the defendant to come to the office of the Registrar for execution of decree. A paper publication was also made in this regard and when finally, the defendant did not execute sale deed, the plaintiff promptly filed civil suit immediately without wasting time, as early as on 29/10/2012. As far as grant of discretionary relief is concerned, the argument of learned counsel for the respondent is that in the present case, the equity lies in favour of the plaintiff and

not the defendant. The defendant came out with dishonest pleadings that he did not know the plaintiff whereas in the cross-examination, he has clearly stated regarding execution between the parties and also payment of substantial amount of Rs.4 lakhs by the plaintiff to the defendant. The defendant had a dishonest intention to avoid execution of sale deed due to his greed for getting higher price which led him not to sell the property. Merely because the defendant has no other property, except the suit property or that there has been escalation in the price, it would not tilt the balance of equity in favour of the defendant so as to deny relief of specific performance of contract in favour of the plaintiff. On the aspect of property being joint family property, it is submitted that the plaintiff's case in this regard is false and after thought because in the plaint itself, it is stated that the property was given to him and the documents of purchase and revenue documents proved that the property was purchased by three brothers including the plaintiff and later on, it was partitioned. Therefore, the pleadings that the property belongs to his father, is at variance and proves falsity of his case and this conduct of the defendant disentitles the defendant to oppose discretionary relief of specific performance of contract in favour of the plaintiff. Learned counsel for the respondent would argue that it was not necessary for the defendant to prove that he had hard cash available with him. The statement that he has capacity to generate fund was good enough to hold that he was ready to perform his part of contract. In support of his submission, learned counsel for the respondent relies upon decision in the case of **Bhavyanath** (represented by Power of Attorney Holder) **v. K.V. Balan (Dead) through LRs** (Civil Appeal No.3336 of 2019) and **Vijay Kumar & ors. v. Om Parkash** (Civil Appeal No.10191 of 2018).

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

10. Following points arises for consideration in the present appeal -

I) Whether the finding of the learned Court below regarding proof of agreement between the parties suffers from any error of law or facts.

II) Whether the plaintiff's suit is liable to be dismissed on the ground that the plaintiff failed to aver and prove readiness and willingness as per legal requirement under Section 16 (c) of the Specific Relief Act.

III) Whether the property could not be subjected to specific performance, it being joint family property and the defendant having only limited interest therein.

IV) Whether the learned Trial Court erred in law, as well as on facts, in exercising discretion.

11. As far as proof of agreement is concerned, the plaintiff has not only specifically pleaded but also proved execution of agreement in his favour. In paragraphs 2, 3 and 4, the plaintiff has specifically pleaded that on 22/03/2012, an agreement for sale of house and shop of the defendant was entered into between the parties for a consideration of Rs.21,21,000/- and advance of Rs.2 lakhs was paid. It has also been pleaded that thereafter, as per this agreement, another installment of Rs.2 lakhs was to be paid on 10/04/2012, in fulfillment of which, the plaintiff again paid Rs.2 lakhs to the defendant on 10/04/2012 and another document of acknowledgment was also executed. The plaintiff also pleaded that earlier, the defendant had also entered into agreement to sell the property for a lesser consideration of Rs.19,50,000/- and received Rs.5,100/- in advance, but he cancelled that agreement and returned the advance. It was only later on, through intervention of broker- Mukesh Soni, deal was finalised for Rs. 21,21,000/- .

12. In order to prove aforesaid pleadings, the plaintiff has not only examined himself as witness to prove the execution of the agreements and contents thereof, the plaintiff has also led evidence of attesting witnesses of two agreements. In

order to prove first agreement (Ex.P/1) dated 22/03/2012, the plaintiff examined Girdhari Lal Talreja, one of the attesting witness as PW2. This witness has clearly deposed in his evidence that an agreement was entered into between the plaintiff and defendant for sale of the disputed property for a consideration of Rs.21,21,000/- and Kishanchand informed that he is in need of a shop for his son and therefore, he is prepared to purchase on a higher price. He has further deposed that he was called to Tahsil office at Rajnandgaon and in his presence, agreement was executed between Kishanchand and Jitendra and advance of Rs.2 lakhs was paid. The parties agreed to execute sale deed in six months and the plaintiff was also required to pay another installment of Rs.2 lakhs within 15 – 20 days. He has proved his signature in Ex.P/1. In his cross-examination, nothing could be elicited to doubt the testimony. He has stated that he is a business man and income tax payer. A suggestion has been given and admitted by him that he signed Ex.P/1 as the witness.

An attempt has been made to impeach credibility by eliciting that the witness and the plaintiff both belong to the same caste. The evidence of this witness fully proves execution of the agreement as also contents of the agreement in its material terms with regard to the amount of consideration, subject matter for sale and payment of advance and also stipulation regarding time, agreement was to be executed. The other agreement (Ex.P/2) is a subsequent document, which according to the plaintiff's case was executed at the time of payment of further amount of Rs.2 lakhs on 10/04/2012. The witness of these documents, Ramesh Talreja has clearly stated in his affidavit that he was informed by Kishanlal regarding this agreement that the parties have agreed for a consideration of Rs.21,21,000/- and advance of Rs.2 lakhs has already been paid to Jitendra Kumar Sahu and on 10/04/2012, Kishanchand informed that another installment of Rs.2 lakhs is to be paid as per the agreement. Then, he along with Kishanchand and Jitendra, went to

Tahsil office - Rajnandgaon and there, Kishanchand gave Rs.2 lakhs to Jitendra, both of them signed the documents and he signed the document as witness. He has admitted his signature in Ex.P/2. In the cross-examination, a suggestion has been given which has been admitted that the plaintiff introduced him to Jitendra, and that he was informed by Kishanchand regarding the deal. Though, he is not in a position to clearly state as to who typed the document, he has stated that his signature was obtained and notarized by the notary. A suggestion was given that the amount was not given in his presence, has been denied. He has stated that he owns a shop and income tax payer. He also admits that after the agreement (Ex.P/2) was written, he had signed the document. He has further affirmed that an advance was paid in his presence. The evidence of this witness clearly proves execution and contents of agreement with regard to material terms as contained therein.

13. As against categoric pleading and evidence led by the plaintiff, the defendant's reply is mere a cock and bull story and an afterthought. According to the defendant, he does not even know the plaintiff whereas in the evidence of the witnesses, it has clearly come and infact, it is the suggestion given to the plaintiff's witness that the defendant was introduced to the witness by the plaintiff. The defendant has come out with a plea that he never met with the plaintiff. He was a drunkard and in need of money and was in company of Mukesh Soni, who was a property broker and one day, in the state of intoxication, Mukesh Soni obtained signatures on blank papers. At the same time, one of the pleadings made by the defendant is that he was in need of loan. Thus, the pleadings of defendants are mutually destructive. To say that the defendant was in need of loan and Mukesh Soni lending assurance to arrange for loan, obtained signature is different from stating that in the state of intoxication, signatures were obtained.

14. The defendant has examined himself and another witness – Narayan Bhoi and Komal Kumar Sahu. The plaintiff has declared himself to be a drunkard. The other two witnesses have also made such statement. However, the other two witnesses of the plaintiff do not claim to be present at the time of so called signature given by the plaintiff on blank documents at the request of Mukesh Soni. Though the case of the defendant was that Mukesh obtained signature on blank papers, but he did not examine Mukesh. The falsity of stand taken by the defendant is reflected from the fact that despite signatures on the documents and despite having obtained those documents, the defendant did not take any steps against the agreement of sale executed between the parties on 22/03/2012 and 10/04/2012. If the defendant's case was that his signatures were fraudulently obtained, on paper publication made in the news paper, the defendant ought to have immediately taken steps either to make complaint to the police or filing civil suit but none of those steps were taken.

15. The defendant's argument that the agreement cannot be said to be concluded contract within the meaning of Section 12 of the Contract Act, cannot be accepted as the defendant has failed to prove that he, on the date of agreement, was of unsound mind. A self serving statement of defendant being a drunkard is not enough. Where there are pleadings of being in drunken state, such statement should not only be pleaded but should also be proved from clinching and cogent evidence. At the first place, the defendant has not stated the date on which, Mukesh Soni obtained his signature. Even in which month, such signatures were obtained, has not been stated. Another important feature is that according to the defendant, his signature was obtained once. However, there are two sets of document in the present case i.e. Ex.P/1 and Ex.P/2. Date of purchase of both stamp documents are different. Therefore, it cannot be said that in both the documents, signatures were taken on the same day. This again establishes that

the defendant's case against execution of agreement is liable to be rejected.

16. We shall not examine plaintiff's case with regard to legal requirement of pleadings and proof of readiness and willingness. It is well settled legal position that in order to get decree of specific performance, the plaintiff is required to comply with the mandatory requirement of Section 16 (c) of the Specific Relief Act i.e. to aver and to prove readiness and willingness. Readiness is required to be averred as well as proved not only at the time of agreement, the plaintiff is also required to prove that he was ready on all subsequent dates including the time of filing of suit and till passing of the decree. The willingness is also required to be proved in the same manner. Both readiness and willingness are required to be established by the plaintiff not only that he was ready and willing at the time of agreement but also on all subsequent dates, at the time of filing of suit and subsequent thereto also till passing of the decree. If these legal requirements are not pleaded and proved, no decree of specific performance can be granted in favour of the plaintiff. Keeping in forefront the aforesaid principles, we shall find out whether the plaintiff has succeeded in proving this aforesaid legal requirement.

17. In the plaint, the plaintiff has pleaded that an agreement was entered into between the parties on 22/03/2012 and advance of Rs.2 lakhs was paid, followed by payment of another installment of Rs.2 lakhs on 10/04/2012, in execution of another agreement in the shape of acknowledgment. Thereafter, in para 4, what has been pleaded is that a registered notice was sent on 21/08/2012 for execution of agreement and that plaintiff was also present in the office of the Registrar. It is also pleaded that another notice was also sent on 25/09/2012 to get the sale deed executed on or before on 09/10/2012 but the defendant refused to receive and sent the message to Mukesh Soni, the broker for execution of agreement and return of amount. Thereafter, in the preceding paragraphs or any of the succeeding

paragraphs, there is no averment made by the plaintiff that he was ready with the balance amount which was quite a huge amount, being more than Rs.17 lakhs. No doubt that there are pleadings with regard to willingness because in para 4 of the plaint, the pleadings regarding admission made, notices sent, presence in the office of the Registrar has been pleaded. Those pleadings, though fulfilling the legal requirement of plea of willingness, the entire pleading do not contain any whisper much less proper pleading that the plaintiff was ready with the balance amount of fund. The essential requirement in this regard having not been pleaded by the plaintiff, it cannot be said that the plaintiff fulfilled the legal requirement of making specific averment of readiness. True it is that the word "ready in hand" is not required to be specifically pleaded but the pleading in its totality must substantially fulfill the legal requirement of plaintiff's readiness to perform his part of contract. Under the contract, the plaintiff was required to pay Rs.21,21,000/- towards sale consideration. According to him, he had paid Rs.4 lakhs. Thus, he was required to pay balance amount of Rs.17,21,000/-. This was not a small amount. The plaintiff was required to specifically plead that he was ready either with the amount or he had made arrangement to pay that amount, in the event of execution of sale deed. There is no whisper with regard to the means through which he could generate balance amount of fund. Though in the evidence, the source of payment is not required to be led but basic plea with regard to readiness is *sine qua non* for grant of specific performance of contract.

18. The plaintiff has, however, produced a document to prove that he was having Rs.17,22,056/- in his account as on 22/09/2012. At this stage, an argument with regard to admissibility of this document has been raised from the side of the defendant. This argument needs to be rejected at the threshold because no argument can be advanced towards admissibility of the document when at the trial stage when it was admitted, objection was not raised. There is no requirement of

objection where the document is one, admission of which is barred under the law so as to say that such objection could be raised even at the appellate stage. However, there is considerable force in the submission of learned counsel for the appellant that in the absence of pleadings, the evidence in that regard may not be admissible. In the case of **Nandkishore Lalbhai Mehta** (supra), a well settled principle with regard to admissibility of evidence has been reiterated by the Supreme Court as below -

“16. The principle was reiterated by this Court in [Ram Sarup Gupta v. Bishun Narain Inter College](#):

“6. ... It is well settled that in the absence of pleading, evidence, if any, produced by the parties cannot be considered. It is also equally settled that no party should be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it. The object and purpose of pleading is to enable the adversary party to know the case it has to meet. In order to have a fair trial it is imperative that the party should settle the essential material facts so that other party may be taken by surprise.....”

In the same judgment, the Supreme Court has also observed that the pleadings should receive liberal consideration and no pedantic approach should be adopted to defeat justice on hair-splitting technicalities. It has been observed that sometimes, pleadings are expressed in words, which may not expressly make out a case in accordance with strict interpretation of law. In such a case, it is the duty of the Court to ascertain the substance of the pleadings to determine the question. It is not desirable to place undue emphasis on form, instead the substance of the pleadings should be considered. Whenever, the question about lack of pleadings is raised, the enquiry should not be so much about the form of the pleadings; instead the Court must find out whether, in substance, the parties knew the case and the

issues upon which, they went to trial.

19. The aforesaid enunciation of principles with regard to admission of evidence is to be applied in the context of legal requirement of Section 16 (c) of the Specific Relief Act. The requirement of pleading, therefore, has to be examined to find out whether the pleadings taken as a whole, substantially fulfills the legal requirement of pleading of readiness. True it is that it was not necessary for the plaintiff to use the word "I am ready with the fund", if from the pleadings it is reflected that the plaintiff had capacity to pay balance amount, it can be held that the plaintiff has fulfilled the legal requirement of he being ready to perform his part of contract. In this regard, if we look on the pleadings of plaintiff, the plaintiff has only come out with the case that he paid advance of Rs.4 lakhs. Except this, there is no other pleading made by the plaintiff in the plaint to show his capacity to pay balance amount on the date of agreement and on subsequent dates. Even the plaintiff has not stated as to what are his assets, immovable property, gold or any other valuable document on the basis of which, the Court could return the finding that the requirement of pleading that the plaintiff should be ready is substantially fulfilled. In a suit for specific performance of contract, the party is not entitled to decree of specific performance in the absence of pleading of readiness and willingness. In order to find out whether there are appropriate pleadings with regard to readiness, judicial pronouncement of the Supreme Court provide sufficient guidelines. However, if by applying liberal construction avoiding hair splitting technicalities, readiness is not reflected from the pleadings, the Court has no option but to hold that the plaintiff has failed to plea readiness. This has happened in the present case.

20. Learned counsel for the respondent vehemently urged to convince us that in the registered notice, specific words have been used to show that the plaintiff had

sufficient funds available in his hand. Therefore, it is contended that the shortcomings in the pleading, if any, are fulfilled. With respect, we are unable to accept this submission as it is not based on any principle of pleadings. The contents of notice of documents are not pleadings. Unless there is specific plea made, the contents of the notice would not substantiate the legal requirement of pleading.

21. The plaintiff's case that there is no rebuttal to the evidence of plaintiff being possessed of more than Rs.17 lakhs in his account, coupled with payment of advance of Rs. 4 lakhs, failure of the plaintiff to plead that he was not only ready but is also ready and willing at all times, at all stages of the cases until passing of the decree, is not required to be proved. In this regard, though, we find that the plaintiff has come out with some evidence of being possessed of Rs. 17 lakhs at the time of filing of suit, what he has stated in cross-examination, proved to be fatal to his case. In cross-examination, the plaintiff has stated that at that time, when he was being cross-examined, there is no money lying in his savings account. He further states that in his account in Vijaya Bank and IDBI bank, less than Rs.5,000/- is lying. He has further stated that Rs.17 lakhs, in his account, as reflected from Ex.P/1, were collected by way of loan. He had taken Rs.8 lakhs from his father as a consideration of relinquishing his claim from property but that amount has already invested in business. He cannot state the names of person from whom he arranged the fund and then he states that he collected those amounts from Shankar Kirana, Mansukhlal etc. He stated that he is engaged in business of bakery and loan of Rs.15 lakhs was already taken in the name of bakery for purchase of stock. His son is joint worker with him and for his mobile shop also, loan of Rs.12.50 lakhs was taken 1 to 1½ years before, of which, he himself is a guarantor. Thus, from the entire evidence of the plaintiff, as is elicited from his cross-examination, it could not be proved that on the date of his evidence, he was

either possessed of sufficient fund available in his hand for payment of balance amount of consideration or had the capacity to generate, in the event of execution of sale deed. He has not disclosed any means wherefrom he could generate fund. Though, he has stated in paragraph 25 of his cross-examination, in the event of Registry, he would arrange the balance amount. He has not stated that wherefrom he would be in a position to arrange funds. Mere statement is not enough. The plaintiff has to prove that he had arranged or generated balance amount towards performance of his part of contract. If that is not done, no decree can be granted for specific performance of contract. In the case of **Kalawati (D)** (supra), the distinction between readiness and willingness to perform part of contract and the legal requirement for the plaintiff to prove that right from the date of execution of agreement, till the date of decree, he was always ready and willing to perform his part of contract, were also noticed with reference to the earlier judicial pronouncement, as below -

“18. 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.

19. *In His Holiness 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 scrutinized along with 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 paragraph 2 of the Report:

“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..... The factum of readiness and willingness to perform 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.”

In para 21 and 22 of the aforesaid decision, specific aspect with regard to capacity to arrange funds was examined as below -

“21. In so far 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.

22. 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.”

22. In a subsequent decision, the Supreme Court reiterated the settled legal position in this regard, again highlighting, that it is not necessary for the plaintiff to show that all the funds are in hand, nevertheless, it was incumbent on the part of the plaintiff and is necessary requirement of law that he has means to generate the consideration amount. In the case of **C.S. Venkatesh v. A.S.C. Murthy (D) by LRs. and ors., AIR 2020 SC 930**, the aforesaid aspect was examined as below -

14. The next question for consideration is in relation to compliance of Section 16 (c) of the Act by the plaintiff. Though a question was raised before the trial court that there are no pleadings as regards the plaintiff's readiness and willingness to perform the contract, the trial court has rightly held that there is sufficient compliance of Section 16 (c) of the Act to the extent of pleadings. Therefore, the question to be considered is whether the plaintiff was ready and willing to perform his part of the contract.

15. The words 'ready and willing' imply that the plaintiff was prepared to carry out those parts of the contract to their logical end so far as they depend upon his performance. The continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of performance. 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 contract, 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. The amount which he has to pay the defendant must be of necessity to be proved to be available. Right from the date of the execution of the contract till the date of decree, he must

prove that he is ready and willing to perform his part of contract. The Court may infer from the facts and circumstances whether the plaintiff was ready and was always ready to perform his contract.

16. In *N.P.Thirugnanam (Dead) by LRs. v. Dr. R. Jagan Mohan Rao and Others*, 1995 (5) SCC 115, it was held that continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant of 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 to and subsequent to the filing of the suit along with other attending circumstances. The amount of consideration which he has to pay to the defendant must necessarily be proved to be available.

17. In *Pushparani S. Sundaram and Others v. Pauline Manomani James (deceased) and Others*, 2002 (9) SCC 582, this Court has held that inference of readiness and willingness could be drawn from the conduct of the plaintiff and the totality of circumstances in a particular case. It was held thus :

“So far these being a plea that they were ready and willing to perform their part of the contract is there in the pleading, we have not hesitation to conclude, that this by itself is not sufficient to hold that the appellants were ready and willing in terms of Section 16 (c) of the Specific Relief Act. This requires not only such plea but also proof of the same. Now examining the first of the two circumstances, how could mere filing of this suit, after exemption was granted be a circumstance about willingness or readiness of the plaintiff. This at the most could be the desire of the plaintiff to have this property. It may be for such a desire this suit was filed raising such a plea. But Section 16 (c) of the said Act makes it clear that

mere plea is not sufficient, it has to be proved.”

18. Similar view has been taken by this Court in *Manjunath Anandappa URF Shivappa Hanasi v. Tammanasa and Others*, 2003 (10) SCC 390 and *Pukhraj D.Jain and Others v. G. Gopalakrishna*, 2004 (7) SCC 251.

19. The judgment of this Court in *Umabai and Anr. v. Nilkanth Dhondiba Chavan (Dead) by LRs. and Anr.*, (2005) 6 SCC 243, is almost similar to the case at hand where the plaintiff had filed a suit for specific performance of the agreement to reconvey property. The plea of the plaintiff was that the transaction was one of mortgage and the sale stood redeemed and the plaintiff was discharged from the debt and he was ready to pay the defendant the amount for the property only in the alternative that the plea of mortgage was not accepted by the Court, would show that his readiness was conditional. The plaintiff did not have any income and could not raise the amount required for re-purchase of the property. In the totality of the circumstances, it was held that the plaintiff was not ready and willing to perform the contract. The conditions laid for the specific performance of the contract are in para 30, which is as under -

“30. It is now well settled that the conduct of the parties, with a view to arrive at a finding as to whether the plaintiff – respondents were all along and still are ready and willing to perform their part of contract as is mandatorily required under Section 16(c) of the Specific Relief Act must be determined having regard to the entire attending circumstances. A bare averment in the plaint or a statement made in the examination-in-chief would not suffice. The conduct of the plaintiff-respondents must be judged having regard to the entirety of the pleadings as also the evidences brought on records”

20. In the instant case, the plaintiff has alleged that he was ready to pay Rs.35,000/- to the defendants and called upon them to execute the reconveyance deed. However, in para 11 of the plaint

it is pleaded that the plaintiff was running contract business wherein he suffered heavy loss and as such he gave up the business. It is also pleaded that at present the plaintiff has no business or profession and has no source of income. He has no property, either movable or immovable. Mere plea that he is ready to pay the consideration, without any material to substantiate this plea, cannot be accepted. It is not necessary for the plaintiff to produce ready money, but it is mandatory on his part to prove that he has the means to generate the consideration amount. Except the statement of PW-1, there is absolutely no evidence to show that the plaintiff has the means to make arrangements for payment of consideration under the reconveyance agreement.”

23. Applying the aforesaid decisions in the present case, we are of the opinion that despite lack of proper pleading, this Court takes into consideration that the plaintiff had paid Rs.4 lakhs as advance and as on 22/09/2012, he had Rs.17,22,056/- available in his account. The legal requirement of plaintiff continuously being ready and willing to perform his part of contract till passing of decree is not proved in view of what he has stated in his cross-examination.

The submission that the plaintiff stated that as and when registration is done, he will arrange funds, cannot be accepted, because the source or means from where it could be done, has not been disclosed. The decision referred to above clearly lays down that the plaintiff is to clearly state the means wherefrom, he could generate funds.

Another argument of learned counsel for the respondent / plaintiff that mere fact that the plaintiff had paid Rs.4 lakhs and in the past, he had generated funds from various loans, is sufficient to prove readiness, cannot be accepted. His pleadings and evidence that in the past, the plaintiff had generated funds, could not be relied upon to return the finding that he has necessary capacity to raise funds.

In the present case, even according to the plaintiff, he has already taken loan of Rs.15 lakhs for his business and stood as guarantor for loan of Rs.12.50 lakhs taken for his son. As he has already taken loan from others, the plaintiff has failed to disclose any source or means as to from where he could again generate Rs.17,21,000/-.

24. As far as issue with regard to discretionary relief and as to whether the property of the plaintiff was self acquired or family property, it is not necessary for us to return the finding. The issue of discretionary relief would arise in a case where the plaintiff has fulfilled the requirement of readiness and willingness and it is lawful to grant decree of specific performance which, in the present case, is not made out in view of considerations made herein above.

The issue with regard to property being that of the plaintiff or his father, also need not be gone into as the readiness itself has not been found proved.

25. We, however, find that in the present case, though the plaintiff has proved payment of Rs.4 lakhs to the defendant, this amount is required to be returned to the plaintiff. Moreover, in the circumstances of the case, we have recorded finding that the defendant has come out with dishonest plea against the plaintiff and the plaintiff required the house for the business of his own son, we are inclined to direct that the defendant shall return Rs.4 lakhs along with interest @ 18% payable from the date, the amount was advanced to the defendant by the plaintiff. This amount shall be payable by the defendant to the plaintiff within three months from the date of receipt of copy of this order. If it is not paid within three months together with interest, it shall carry further interest @ 24% till the date of realisation.

26. In the result, the appeal is partly allowed. Decree of specific performance granted in favour of the plaintiff is set aside but the plaintiff is entitled to refund of

Rs.4 lakhs along with interest in the manner stated herein above.

27. Let appellate decree be accordingly drawn. Parties to bear their respective costs.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge