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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO.58 OF 2015
WITH
CIVIL APPLICATION NO.112 OF 2015**

Sou. Shakuntala Balasaheb Bhosale and Anr.	... Appellants
Versus	
Shri. Pankaj Jagannath Patole	... Respondent

Mr. Rahul Prakash Walvekar for the Appellants.
Mr. Tejpal Shrikant Ingale for the Respondent.

**CORAM : SMT. SADHANA S. JADHAV, J.
DATE : 10th JANUARY 2020.**

P.C.:

1 The appellant herein impugns the judgment and decree dated 28th October 2014 passed by the District Judge, Sangli in Regular Civil Appeal No.90 of 2007 thereby upholding the judgment and decree dated 25th January 2007 passed by the learned Joint Civil Judge, Junior Division, Tasgaon in Regular Civil Suit No.74 of 2000.

2 That the present appellant happens to be the original defendant. The suit was filed by the plaintiff for specific performance of the agreement of sale. The plaintiff had also issued a notice to the defendant under section 106(3) of the Transfer of Property Act, 1882. The learned trial Court has recorded a finding that the plaintiff was ready and willing to

perform his part of the contract, however, the same was denied by the defendant. The suit was decreed in favour of the plaintiff. The defendant had challenged the said judgment and order by filing R.C.A.90 of 2007. The appellate Court has confirmed the findings. The substantial questions of law as framed by the appellant herein are as follows :

- “d. The substantial question of law is “whether both the lower courts were justified in using discretionary power u/s. 20 of Specific Relief Act, 1963 in granting decree for specific performance in favour of Respondent/ Original Plaintiff?
- f. Whether the courts below were justified in admitting in suit for specific performance in absence of the original agreement dated 22/04/1999?
- g. Whether mere issuance of notice dated 27/10/1999 before filing of suit and without any pleading about readiness and willingness can be construed as sufficient compliance of Section 16(c) of Specific Relief Act, 1963?”

3 The learned counsel for the appellant submits that the notice which was issued under section 106 of the Transfer of Property Act, 1882 was not appended to Form No.47 of the Civil Procedure Code and hence, it cannot be said that there was sufficient compliance of section 16(c) of the Specific Relief Act. Section 16(c) of the Specific Relief Act reads as follows :-

- “16. Personal bars to relief. - Specific performance of contract cannot be enforced in favour of a person -
 - (a)
 - (b)
 - (c) who fails to 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 performance, of which has been prevented or waived by the defendant.

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 defendant or to deposit in Court any money except when so directed by the Court.;
- (ii) the plaintiff must prove performance of, or readiness and willingness to perform, the contract according to its true construction.”

4 In fact, the gravamen of the notice under section 106 is the intention of the parties, readiness and willingness to perform as per the agreement executed between the parties. All that is required by law is that the intention of the parties is to be gathered from the notice i.e. issued.

5 The learned counsel for the appellant has placed reliance upon the judgment of the Apex Court in the case of *Padmakumari and Ors. Vs. Dasayyan and Ors.*¹. The learned counsel for the appellant has drawn attention of this Court to paragraphs 21 and 22 of the judgment which read thus :-

“21. The second important legal contention raised by defendant Nos. 12 to 15 is that the pleadings of the plaintiff are not in conformity with Order 6 Rule 3 CPC, clause 3 of Form No. 47 in Appendix 'A', extracted hereinabove. A careful reading of Para 6 of the plaint makes it very clear that the averment as provided under clause 3 is not in *stricto sensu*

1 (2015) 8 SCC 695

complied with by the plaintiff. The same is evidenced from the averments made at Para 6 of the plaint which reads thus:

"6. The plaintiff is ready and willing to perform his part of the contract by paying the balance of sale consideration of Rs. 63,000/- and take the sale deed in accordance with the provisions of the agreement deed dated 19.04.1992."

22. Upon a careful reading of the abovesaid paragraph we have to hold that the plaintiff has not complied with the legal requirement which is mandatory as provided under Section 16 (c) of the Specific Relief Act. Section 16(c) fell for consideration and has been interpreted by this Court in a number of cases, referred to supra, upon which reliance has rightly been placed and the said decisions are applicable to the fact situation in support of defendant Nos. 12 to 15 and, therefore, we have to hold that the concurrent finding of fact recorded by the High Court on Issue No. 1 is erroneous in law and is liable to be set aside."

6 The learned counsel for the respondent has placed reliance upon the judgment of the Apex Court in the case of *Sugani Vs. Rameshwar Das and Anr.*², wherein the Apex Court has held as follows :-

"10. Further no issue was framed as regards the alleged non-fulfillment of the requirement of Section 16 (c) of the Act. Strangely the High Court upset the factual findings recorded by the trial court and the first appellate Court holding that the requirements of Section 16(c) of the Act were not fulfilled."

7 It is further held that the requirements be fulfilled for bringing in compliance with section 16(c) of the Act have been delineated by this Court in several judgments.

2 (2006) 11 SCC 587

8 The Apex Court has also referred to the Three Judge Bench of the Apex Court in the case of *Syed Dastagir vs T.R. Gopalakrishnasetty*³, wherein it was held that “unless the 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. 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 averment of readiness and willingness in compliance is not in mathematic form it could be in specific words. If the averments as a whole do clearly indicates readiness and willingness of plaintiff to fulfill 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 readiness and willingness of the plaintiff in a suit for specific performance of contract for sale”.

9 This Court is of the opinion that in all such cases, where a suit is for specific performance, a notice issued should spell out an intention of the parties to abide by the contract and it would not be fair to adopt a

3 1999(6) SCC 337

pedantic approach, especially when the said issue was never framed either by the trial Court or by the appellate Court. The said issue does not go to the root of the lis such as want of jurisdiction, want of pecuniary jurisdiction or only mandatory provisions of either Code of Civil Procedure or the Specific Relief Act. In view of the above discussion, the issues framed by the appellant needs to be answered in the negative. The appeal being sans merit stands dismissed. In view of the dismissal of the second appeal, civil application stands disposed of.

(SMT. SADHANA S. JADHAV, J.)