IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.01.2017

PRONOUNCED ON : 12. 08.2020

CORAM :

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.S.No.513 of 2006

S.Rajeswari .. plaintiff

V.

C.Parimala .. defendant

PRAYER : Civil suit is filed under Order VII Rule 1 of CPC r/w. Section 10, 20(3), 21 and 22 of Specific Relief Act, 1963 and Order IV Rule 1 of OS Rules.

(a) for specific performance of the contract under the sale agreement dated 28.10.2005 directing the defendant to execute the sale deed with respect to the suit property to and in favour of the plaintiff on receipt of the balance sale consideration of Rs.34,70,000/- and direct the defendant to put the plaintiff into vacant possession of the suit property more fully described in the schedule hereunder, failing which direct the officer of the Court to execute and register the sale deed in favour of the plaintiff.

(b)for cost of the suit.

For Plaintiff : M/s.S.Sadasharam

For Respondent : M/s.R.Thiagarajan

J U D G M E N T

The civil suit is filed by the plaintiff for specific performance of the contract under sale agreement dated 28.10.2005.

2. The plaintiff submits that the defendant being the absolute owner of property bearing Door No.34-B, Plot No.30, Kaliamman Koil Street, Virugambakkam, Chennai to an extent of 2441sq.ft with a building thereon. The plaintiff agreed to purchase the suit property free from all encumbrances and the terms of the sale transaction were negotiated and the sale consideration was fixed at Rs.48,00,000/-. On 21.10.2005, a sum of Rs.1,00,000/- was paid in cash to the defendant and a cheque for Rs.1,00,000/- drawn from Indian Overseas Bank, Arumbakkam Branch was issued in favour of the defendant and thereafter sale agreement was entered into between the plaintiff and the defendant on 28.10.2005 by setting out all terms and conditions. A sum of Rs.3,00,000/- was also paid in cash to the defendant by the plaintiff. The husband of both the plaintiff and the defendant took effective steps in the negotiations and also the contents in the sale agreement was mutually agreed between the parties. It was mutually agreed between the

parties that the sale transaction shall be completed within a period of three months and further agreed time shall be extended by another two months, if required. The defendant shall be liable to hand over the vacant possession of the suit property to the plaintiff/purchaser on the date of execution of the sale deed and the balance sale consideration shall be paid by the plaintiff to the defendant on the date of execution of the sale deed. The defendant agreed to hand over all the title deeds on the date of execution of the sale deed and prior to that the dues payable by the defendant to the UCO Bank shall also be discharged and the title deeds shall be obtained from the UCO Bank for being handed over to the plaintiff.

3. The plaintiff states that balance sale consideration of Rs.43,00,000/- was readily available for being paid to the defendant. The defendant has not taken any steps to vacate the tenants and to discharge the dues to the UCO Bank and in fact on 09.11.2005 the defendant demanded a sum of Rs.1,00,000/- from the balance sale consideration and the said amount was issued by way of cheque. Again the defendant demanded further a sum of Rs.1,00,000/- and the same was paid by cash

on 16.11.2005. The plaintiff insisted the defendant to discharge the liabilities to the UCO Bank, for which the defendant demanded a sum of Rs.4,00,000/- and the same was paid by the plaintiff by way of cash on 21.11.2005. Thereafter, the defendant demanded a sum of Rs.30,000/- on 07.12.2005 and the plaintiff issued a cheque for the said amount. Once again on 19.12.2005, the defendant demanded a sum of Rs.2,00,000/- and the same was paid by the plaintiff by way of cash on 19.12.2005 itself. Inspite of periodical payments effected by the plaintiff to the defendant, the defendant has not taken any action to vacate the tenants and to discharge the loan due to the UCO Bank. The plaintiff was ready and willing to perform her part of the contract and to get the sale deed executed in her favour. But the defendant had been postponing the execution of the sale deed on receipt of the balance sale consideration, by stating she has to vacate the tenants and to clear the bank dues. Infact, the plaintiff was willing to make any further payments to clear the loan liability to the UCO bank where the suit property has been mortgaged, whereas the defendant is not taking any effective steps to discharge the bank loan nor she allowed the plaintiff to contact the bank officials to determine the quantum of amount payable by the defendant to the UCO

Bank. The defendant has not taken any effective steps to negotiate with the bank to discharge the liability. The plaintiff had been making payments as and when demanded by the defendant to enable her to get ready for the execution of the sale deed by complying the conditions stipulated in the sale agreement. As the time for completion of the sale transaction was nearing expiry, even then, the defendant was not prepared to execute the sale deed stating that the tenants had to be vacated and further it was also represented by the defendant that her daughter was in the family way and she has got to be accommodated in the suit property for delivery of the child and for treatment and on this pretext also the defendant had been postponing and getting the time extended for completion of the sale transaction. The defendant's daughter was stated to leave the suit property with the child by July 2006 and on this pretext also the defendant had been extending the time and postponing the completion of the sale transaction.

4. The plaintiff and her husband requested the defendant to complete the sale transaction stating that the balance sale consideration is readily available with the plaintiff. The plaintiff's husband also used to

meet the defendant and her husband in person and request for the early completion of the sale transaction and on all occasions whenever the plaintiff and her husband used to talk to the defendant over phone and meet the defendant and her husband in person, they used to offer some excuses and used to promise and assure to complete the sale transaction as early as possible and stating so the completion of the sale transaction was prolonged and postponed only by the defendant.

5. The plaintiff was shocked and surprised that she received a legal notice dated 24.06.2006 from the defendant whereby the defendant had stated that the plaintiff was not prepared to get the sale transaction completed within the time stipulated and therefore the agreement dated 28.10.2005 for sale of the suit property between the plaintiff and the defendant had been lapsed and stands terminated. The defendant had been postponing the early completion of the transaction and ultimately came out with a case of cancellation of agreement making false and frivolous allegations against the plaintiff. The defendant has sent a pay order dated 24.06.2006 for a sum of Rs.13,30,000/- along with the legal notice. The plaintiff caused a reply notice dated 29.06.2006 expressing her willingness and readiness to get the sale completed immediately on

payment of balance sale consideration of Rs.34,70,000/-. The plaintiff had also stated that the sale agreement is still subsisting and enforceable in law and that the plaintiff was not willing to take back the sum of Rs.13,30,000/- which had been paid by the plaintiff by way of pay order. It is also pointed out by the plaintiff that the defendant had committed default and failed to honour the commitment and comply with the conditions contained in the sale agreement dated 28.10.2005. On receipt of the reply notice dated 29.06.2006, the defendant caused a rejoinder to be issued on 30.06.2006 enclosing the pay order of Rs.13,30,000/- and the rejoinder notice contains various false allegations levelled against the plaintiff and a perusal of the rejoinder notice would make it very clear that the defendant was at fault and failed to comply with the conditions contained in the sale agreement dated 28.10.2005. A reply to the rejoinder notice was issued on 06.07.2006 and the pay order was again returned to the defendant requesting the defendant to come forward to execute the sale deed on receipt of the balance sale consideration in her reply notice dated 29.06.2006, the defendant did not come forward to execute the sale deed but indulged in precipitating the issue and thereby failed to execute the sale deed.

6. The plaintiff states that the defendant is bound by the terms of the sale agreement dated 28.10.2005 and the plaintiff has got every right and entitlement to have the sale agreement enforced against the defendant and the defendant has no locus standi or any right to withdraw from the sale agreement. The sale agreement is still in force and valid in law and the same has got to be enforced. The defendant is bound to honour the commitment under the sale agreement. The time was periodically extended only at the instance of the defendant to enable her to comply with the conditions stipulated in the agreement to vacate the tenants and to discharge the bank liability. From the rejoinder notice it is seen that the defendant has discharged the bank loan by making a payment of a sum of Rs.22,00,000/- on 28.03.2006 very much beyond the time limit stipulated in the agreement and still the tenants continue to occupy the suit property. The tenants and the defendant are still in possession of the suit property and it was only the defendant who committed default and failed to honour the commitment and failed to perform her part of the contract. There is no other option except to execute the sale deed with respect to the suit property to and in favour of the plaintiff who is willing to pay immediately the entire balance sale

consideration. The plaintiff has got every right to have specific performance of the contract under the sale agreement dated 28.10.2005. The plaintiff had parted with lump sum amount to a tune of Rs.13,30,000/- and on account of failure on the part of the defendant to execute the sale deed on receipt of the balance sale consideration, the plaintiff has been forced to suffer monetarily but also lost her opportunity to go for another property. Hence, the plaintiff filed the present suit for the relief as prayed for.

7. The defendant in her written statement had stated that it is true that the plaintiff herein has entered into an agreement for sale with the defendant agreeing to purchase the suit schedule mentioned property for a sale consideration of Rs.48,00,000/-. The defendant along with her husband W.S.Chandran and their group of companies SVS industries borrowed money from UCO Bank, T.Nagar Branch by mortgaging the immovable property belonging to the defendant. There had been an involuntary default in discharge of the loan, the UCO Bank acting through the Authorised Officer issued possession notice under Rule 8(1) of SARFASEI Act and since there was threat of dispossession of the

property and also sale of the property by UCO Bank. The defendant with a view to avoid ruinous and disastrous sale was on the look out for a purchaser who shall be willing to conclude the deal within a short span so as to facilitate the defendant so as to liquidate the liability and defray the loan to the bank. The plaintiff and the defendant had discussion, negotiation and the modalities of the implementation of the terms of the contract were discussed at length and agreed terms were reduced into writing and as such the plaintiff cannot express ignorance about the terms of the contract. The purpose and object for entering into an agreement for sale is solely with a view to clear the subsisting loan with UCO Bank. Accordingly, the parties herein entered into an agreement dated 28.10.2005. In the above factual background she entered into the agreement of sale and also based on the confirmation by the plaintiff the transaction will be completed as per the time schedule in terms of the agreement. The defendant also approached the bank and also negotiated with them for clearing their dues. The defendant submits that the plaintiff who initially paid certain sum of money towards part sale consideration failed to keep up to her promise and left this defendant in a lurch. The defendant submits that she wanted to clear the loan amount payable to UCO Bank on or before 31.01.2006, the fact was also very well aware and hence three months time was fixed to complete the sale transaction. The defendant submits that the Bank had promised waiver to the tune of Rs.3,00,000/- provided the amount was settled before 31.01.2006. The failure of the plaintiff to comply with the terms of the agreement by making payment of balance sale consideration and completing the transaction, this defendant was unable to pay the amount due to the bank before January 2006 and lost the opportunity by availing one time settlement. Thereafter, the defendant approached the Bank and convinced them and also paid a sum of Rs.22,00,000/- on 28.03.2006 towards full settlement for the dues payable to the bank and had the property documents released and also saved the property from being proceeded under the SARFASEI Act.

8. The defendant submits that the plaintiff has committed breach of contract, the defendant made alternate arrangements for finance from other private agencies and cleared the dues to the bank. The defendant submits that after clearing the dues payable to the bank, the defendant herein cancelled the agreement for sale and also returned the sum of

Rs.13,30,000/- along with the counsel's notice dated 24.06.2006. The plaintiff returned the said sum along with her counsel's notice dated 29.06.2006 and the defendant once again sent back the amount through her counsel dated 30.06.2006 which was once again returned by the plaintiff by her counsel notice dated 06.07.2006. Hence, the defendant is taking necessary steps to deposit the said amount into the credit of this suit before this Court, however, this Court directed to invest the said amount for a period of three years and the deposit receipt could be marked as a document on behalf of the defendant at the time of trial in her defence in the suit claim.

9. The defendant states that the plaintiff is not ready and willing to perform her part of the contract ever since the inception of the contract. The price of the property have also gone up manifold in the meanwhile and if the contract is enforced as against the defendant but she would also be losing the property for a paltry sum despite the breach of essential terms of the contract committed by the plaintiff. As per the order of this Court dated 07.06.2007, the defendant has deposited a sum of Rs.13,00,000/- in a nationalized bank in fixed deposit for a period of

three years and the same shall be encashed with accrued interest at the time of trial and shall be paid to the plaintiff and thereby, rescind the contract strictly in accordance with the terms of the contract. The defendant submits that she has every reason to believe that the plaintiff had no financial capacity to complete the transaction and hence postponed the transaction on some pretext, for the reasons stated above, the defendant cancelled the agreement for sale and returned the advance amount. The defendant states that the plaintiff was very well aware of the fact that the defendant had cleared the amount due to the bank as early as March 2006 from other sources. The plaintiff on coming to know that the amount has been cleared to the Bank and the value of the property is much more has now thought off the present suit with a view to knock off the property.

10. Further the defendant submits that the relief of specific performance being a equitable relief cannot and will not be granted by this Court to the Plaintiff being a defaulting party. The defendant submits that the plaintiff has violated the terms of the contract and acted in variance of the terms of the agreement and not completed the

transaction within the time prescribed under the agreement and hence the plaintiff is not entitled to any relief under Section 16 of the Specific Relief Act. The plaintiff failed to perform her part of the obligations arising out of the contract, is not entitled for the discretionary and equitable relief of specific performance of the Agreement of Sale. The defendant further states that time is the essence of contract, which took place from the date of entering into the above contract by the defendant with the plaintiff.

11. Since the plaintiff, having failed to pay the balance sale consideration has forfeited her rights to claim for specific performance of the contract, the person in breach is not entitled for the discretionary and equitable relief of specific performance of the Agreement for Sale and in such circumstances, the present suit has been filed by the plaintiff as against the defendant only after she came to know that the defendant has cleared the liability due and payable by her to the bank in respect of the suit property, by arranging funds from other sources.

12. The plaintiff miserably failed and neglected to perform her part of the contractual obligations and as a matter of fact, waived and abandoned her rights which is evident from the manner in which she has been taking inconsistent stand at different stages of the litigation. The defendant never failed to perform any of the essential terms of the contract as alleged by the plaintiff. But it is the plaintiff who was not possessed sufficient funds to meet the balance sale consideration within the stipulated period of time. The contract is deemed to have come to an end at the option of the defendant and as a matter of fact, the defendant terminated, contract and refunded the advance paid by the plaintiff and thereby put an end to the terms of the contract dated 28.10.2005. In the absence of subsisting legally enforceable contract, the plaintiff is not entitled to seek the discretionary and equitable relief of specific performance of the contract.

13. The defendant states that since the plaintiff has committed breach of essential terms of the contract dated 28.10.2005, the contract has been duly rescinded and cancelled by the defendant as early as on 24.06.2006 and in such circumstances, unless and until this Court holds

that the termination of the contract is not in accordance with law, the plaintiff is not entitled for the discretionary and equitable relief of specific performance of the contract. The defendant submits that there is absolutely no valid, plausible and tenable cause of action for institution of the present suit by the plaintiff as against the defendant and as such, the suit is liable to be rejected and dismissed and accordingly, the defendant prays for dismissal of the suit with exemplary costs and thus renders justice.

COUNTER CLAIM BY THE DEFENDANT

14. The defendant states that the plaintiff, ought to have paid the balance sale consideration within a stipulated period of three months from the date of Agreement of Sale dated 28.10.2005, failed to pay the same within the stipulated period or within the extended period of two months as provided under Clause 5 of the Agreement of Sale. The plaintiff has no sufficient funds to remit the balance sale consideration to the defendant, to show some indulgence, the defendant received the sum of Rs.2 lakhs paid by the plaintiff by cash on 19.12.2005 and expedited the plaintiff to perform her part of the obligations arising out of the

contract in the Tamil month of 'Thaai' and even thereafter, the plaintiff was keeping silence and had not taken any steps to arrange the balance sale consideration and thus, the defendant had no other option, but to terminate and rescind the contract as per the terms of the contract dated 28.10.2005.

15. The defendant states, in view of the fact that the plaintiff had failed and neglected to pay the balance sale consideration, due and payable by her with respect to suit transaction, within the stipulated period as per the terms of the contract dated 28.10.2005 entered into by the defendant with the plaintiff, the defendant was constrained to validly terminate and rescind the contract. After terminating the contract, the defendant had borrowed funds from other agencies at an exorbitant rate of interest and paid the same to UCO Bank, thereby averted the disastrous sale of the suit property brought out by the bank, and subsequently, returned the advance of Rs.13,30,000/- to the plaintiff by way of Banker's Cheque bearing No.031843 dated 24.06.2006 drawn on Bank of India, along with a legal notice dated 29.06.2006. But, the plaintiff chose to send a reply notice returning the above referred

instrument and thereafter, filed the above suit as against the defendant, knowing fully well that the contract dated 28.10.2005 has been terminated validly by the defendant. The defendant states that there is no subsisting valid, legally enforceable contract in favour of the plaintiff in respect of the suit schedule property, the plaintiff is not entitled for the discretionary and equitable relief of specific performance of the contract or for refund of the money paid by her towards advance sale consideration. However, the defendant is not holding the amount paid by her at the inception of the contract and pursuant to the orders passed by this Court in Application No.3930 of 2007 in C.S.No.513 of 2006, the defendant had deposited the said amount in a Fixed Deposit with Indian Bank, Koyambedu branch in the name of the plaintiff and marked the receipt of the Fixed Deposit issued by the bank as one of the documents filed in support of this Counter Claim. The contract dated 28.10.2005 has been validly terminated and rescinded, the plaintiff is not entitled for any relief, much less than the relief of specific performance and whereas, the defendant shall be entitled to have the contract duly rescinded and terminated in accordance with the terms of the contract, hence this Counter Claim.

16. Based on the pleadings and documents filed by both parties and submission made by both the Counsel the following issues have been framed by this Court on 15.10.2008 :-

1. Whether the defendant is liable to honour the terms of the sale agreement dated 28.10.2005 and execute the sale deed on receipt of the balance sale consideration?

2. Whether defendant violated the terms of the agreement and failed to honour the commitment under sale agreement dated 28.10.2005?

3. Whether the defendant deliberately avoided the execution of the sale deed on receipt of the balance sale consideration and neglected to honour the commitment under the sale agreement dated 28.10.2005?

4.Whether the plaintiff has been always ready and willing to perform her part of contract?

5. Whether the plaintiff failed and neglected to pay the balance sale consideration within the time stipulated as per the terms of the contract?

6. Whether the time is essence of contract?

7. Whether the specific performance would make hardship to defendant?

8. Whether the counter claim of the defendant is to be allowed?

9. Whether the defendant is entitled to declaration that the contract dated 28.10.2005 has been duly rescinded and termination by the defendant on 24.06.2006?

10. Whether the defendant is entitled to counter claim as prayed for in the written statement?

11. To what reliefs the plaintiff and defendant are entitled to?

17. After completion of pleadings, during trial, on the side of the plaintiff, PW1 and PW2 were examined and marked Exs.P1 to P11. On the side of the defendants, defendant was examined as DW1 and marked Exs.D1 to D20.

18. Heard the rival submissions made on both sides and perused the materials available on record.

19. **Issues Nos. 1 to 5** :-

The case of the plaintiff is that the defendant is the absolute owner of the property and the plaintiff agreed to purchase the same free from all encumbrances and the terms of the sale transactions were negotiated and the sale consideration for the suit property was fixed at Rs.48 lakhs. The plaintiff has made a payment of Rs.1,00,000/- by way of cash and a sum of Rs.1,00,000/- by way of cheque on 21.10.2005. Subsequently, when the Agreement for Sale was entered into between the plaintiff and the defendant on 28.10.2005, in addition to the payment of the sum of Rs.2,00,000/- which was already paid on 21.10.2005, the plaintiff had agreed to pay a further sum of Rs.3 lakhs and the same has also been paid by the plaintiff to the defendant by way of cash. It is mutually agreed by the parties that the sale transaction shall be completed within 3 months and further agreed time shall be extended by another 2 months if required. The defendant shall be liable to hand over the vacant possession of the suit property to the plaintiff/purchaser on the date of execution of the sale deed and the balance sale consideration of Rs.43 lakhs shall be paid by the plaintiff to the defendant on the date of execution of the sale deed. The defendant agreed to hand over all the title deeds on the date of execution of the sale deed and prior to that the dues payable by the defendant to the UCO Bank shall also be discharged and the title deeds shall be obtained from the UCO Bank for being handed over to the plaintiff.

20. The balance sale consideration of Rs.43 lakhs was readily available for being paid to the defendant . But, the defendant has not taken any steps to vacate the tenants and to discharge the liabilities to the UCO Bank and in fact on 09.11.2005, the defendant demanded a sum of Rs.1,00,000 from the balance sale consideration and the said amount was paid by way of cheque. Again the defendant demanded further sum of Rs.1,00,000/- from the balance sale consideration and the same was paid by cash on 16.11.2005. When the plaintiff insisted the defendant to discharge the liabilities to the UCO Bank, the defendant demanded a further sum of Rs.4 lakhs and the same was also paid by the plaintiff by way of cash on 21.11.2005. Thereafter, the defendant demanded a sum of

Rs.30,000/- on 07.12.2005 and the plaintiff issued a cheque for the said amount. Once again on 19.12.2005, the defendant demanded a sum of Rs.2,00,000/- and the same was paid by the plaintiff by way of cash on 19.12.2005. Inspite of periodical payments effected by the plaintiff to the defendant, the defendant found to have taken no action to vacate the tenants and to discharge the loan due to the UCO Bank. The plaintiff was ready and willing to perform her part of the contract and to get the sale deed executed in her favour. But the defendant had been postponing the execution of the sale deed on receipt of the balance sale consideration by stating that she has to vacate the tenants and clear the Bank dues. In fact, the plaintiff was willing to make any further payments to clear the loan liability to the UCO Bank, where the suit property has been mortgaged, whereas the defendant has not taken any steps to negotiate with the Bank to discharge the liability. The plaintiff had been making payments as and when demanded by the defendant to enable her to get ready for the execution of the sale deed by complying with the conditions stipulated in the sale agreement. As the time for completion of the sale transaction was nearing expiry, even then, the defendant was not prepared to execute the sale deed stating that the tenants had to be vacated and further it was also represented by the defendant that her daughter was in family way and she has got to be accommodated in the suit property for delivery of the child and for treatment and on this pretext also the defendant had been postponing and getting the time extended for completion of the sale transaction. The defendant's daughter was stated to leave the suit property with the child by July 2006 and on this pretext also the defendant has been extending the time and postponing the completion of the sale transaction.

21. The plaintiff and her husband requested the defendant to complete the sale transaction stating that the balance sale consideration is readily available with the plaintiff. The plaintiff's husband also used to meet the defendant and her husband in person and also over phone for completion of the sale transaction, however, the defendant assured and promised to complete the sale transaction as early as possible and stating so the completion of the sale transaction was prolonged and postponed only by the defendant . The plaintiff received the legal notice dated 24.06.2006 from the defendant, whereby , the defendant had stated that the plaintiff was not prepared to get the sale transaction completed within

the time stipulated and therefore, the agreement dated 28.10.2005 or sale of the suit property between the plaintiff and the defendant had been lapsed and stands terminated. The defendant had been postponing the early completion of the transaction and ultimately came out with a case of cancellation of agreement making false and frivolous allegations against the plaintiff. The defendant has sent a pay order dated 24.06.2006 for a sum of Rs.13,30,000/- along with the legal notice. The plaintiff caused a reply notice dated 29.06.2006 expressing her willingness and readiness to get the sale completed immediately on payment of balance sale consideration of Rs.34,70,000/-. The plaintiff had also stated that the sale agreement is still subsisting and enforceable in law and the plaintiff was not willing to take back the sum of Rs.13,30,000/- which has been paid by the plaintiff by way of pay order. The defendant had committed default and failed to honour the commitment and comply with the conditions contained in the sale agreement dated 28.10.2005. On receipt of the reply notice dated 29.06.2006, the defendant caused a rejoinder issued on 30.06.2006 enclosing the pay order of Rs.13,30,000/- and the rejoinder notice contains various false allegations levelled against the plaintiff and a perusal of the rejoinder notice would make it very clear that the defendant was at fault and failed to comply with the conditions contained in the sale agreement dated 28.10.2005.

22. A reply to the rejoinder notice was issued on 06.07.2006 and the pay order was again returned to the defendant requesting the defendant to come forward to execute the sale deed on receipt of the balance sale consideration in her reply notice dated 29.06.2006, the defendant did not come forward to execute the sale deed but indulged in precipitating the issue and thereby failed to execute the sale deed. The defendant is bound by the terms of the sale agreement dated 28.10.2005 and the plaintiff has got every right and entitlement to have the sale agreement enforced against the defendant and the defendant has no locus standi or any right to withdraw the sale agreement and the sale agreement is still in force and valid in law and the same has got to be enforced. The defendant is bound to honour the commitment under the sale agreement. The time was periodically extended only at the instance of the defendant to enable her to comply with the conditions stipulated in the agreement to vacate the tenants and to discharge the bank liability. From the rejoinder

notice it is seen that the defendant has discharged the bank loan by making a payment of a sum of Rs.22,00,000/- on 28.03.2006 very much beyond the time limit stipulated in the agreement and still the tenants continue to occupy the suit property. The tenants and the defendant are still in possession of the suit property and it was only the defendant who committed default and failed to honour the commitment and failed to perform her part of the contract. Therefore the plaintiff has filed the suit for specific performance and direction to execute the sale deed in favour of the plaintiff after receipt of the balance sale consideration.

23. The case of the defendant is that the defendant along with her husband and their group of companies SVS industries borrowed money from UCO Bank, T.Nagar Branch by mortgaging the immovable property belonging to the defendant. There had been an involuntary default in discharge of the loan, the UCO Bank acting through the Authorised Officer issued possession notice under Rule 8(1) of SARFASEI Act. In order to discharge the liability of the bank, the defendant entered into a sale agreement with the plaintiff on 28.10.2005. The plaintiff was not ready and willing to perform her part of contract though in the agreement

it is not mentioned that the time is essence of contract, but considering the situation to clear the dues to the Bank, the defendant entered into a sale agreement and the defendant wanted to clear the loan amount payable to the UCO Bank on or before 31.01.2006 and 3 months time was fixed to complete the sale transaction. The said fact was also very well aware of the plaintiff. The failure of the plaintiff to comply with the terms of the agreement by making payment of balance sale consideration and complete the sale transaction, the defendant was unable to pay the amount due to the bank before January 2006 and lost the opportunity by availing one time settlement. Thereafter, the defendant approached the Bank and convinced them and also paid a sum of Rs.22 lakhs on 28.03.2006 towards full settlement for the dues payable to the Bank with the help of the private financiers and get the property documents released and also saved the property from being proceeded under the SARFASEI Act.

24. Since the plaintiff has committed breach of contract, the defendant made alternate arrangements for finance from other private financiers and cleared the dues to the Bank. After clearing the dues

payable to the bank, the defendant cancelled the agreement for sale and also returned the sum of Rs.13,30,000/- along with the counsel's notice dated 24.06.2006. The plaintiff returned the said sum along with her counsel's notice dated 29.06.2006 and the defendant once again sent back the amount through her counsel on 30.06.2006 which was once again returned by the plaintiff by her counsel notice dated 06.07.2006. Hence, the defendant is taking necessary steps to deposit the said amount into the credit of this suit before this Court, however, this Court directed to invest the said amount for a period of three years and the deposit receipt could be marked as a document on behalf of the defendant at the time of trial in her defence in the suit claim. The plaintiff is not ready and willing to perform her part of the contract ever since the inception of the contract. The price of the property have also gone up manifold in the meanwhile and if the contract is enforced as against the defendant but she would also be losing the property for a paltry sum despite the breach of essential terms of the contract committed by the plaintiff. As per the order of this Court dated 07.06.2007, the defendant has deposited a sum of Rs.13,00,000/- in a nationalized bank in fixed deposit for a period of three years and the same shall be encashed with accrued interest at the time of trial and shall be paid to the plaintiff and thereby, rescind the contract strictly in accordance with the terms of the contract. The defendant has every reason to believe that the plaintiff had no financial capacity to complete the transaction and hence postponed the transaction on some pretext, for the reasons stated above, the defendant cancelled the agreement for sale and returned the advance amount. The plaintiff miserably failed and neglected to perform her part of the contractual obligations and as a matter of fact, waived and abandoned her rights which is evident from the manner in which she has been taking inconsistent stand at different stages of the litigation. The defendant never failed to perform any of the essential terms of the contract as alleged by the plaintiff. But it is the plaintiff who was not possessed sufficient funds to meet the balance sale consideration within the stipulated time as mentioned in the agreement.

25. Since the plaintiff has committed breach of essential terms of the contract dated 28.10.2005, the contract has been duly rescinded and cancelled by the defendant as early as on 24.06.2006 and in such circumstances, unless and until this Court holds that the termination of

the contract is not in accordance with law, the plaintiff is not entitled for the discretionary and equitable relief of specific performance of the contract. There is absolutely no valid, plausible and tenable cause of action for institution of the present suit by the plaintiff as against the defendant and as such, the suit is liable to be dismissed and decreed as per the counter claim.

26. The learned counsel for the plaintiff would submit that as per the Agreement of Sale, the plaintiff has paid the advance amount. Subsequent to the agreement, the plaintiff has paid various payments on various dates on the demand made by the defendant to clear the dues to the UCO Bank as mentioned in the plaint. The payment of amounts subsequent to the agreement as and when demanded by the defendant would make it clear that the plaintiff was having sufficient funds with her to make the payment to the defendant on the date when the sale deed is executed. However, even after expiry of the time mentioned in the agreement, the defendant has received amounts and even after receipt of the amounts, the defendant neither taken any steps to redeem the property from the UCO Bank nor keep the property vacant for being delivered to

the plaintiff . As per agreement, though three months time was fixed, time is not the essence of contract and the plaintiff was always ready and willing to perform her part of the contract and the defendant alone was not ready and willing to perform her part of contract. The plaintiff has got sufficient funds to get the sale deed executed in her favour and the defendant has not executed the sale deed and not willing to complete her part of the contract. Therefore, the time is not the essence of contract. The defendant has no right to terminate the contract and the same is not valid and binding on the plaintiff. The defendant has discharged the bank loan dues only after the expiry of the time as mentioned in the agreement. The plaintiff need not having money always in her hands and if she expressed her readiness and willingness and if she has the source to meet out the sale consideration, that is enough. Therefore, since the plaintiff is always ready and willing to perform her part of contract, unilateral cancellation of the agreement is not valid and not binding the plaintiff and therefore, the suit has to be decreed as prayed for.

27. The learned counsel for the defendant would submit that the agreement dated 28.10.2005 was admitted and the time for performance

of contract stipulated in the agreement was 3 months and if necessary, they can extend a further period of 2 months. Since the property was mortgaged in the UCO Bank and possession notice was sent to the defendant by the bank, only for clearing the dues to the bank, the defendant entered into the agreement with the plaintiff. Initially the plaintiff has paid the advance amount and the balance sale consideration of Rs.43 lakhs should be paid within 3 months. The plaintiff has paid a total sum of Rs.13,30,000/- on various dates to the defendant. But, she has not paid the balance amount to clear the dues of the Bank.

28. In order to clear the dues, the plaintiff did not come forward to pay the balance sale consideration and get the sale deed executed, within the time fixed. Therefore, the defendant was unable to pay the amount due to the bank before January 2006 and lost the opportunity by availing one time settlement. and therefore, the defendant made alternate arrangements for finance and also paid a sum of Rs.22 lakhs towards full settlement and saved the property from being proceeded with under the provisions of SARFAESI Act. Since, the plaintiff failed to pay the amount due to the Bank, the defendant was constrained to cancel the sale

agreement and also informed the same to the plaintiff by issuing legal notice and refunded the sum of Rs.13,30,000/- to the plaintiff. For supporting his contention, the learned counsel also relied upon the following judgments

Sl. No	*Citations*	*Name of the parties*
1.	1970 (3) SCC 140	R.C. Chandlok & others /vs/ Chuni Lal Sabharwal & others
2.	AIR 1976 ANDHRA PRADESH 243	Pudi Lazarus /vs/ Rev. Johnson Edward & others
3.	AIR 1972 PUNJAB AND HARYARYANA 223	Mehal Singh and others /vs/ The State of Punjab and others
4.	1993 (1) SCC 519	Chand Rani (SMT) (Dead) by LRS /vs/ Kamal Rani (SMT) (dead) by LRS
5	1996(4) SCC 423	P.R. Deb and Associates /vs/ Sunanda Roy
6	1999(5) SCC 77	K. Narendra /vs/ Riviera Apartments (P) Ltd.
7	2002 (3) SCC316	V. Muthuswami /vs/

Sl. No	*Citations*	*Name of the parties*
		Angammal
8	2013 (15) SCC 27	I.S.Sikandar /vs/ K. Subramani
9	2015 (1) SCC 705	Zarina Siddiqi /vs/ A.Ramalingam
10.	2015 (5) SCC 531	Shamshar Singh /vs/ Rajinder Kumar
11	SA 1275 & 1276 of 2007	V. Saraswathi /vs/ Daweed Beevi

He would further submit that even though in the agreement, it is not mentioned that time is essence of contract, the circumstances warrants that time is essence of the contract in this case and the plaintiff has no means to pay the balance sale consideration and get the sale deed executed. Therefore, the defendant cancelled the agreement and also sent notices with the advance amount already paid by the plaintiff. In a suit for the relief of specific performance, the default parties are not entitled for any equitable relief and therefore, the suit is liable to be dismissed.

29. Heard both sides and perused the records carefully.

30. The agreement entered into between the parties on 28.10.2005 and time for executing the sale deed is stipulated as 3 months in the agreement are also admitted. As per agreement, the plaintiff has to pay the balance sale consideration of Rs.43 lakhs within three months and on different dates, the plaintiff paid a sum of Rs. 13,30,000/- to the defendant, which is also admitted by both the parties.

31. According to the plaintiff, the defendant has entered into a sale agreement and received the sale consideration of Rs.13,30,000/- on different dates and agreed to execute the sale deed after discharging the dues to the bank and also to vacate the tenants. Since defendant's daughter was in family way, upto July 2006 , the defendant sought extension of time.

32. According to the defendant, since the defendant had failed to pay the loan dues regularly, her account was declared as Non Performing Asset and possession notice was sent by the bank Under SARFAESI Act. Only in order to clear the dues, and safeguard the property from the bank

from taking possession of the property under SARFAESI Act, the defendant entered into a sale agreement with the plaintiff. But the plaintiff did not come forward to pay the balance sale consideration within the stipulated time and got executed the sale deed.

33. As already stated, Agreement for sale dated 28.10.2005 is admitted and the same is marked as Ex.P.2 and on 24.06.2006, the defendant sent a notice (Ex.P.3) to the plaintiff by intimating the termination of the sale agreement and also refund the advanced sale consideration paid by the plaintiff. Though the plaintiff sent a reply notice dated 29.06.2006 to the defendant (Ex.P.5) and returned the amount, she failed to show that on the date of receipt of Ex.P.3, she had sufficient means to pay the sale consideration and get the sale deed executed. Though in the agreement, it has not been specifically stated regarding the fact that after clearing the bank dues the defendant had to execute the sale deed, but the time of 3 months has been given for payment of the sale consideration and another 2 months has been given, if necessary. There is no evidence to show that the plaintiff has approached the defendant and ready to pay the balance sale consideration

and get the sale deed executed before receiving legal notice Ex.P.3. Though after the date of sale agreement, the plaintiff made some payments, the plaintiff knew very well that the property was mortgaged with the UCO Bank and also knew about the possession notice issued under Rule 8(1) of SARFASEI Act . PW1 also admitted the same during cross examination. Therefore, the plaintiff very well knew that unless the mortgage is cleared and the property is redeemed, the defendant cannot execute the sale deed. The plaintiff ought to have issued notice to the defendant to come forward to execute the sale deed. Though the defendant has to clear the bank due of Rs.22 lakhs, the balance sale consideration is Rs.43 lakhs and hence, the plaintiff should have paid Rs.22 lakhs to the bank and should have sent notice that she is ready to clear the bank dues and after vacating the tenant at the time of execution of the sale deed she would pay the balance sale consideration. If the plaintiff not paid the amount, certainly the defendant could not clear the bank dues. Therefore, the plaintiff has failed to prove that she approached defendant before expiry of the time stipulated in the agreement and her willingness to clear the bank dues and also to pay the balance sale consideration and fixed the time for execution of the sale deed. Therefore, this Court , from the facts and circumstances of the case and also from exchange of notice made by the plaintiff and the defendant, and from oral and documentary evidence, finds that the plaintiff was not ready and willing to perform her part of contract. Even assuming that she was ready and willing to perform her part, when she knew that all the property was mortgaged with the bank, and all the original documents are with the bank, she should have approached the bank and ascertained actual due and try to clear the bank dues. Therefore, in the absence of the same, the plaintiff is not entitled to any equitable relief on the ground of readiness and willingness. Therefore, this Court finds that the plaintiff was not ready and willing to perform her part of contract within the stipulated time mentioned in the agreement. Though ordinarily the time is not essence of the contract, unless she specifically mentioned in the agreement itself that time is essence of the contract and proved the same by let in evidence. In this case, the circumstances shows that since the defendant received notice under Section 13(2) of the SARFAESI Act, dated 23.02.2005 from the bank, and subsequent correspondence under Ex.D1 to Ex.D8 she entered into the agreement of sale with the plaintiff on 28.10.2005. Therefore, taking into consideration of the fact that the defendant was hardly need of money to clear the dues with the UCO Bank and the plaintiff atleast should have approached the bank with the defendant and intimated that she was ready to pay the money directly to the bank and redeem the mortgage and obtain all the original title deeds and the balance would be paid at the time of execution of the sale deed. Hence, the plaintiff has not proved that she was ready and willing to perform her part of contract.

34. The plaintiff has not proved that she was ready and willing to perform her part of contract. The defendant, by notice dated 24.06.2006 terminated the contract and also sent back the amounts already paid by the plaintiff. Even though the plaintiff sent a reply, dated 29.09.2006, she has not proved that on the date of sending reply she was having sufficient means to pay the balance sale consideration and the defendant has also stated that since the plaintiff has failed to clear the dues, the defendant made alternative arrangements with private financiers and cleared the dues to the bank and therefore, the defendant cancelled the agreement and sent the legal notice to the plaintiff along with the pay order. From the oral and document evidence, this Court finds that the

plaintiff has failed and neglected to pay the balance sale consideration within the time stipulated in the agreement dated 28.10.2005 and therefore, issue numbers 1 to 5 are answered against the plaintiff.

35. **Issue No.6.**

As far as this issue is concerned, as already stated, the agreement is not in dispute and 3 months time has been stipulated for execution of the sale deed, if necessary, they can extend the time for another two months also not disputed. It is well settled preposition of law that in the contract for sale of immovable property ordinarily, the time is not essence of the contract, but at the same time, if the circumstances warrants, it could be happened. But at the same time though in this case, after the agreement on several dates, the defendant received the money from the plaintiff. However, even though, she knew that the defendant mortgaged the property with the UCO Bank and required possession notice from the bank, she did not make payment within the stipulated time mentioned in the contract. From the conduct of the parties and the facts and circumstances of this case, this Court finds that the time is essence of the contract and this issue is answered accordingly.

36. **Issue No.7 :-**

The defendant after receiving the possession notice from the bank, approached the plaintiff and agreed to sell the property for the sum of Rs.48 lakhs and received an advance of Rs.3 lakhs and thereafter, received another sum of Rs.2 lakhs and agreed to execute the sale agreement on receipt of Rs. 43 lakhs on the date of execution of the sale deed. As per the agreement, on the date of execution of sale deed, the plaintiff should pay the balance sale consideration. But, the plaintiff very well know about the fact that the property was mortgaged with the bank and possession notice was received by the defendant under the SARFAESI Act. Therefore, under the circumstances, the plaintiff should have atleast paid the dues to the bank and should obtained the original documents and subsequently, at the time of execution of sale deed, she should have paid the balance sale consideration. Since the plaintiff did not make the payment to the bank, the defendant had arranged for finance from the private financiers and settled the dues with the bank and cleared the mortgage and further, now the value of the property is also enhanced. But at the same time, with great difficulty, the defendant cleared the dues and the plaintiff has not proved that she has made payment to the bank and therefore, as it is already found that the plaintiff was not ready and willing to perform her part of contract, the relief of specific performance would make hardship to the defendant and this issue is answered accordingly.

37. **Issue Nos.8 and 10**

From a careful reading of the pleadings and oral and documentary evidence, it could be seen that the plaintiff has not proved the fact that she is entitled for the relief of specific performance and therefore, as the defendant made a counter claim as if the plaintiff she has to prove the claim. In this case, the defendant has not proved and established the relief sought for in the counter claim and this issue is answered against the defendant.

38. **Issue No.9**

As already held that the plaintiff has not proved the readiness and willingness to perform her part of the contract, she is not entitled for the relief of specific performance and the defendant sent a notice dated 24.06.2006 and terminated the agreement dated 28.10.2005 by sending the advance amount received by the defendant from the plaintiff. Though it is settled preposition that unilateral cancellation is not permissible, but after the expiry of the terms and conditions mentioned in the agreement, and further since the plaintiff did not make the payment to clear the bank dues, the defendant made private arrangements to clear the dues and therefore the purpose has been completed without the help of the plaintiff and hence, the defendant has cancelled the agreement. As per the agreement, the balance sale consideration would be paid at the time of execution of the sale deed. But the plaintiff very well know that the defendant received the possession notice from the bank and unless the defendant paid the bank dues and redeemed the property he cannot execute the sale deed. Therefore, the plaintiff has not proved that she made the payment to clear the bank dues, except she made payment of Rs.13,30000 on several dataes. But the plaintiff has not proved that she along with the defendant approached the bank to settle the dues. Therefore, under the circumstances, the plaintiff is not entitled to get the declaration that the agreement dated 28.10.2005 has been duly rescinded and terminated by the defendant on 24.06.2006 and this issue is answered accordingly.

39. Issue no.11

As already discussed from the pleadings, oral and documentary evidence, this court finds that the plaintiff has not proved that she was ready and willing to perform her part of the contract. Though it is settled preposition of law that possession of money always in the hands of the plaintiff is not necessary, but at the same time, in this case, the circumstances warrants that the defendant has to clear the dues to the bank and the plaintiff also very well knew that the property was mortgaged and unless clear the encumbrance, the plaintiff could not get the sale deed in her favour. Therefore, she should have approached the bank or sent notice to the defendant within the stipulated time and proved her bonafide that she was having money and she was ready to clear the dues to the bank and redeem the mortgage. Admittedly , the defendant redeemed the mortgage only after the stipulated time mentioned in the agreement and paid a sum of Rs.22 lakhs on 28.03.2006, i.e. after expiry of the time stipulated in the agreement. Therefore, the plaintiff has not proved that she made genuine attempt to make payment due to the bank. Therefore, the plaintiff is not entitled to get the equitable remedy. Even assuming that time is not the essence of the contract and the defendant got some payments towards the balance sale consideration after the 3 months period stipulated in the agreement, but at the same time, the plaintiff has not proved that she was always ready and willing to perform her part of contract by paying the balance sale consideration in order to clear the dues of the bank. Therefore, under the circumstances, the plaintiff is not entitled to the equitable remedy of specific performance.

40. In the result, the suit is dismissed. The counter claim filed by the defendant is also dismissed. However, considering the facts and circumstances of the case, the respective parties are directed to bear their own costs.

12. 08.2020.

Index : Yes/No
Internet : Yes/No
mrp

<u>List of Witness examined on the side of the plaintiffs</u>

S.Rajeswari	-	PW1
S.Balasubramanian	-	PW2

List of documents marked on the side of the plaintiffs

SL. No	Exhibits	DESCRIPTION OF DOCUMENTS	DATED
1	P1	Receipt between the plaintiff and the defendant	21.10.2005
2	P2	Sale agreement between the plaintiff and the defendant	28.10.2005
3	P3	Notice by defendant to plaintiff	24.06.2006
4	P4	Xerox copy of pay order by defendant to plaintiff	24.06.2006
5	P5	Office copy of reply notice by plaintiff's counsel to defendant's counsel along with postal receipt	29.06.2006
6	P6	Rejoinder by defendant's counsel to plaintiff's counsel	30.06.2006
7	P7	Office copy of reply to rejoinder along with postal receipts	06.07.2006
8	P8	Photo with negative and bill by the plaintiff	---
9	P9	Medicine sales bill by the plaintiff	03.07.2006
10	P10	Endorsement made on the back side of Ex.P2	---
11	P11	Computer generated copy in respect of guideline value	---

List of Witness examined on the side of the defendants

W.S.Chandran - DW1

List of documents marked on the side of the defendant

SL.	Exhibits	DESCRIPTION OF	DATED

No		DOCUMENTS	
1	D1	Letter issued by UCO Bank to Mrs.C.Parimala	23.02.2005
2	D2	Original letter issued by UCO bank to M/s.SVS industries Ambattur, Chennai	28.02.2005
3	D3	Notice issued by UCO bank to Mr.W.S.Chandran	28.02.2005
4	D4	Original notice issued by the UCO bank to Mrs.C.Parimala	28.02.2005
5	D5	Letter sent by the Tamil Nadu Industrial Investment Corporation Ltd to Mr.W.S.Chandran	19.05.2005
6	D6	Photocopy of the letter issued by the Tamil Nadu Industrial Investment Corporation Ltd to Mr.W.S.Chandran	08.06.2005
7	D7	Original Notice issued by UCO Bank to Mr.C.Parimala	27.07.2005
8	D8	Photocopy of the possession notice issued by UCO Bank	27.07.2005
9	D9	Photocopy of the letter issued by UCO bank to Mr.W.S.Chandran and Mrs.C.Parimala	25.01.2006
10	D10	Order passed in Appln.No.3930 of 2007 on 07.06.2007	---
11	D11	Letter from UCO Bank to the defendant	31.03.2006
12	D12	Letter from UCO Bank	31.03.2006
13	D13	Letter from UCO Bank addressed to SVS.Industries	31.03.2006
14	D14	Copy of Fixed deposit receipt No.0210414 with Indian Bank in the name of the defendant	07.06.2007

15	D15	Copy of the Fixed Deposit receipt No.136146 with Vijaya Bank in the name of the defendant	20.09.2012
16	D16	Encumbrance Certificate	29.11.2012
17	D17	Letter from TIIC addressed to Inspector of Police, Crime branch, Porur	16.03.2006
18	D18	Statement from LIC indicating payment	28.03.2006
19	D19	Undertaking letter given by Mr.Narayanan, Tenant	01.12.2005
20	D20	Copy of the payment receipt issued by UCO Bank	01.12.2005

08.2020

P. VELMURUGAN, J.

mrp

Pre Delivery Judgment in

C.S.No.513 of 2006

12. 08.2020.