IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.10.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MRS.JUSTICE N.MALA

A.S.No.337 of 2013
and M.P.No.1 of 2013

J.Chandrasekar ...Plaintiff/ Appellant

-Vs-

1.N.Gandhimathi
2.N.Gowtham ...Defendants/ Respondents

Prayer:- Appeal Suit filed under Order XLI Rule 1 r/w Section 96 C.P.C., against the judgment and decree dated 30.11.2012 made in O.S.No.474 of 2011 on the file of the First Additional District Judge, Coimbatore.

For Appellant	:	Mr.D.Krishna Pradeep
For Respondents	:	No appearance

JUDGMENT

[Judgment of the Court was made by S.S.SUNDAR, J.,]

The plaintiff in the suit in O.S.No.474 of 2011 on the file of the First Additional District Judge, Coimbatore is the appellant in the above appeal.

2. The plaintiff filed the suit in O.S.No.474 of 2011 for specific performance of an Agreement of Sale Deed dated 18.08.2006 and to deliver possession of the property to the plaintiff and for other consequential reliefs.

3. It is the case of the plaintiff that he entered into an Agreement of Sale with the husband of 1st respondent on 18.08.2006. It is contended by the appellant that the husband of 1st respondent agreed to sell the suit property namely an extent of 2 acres out of a larger extent of 4.64 acres in S.No.250 in Thudialur Village, Coimbatore Taluk. The Sale Agreement dated 18.08.2006 marked as Ex.A1 in the suit reveals that the appellant entered into an Agreement of Sale in respect of the suit property for a total sale consideration of Rs.30,00,000/- . It is seen that the plaintiff has paid a sum of Rs.5,00,000/- as advance on the date of the agreement and agreed to pay the balance of sale consideration namely Rs.25,00,000/- within a period of six months from the date of the agreement. The agreement also contain the following clause which read as

follows:

> "மேற்படி 6 மாதங்கள் காலக் கெடுவிற்குள் 1 இலக்கமிட்டவர் அவருடைய செலவில் ஷை வீதம் கிரயம் செய்து கொள்ளத் தவறினால், அதனால் இன்று 2 இலக்கமிட்டவருக்குச் செலுத்தியுள்ள முன்பணத் தொகையை இழந்து விடவேண்டியது. அத்துடன் இந்தக் கிரய ஒப்பந்தமும் ரத்தாகி விடும்."

4. Though the plaintiff agreed to pay the balance of sale consideration amount of Rs.25,00,000/- within a period of six months from the date of the agreement, it is admitted that the plaintiff did not pay the balance of sale consideration within the stipulated time as agreed under Ex.A1. However, the plaintiff pleaded that several payments were made to the husband of 1st respondent on various dates. The endorsements which are marked as Exs.A2 to Ex.A5 indicate that the following amounts were paid by the plaintiff to the husband of 1st respondent and the husband of 1st respondent had agreed to extend the time whenever he received the payments except the last payment.

Date	Payment	Time extended upto	Ex.Nos.
----------	Rs.3.0 lakhs	30.09.2007	Ex.A2
22.12.2007	Rs.2.0 lakhs	28.12.2008	Ex.A3
22.05.2007	Rs.2.0 lakhs	31.08.2009	Ex.A4
18.04.2009	Rs.5.0 lakhs	-----------	Ex.A5

5. From the various endorsements, it is to be noted that the husband of the 1st respondent signed below the endorsements which were marked as Exs.A2, A3, A4 and A5. The agreement under Ex.A1 contains two other endorsements which are not signed. However, it is seen that those endorsements were also relied upon before the Trial Court even in the absence of signature of the husband of the 1st respondent.

6. Based on the endorsements made by the husband of 1st respondent accepting further amounts from the plaintiff, it is contended by the plaintiff in the plaint that the parties never intended time as the essence of the contract as the husband of 1st respondent himself extended the time on various occasions and finally extended the time up to 31.08.2009. However, it is admitted that the time was not extended beyond 31.08.2009. It is also contended by the plaintiff that he was always ready and willing to perform his part of contract and further stated in the plaint that the plaintiff demanded the husband of 1st respondent on several occasions to perform his part of contract to execute the Sale Deed in his favour. It is stated in the plaint that the husband of 1st respondent did not come forward to execute the Sale Deed on account of delay by the survey officials to demarcate

the land. It is admitted by the plaintiff that the husband of 1st respondent died on 25.04.2010. Thereafter, the plaintiff sent a telegram on 12.04.2011 to the defendants asking them to perform their part of contract. Thereafter, a legal notice was issued to the defendants on 21.05.2011 calling up on the defendants/respondents to execute the Sale Deed in favour of the plaintiff/appellant. The defendants sent a reply to the legal notice issued by the plaintiff denying the agreement as one intended to be a sale transaction. Thereafter, the plaintiff filed the present suit on 13.07.2011.

7. The suit was contested by the defendants on many grounds. It is contended by the defendants that husband of 1st respondent had no intention to sell the suit property to anyone and further stated that the husband of 1st respondent had borrowed a sum of Rs.4,00,000/- from the plaintiff. The defendants also denied the various payments that are alleged to have been paid by the plaintiff as indicated in the endorsements made in the suit agreement under Exs.A2 to Ex.A5.

8. The respondents also specifically denied the readiness and willingness of the appellant without prejudice to their contention that the question

of readiness does not arise in the light of denial of execution of the agreement with an intention to sell. The Trial Court after framing necessary issues found that the Sale Agreement under Ex.A1 is proved and it is a genuine sale transaction by which the husband of 1st respondent agreed to sell the suit property for a total sale consideration of Rs.30,00,000/-. Having found that the agreement is true and that the amounts as per the endorsements were paid by the appellant to the husband of 1st respondent, the Trial Court considered the question of readiness and willingness. Having regard to the conduct of the appellant, that he did not pay the balance before the extended time, i.e.31.08.2009, the Trial Court found that the appellant has failed to prove his readiness and willingness to pay the balance sale consideration before the death of the husband of 1st respondent which was on 25.04.2010. The appellant filed the suit only on 13.07.2011, nearly 22 months after the expiry of time extended as per endorsement under Ex.A4. Taking note of the fact that the appellant did not pay the balance amount as stipulated in the Agreement of Sale even after several extensions of time, the Trial Court relying upon the judgment of the Hon'ble Supreme Court in the case of ***Saradamani Kandasamy Vs. Rajalakshmi*** reported in ***(2011) 6 CTC 460*** held that the appellant is not entitled to the equitable relief of specific performance as he has not established his readiness and willingness and that the unexplained delay is fatal to seek specific performance. Having regard to the admitted facts and the conduct of the appellant, the Trial Court granted the alternative relief by directing the respondents to refund the advance amount of Rs.17,00,000/- with interest at the rate of 9 % per annum. Aggrieved by the judgment and decree of the Trial Court the above appeal is preferred by the plaintiff.

9. The learned counsel appearing for the appellant during the course of argument submitted that time is not an essence of the Agreement of Sale Deed dated 18.08.2006 as the husband of 1st respondent extended time periodically upon receipt of further amount as per the endorsements found under Exs.A2 – A5. He further submitted that the appellant has filed the suit within the period of limitation and therefore, the Trial Court is not right in dismissing the suit for specific performance merely because the suit was filed long after the final extension of time. The learned counsel further pointed out that the Trial Court having found that the Agreement of Sale dated 18.08.2006 is genuine and the husband of 1st respondent received various payments as per endorsements Exs.A2 to A5, ought to have granted a decree for specific performance. In the light of specific findings rendered by the Trial Court, it is contended by the

learned counsel that the approach of the Trial Court to deny specific performance on the basis of judgment of the Hon'ble Supreme Court in the case of ***Saradamani Kandappan Vs. S.Rajalakshmi and others*** reported in ***2011 (4) CTC 640*** is not proper.

10. The learned counsel appearing for the appellants also submitted that the appellant has produced the documents under Exs.A10, A11 and A20 to A22 before the Trial Court to show that the appellant had the financial capacity to mobilize funds by sale of properties belonging to him. Pointing out that the appellant has sent a telegram and legal notice promptly and thereafter filed the suit immediately after the receipt of the reply notice, the counsel contended that the findings of the Trial Court are unsustainable.

11. From the pleadings, findings of the Trial Court and the grounds raised by the appellant the points that arise for consideration are as follows:-

> *(a) Whether the appellant has proved his readiness and willingness to perform his part of contract in terms of Agreement of Sale dated 18.08.2006?*
>
> *(b) Whether the appellant is entitled to the equitable relief of specific performance in the present case?*
>
> *(c) Whether time is the essence of the agreement?*

12. From the pleadings, admitted facts and evidence, the Trial Court has found that time is the essence of contract. Further it is also found that the plaintiff is not ready and willing to perform his part of the contract as per the agreement and that the plaintiff is not entitled to the equitable relief of specific performance. It is true that the appellant has established the fact that the husband of 1st respondent entered into an Agreement of Sale under Ex.A1 to sell the suit property for a total sale consideration of Rs.30,00,000/- and the appellant has paid a sum of Rs.17,00,000/- out of the total sale consideration as per the endorsements under Exs.A2 to A5. However, it is seen that as per the case of the appellant relying upon the endorsements, the time was extended only up to 31.08.2009 as per Ex.A4 endorsement. Even while receiving the payment of Rs.5,00,000/- under Ex.A5 on 18.04.2009 time was not extended further. However, the appellant did not pay any money after 18.04.2009. In other words, the appellant has miserably failed to prove his readiness and willingness by making any further payment after 18.04.2009. As per Ex.A1 dated 18.08.2006, only six months time was given for payment of balance. Though time was extended up to 31.08.2009, the fact that there was no further extension even while making further payment as per Ex.A5 indicates that time was made as an

essence of the contract.

13. It is also admitted by the appellant that the telegram under Ex.A7 was issued to the respondents only on 12.04.2011. Though extension of time to make payments was granted by the husband of 1st respondent till 31.08.2009, the plaintiff did not come forward to make payment under the pretext that husband of 1st respondent did not arrange to demarcate the land which was agreed to be sold under the Agreement of Sale in favour of the appellant under Ex.A1. This Court is unable to believe that the husband of 1st respondent was unable to demarcate the land with the assistance of the survey officials for more than three years. From the facts admitted and from the records it can be seen that the appellant has not produced any document or evidence which is reliable and independent to show that he approached the husband of 1st respondent any time before his death to demarcate the land. Therefore, taking advantage of the various extensions given by the husband of 1st respondent, the appellant wanted to delay performance to the maximum extent possible to the detriment of the respondents. It appears that the appellant did not have sufficient money to keep his promise as per Ex.A1.

14. Though it is contended by the appellant's counsel that Exs.A10 and A11 would show the financial capacity of the appellant, the Trial Court considered the documents and found that the appellant did not have the funds at the relevant point of time to perform his part of the contract in terms of the Agreement of Sale under Ex.A1. However, the appellant has produced before the Trial Court a few documents of Title Deeds showing that he had the capacity to make payment. It is to be noted that appellant has not produced further record to show that he made any attempt to sell those properties to mobilize funds so as to perform his part of contract as agreed under Ex.A1. In the absence of any evidences, the Trial Court is right in holding that the appellant has not proved his readiness and willingness. This Court and the Hon'ble Supreme Court has made a clear distinction between readiness and willingness. In this case, though the appellant has paid various amounts which were accepted by the husband of 1st respondent, there is no indication that the husband of 1st respondent extended time beyond 31.08.2009. Therefore by the conduct of the husband of 1st respondent it was made explicit to the appellant that time for performance is made as essence of contract by not extending time beyond 31.08.2009. In the said circumstances, this Court is of the view that the appellant has miserably failed to prove his readiness and willingness in terms of Section 16 (c) of the

Specific Relief Act, 1963 which is prerequisite for grant of relief of specific performance. In the factual context, it is useful to refer to the judgment of the Hon'ble Supreme Court in the case of ***I.S.Sikandar (D) by L.Rs. Vs. K.Subramani and Ors.*** reported in ***(2013) 15 SCC 27*** wherein it is held as follows:

> *"18.__Answer to Point No. 2__*
>
> *Even if we assume that the Agreement of Sale dated 25.12.1983 is subsisting, we have to answer point No. 2 in favour of Defendant No. 5 for the following reasons:*
>
> *It would be very much relevant for us to extract Clause 6 of the Agreement of Sale which reads thus:*
>
> *The time fixed for execution and completion of the sale transaction is five months from the date of the agreement of sale. The first parties have agreed to get the necessary permission for registration from the competent authorities such as the Urban Land Ceiling authorities and Income Tax Authority within the said period of five months at the cost and expenses of the Second Party. The Second Party has agreed to pay the necessary layout and conversion charges of the suit property to the concerned authorities. The first party have further agreed with the second party that if in case the necessary permission from the aforesaid authorities is delayed and as a consequence thereof the payment of layout charges is delayed, the time for due performance of the agreement shall stand extended for a further*

period of 2 months from the date of grant of such permission.

This position of law is well settled by this Court in the Constitution Bench judgment in Smt. Chand Rani (dead) by L.Rs. v. Smt. Kamal Rani (dead) by L.Rs. MANU/SC/0285/1993 : (1993) 1 SCC 519; wherein this Court has held that it is well settled principle of law, that in a case of sale of immovable property, time is not the essence of the contract. However, If the parties agreed to a specified time in the agreement to perform their part of the contract, then time is the essence of the contract and parties shall adhere to the same.

To emphasize the fact that time is the essence of the contract before the High Court, the counsel for the 5 th Defendant has placed reliance upon the judgment of this Court in Chand Rani's case (supra), the relevant portions of which are extracted below:

> ***19.** It is a well-accepted principle that in the case of sale of immovable property, time is never regarded as the essence of the contract. In fact, there is a presumption against time being the essence of the contract. This principle is not in any way different from that obtainable in England. Under the law of equity which governs the rights of the parties in the case of specific performance of contract to sell real estate, law looks not at the letter but at the substance of the agreement. It has to be ascertained whether under the terms of the contract the parties named a specific time*

within which completion was to take place, really and in substance it was intended that it should be completed within a reasonable time. An intention to make time the essence of the contract must be expressed in unequivocal language.

20. *...Section 55 of the Contract Act which deals with the consequences of failure to perform an executory contract at or before the stipulated time provides by the first paragraph:*

> *When a party to a contract promises to do a certain thing at or before a specified time, or certain things at or before specified times, and fails to do any such thing at or before the specified time, the contract, or so much of it as has not been performed, becomes voidable at the option of the promisee if the intention of the parties was that time should be of the essence of the contract.*

It is not merely because of specification of time at or before which the thing to be done under the contract is promised to be done and default in compliance therewith, that the other party may avoid the contract. Such an option arises only if it is intended by the parties that time is of the essence of the contract. Intention to make time of the essence, if expressed in writing, must be in language which is unmistakable: it may also be inferred from the nature of the property agreed to be sold, conduct of the parties and the surrounding *circumstances at or before the contract. Specific performance of a contract will ordinarily be granted, notwithstanding default in carrying out the contract within the specified period, if having regard to the express stipulations of the parties, nature of the property and the surrounding circumstances, it is not inequitable to grant the relief. If the contract relates to sale of immovable property, it would normally be presumed that time was not of the essence of the contract. Mere incorporation in the written agreement of a clause imposing penalty in case of default does not by itself evidence an intention to make time of the essence. In Jamshed Khodaram Irani v. Burjorji Dhunjibhai the Judicial Committee of the Privy Council observed that the principle underlying Section 55 of the Contract Act did not differ from those which obtained under the law of England as regards contracts for sale of land.*

***22.** In Hind Construction Contractors case quoting Halsbury's Laws of England, this Court observed at pages 1154-55 as under: (SCC pp. 76- 77, paras 7 & 8)*

In the latest 4 th edn. of Halsbury's Laws of England in regard to building and engineering contracts the statement of law is to be found in Vol. 4, para 1179, which runs thus:

> ***1179.** Where time is of the essence of the contract. -- The expression time is of the essence*

means that a breach of the condition as to the time for performance will entitle the innocent party to consider the breach as a repudiation of the contract. Exceptionally, the completion of the work by a specified date may be a condition precedent to the contractor's right to claim payment. The parties may expressly provide that time is of the essence of the contract and where there is power to determine the contract on a failure to complete by the specified date, the stipulation as to time will be fundamental. Other provisions of the contract may, on the construction of the contract, exclude an inference that the completion of the works by a particular date is fundamental; time is not of the essence where a sum is payable for each week that the work remains incomplete after the date fixed, nor where the parties contemplate a postponement of completion.

Where time has not been made of the essence of the contract or, by reason of waiver, the time fixed has ceased to be applicable, the employer may by notice fix a reasonable time for the completion of the work and dismiss the contractor on a failure to complete by the date so fixed.

It will be clear from the aforesaid statement of law that even where the parties have expressly provided *that time of the essence of the contract such a stipulation will have to be read along with other provisions of the contract and such other provisions may, on construction of the contract, exclude the inference that the completion of the work by a particular date was intended to be fundamental; for instance, if the contract were to include clauses providing for extension of time in certain contingencies or for payment of fine or penalty for every day or week the work undertaken remains unfinished on the expiry of the time provided in the contract such clauses would be construed as rendering ineffective the express provision relating to the time being of the essence of contract.*

19. *The legal principle laid down by this Court in the above case squarely applies to the facts of this case for the following reasons. In the instant case, undisputedly, the Plaintiff did not get Agreement of Sale executed by paying the remaining consideration amount to the Defendant Nos. 1-4 within the stipulated period of 7 months as agreed upon by him under Clause 6 of the agreement by asking the Defendant Nos. 1-4 to get the necessary permission from ULCA and Income Tax Department after paying the layout charges to the concerned authorities for getting the sale deed executed in his favour. The Plaintiff has not complied with the condition within the original stipulated period of five months and extended period of two months and even if the delay occurs in getting permission from the authorities, that period was over by July, 1984. It is an undisputed fact that the date of the institution of* *the original suit was nearly 11 months after expiry of the limitation period stipulated in the agreement to get the sale deed executed in favour of the Plaintiff.*

20. *Both the trial court as well as the appellate court have not examined this important aspect of the case though the parties have agreed to perform their part of contract within seven months from the date of execution of the agreement as stipulated in Clause 6. We have considered this aspect of the case on the basis of the period of 7 months stipulated in the Agreement of Sale and the same is answered in favour of the Defendants.”*

15. In the case of ***Saradamani Kandasamy Vs. Rajalakshmi*** reported in ***(2011) 6 CTC 460*** the Hon'ble Supreme Court has held follows:-

“27. *A correct perspective relating to the question whether time is not of the essence of the contract in contracts relating to immovable property, is given by this Court in K.S. Vidyanadam and Ors. v. Vairavan MANU/SC/0404/1997 : (1997) 3 SCC 1 (by Jeevan Reddy J. who incidentally was a member of the Constitution Bench in Chand Rani). This Court observed:*

It has been consistently held by the courts in India, following certain early English decisions, that in the case of agreement of sale relating to immovable property, time is not of the essence of the contract unless specifically provided to that effect.

In the case of urban properties in India, it is well-known that their prices have been going up sharply over the

> *last few decades particularly after 1973. ....We cannot be oblivious to the reality and the reality is constant and continuous rise in the values of urban properties - fuelled by large scale migration of people from rural areas to urban centres and by inflation.*
>
> *Indeed, we are inclined to think that the rigor of the rule evolved by courts that time is not of the essence of the contract in the case of immovable properties - evolved in times when prices and values were stable and inflation was unknown - requires to be relaxed, if not modified, particularly in the case of urban immovable properties. It is high time, we do so.*

(Emphasis supplied)

Therefore there is an urgent need to revisit the principle that time is not of the essence in contracts relating to immovable properties and also explain the current position of law with regard to contracts relating to immovable property made after 1975, in view of the changed circumstances arising from inflation and steep increase in prices. We do not propose to undertake that exercise in this case, nor referring the matter to larger bench as we have held on facts in this case that time is the essence of the contract, even with reference to the principles in Chand Rani and other cases. Be that as it may.

28. *Till the issue is considered in an appropriate case, we can only reiterate what has been suggested in K.S. Vidyanadam (supra):*

> ***(i)*** *Courts, while exercising discretion in suits for specific performance, should bear in mind that when the parties prescribe a time/period, for taking certain steps or*

for completion of the transaction, that must have some significance and therefore time/period prescribed cannot be ignored.

(ii) *Courts will apply greater scrutiny and strictness when considering whether the purchaser was 'ready and willing' to perform his part of the contract.*

(iii) *Every suit for specific performance need not be decreed merely because it is filed within the period of limitation by ignoring the time-limits stipulated in the agreement. Courts will also 'frown' upon suits which are not filed immediately after the breach/refusal. The fact that limitation is three years does not mean a purchaser can wait for 1 or 2 years to file a suit and obtain specific performance. The three year period is intended to assist purchasers in special cases, as for example, where the major part of the consideration has been paid to the vendor and possession has been delivered in part performance, where equity shifts in favour of the purchaser.*"

16. The question of readiness and willingness in the present case also has to be considered in the light of judgment of the Hon'ble Supreme Court in the case of ***K.S.Vidyanathan & Others Vs. Vairavan*** reported in ***1997 (1) CTC 628 (SC)*** wherein the Hon'ble Supreme Court in a similar case has held as follows:-

"***11.*** *Sri Sivasubramanium cited the decision of the Madras High Court in Section V. Sankaraninga Nadar v. P.T.S. Ratnaswamy*

Nadar A.I.R. 1952 Mad. 389 holding that mere rise in prices is no ground for denying the specific performance. With great respect, we are unable to agree if the said decision is understood as saying that the said factor is not at all to be taken into account while exercising the discretion vested in the court by law. We cannot be oblivious to the reality - and the reality is constant and continuous rise in the values of urban properties - fuelled by larger-scale migration of people from rural areas to urban centers and by inflation.

Take this very case. The plaintiff had agreed to pay the balance consideration, purchase the stamp papers and ask for the execution of sale deed and delivery of possession within six months. He did nothing of the sort. The agreement expressly provides that if the plaintiff fails in performing his part of the contract, the defendants are entitled to forfeit the earnest money of Rs. 5,000/- and that if the defendants fail to perform their part of the contract, they are liable to pay double the said amount. Except paying the small amount of Rs. 5,000/- [as against the total consideration of Rs. 60,000/-] the plaintiff did nothing until he issued the suit notice 2 1/2 years after the agreement. Indeed, we are inclined to think that the rigor of the rule evolved by courts that time is not of the essence of the contract in the case of immovable properties - evolved in times when prices and values were stable and inflation was unknown - requires to be relaxed, if not modified, particularly in the case of urban immovable properties. It is high time, we do so.

Learned Counsel for the plaintiff says that when the parties entered into the contract, they knew that prices are rising; hence, he says, rise in prices cannot be a ground for denying specific performance. May be, the parties knew of the said circumstance but *they have also specified six months as the period within which the transaction should be completed. The said time-limit may no amount to making time the essence of the contract but it must yet have some meaning. Not for nothing could such time-limit would have been prescribed. Can it be stated as a rule of law or rule of prudence that where time is not made the essence of the contract, all stipulations of time provided in the contract have no significance or meaning or that they are as good as nonexistent? All this only means that while exercising its discretion, the court should also bear in mind that when the parties prescribes certain time-limits for taking steps by one or the other party, it must have some significance and that the said time-limits cannot be ignored altogether on the ground that time has not been made the essence of the contract [relating to immovable properties].*

12. *Sri Sivasubramanium relied upon the decision of this Court in Satyanarayana v. Yellogi Rao MANU/SC/0310/1964 : [1965]2SCR221 , wherein it has been held:*

> *As Article 113 of the Limitation Act prescribes a period of 3 years from the dated fixed thereunder for specific performance of a contract, it follows that mere delay without more extending up to the said period cannot possibly be a reason for a court to exercise its discretion against giving a relief of specific performance. Nor can the scope of the discretion, after excluding the cases mentioned in Section 22 of the Specific Relief Act, be confined to waiver, abandonment or estoppel. If one of these three*

circumstances is established, no question of discretion arises, for either there will be no subsisting right or there will be a bar against the assertion. So, there must be some discretionary field unoccupied by the three cases, otherwise the substantive section becomes otiose. It is really difficult to define that field. Diverse situation may arise which may induce a court not to exercise the discretion in favour of the plaintiff. It may better be left undefined except to state what the section says, namely, discretion of the court is not arbitrary,, but sound and reasonably guided by judicial principles and capably of correction by a court of appeal.

[Emphasis supplied]

Subba Rao, J., speaking for the Bench, pointed out the distinction between Indian Law and the English Law on the subject and stated the conclusion in the following words: "While in England, mere delay or laches may be a ground for refusing to give a relief of specific performance, in India mere delay without such conduct on the part of the plaintiff as would cause prejudice to the defendant does not empower a court to refuse such a relief.... It is not possible or desirable to lay down the circumstances under which a court can exercise its discretion against the plaintiff. But they must be such that the representation by or the conduct or neglect of the plaintiff is directly responsible in inducing the defendants to change his position to his prejudice or such as to bring about a situation when it would be inequitable to give him such a relief."

***13.** In the case before us, it is not mere delay. It is a case of total inaction on the part of the plaintiff for 2 112 years in clear* *violation of the term of agreement which required him to pay the balance, purchase the stamp papers and then ask for execution of sale deed within six months. Further, the delay is coupled with substantial rise in prices - according to the defendants, three times - between the date of agreement and the date of suit notice. The delay has brought about a situation where it would be inequitable to give the relief of specific performance to the plaintiff."*

17. After entering into an Agreement of Sale on 18.08.2006 to pay the balance of Rs.25 lakhs within six months (before 17.02.2007) the defendants sought for extension which was given to him on three occasions up to 31.08.2009. Even after getting nearly 2 ½ years further time, the appellant did not pay the balance amount of Rs.13,00,000/- before filing suit on 13.07.2011. The appellant has not even established his readiness till he filed the suit. Even after the death of husband of 1st respondent he did not come forward to make payment as per the terms. The suit property is an extent of 2 acres in a semi urban area. Between 2006 and 2011, there was a steep increase in price throughout the State. This Court can take judicial notice. The findings of the Trial Court on all the issues are unassailable. The Trial Court having regard to admitted facts and evidence refused to grant the equitable relief of specific performance giving cogent reasons. However granted alternative relief as prayed for.

18. In the light of the facts admitted and considered by the Trial Court and this Court we are unable to grant any relief to the appellant in the above appeal.

19. In the result, this Court finds no merits and hence, this appeal is **dismissed with cost** confirming the judgment and decree dated 30.11.2012 made in O.S.No.474 of 2011 by the First Additional District Judge, Coimbatore. Consequently, connected miscellaneous petition is closed.

[SSSRJ] [NMJ]
11.10.2022

cda
Index : Yes/No

Speaking/Non Speaking order

S.S.SUNDAR, J.,

AND

N.MALA, J.,

cda

To

1.The First Additional District Judge, Coimbatore.

2.The Section Officer, VR Records,
High Court, Chennai.

A.S.No.337 of 2013

11.10.2022