



WEB COPY



A.S.No.92 of 2018
and C.M.P.No.2417 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19.10.2022

Pronounced on : 07.11.2022

CORAM:

THE HONOURABLE **MS.JUSTICE V.M.VELUMANI**
and
THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

A.S.No.92 of 2018
and C.M.P.No.2417 of 2018

A.Zahir Hussain

... Appellant

Vs.

Chandran (Died)

Rakesh (Died)

1.Kamala

2.Sudha Carolilne

3.Kavitha

4.Evan Marvin

5.Minor. Richins Larwin

... Respondents



A.S.No.92 of 2018
and C.M.P.No.2417 of 2018

Prayer: This First Appeal is filed under Section 96 C.P.C against the Judgment and decree dated 28.07.2017 made in O.S.No.13 of 2011 on the file of the V Additional District Court, Coimbatore.

For Appellant : Mr.V.Anandhamurthy
For R1 to R5 : Mr.T.Saikrishnan

J U D G M E N T

(Judgment of the Court was delivered by SUNDER MOHAN, J.)

The above Appeal has been filed challenging the Judgment and Decree dated 28.07.2017 in O.S.No.13 of 2011 dismissing the suit filed by the appellant for Specific Performance of the Agreement entered into between the appellant and the respondents.

2. The appellant/plaintiff filed a suit stating that he had entered into an Agreement of Sale on 22.03.2010 wherein, one Mr.Chandran and Mr.Rakesh (both died during the pendency of the suit, the respondents herein are their legal representatives. In this judgement reference to the respondents means the



A.S.No.92 of 2018
and C.M.P.No.2417 of 2018

WEB COPY

deceased Mr.Chandran and Mr. Rakesh and their successors in interest namely the respondents herein), agreed to sell the suit schedule property for a sale consideration of Rs.2,20,000/- (Rupees Two Lakhs Twenty Thousand only) per cent. The appellant paid a sum of Rs,5,00,000/- (Rupees Five Lakhs only) towards advance on the date of Agreement. He was always ready and willing to pay the balance sale consideration. The appellant asked the respondents to measure the property before the execution of the Sale Deed. The respondents avoided the measurement of the property. Finally on 25.10.2015, the property was measured and the appellant found that the property available was only 11 cents and 50 Sq.ft and not 15 cents and 60 Sq.ft., as stated in the Agreement of Sale. The appellant was ready and willing to pay the balance sale consideration for the actual extent of land available and not for the extent of land mentioned in the Sale Agreement. However on 25.05.2010, the respondents sent a legal notice stating that since the appellant had not come forward to pay the balance sale consideration within the time stipulated in the Agreement the Agreement stood cancelled, and that the appellant was not entitled to refund of the advance amount as per the terms of the Agreement. The appellant sent a reply notice on 21.06.2010 refuting the averments in the notice and expressing his readiness and willingness to pay the balance sale



A.S.No.92 of 2018
and C.M.P.No.2417 of 2018

WEB COPY

consideration for the actual extent of 11 cents and 50 Sq.ft available. Thereafter, a panchayat was held on 02.11.2010 wherein, the respondents agreed to sell the available property of 11 cents 50 Sq.ft at the agreed rate of Rs.2,20,000/- (Rupees Two Lakhs Twenty Thousand only) per cent and, execute the Sale Deed on or before 03.12.2010 and hand over the possession of the suit property to the appellant. Since the respondents failed to sell the suit property as promised by them, the appellant issued a legal lawyer's notice dated 10.12.2010 calling upon the respondents to execute the Sale Deed. The respondents issued a reply notice dated 27.12.2010. The appellant further stated that he was ready and willing to pay the balance sale consideration. The owners of the land namely Mr.Chandran and Mr.Rakesh died during the pendency of the suit and the respondents were impleaded as legal representatives of the deceased defendants. The appellant therefore prayed for a decree against the respondents to execute the Sale Deed by receiving the balance sale consideration. The appellant filed an amended plaint by altering the extent of land to 12 cents 225 Sq.Ft after the report of the Advocate Commissioner. The Commissioner examined the property and found the extent available as 12 Cents and 225 Sq.Ft.



A.S.No.92 of 2018
and C.M.P.No.2417 of 2018

WEB COPY

3.The first and second defendants in the suit namely Mr.Chandran and Mr.Rakesh filed Written Statement stating that the actual extent of land available was 15 cents and 60 Sq.ft as mentioned in the Sale Agreement. They had purchased the said extent by a Sale Deed dated 13.04.2007. The appellant entered into the sale Agreement only after verifying the extent of land. The second defendant had lodged a police complaint on 18.06.2010 against the appellant, as the appellant threatened them with dire consequences if they did not execute the Sale Deed. The defendants were always willing to execute the Sale Deed for the extent of land measuring 15 Cents and 60 Sq.ft. The appellant had made a false claim that only 11 cents and 50 Sq.Ft was available. There was no panchayat on 02.11.2010 as falsely averred by the appellant. The appellant had suppressed the rejoinder notice dated 20.07.2010 issued by the defendants refuting all the allegations. Since the appellant was not ready and willing to pay the balance sale consideration for the extent mentioned in the Sale agreement, the appellant is not entitled to the relief as prayed for.



A.S.No.92 of 2018
and C.M.P.No.2417 of 2018

WEB COPY

4.The third defendant/first respondent who was impleaded on the death of the first two defendants filed a written statement stating that on 13.06.2012 when her husband returned home after the hearing of the case, the appellant along with four other persons came to her house and demanded Rs.31,00,000/- (Rupees Thirty One Lakhs only) for withdrawing the suit. The husband of the third defendant was shocked, because of this illegal demand and conduct of the appellant, due to which he suffered a mild heart attack on the same night at 11:25 p.m, suffered another attack on 14.06.2012 at about 3.00 a.m and ultimately died on 15.06.2012. Sadly, the second defendant, the son of the first defendant unable to bear his father's demise also died a little later. In view of the death of the bread winners of the family, the widows of the first and second defendants and their young children one of whom is mentally retarded are pursuing the legal battle against the appellant. The third defendant also filed an additional Written Statement to the amended plaint stating that the amended plaint changed the character of the suit. The third defendant/first respondent stated that they never handed over the possession of the property. The appellant being a real estate broker is taking advantage of the absence of two male members in the family. The defendant never agreed to execute the Sale Deed for the extent of land mentioned



A.S.No.92 of 2018
and C.M.P.No.2417 of 2018

in the Commissioner's report. There were 3 measurements with regard to the extent of property (i.e) the measurement given in the agreement, the measurement indicated in the first report of the Commissioner and measurement in the said report of the Commissioner.

5. Before the trial Court, the appellant examined three witnesses on his side and marked Ex.A1 to Ex.A.17. The respondents examined D.W.1, and marked Ex.R.1. The commissioner's reports were marked as Ex.C.1 and Ex.C.3 and the plan was marked as Ex.C.2.

6.The trial Court framed the following issues:

- 1.Whether the property available on ground in respect of sale agreement is only 11 Cents and 50 Sq ft. as mentioned in the plaint?*
- 2.Whether the time was the essence of contract?*
- 3.Whether the plaintiff was ready and willing to perform his part of the contract?*
- 4.Whether the plaintiff is entitled for the relief of specific performance of contract?*
- 5.To what other relief, if any, is the plaintiff entitled?*



A.S.No.92 of 2018
and C.M.P.No.2417 of 2018

WEB COPY

Additional Issue

Whether the suit sale agreement dated 22-3-2010 is true and valid?

Amended Issue No.1

Whether the suit property available on ground in respect of the sale agreement is only 12 Cents and 225 Sq.ft. as mentioned in the plaint?

7.The trial Court decided in favour of the appellant in respect of the Additional Issue and the Amended Issue No.1 and Issue No.2. In respect of Issue Nos.3, 4 and 5, the trial Court decided in favour of the respondents. Thus, the trial Court found that the appellant had not established the readiness and willingness to pay the balance sale price. The appellant had also not established that there was a panchayat on 02.11.2010 and the respondents had handed over the possession during the said panchayat. The appellant had therefore come up with false averments in a suit for Specific Performance and therefore not entitled to the discretionary relief. The learned trial Judge also found that the appellant was not entitled to the alternative relief for refund of the advance amount as no claim was made for such relief.



A.S.No.92 of 2018
and C.M.P.No.2417 of 2018

WEB COPY 8. The learned counsel for the appellant submitted that the trial Court ought to have granted the relief of Specific Performance. The trial Court ought to have seen that the respondents had come forward to measure the property only on 20.05.2010 which was two days before the time stipulated for the execution of the Sale Deed in the sale Agreement. The trial Court further ought to have seen that when the property was measured on 25.02.2010 only an extent of 11 cents and 50 Sq.ft was available and not 15 cents 60 sq.ft as mentioned in the Sale Agreement. The learned counsel further submitted that it was the respondents who refused to execute the Sale Deed for the available extent, though the appellant was always ready and willing to pay the balance sale consideration. The conduct of the respondents in issuing the notice within five days from the date of measurement cancelling the Sale Agreement shows that their motive was to commit breach of promise and to somehow find ways to avoid refund of the advance amount received by them. The learned counsel further submitted that in a suit for Specific Performance, the appellant need not establish that funds are available all the time. The appellant had to establish that he is capable of paying the balance sale consideration and was ready and willing to perform his part of the contract. He



A.S.No.92 of 2018
and C.M.P.No.2417 of 2018

further submitted that the learned trial Judge ought not to have disbelieved the appellant's case with regard to the panchayat that was held on 02.11.2010. The appellant had mentioned about the panchayat in the notice dated 10.12.2010 though he had not mentioned the names of the witnesses to the panchayat. The learned Judge ought not to have disbelieved his version merely because he had not specifically mentioned the names of the witnesses. The learned Judge erred in holding that the appellant had not established his readiness and willingness. The learned counsel for the appellant relied upon the following Judgments in support of his submissions:

(a) Unreported Judgment of this Court is ***A.S.No.293 of 2016*** dated 22.06.2022 in ***(T.P.Ponnusamy vs.R.Devaraj)***

11.5. The learned counsel for the respondent relied on the judgment of the Apex Court in R.Lakshmikantham Vs.Devaraji reported in 2019 (6) CTC 859, wherein, the Apex Court held that in cases where agreement of sale required completion of sale transaction within three months and subsequent clauses in the agreement required redemption of mortgage and retrieval of title deeds from mortgagee, the period of three months stipulated in the agreement start only after the redemption of the mortgage. It was also further held



A.S.No.92 of 2018
and C.M.P.No.2417 of 2018

WEB COPY

that in such cases, the time was not essence of the contract. The relevant observations of the Apex Court in this regard is as follows:

It is stated that at the time of the sale agreement, the suit property was worth roughly a sum of Rs. 6 lakhs, but the parties finally agreed and the Defendant, in particular, agreed to sell the aforesaid property for Rs. 3.65 lakhs. A perusal of the agreement to sell would show that though Clause 3 requires that the balance sale consideration will be paid within three months from the date of the agreement and that the seller will execute the sale deed on the date on which balance sale consideration was paid yet, clauses 5 and 8 clearly show that the original title deeds which are with the mortgagee had yet to be handed over and the mortgage had yet to be redeemed. It is only when this is done that Clause 3 would kick in, showing that the time of three months is obviously not of essence.

(b) *Narinderjit Singh vs. North Star Estate Promoters Limited* reported in (2012) 5 SCC 712.

21. In R.C. Chandiok v. Chuni Lal Sabharwal [(1970) 3 SCC 140] this Court observed that “readiness and willingness cannot be treated as a straitjacket formula and the issue has to be decided keeping in view the facts and circumstances relevant to the intention



A.S.No.92 of 2018
and C.M.P.No.2417 of 2018

WEB COPY

and conduct of the party concerned”. The same view was reiterated in P. D'Souza v. Shondrilo Naidu [(2004) 6 SCC 649] .

22. In N.P. Thirugnanam v. R. Jagan Mohan Rao [(1995) 5 SCC 115] the Court found that the appellant was dabbling in real estate transaction without means to purchase the property and observed: (SCC pp. 117-18, para 5)

“5. ... Section 16(c) of the Act envisages that the plaintiff must plead and prove that he had 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 those terms the performance of which has been prevented or waived by the defendant. The continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of specific performance. This circumstance is material and relevant and is required to be considered by the court while granting or refusing to grant the relief. If the plaintiff fails to either aver or prove the same, he must fail. To adjudge whether the plaintiff is ready and willing to perform his part of the contract, the court must take into consideration the conduct of the plaintiff prior and subsequent to the filing of the suit along with other attending circumstances. The amount of consideration which he has to pay to the defendant must of necessity be proved to be available. Right from the date of the



A.S.No.92 of 2018
and C.M.P.No.2417 of 2018

execution till date of the decree he must prove that he is ready and has always been willing to perform his part of the contract. As stated, the factum of his readiness and willingness to perform his part of the contract is to be adjudged with reference to the conduct of the party and the attending circumstances. The court may infer from the facts and circumstances whether the plaintiff was ready and was always ready and willing to perform his part of the contract.”

(c) *Beemaneni Maha Lakshmi vs. Gangumalla Appa Rao* reported in (2019) 6 SCC 233.

Therefore, on conjoint reading of Ext. A-1 and the reply to the notice by the defendant dated 14-4-1987 and the cross-examination of the defendant vendor, both the learned trial court and the High Court have rightly observed and held that it was the appellant vendor that did not perform her part of the contract. Once, the finding is recorded that it was the appellant vendor that did not perform her part of the contract, thereafter as rightly observed by the High Court, the failure on the part of the vendee to “demonstrate” that he was having sufficient money with him to pay the balance sale consideration under Ext. A-1 by the date of his evidence is not much of consequence.

...



A.S.No.92 of 2018
and C.M.P.No.2417 of 2018

It is not expected from the plaintiff that he would continue to deposit the same with the bank all these years. What is required to be considered is as and when he is called upon to make the deposit, he has deposited the amount to show his bona fides or not? Therefore, as such, both the learned trial court as well as the High Court have rightly passed a decree for specific performance.

(d)A.Kanthamani vs, Nasreen Ahmed reported in **2017 (2) CTC 656.**

28. The expression "readiness and willingness" has been the subject matter of interpretation in many cases even prior to its insertion in Section 16 (c) of the Specific Relief Act, 1963. While examining the question as to how and in what manner, the Plaintiff is required to prove his financial readiness so as to enable him to claim specific performance of the contract/agreement, the Privy Council in a leading case which arose from the Indian Courts (Bombay) in Bank of India Limited and Ors. v. Jamsetji A.H. Chinoy and Chinoy and Co. MANU/PR/0035/1949MANU/PR/0035/1949 : AIR 1950 PC 90, approved the view taken by Chagla A.C.J., and held inter alia that " it is not necessary for the Plaintiff to produce the money or vouch a concluded scheme for financing the transaction to prove his readiness and willingness. "



A.S.No.92 of 2018
and C.M.P.No.2417 of 2018

(e)P.Daivasigamani vs. S.Sambandan reported in

WEB COPY

MANU/SC/1309/2022.

“11. As regards, the delay in filing the suit, it is very pertinent to note that the Rule of equity that exists in England, does not apply in India, and so long as a suit for specific performance is filed within the period of limitation, delay cannot be a ground to refuse the relief of specific performance to the Plaintiff. In Mademsetty Satyanarayana v. G. Yelloji Rao MANU/SC/0310/1964 : AIR 1965 SC 1405 it has been observed as under:

7. Mr. Lakshmaiah cited a long catena of English decisions to define the scope of a court's discretion. Before referring to them, it is necessary to know the fundamental difference between the two systems-- English and Indian--qua the relief of specific performance. In England the relief of specific performance pertains to the domain of equity; in India, to that of statutory law. In England there is no period of limitation for instituting a suit for the said relief and, therefore, mere delay -- the time lag depending upon circumstances -- may itself be sufficient to refuse the relief; but, in India mere delay cannot be a ground for refusing the said relief, for the statute prescribes the period of limitation. If the suit is in time, delay is



A.S.No.92 of 2018
and C.M.P.No.2417 of 2018

WEB COPY

sanctioned by law; it is beyond time, the suit will be dismissed as barred by time; in either case, no question of equity arises.

12. The aforesaid ratio has also been followed recently by this Court in R. Lakshmikantham v. Devaraji MANU/SC/0969/2019: (2019) 8 SCC 62. We, therefore, have no hesitation in holding that mere delay alone in filing the suit for specific performance, without reference to the conduct of the Plaintiff, could not be a ground for refusing the said relief, when the suit was filed within the statutory time limit by the Respondent- Plaintiff.”

9.The learned counsel for the respondents would submit that the appellant is a real estate broker and he is trying to take advantage of the absence of the two male members in the family who had executed the sale Agreement. In the sale Agreement, time was the essence of the contract. The respondents were in need of money and that is why, a time limit of two months for the execution of Sale Deed was fixed. The appellant is a real estate broker. He had measured the property and only thereafter entered into the Sale Agreement. The extent of land was not 11 cents and 50 sq.ft as stated by the appellant. The appellant attempted to force the respondents to sell the land for a lesser consideration by stating that only a lesser



A.S.No.92 of 2018
and C.M.P.No.2417 of 2018

WEB COPY

extent of land was available. The appellant had tinkered with the land by executing fences etc, when the Advocate Commissioner measured the property and that is why only a lesser extent was found when the Advocate Commissioner measured the property. Even as per the measurement of Advocate Commissioner, 12 cents and 225 Sq.ft was available and not 11 cents 50 Sq.ft as stated by the appellant. The readiness and willingness must be only with regard to the consideration as agreed upon and not for the reduced extent claimed by the appellant. Therefore, the trial Court rightly concluded that the appellant had not established readiness and willingness. The learned Counsel further submitted that the appellant was not entitled to any discretionary relief because of his conduct in making a false statement that possession was handed over on 02.11.2010 and that the respondents agreed to sell 11 cents and 50 sq.ft. The learned counsel further submitted that it is highly improbable that when the respondents had not handed over possession at the time of execution of sale Agreement, they would not have handed over possession on 02.11.2010, especially when no further consideration was paid. The respondents never conceded that the available property was only 11 cents and 50 Sq.ft. In a suit for Specific Performance, which is a discretionary relief, the appellant ought not to have come up with false averments and the trial



A.S.No.92 of 2018
and C.M.P.No.2417 of 2018

court had rightly dismissed the suit on that basis also. The learned counsel relied upon the following decisions of the Hon'ble Apex Court in

(a) ***Ravi Setia vs. Madan Lal and other*** reported in **(2019) 9 SCC 381**.

“9. There can be no straight jacket formula with regard to readiness and willingness. It will have to be construed in the facts and circumstances of each case in the light of all attending facts and circumstances. We are of the considered opinion, that in the facts and circumstances of the present case, the failure of the plaintiff to offer any explanation why the balance consideration was not deposited within the time granted, the filing of the application for extension of time after expiry of the prescribed period coupled with the frivolousness of the grounds taken in the application for extension that the money would lie in the bank without earning interest, are all but evidence of incapacity on part of the plaintiff to perform his obligations under the agreement and reflective of lack of readiness and willingness. He preferred to wait and abide by the gamble of a favourable decision in the first appeal.”

10. The grant of relief for specific performance under [Section 16](#) (1)(c) of the Act is a discretionary and



WEB COPY



A.S.No.92 of 2018
and C.M.P.No.2417 of 2018

equitable relief. Under [Section 16 \(1\)\(c\)](#), the plaintiff has to demonstrate readiness and willingness throughout to perform his obligations under the contract. The plea that the amount would lie in the bank without interest is unfounded and contrary to normal banking practice. To our mind, this is sufficient evidence of the incapacity or lack of readiness and willingness on part of the plaintiff to perform his obligations. Undoubtedly, the time for deposit could be extended under [Section 28](#) of the Act. But the mere extension of time for deposit does not absolve the plaintiff of his obligation to demonstrate readiness and willingness coupled with special circumstances beyond his control to seek such extension. The plaintiff did not aver in the application that he was ready and willing to perform his obligations and was prevented from any special circumstances from doing so. The pendency of an appeal by the defendant did not preclude the plaintiff from depositing the amount in proof of his readiness and willingness. Readiness has been interpreted as capacity for discharge of obligations with regard to payment. The High Court has rightly observed that there was no stay by the Appellate Court of the decree under appeal to justify nondeposit during



WEB COPY



A.S.No.92 of 2018
and C.M.P.No.2417 of 2018

the pendency of the appeal. The grant of extension of time cannot ipso facto be construed as otherwise demonstrating readiness and willingness on part of the plaintiff. The plaintiff was required to plead sufficient, substantial and cogent grounds to seek extension of time for deposit because otherwise it becomes a question of his conduct along with all other attendant surrounding circumstances in the facts of the case. We therefore find no infirmity in the order of the High Court concluding that the plaintiff in the facts and circumstances was not ready and willing to perform his obligations.

(b) C.S.Venkateshvs.A.S.C. Murthy reported in (2020) 3 SCC 280.

“16. The words ‘ready and willing’ imply that the plaintiff was prepared to carry out those parts of the contract to their logical end so far as they depend upon his performance. The continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of performance. If the plaintiff fails to either aver or prove the same, he must fail. To adjudge whether the plaintiff is ready and willing to perform his part of contract, the court must take into consideration the conduct of the plaintiff prior, and subsequent to the filing



A.S.No.92 of 2018
and C.M.P.No.2417 of 2018

of the suit along with other attending circumstances. The amount which he has to pay the defendant must be of necessity to be proved to be available. Right from the date of the execution of the contract till the date of decree, he must prove that he is ready and willing to perform his part of the contract. The court may infer from the facts and circumstances whether the plaintiff was ready and was always ready to perform his contract.”

10.Heard, the learned counsel for the appellant and the learned counsel appearing for the respondents.

We have given our anxious consideration to the submissions of the learned counsels on either side, the pleadings, oral and documentary evidence on record and the impugned Judgment.

11.The points that arise for consideration in this appeal are:

(i) Whether the appellant was ready and willing to perform his part of the agreement dated 22.03.2010?



A.S.No.92 of 2018
and C.M.P.No.2417 of 2018

WEB COPY

(ii) Whether the appellant is entitled to relief of specific performance of the agreement dated 22.03.2010?

The remaining issues framed by the trial court were answered in favour of the appellant. There is no appeal by the respondents challenging those findings. In view of the same, we see no reason to set aside the findings of the trial Court on the other issues. The Trial Court found that time was not the essence of the Agreement between the appellant and the respondents.

Points (i) & (ii)

12.The admitted facts are that an Agreement was entered into between the appellant and the respondents. The Agreement was for an extent of 15 cents and 60 Sq.ft. The Agreement specifies that the vendors/respondents shall measure the land and keep the same ready to enable the appellant to make arrangements to pay the balance sale consideration and get the Sale Deed executed. The Sale Agreement Ex.A.1 also specifies that the Appellant had to pay the balance consideration for an extent of the land that is actually available after measurement.



A.S.No.92 of 2018
and C.M.P.No.2417 of 2018

WEB COPY

13.The defendants 1 & 2 issued a legal notice on 25.05.2010 stating that the appellant had not come forward to pay the balance sale consideration within the time limit specified in the Agreement and hence, the Agreement stood cancelled. The appellant issued a reply notice on 21.06.2010 stating that the land was measured on 25.05.2010 and only then it came to light that the property that was available only 11 cents and 50 Sq.ft and not 15 cents 60 Sq.ft as mentioned in the Sale Agreement. In the said reply notice, the appellant had also stated that he was ready and willing to pay the balance sale consideration for the actual extent available. However, the respondents demanded the excess amount of 30,000/- per cent which was not agreeable to the appellant. The fact of issue of notice by the respondents and the reply notice sent by the appellant is not in dispute. There is a dispute between the appellant and the respondents with regard to the actual land available. It is the case of the respondents that an extent of 15 cents and 60 Sq.Ft was available as per the Sale Deed by which they bought the property. It is their case that the appellant wrongly claimed that only 11 cents and 60 Sq.ft was available. The second factual dispute is with regard to whether a Panchayat was held on 02.11.2010 between the appellants and the deceased defendants and whether in that panchayat possession was handed over to the appellant and the



A.S.No.92 of 2018
and C.M.P.No.2417 of 2018

WEB COPY

deceased defendants agreed to execute the Sale Deed on or before 03.12.2010 by receiving the balance sale consideration for an extent of 11 cents and 50 Sq.Ft.

13.(a) As regards the panchayat, the trial Judge found on facts that the Panchayat did not take place as alleged by the appellant. On 10.12.2010 the appellant issued Ex.A4, legal notice stating that the panchayat was held on 02.11.2010 and he had taken possession of the property besides stating that the respondents had agreed to sell 11 cents 50 Sq.ft at the rate of 2,20,000/- (Rupees Two Lakhs Twenty Thousand only). The respondent had issued a reply Ex.A5 on 27.12.2010 stating that no panchayat was held and they never agreed to sell 11 cents and 50 Sq.ft and did not hand over possession of property to the appellant on 02.11.2010.

13 (b) P.W.2 and P.W.3 were examined to prove that there was a Panchayat held on 02.11.2010. We find that in the notice Ex.A.4 dated 10.12.2010 the appellant had not mentioned about the presence of witnesses P.W.2 and P.W.3. That apart, P.W.2 in the cross examination would state that the respondents initially agreed to handover the possession and execute the Sale Deed in twenty



A.S.No.92 of 2018
and C.M.P.No.2417 of 2018

days but later on changed their mind. This evidence of P.W.2 is contrary to the stand of the appellant that possession was handed over on 02.11.2010. The relevant portion of P.W.2's evidence is extracted hereunder:

“20 நாட்களில் கிரையம் கொள்ளுமாறும் சொத்தின்
சுவாதீனத்தை பெற்றுக் கொள்ளுமாறும் பிரதிவாதிகள்
சொன்னார்கள் ஆனால் பின்னர் மாறிவிட்டார்கள்”

13 (c) That apart, both the P.W.2 and P.W.3 admitted that on 02.11.2010 the parties did not record anything in writing to show that the deceased defendants handed over the possession to the appellant. Further, it is highly improbable that after having sent a notice on 25.05.2010, the deceased defendants would have handed over the possession and agreed to receive the sale consideration for a lesser extent. As stated earlier, the presence of P.W.2 and P.W.3 has not been mentioned in the notice dated 10.11.2010 issued by the appellant. For all the above reasons, we are of the view that the version of the appellant that the panchayat was held on 02.11.2010 and deceased defendants handed over the possession to the appellant is highly improbable and unbelievable. In our view the appellant has come forward with a false claim in this regard.



A.S.No.92 of 2018
and C.M.P.No.2417 of 2018

WEB COPY

14.Be that as it may, in the light of the above facts, we have to examine whether the appellant was ready and willing to perform his part of the Agreement dated 22.03.2010. From the Judgements cited by the learned counsels on either side, it is seen that there cannot be any straight jacket formula with regard to readiness and willingness. It will have to be construed in the facts and circumstances of each case. The Hon'ble Apex Court in a recent Judgment in ***P Daivasigamani vs. S.Sambandan*** reported in ***MANU/SC/1309/2022*** had summed up the legal principles relating to readiness and willingness and also with regard to the Principles relating to grant of discretionary relief of Specific Performance. The Hon'ble Apex Court while explaining the expression “*readiness and willingness*” held as follows:-

“15. Readiness and willingness are not one, but two separate elements. Readiness means the capacity of the Plaintiff to perform the contract, which would include the financial position to pay the purchase price. Willingness refers to the intention of the Plaintiff as a purchaser to perform his part of the contract. Willingness is inferred by



WEB COPY



A.S.No.92 of 2018
and C.M.P.No.2417 of 2018

scrutinising the conduct of the Plaintiff/purchaser, including attending circumstances¹. Continuous readiness and willingness on the part of the Plaintiff/purchaser from the date the balance sale consideration was payable in terms of the agreement to sell, till the decision of the suit, is a condition precedent for grant of relief of specific performance.

16. The expression "readiness and willingness" used in Section 16(c) of the said Act, has been interpreted in catena of decisions by this Court, in the light of facts and circumstances of the cases under consideration for the purpose of granting or refusing to grant the relief of Specific Performance of a contract. The said expression cannot be interpreted in a straitjacket formula. In a very apt decision of this Court in case of Syed Dastagir v. T.R. Gopalakrishna Setty MANU/SC/0471/1999 : (1999) 6 SCC 337, a three-Judge Bench of this Court, construing a plea of "readiness and willingness to perform" in view of the requirement of Section 16(c) and its explanation, observed as under:

9. So the whole gamut of the issue raised is, how to



WEB COPY



A.S.No.92 of 2018
and C.M.P.No.2417 of 2018

construe a plea specially with reference to Section 16(c) and what are the obligations which the Plaintiff has to comply with in reference to his plea and whether the plea of the Plaintiff could not be construed to conform to the requirement of the aforesaid section, or does this Section require specific words to be pleaded that he has performed or has always been ready and is willing to perform his part of the contract. In construing a plea in any pleading, courts must keep in mind that a plea is not an expression of art and science but an expression through words to place fact and law of one's case for a relief. Such an expression may be pointed, precise, sometimes vague but still it could be gathered what he wants to convey through only by reading the whole pleading, depending on the person drafting a plea. In India most of the pleas are drafted by counsel hence the aforesaid difference of pleas which inevitably differ from one to the other. Thus, to gather true spirit behind a plea it should be read as a whole. This does not distract one from performing his obligations as required under a statute. But to test whether he has performed his obligations, one has to see the pith and substance of a plea. Where a statute requires any fact to be pleaded then that has to be pleaded maybe in any form. The same plea may be



WEB COPY



A.S.No.92 of 2018
and C.M.P.No.2417 of 2018

stated by different persons through different words; then how could it be constricted to be only in any particular nomenclature or word. Unless a 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. The language in Section 16(c) 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. So to insist for a mechanical production of the exact words of a statute is to insist for the form rather than the essence. So the absence of form cannot dissolve an essence if already pleaded".

17. It was further observed therein that:

It is significant that this explanation carves out a contract which involves payment of money as a separate class from Section 16(c). Explanation (i) uses the words "it is not essential for the Plaintiff to actually tender to the



WEB COPY



A.S.No.92 of 2018
and C.M.P.No.2417 of 2018

Defendant or to deposit in court any money except when so directed by the court". (emphasis supplied) This speaks in a negative term what is not essential for the Plaintiff to do. This is more in support of the Plaintiff that he need not tender to the Defendant or deposit in court any money but the Plaintiff must [as per Explanation (ii)] at least aver his performance or readiness and willingness to perform his part of the contract."

14 (a) From the above observations, it could be seen that readiness and willingness are two different elements. In order to establish readiness and willingness, the plaintiff has to first make an averment that he had always been ready and willing to perform the essential terms of the contract which have to be performed by him. Further, the explanation to Section 16 (c) of the Specific Relief Act makes it clear that it is not necessary for the plaintiff to always keep the money ready with him but however it must be established that he had the capacity to pay the balance sale consideration. In this case, we find that the appellant had not produced any evidence to show his capacity to pay the balance sale consideration. The appellant had produced Ex.A.14 and Ex.A.15 the Bank Statements, which pertain to period from 2016 to 2017. The appellant also



A.S.No.92 of 2018
and C.M.P.No.2417 of 2018

produced Ex.A.16 which is a Sale Deed dated 18.09.2006 executed in his favour.

We find none of these documents would establish the appellant's capacity to pay the balance sale consideration during the year 2010. All these documents established his financial capacity in the year 2016. When the appellant could produce documents pertaining to the year 2016, we are unable to understand as to why the appellant did not produce Bank Statements or any other document to establish his capacity to pay the balance consideration during the year 2010. We have to necessarily draw an adverse inference against the appellant in this regard. The appellants has therefore in our view failed to establish his capacity to pay the balance sale consideration during the year 2010. Hence, the appellant has not established readiness.

15.As regards willingness, it has to be inferred by analysing the conduct of the plaintiff / purchaser and the circumstances of the case. As we have stated earlier, it is the case of the appellant that on measurement only 11 cents and 50 Sq.ft. was available. It is the consistent stand of respondents that an extent of 15 cents and 60 Sq.ft was available. The land was ultimately measured by the learned Advocate Commissioner during trial and the learned Advocate Commissioner



A.S.No.92 of 2018
and C.M.P.No.2417 of 2018

WEB COPY

found that an extent of 12 Cents and 225 Sq.ft was available. The Advocate Commissioner's Report has not been challenged by the respondents and the Trial Court also found that the actual land was available 12 Cents and 225 Sq.ft. The respondents have not challenged that finding. Be that as it may, till the Advocate Commissioner measured the property, both the parties were asserting that their version as regards measurement was correct. The Appellant was all through willing to purchase only 11 cents and 50 Sq.ft. This assertion was also found to be wrong ultimately when the Advocate Commissioner measured the property. Therefore, the willingness of the appellant to purchase the property was conditional inasmuch as he was willing to purchase only 11 cents and 50 Sq.ft. Such conditional willingness when there is a dispute between the appellant and the defendants/respondents as regards the extent cannot be termed as willingness for the purpose of grant of discretionary relief of Specific Performance. Had the appellant's assertion, with regard to measurement matched with the Commissioner's measurement, it would have been a different matter. In this case, as stated earlier that is not so and the respondents cannot be expected to execute the Sale Deed as per the condition of the appellant, which was ultimately found to be incorrect. Therefore, we hold that the appellant had not established willingness.



A.S.No.92 of 2018
and C.M.P.No.2417 of 2018

We are holding so notwithstanding the fact the appellant had amended the plaint as regards measurement after the report of the Advocate Commissioner.

16.Further, the appellant is not entitled to the discretionary relief for other reasons as well. The appellant had come up with a false claim that a panchayat was held and the possession was handed over to him. We have already given reasons for holding that it was a false claim of the appellant. The relief of Specific Performance is discretionary and since the appellant has come up with a false case, he is not entitled to said relief. Further the Hon'ble Apex Court in ***P.Daivasigamani vs S.Sambandan*** reported in ***MANU/SC/1309/2022*** while interpreting the provisions of the Specific Relief Act, held as follows:-

“13. This takes us to the next question as to whether the High Court was justified in granting the relief of specific performance in favour of the Respondent - Plaintiff? Now, before answering the said question, it may be noted that some of the relevant provisions contained in the Specific Relief Act, 1963 (hereinafter referred to as the "Said Act") have undergone a substantive change by way of amendments made by the Act 18 of 2018, which came into force with effect from 01.10.2018. As per the recent decision of the three-judge bench of this Court, in case



A.S.No.92 of 2018
and C.M.P.No.2417 of 2018

of Smt. Katta Sujatha Reddy v. Siddamsetty Infra Projects Ltd., Civil Appeal No. 5822 of 2022 decided on 25th August, 2022, the said Act 18/2018 amending the Specific Relief Act is prospective in nature and cannot apply to those transactions that took place prior to its coming into force. In the instant case, the subject agreement having taken place prior to the said Amendment, we will have to take into consideration the legal position as it stood prior to the 2018 amendment.

The Hon'ble Apex Court was dealing with the provisions prior to amendment which came into effect on 01.10.2018. Since in the instant case, the Agreement is dated on 22.03.2010 the interpretation made by Hon'ble Supreme Court as regards the unamended provisions is applicable to the facts of the present case.

17. Section 20 (2) (b) reads as follows:-

Section 20 - Discretion as to decreeing specific performance.--

...

(2) The following are cases in which the court may properly



A.S.No.92 of 2018
and C.M.P.No.2417 of 2018

WEB COPY

exercise discretion not to decree specific performance:

...

(b) where the performance of the contract would involve some hardship on the Defendant which he did not foresee, whereas its non-performance would involve no such hardship on the Plaintiff; or

We find that in this case, the respondents did not foresee that the appellant would claim that only 11 Cents and 50 Sq.Ft was available. This obviously had caused hardship to the respondents. For this reason also the discretion can be exercised by the Court not to decree Specific Performance.

18. Further, in the very same case, the Honourable Apex Court held as follows:-

"Sub-section (2) to Section 20 of the Specific Relief Act (Pre-amendment) lists some of the principles that the court should take into consideration while exercising discretion. The factors to be considered while exercising discretion include hardship to the Defendant/seller which he did not foresee, hardship to the Plaintiff/purchaser in case of non-performance, or whether the contract, even when not void,



WEB COPY



A.S.No.92 of 2018
and C.M.P.No.2417 of 2018

was entered under the circumstances that make the enforcement of specific performance inequitable, or whether the Plaintiff has done substantial acts or suffered losses as a consequence of the contract, and the conduct of the parties, including that of the Defendant/seller and other circumstances under which the contract was entered are such that they give an unfair advantage over the Defendant/seller. The court should examine whether the Plaintiff/purchaser had, in fact, performed his part of the contract, and if so, how and to what extent, and in what manner he has performed, and whether such performance was in conformity with the terms of the contract. The status of the parties, and whether the Plaintiff/purchaser is a speculator in the property, who buys and sells properties, and whether his conduct reflects an attempt to gain on account of the rise in the price of the property, hoping that the delay in payment of full consideration would go to his advantage, will be a relevant consideration."

In the facts of the instant case, we find that Appellant is a Real Estate Agent and he ought to have measured the property before entering into an Agreement of a sale and paying advance of Rs.5,00,000/- (Rupees Five Lakhs only) his assertion



A.S.No.92 of 2018
and C.M.P.No.2417 of 2018

is only a lesser extent was available also was not found to be correct. One of the factors that the Honourable Apex Court suggested, that the Court should look into is the status of the parties and whether the plaintiff purchaser is a speculator in property. For this reason also we are of the view that appellant is not entitled to discretionary relief as he cannot be treated on par with any other gullible purchaser who would have entered into an Agreement of sale even without ascertaining the actual extent of land.

19. That apart, the Trial Court had held that time is not the essence of this contract and that the suit was filed within limitation. The Honourable Apex Court held that the Court must make a distinction between limitation and delay and latches. In this case, the appellant had not taken any steps immediately to file the suit. Though, the deceased defendants cancelled the Agreement even as early as on 25.05.2010, the appellant waited till January 2011 to file the suit. They gave a false excuse by stating that there was a panchayat. This conduct is also one of the considerations for rejecting the discretionary relief of Specific performance. The relevant portions of the Judgement of the Hon'ble Apex Court is extracted hereunder:-



A.S.No.92 of 2018
and C.M.P.No.2417 of 2018

“20. Time, it is stated, is not the essence of the contract in the case of immovable properties, unless there are grounds to hold to the contrary. This doctrine is applied, without being unfair and inequitable to the Defendant/seller, as the court should not ignore that a person sells the property when he needs money, and, therefore, expects the money in the stipulated or reasonable time, which would meet the purpose of the sale. The purpose of sale can vary from the need for liquid cash to be invested to earn interest, medical, educational, child's marriage or purchasing another property. To save capital gains, the seller has to purchase another immovable property, unless the proceeds are exempt. There has been a steep rise in the prices of land in the last quarter of the 20th Century in India. With the rise in property value, the value of money has fallen. At times, delay in payment would defeat the Defendant/seller's purpose⁴. Therefore, the offer of the Plaintiff/purchaser in writing and the time and occasion when the offer to pay the balance amount to the Defendant/seller is an important factor which would matter when the court examines the question of discretion, that is, whether or not to grant a decree of specific performance. While examining these aspects, the quantum of money paid by the Plaintiff/seller to the Defendant/purchaser may become a relevant fact that merits due consideration. There is a distinction



A.S.No.92 of 2018
and C.M.P.No.2417 of 2018

between limitation and delay and laches. Limitation is a ground for dismissing a suit even if the Plaintiff is otherwise entitled to specific performance, while delay operates to determine the discretion and exercise Under Section 20 of the Specific Relief Act, even if the suit is not dismissed on account of limitation. However, not one but several aspects have to be considered when the court, in terms of Section 20 of the Specific Relief Act, exercises discretion, guided by judicial principles, sound and reasonable.”

20. We are of the view that the appellant has neither established readiness nor willingness. Even otherwise he is not entitled to discretionary relief in view of his conduct in filing the suit with laches and also of making false claims. Besides the above, respondents did not foresee the appellant's claim with regard to measurement and therefore, their performance of contract would have caused hardship to them. For the above reasons the trial court was justified in dismissing the suit and the Judgement does not call for any interference by this Court. For the above reasons points (i) and (ii) are answered against the appellant.



A.S.No.92 of 2018
and C.M.P.No.2417 of 2018

21. Hence, the above Appeal is dismissed. No Costs. Consequently, the connected miscellaneous petition is closed.

(V.M.V.,J) (S.M.,J)

07.11.2022

Index : Yes / No
dk/vsn

V.M.VELUMANI,J.
and
SUNDER MOHAN,J.
dk/vsn

To

1. The V Additional Judge,
District Court,
Coimbatore.
2. The Section Officer
V.R.Section, Madras High Court,
Chennai.



WEB COPY



A.S.No.92 of 2018
and C.M.P.No.2417 of 2018

A.S.No.92 of 2018
and C.M.P.No.2417 of 2018

07.11.2022