



A.S.No.848 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on: 02.11.2022	Judgment delivered on: 17.11.2022
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CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

and

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

A.S.No.848 of 2020

1.S.Muralidaran

2.S.Badrinathan

.. Appellants

Vs.

K.Bhaskaran

.. Respondent

Prayer: This First Appeal is filed under Section 96 of C.P.C. Read With Order XLI Rule 1 of C.P.C., against the judgment and decree dated 03.07.2020 made in O.S.No.130 of 2013 on the file of the Principal District Court, Kancheepuram at Chengalpattu.

For Appellants : Mr.V.Raghavachari
for Mr.R.Ganesan

For Respondent : Mr.K.Sukumar
for Ms.K.R.B.Dhaaranee



JUDGMENT

(Judgment of the Court was delivered by V.M.VELUMANI,J.)

The appellants are defendants in O.S.No.130 of 2013 on the file of the Principal District Court, Kancheepuram at Chengalpattu. They filed the present appeal challenging the judgment and decree dated 03.07.2020, granting specific performance in favour of the respondent.

Facts of the case :-

2.The respondent filed O.S.No.130 of 2013 for specific performance of agreement of sale dated 04.07.2006 in respect of suit property and permanent injunction. According to the respondent, the 1st appellant is owner of 18 cents and 2nd appellant is owner of 17 cents of suit property situated at No.150, Medavakkam Village, Tambaram Taluk, Kancheepuram District in Survey No.427/1, described in the schedule to the plaint. The appellants were in need of funds and they are unable to defend the suit filed against one D.Balaraman. They decided to sell the suit property to the respondent. After discussions, the respondent and appellants entered into an agreement of sale on 04.07.2006. The total sale consideration was fixed at Rs.52 Lakhs and respondent paid an advance



of Rs.10 Lakhs on the date of agreement. The appellants admitted and acknowledged the same. The balance sale consideration of Rs.42 Lakhs is to be paid within 4 months from the date of agreement, but the same is subject to Clause 13 of agreement of sale dated 04.07.2006. As per Clause 13, the agreement is subject to result of any appeal filed against the judgment and decree dated 07.03.2006 passed in O.S.No.639 of 2001 on the file of Principal Sub Court, Chengalpattu.

2(i).The respondent was always ready and willing to pay the balance sale consideration. D.Balaraman, the defendant in O.S.No.639 of 2001 filed A.S.No.89 of 2006 on the file of the Principal District Court, Chengalpet and the same was dismissed by the judgment and decree dated 29.11.2010. S.A.No.1615 of 2011 filed by the said D.Balaraman was also dismissed by this Court on 06.08.2012, confirming the judgment and decree passed in O.S.No.639 of 2001.

2(ii).The appellants did not have sufficient funds to defend the above litigation. The respondent, as agreement holder, has to fight the litigation on behalf of appellants and funded the litigation up to this Court. Apart from paying the advance amount of Rs.10 Lakhs, the



respondent further paid a sum of Rs.28 Lakhs on various dates viz., from 04.10.2006 to 17.12.2011. Thus, the respondent has paid a total sum of Rs.38 Lakhs.

2(iii).After dismissal of Second Appeal in August, 2012, the respondent was trying to contact the appellants to pay the balance sale consideration and complete the sale deed and to take possession of the property through Court where Execution Petition was pending before the Sub Court, Tambaram. But, the appellants were evasive. The respondent got the copy of the judgment of this Court passed in Second Appeal on 15.04.2013 and made attempts to meet the appellants in person and tried to communicate the appellants through telephone, mobile phone, but they were evasive. The respondent came to know that the appellants were taking steps to sell the suit property to third parties and various brokers and politicians were contacting the respondent and negotiating on behalf of the appellants. The respondent has paid a sum of Rs.38 Lakhs and is willing to deposit the balance sale consideration of Rs.17 Lakhs before the Court. The respondent also paid the appellants in getting their property and fight the litigation up to this Court.



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2(iv).The respondent has sufficient means and is in possession of sufficient funds, both in Bank as well as by immovable property. He is always ready and willing to perform his part of the contract. The respondent engaged an Advocate in Sub Court, Chengalpattu and Senior Advocate before this Court to defend the A.S.No.89 of 2006 and S.A.No.1615 of 2011 on behalf of the appellants. After succeeding in Second Appeal, the appellants, in collusion with D.Balaraman, the 1st defendant in O.S.No.639 of 2001 and local politicians, are trying to sell the property to defeat the interest of the respondent. The respondent gave complaint to the Police. But the Police refused to entertain the complaint stating that it is civil matter. In the above circumstances, the respondent has filed the present suit for the relief mentioned in the plaint. The respondent also stated that the suit is not barred by limitation in view of Clause 13 of agreement of sale and the sale is subject to result of appeal if any filed against the judgment and decree in O.S.No.639 of 2001.

3.The appellants filed written statement and denied all the averments contained in the plaint. According to the appellants, the allegations made in the paragraphs 3 to 13 of the plaint are all false and hence, denied the same. The entire allegations contained in the plaint are



only make believe one and it is an imagination of the respondent. There is no truth in the said allegations. The appellants are owners of the property and sale agreement in stamp paper is made believe one and handy creation of the respondent.

3(i).The suit sale agreement is not true, valid and binding on the appellants. The averments that the appellants agreed to execute the sale deed after disposal of the appeal whenever required by the respondent is a make believe allegation and there is no truth in it. The Second Appeal was disposed on 06.08.2012. The respondent never made offer to appellants. The appellants also denied that the respondent was ready and willing to perform his part of the contract. They further stated that the respondent never approached the appellants stating that he was ready to perform his part of the contract. The allegation of the respondent that he approached the appellants is false. The respondent did not take any steps with regard to sale agreement for one year, which shows that the agreement was not a genuine document. The act of the respondent shows his malafide intention. The alleged payments after agreement are not true and correct. The respondent did not issue any notice before filing the suit. The value of the suit property is very high and respondent has fixed the value at a



low price. The suit is barred by limitation. The sale agreement is not enforceable and there is no privity of contract. No cause of action as pleaded in the suit arose and prayed for dismissal of the suit.

4. Based on the above pleadings, the learned Judge framed following issues and additional issues:

Issues:

(i) Whether the plaintiff is entitled to the relief of specific performance of the sale agreement dated 04.07.2006?

(ii) Whether the sale agreement pleaded by the plaintiff is true and valid?

(iii) Whether the plaintiff was ready and willing to perform his part of the contract?

(iv) Whether the suit is in time?

(v) To what relief the plaintiff is entitled?

Additional Issue:

(i) Whether the plaintiff is entitled for the relief of permanent injunction as prayed for?



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5.Before the learned Judge, the respondent examined himself as P.W.1 and examined one S.Sivasankaran as P.W.2 and marked 13 documents as Exs.A1 to A13. The 1st appellant examined himself as D.W.1. The appellants did not mark any documents.

6.The learned Judge considering the issues, oral and documentary evidence, by the judgment and decree dated 03.07.2020, decreed the suit as prayed for and directed the appellant to execute the sale deed in favour of the respondent within 3 months and also restrained the appellants from alienating or encumbering the suit property by any manner till the date of execution of the sale deed in favour of the respondent by means of permanent injunction.

7.Challenging the said judgment and decree dated 03.07.2020 made in O.S.No.130 of 2013, the appellants have come out with the present appeal.

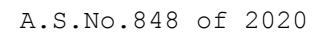
8.Though the appellants raised various grounds in the grounds of appeal, learned counsel appearing for the appellants restricted his arguments and made following submissions:



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(i) As per the agreement of sale dated 04.07.2006, the respondent must pay balance sale consideration of Rs.42 Lakhs within 4 months from the date of agreement. The learned counsel appearing for the appellants referred to Clause 2(b) of the agreement and submitted that time is essence of contract. The suit agreement is not an agreement of sale, but it is only a champertous agreement. The appellants required money for investment and also to conduct the suit filed against one D.Balaraman. The appellants entered into suit agreement only for the litigation expenses and did not agree to sell the suit property to the respondent. The respondent in paragraph nos.5,6 and 8 of the plaint admitted that agreement is for funding the litigation.

(ii) The learned counsel appearing for the appellants referred to Clauses 3 and 9 of the agreement of sale and submitted that the respondent has to pay the balance sale consideration of Rs.42 Lakhs within 4 months from the date of agreement. As per Clause 3 of the agreement, on receipt of entire sale consideration, the appellants will execute the sale deed or Power of Attorney in favour of the respondent or his nominee. As per Clause 9 of agreement, on payment of entire sale consideration, the appellants will hand over vacant possession and hand



The learned counsel appearing for the appellants further contended that Clause 13 has to be read together with Clauses 2(b), 3 and 9 of the agreement. These Clauses clearly show that balance sale consideration has to be paid within 4 months from the date of agreement i.e., 04.07.2006 and if the appellants are not successful in the appeal that may be filed against the judgment and decree passed in O.S.No.639 of 2001, the appellants have to refund the entire amount received by them together with interest. The term advance mentioned in Clause 13 is only entire amount of Rs.52 Lakhs to be paid by the respondent as per Clause 2(b) of the agreement.

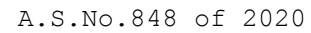
(iii) The contention of the respondent that payment of balance sale consideration and completion of transaction depends upon the appeal filed challenging the judgment and decree in O.S.No.639 of 2001, is not correct. The agreement of sale dated 04.07.2006 is only a loan agreement and it is not an agreement of sale. The averments in the plaint clearly shows that the agreement is only an agreement funding the litigation as the appellants did not have sufficient funds to defend the appeals to be filed against the judgment and decree in O.S.No.639 of 2001. In view of



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clear admission of respondent in the plaint that suit agreement is only for funding litigation expenses, the appellants need not specifically deny in the written statement that suit agreement is not an agreement of sale. The appellants have denied the genuineness of the suit agreement. Various amounts paid by the respondent upto 2011 is not advance for agreement of sale and it is only funding of litigation. In the endorsements made in the agreement of sale did not mention any extension of time to complete the sale agreement. All the payments made by the respondent and endorsements made by the appellants are only during pendency of First Appeal and Second Appeal. Last payment was made on 17.12.2011, when the Second Appeal was pending.

(iv) The Second Appeal was dismissed on 06.08.2012 and after dismissal of the Second Appeal, the respondent did not take any steps to pay the alleged balance sale consideration and complete the sale transaction. The respondent did not contact the appellants after dismissal of the Second Appeal. The contention of the respondent that he tried to contact the appellants is not true. He did not issue any notice to the appellants before filing the suit. The respondent has filed the suit on 02.07.2013, after 11 months of dismissal of the Second Appeal and respondent has not given any acceptable reason for the delay and latches.



(vi) The respondent was not ready and willing to perform his part of the contract and he is not entitled to equitable relief of specific performance. The learned counsel appearing for the appellants referred to *Thamamani Kandappan's* case reported in **2011 (12) SCC 18** and submitted that even couple of months delay in filing the suit is fatal to the case of the plaintiff. In the present case, there is a delay of 11 months in filing the Second Appeal. The learned counsel appearing for the appellants further submitted that the reasons given by the learned



Judge for holding that the respondent was ready and willing to perform his part of the contract and respondent had sufficient funds to pay the balance sale consideration are not correct. The appellants have disputed various averments made by the respondent. The learned Judge erroneously held that the appellants did not dispute Clause 13 of agreement.

(vii) The respondent has not sufficiently identified the suit property with reference to its four boundaries in the alleged agreement of sale. In the plaint schedule also, the respondent has not given the boundaries of suit property. As per Order VII Rule 3 of C.P.C, in case of immovable property, the immovable property must be described so as to identify the same and if property can be identified by the boundaries, the plaintiff has to describe the property by giving boundary so as to identify the property. The respondent has not given boundaries of suit property and suit filed by the respondent without boundaries is liable to be dismissed.

(viii) The learned counsel appearing for the appellants further contended that at the time of entering into the suit agreement and filing of suit, the appellants were not in possession of suit property and respondent himself in his evidence has admitted that the appellants are not in possession of the suit properties. The agreement is subject to result



of appeal to be filed against the judgment and decree in O.S.No.639 of 2001 and alleged agreement is a contingent agreement. In view of the contingent agreement, the suit agreement is not a concluded contract on the date of Ex.A1 / agreement and filing of suit. The judgment and decree of Trial Court is contrary to the judgment of the Hon'ble Apex Court.

(ix) As per Specific Relief Act, the Court must consider and grant equitable relief only in favour of the vendors and not in favour of the purchaser and prayed for allowing the appeal.

In support of his contention, the learned counsel relied on the following judgments:

(i) ***AIR 1997 MP 106, [Kamrunnisa v. Pramod Kumar Gupta]:***

“13. From the aforesaid facts, which are not in dispute, the question that arises, for determination is whether the agreement dated 23-10-1978' Ex. P-2, is void because it is champertous in nature. What is a champertous agreement ? It is an agreement to finance litigation and to" share the fruits thereof. There is no special enactment in India barring such an agreement. For this reason, in our country, the champertous agreements have to be examined by the Courts under [Section 23](#) of the Contract Act. It is now



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settled law in India-that these agreements, by themselves, are not, illegal in the sense, that they are immoral or opposed to public, policy. However, if the Court finds that a particular agreement is opposed to principle of equity and good conscience or unconscienable and extortionate in itself, then the 'Courts would not enforce it. In other words, when such agreement is not made with a view to help persons to tide over their financial difficulties arising as a consequence of unequal litigation, but with a view to take advantage from the predicament of the persons involved in the litigation, the Court may refuse to accept it. In the case of Lala Ram Samp v. Court of Wards through Deputy Commissioner, Delhi, AIR 1940 PC 19, the opinion of the Privy Council was given by Sir George Rankin as follows:--

"Champertous transactions are in their essence speculative and the fairness or otherwise of a particular bargain is almost always open to some debate...."

It was further observed that:--

".... In applying the principle that "a fair agreement to supply funds f o carry on a suit in consideration of having a share in the property, if recovered, ought not to be regarded as being, per se', opposed to public policy 41A 23 at p. 47, it is essential to have regard not merely to the value of the property claimed but to the commercial value of the claim. This has to be estimated by the parties in advance of the result; and where they



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have weighed the probabilities in a manner, which has not operated unfairly it is more reasonable to regard this as confirming their shrewd estimate of the chances than to condemn the agreement outright as unfair, by reason only of the possibility that a great gain to the claimant would have had to be shared with the financier. Though it is clearly not conclusive, the proportion to be retained by the claimant is an important matter to be considered when judging of the fairness of a bargain made at a time when the result of the litigation is problematical. The uncertainties of litigation are proverbial; and if the financier must needs risk losing his money he may well be allowed some chance of exceptional advantage....."

Even earlier the Privy Council in the case of Sri Rajesh Vatsovaya Venkata Subhadrayamma Jagatpati Bhadur Guru v. Shri Poosapati Venkatapati Raju Guru, AIR 1924 PC 162 had recognized the principle that champerty by itself shall not make an agreement illegal."

(ii) (1997) 3 SCC 1, [K.S.Vidyanadam vs Vairavan]

"6. In this appeal, Sri J. Ramamurthy, learned counsel for the defen-dants, took us through the oral and documentary evidence on record and submitted that the plaintiff is disentitled to specific performance on ac-count of the delay on his part and also because he was not ready and willing to perform his



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part to the contract. Counsel submitted that the plaintiff has in fact come forward with a false case that though he was demanding repeatedly, the defendants had been putting off the execution of the sale deed on the ground of existence of the tenant. On the other hand, Sri Sivasubramaniam, learned counsel for the plaintiff, submitted that once it is held that time is not the essence of the contract and when the suit has been filed within the period of limitation prescribed by law, there is no reason for not decreeing specific performance. He submitted that the plaintiff is a man of means and is in a position to produce the requisite amount at any time. Mere rise in prices during the period between the date of agreement and the date of suit is no ground for denying specific performance. Counsel submitted that the High Court has rightly exercised its discretion which should not be interfered with by this Court.

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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 -*



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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.

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15. Sri Sivasubramaniam submitted that as on today, fourth appellant alone is fighting the litigation, that he has purchased the property after the decree of the Trial Court which means that he has consciously purchased litigation and that, therefore, there are no equities in his favour. Counsel submitted that as between the plaintiff and the fourth defendant, equities are in favour of the plaintiff. We are not impressed. The plaintiff has paid only a sum of Rs. 5,000/- in December, 1978 as against the consideration of Rs. 60,000/-. The Trial Court dismissed the suit for specific performance on 4.9.1982, while decreeing the refund of their earnest money. Defendant No.4 purchased the suit house on November 19, 1982 for a consideration of Rs. 90,000/-. May be, he knew he was purchasing litigation and probably it was for that reason that he may not have paid the full amount of the value. In any event, we cannot ignore the fact that Defendants 1 to 3 are also appellants before us. We are also not prepared to say that as between plaintiff and the



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fourth defendant, the equities are in favour of the plaintiff alone.”

(iii) (2022) Live law (SC) 807, [Kolli Satyanarayana (dead) By Lrs. V

Valuripalli Kesava Rao Chowdary(Dead) Thr.Lrs And Others]

“12. In the case of [K.S. Vidyanadam and Others v. Vairavan](#)¹, this Court has held that the court should look at all the relevant circumstances including the time limit(s) specified in the agreement and determine whether its discretion to grant specific performance should be exercised. It has been held that in case of urban properties, the prices have been rising sharply. It has been held that while exercising its discretion, the court should bear in mind that when the parties prescribe certain time limit(s) for taking steps by one or the other party, it must have some significance and that the said time limit(s) cannot be ignored (1997) 3 SCC 1 altogether on the ground that time is not the essence of the contract.

16. We do not find any reason to differ with the concurring judgments passed by the learned Single Judge as well as the Division Bench of the High Court denying a decree for specific performance. However, taking into consideration the facts and circumstances and an undisputed position that the



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defendant had, in fact, received an amount of Rs.15,000/- as early as 1978, we direct the respondents-defendants to pay an amount of Rs.15,00,000/- to the appellants-plaintiffs. The said amount shall be paid within a period of 3 months from the date of this judgment.”

(iv).(2019)8 SCC 575, [Surinder Kaur v. Bahadur Singh]

“13. Explanation (ii) to [Section 16\(c\)](#) of The Specific Relief Act lays down that it is incumbent on the party, who wants to enforce the specific performance of a contract, to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract. This the plaintiff miserably failed to do in so far as payment of rent is concerned.

14.A perusal of [Section 20](#) of The Specific Relief Act clearly indicates that the relief of specific performance is discretionary. Merely because the plaintiff is legally right, the Court is not bound to grant him the relief. True it is, that the Court while exercising its discretionary power is bound to exercise the same on established judicial principles and in a reasonable manner. Obviously, the discretion cannot be exercised in an arbitrary or whimsical manner. Sub clause(c) of subsection (2) of [Section 20](#) provides that even if the contract is



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otherwise not voidable but the circumstances make it inequitable to enforce specific performance, the Court can refuse to grant such discretionary relief. Explanation (2) to the Section provides that the hardship has to be considered at the time of the contract, unless the hardship is brought in by the action of the plaintiff.”

(v)2022 SCC Online SC 840, [U.N.Krishnamurthy v S.M.

Krishnamurthy],

“24. [Section 16](#) (c) of the [Specific Relief Act, 1963](#) bars the relief of specific performance of a contract in favour of a person, who fails to aver and prove his readiness and willingness to perform his part of contract. In view of Explanation (i) to clause (c) of [Section 16](#), it may not be essential for the plaintiff to actually tender money to the defendant or to deposit money in Court, except when so directed by the Court, to prove readiness and willingness to perform the essential terms of a contract, which involves payment of money. However, explanation (ii) says the plaintiff must aver performance or readiness and willingness to perform the contract according to its true construction.

25. To aver and prove readiness and willingness to perform an obligation to pay money, in terms of a contract, the plaintiff would have to make specific statements in the plaint and adduce evidence



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to show availability of funds to make payment in terms of the contract in time. In other words, the plaintiff would have to plead that the plaintiff had sufficient funds or was in a position to raise funds in time to discharge his obligation under the contract. If the plaintiff does not have sufficient funds with him to discharge his obligations in terms of a contract, which requires payment of money, the plaintiff would have to specifically plead how the funds would be available to him. To cite an example, the plaintiff may aver and prove, by adducing evidence, an arrangement with a financier for disbursement of adequate funds for timely compliance with the terms and conditions of a contract involving payment of money.

26. *In Man Kaur v. Hartar Singh Sanghal*, this Court held that:

“40.A person who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him (other than the terms the performance of which has been prevented or waived by the defendant) is barred from claiming specific performance. Therefore, even assuming that the defendant had committed breach, if the plaintiff fails to aver in the plaint or prove that he was always ready and willing to perform the essential terms of contract which are required to be performed by him (other



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than the terms the performance of which has been prevented or waived by the plaintiff), there is a bar to specific performance in his favour. Therefore, the assumption of the respondent that readiness and willingness on the part of the plaintiff is something which need not be proved, if the plaintiff is able to establish that the defendant refused to execute the sale deed and thereby committed breach, is not correct. Let us give an example. Take a case where there is a contract for sale for a consideration of Rs. 10 lakhs and earnest money of Rs. 1 lakh was paid and the vendor wrongly refuses to execute the sale deed unless the purchaser is ready to pay Rs. 15 lakhs. In such a case there is a clear breach by the defendant. But in that case, if the plaintiff did not have the balance Rs. 9 lakhs (and the money required for stamp duty and registration) or the capacity to arrange and pay such money, when the contract had to be performed, the plaintiff will not be entitled to specific performance, even if he proves breach by the defendant, as he was not “ready and willing” to perform his obligations.”

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30. This Court, in effect, held that for determining whether the Plaintiff was ready and willing to perform his part of the agreement it is necessary for the Court to consider the conduct of the Plaintiff prior and subsequent to filing the suit for specific performance. The relevant part of the



judgment is extracted hereinbelow:—

“5. ...[Section 16\(c\)](#) of the Act envisages that 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...”

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33. In a suit for Specific Performance of a contract, the Court is required to pose unto itself the following questions, namely:-

- (i) Whether there is a valid agreement of sale binding on both the vendor and the vendee and*
- (ii) Whether the Plaintiff has all along been and still is ready and willing to perform his part of the contract as envisaged under [Section 16\(c\)](#) of the Specific Relief Act, 1963.*

34. There is a distinction between readiness and willingness to perform the contract and both ingredients are necessary for the relief of Specific Performance. In [His Holiness Acharya Swami Ganesh Dassji v. Sita Ram Thapar](#)⁷ cited by Mr. Venugopal, this Court said that there was a difference



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between readiness and willingness to perform a contract. While readiness means the capacity of the Plaintiff to perform the contract which would include his financial position, willingness relates to the conduct of the Plaintiff. The same view was taken by this Court in [Kalawati v. Rakesh Kumar](#)⁸.

35. Even in a first appeal, the first Appellate Court is duty bound to examine whether there was continuous readiness and willingness on the part of the Plaintiff to perform the contract. This proposition finds support from [Balraj Taneja v. Sunil Madan](#)⁹, and [H.P. Pyarejan v. Dasappa](#)¹⁰ where this Court approved the views taken by the Privy Council in [Ardeshir Mama v. Flora Sassoon](#)¹¹.

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38. In this case, we cannot overlook the fact that the suit property is located in the industrial town of Hosur located about 30/40 kms. from Bengaluru. The Court is obliged to take judicial notice of the phenomenal rise in the price of real estate in Hosur. The proposition finds support from case reported in [K.S. Vidyadnam v. Vairavan](#) (supra). To quote this Court “we cannot be oblivious to 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.”

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43. In Saradamani Kandappan (supra) this Court reiterated that (i) while exercising discretion in suits for Specific Performance, the Courts should bear in mind that when the parties prescribed a time for taking certain steps or for completion of the transaction, that must have some significance and therefore time/period prescribed cannot be ignored; (ii) the Courts will apply greater scrutiny and strictness when considering whether purchaser was ready and willing to perform his part of the contract and (iii) every suit for Specific Performance need not be decreed merely because it is filed within the period of limitation, by ignoring time limits stipulated in the agreement. The 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 that a purchaser can wait for one or two years to file a suit and obtain Specific Performance. The three year period is intended to assist the purchaser 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.

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45. The Respondent Plaintiff has relied upon the notice dated 13.02.2003 and evidences of PW2 & PW3 to prove that he was always ready and willing to



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perform his part of the contract. Even though it may be true that the Respondent Plaintiff had deposited the balance sale consideration in court on 06.04.2010, it cannot be ignored that such deposit was made by him seven years after 15.3.2003, being the date by which the sale had to be concluded. No evidence has been adduced on behalf of the Respondent Plaintiff as to how the Respondent Plaintiff was in a position to pay or make arrangements for payment of the balance sale consideration within time. The Courts below also erred in not adjudicating upon this vital issue except to make a sweeping observation that, given that the Respondent Plaintiff was a businessman he had sources to arrange the balance funds. Careful study of balance sheet dated 31.03.2003 of the Respondent Plaintiff would demonstrate that he did not have sufficient funds to discharge his part of contract.

46. It is settled law that for relief of specific performance, the Plaintiff has to prove that all along and till the final decision of the suit, he was ready and willing to perform his part of the contract. It is the bounden duty of the Plaintiff to prove his readiness and willingness by adducing evidence. This crucial facet has to be determined by considering all circumstances including availability of funds and mere statement or averment in plaint of readiness and willingness, would not suffice.”



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(vi) (2020) 3 SCC 311, [*Atma Ram v Charanjit Singh*]

“9.Coming to the second aspect revolving around [Section 16\(c\)](#), a look at the judgment of the Trial Court would show that no issue was framed on the question of readiness and willingness on the part of the petitioner/plaintiff in terms of [Section 16\(c\)](#) of the Specific Relief Act, 1963. The fact that the petitioner chose to issue a legal notice dated 12.11.1996 and the fact that the petitioner created an alibi in the form of an affidavit executed before the SubRegistrar on 7.10.1996 (marked as Exhibit P2) to show that he was present before the SubRegistrar for the purpose of completion of the transaction, within the time stipulated for its performance, was not sufficient to conclude that the petitioner continued to be ready and willing even after three years, on 13.10.1999 when the plaint was presented. No explanation was forthcoming from the petitioner for the long delay of three years, infiling the suit (on 13.10.1999) after issuing a legal notice on 12.11.1996. The conduct of a plaintiff is very crucial in a suit for specific performance. A person who issues a legal notice on 12.11.1996 claiming readiness and willingness, but who institutes a suit only on 13.10.1999 and that too only with a prayer for a mandatory injunction carrying a fixed court fee



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relatable only to the said relief, will not be entitled to the discretionary relief of specific performance.”

(vii) S.Kalianna Gounder &Ors V. S.Periyasamy & Ors.: [LNIND

2017 Mad 3435] (para 19,23-32)

“27. It could be seen from the heading of the Section itself that the bar created under [Section 16](#) is personal in nature i.e., personal to the plaintiff. Therefore, if the plaintiff does not aver and prove that he has performed or always been ready and willing to perform his part of the contract, he would not be entitled to a decree dehors the defence of the defendants. [In Balamurugan v. Arumugam and Ors.](#) reported in 2010 (23) CTCOL 535, this Court, while considering the nature of the bar enacted under [Section 16](#) of the Specific Relief Act, had held that the absence of readiness and willingness can be raised even by a subsequent purchaser. In answer to the argument that since there was no plea regarding the absence of readiness and willingness, the plaintiffs did not have an opportunity to lead evidence regarding the same, this Court had observed as follows:

"19. A pertinent argument was advanced by the learned Counsel for the 1st Respondent that despite the averment made by the Plaintiff in the plaint expressing his readiness and



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willingness, there was no denial by the Defendants, more particularly by the Defendants 1 and 2 and therefore, there was no occasion for him to lead any evidence to prove his readiness and willingness.

"20. In a suit for specific performance, it is for the plaintiff to plead and prove his readiness and willingness to perform his part of the contract. That being a mandatory requirement, the Court before passing judgment against the Defendant has to scrutinise the facts set out in the plaint to find out whether the said requirements, specially those indicated in [Section 16\(1\)\(c\)](#) of the Act have been complied with or not....."

28. Therefore, it is clear that dehors the conduct of the defendants in a suit for specific performance, it is incumbent on the plaintiff to prove continuous readiness and willingness. If such readiness and willingness is absent the whole suit would have to fail and there cannot be a decree against some of the defendants alone in such a suit for specific performance. In my considered opinion in as much as the bar contemplated under [Section 16](#) are personal bars as against the plaintiffs in a suit for specific performance, whether or not there is a plea on the part of the defendants, the plaintiff will have to plead and prove that he or she is always ready and willing to perform his or her part of the



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contract. A negative finding on the readiness and willingness will entail the dismissal of the entire suit and there cannot be a partial decree. Therefore, the second question is answered in favour of respondents 7 to 16.”

(viii) (2012) 3 MWN (Civil) 603, [G.Sundarraaj v Meenakshi]

“18. When such is the unassailable and unarguable factual scenario, the core question would arise as to how it would lie in the mouth of the plaintiff to contend that ever since 1987 till 2004 he did not have had sufficient funds to purchase non-judicial stamp papers and also to get the sale deed scribed and registered. Absolutely, the plaint is silent as silence could be.

23. What one could notice in respect of the mandate as contemplated under [Section 16](#) of the Specific Relief Act, is only the above said excerpt in the plaint. Absolutely there is no expounding or explanation, elucidation or detailing of the fact as to what made the plaintiff to keep quiet till the year 2003 ever since 1987. There is no legal answer to it.”

(ix) A.S(MD) No.107/2012 dated 28.10.2022, [Surendran v

G.Selladurai & Ors.]



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“30. The Court below did not even frame an issue with regard to the readiness and willingness of the plaintiff to perform his part of the contract. The Court below has spent all its time in commenting upon the defendants and was swayed by their conduct and hence, the Court below did not even render a finding on readiness and willingness on the part of the plaintiff. The issue regarding readiness and willingness and the finding on the said issue is more a matter of content and it is not necessary to use the exact terminology of readiness and willingness in a judgment. In other words, it can be gathered from the pleadings, evidence and discussion made by the Court. In this case, the Court below has not satisfied even this requirement and has proceeded to decree the suit in favour of the plaintiff. The Court below has taken note of the Income Tax Return marked on the side of the plaintiff as Ex.A16. This document has come into existence after the filing of the suit and hence, the Court cannot act upon the same. Apart from this document, except for the ipsi dixit of the plaintiff, there is no material to conclude that the plaintiff was ready and willing to perform his part of the contract. The point for consideration (d) is answered accordingly.

31. The learned counsel for the plaintiff had submitted that where the defendants have denied the very agreement of sale, they cannot raise the



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question of readiness and willingness. Even taking this proposition to be correct, the Court has to be satisfied that the plaintiff is ready and willing to perform his part of the contract, irrespective of the stand taken by the defendant and in any event, the plaintiff is duty bound to prove that he was always ready and willing to perform his part of the contract. In the present case, since the very agreement of sale dated 01.07.2006 has been held to be questionable, the finding on readiness and willingness on the part of the plaintiff becomes more academic.

.....

33. In the considered view of this Court, the Court below ought not to have exercised its discretion under Section 20 of the Specific Relief Act and granted the decree of specific performance in favour of the plaintiff. The relief of specific performance being an equitable relief, the Court is bound to satisfy itself about the existence of a sale agreement, conduct of the plaintiff and the plaintiff proving that he was always ready and willing to perform his part of the contract and in the absence of the same, the discretion cannot be exercised in favour of the plaintiff. The amendment brought into the Specific Relief Act through Act 18 of 2018, has virtually made the enforcement of the contract as a rule. However, it has been held by the Apex Court in a recent judgment in Katta Sujatha Reddy and Ors.



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Vs. Siddamsetty Infra Projects Pvt. Ltd. and Ors. reported in (2022) 6 MLJ 630 that this amendment has only a prospective effect and it cannot be applied to transactions that took place prior to the coming into force of the amendment. In view of the same, the discretion is available to the Court under Section 20 of the Specific Relief Act and the plaintiff is not entitled for that discretion to be exercised in his favour on the facts of the present case. The point for consideration (h) is answered accordingly.

.....

36. In the result, the judgment and decree passed in O.S.No.111 of 2007, dated 06.08.2012, on the file of the II~Additional District Judge, Tiruchirappalli, is hereby set aside and this appeal suit is allowed accordingly. Considering the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.”

(x) 2011 (12) SCC 18 [Saradamani Kandappan Vs.

S.Rajalakshmi and others] -

“37.The reality arising from this economic change cannot continue to be ignored in deciding cases relating to specific performance. The steep increase in prices is a circumstance which makes it inequitable to grant the relief



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of specific performance where the purchaser does not take steps to complete the sale within the agreed period, and the vendor has not been responsible for any delay or non-performance. A purchaser can no longer take shelter under the principle that time is not of essence in performance of contracts relating to immovable property, to cover his delays, latches, breaches and 'non-readiness'. The precedents from an era, when high inflation was unknown, holding that time is not of the essence of the contract in regard to immovable properties, may no longer apply, not because the principle laid down therein is unsound or erroneous, but the circumstances that existed when the said principle was evolved, no longer exist. In these days of galloping increases in prices of immovable properties, to hold that a vendor who took an earnest money of say about 10% of the sale price and agreed for three months or four months as the period for performance, did not intend that time should be the essence, will be a cruel joke on him, and will result in injustice. Adding to the misery is the delay in disposal of cases relating to specific performance, as suits and appeals therefrom routinely take two to three decades to attain finality. As a result, an owner agreeing to sell a property for Rs.One lakh and received Rs.Ten Thousand as advance may be required to execute a sale deed a quarter century later by receiving the remaining Rs.Ninety Thousand, when the property value has risen to a crore of rupees.”



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9(i) The learned counsel appearing for the respondent contended that the appellants did not have funds to contest the suit filed by them against one D.Balaraman with regard to suit property. The appellants approached the respondent to sell the suit property. As per the suit agreement entered into between the appellants and respondent, the sale price was fixed at Rs.52,00,000/- and the respondent paid a sum of Rs.10,00,000/- as advance. As per clause 2(b) of the agreement, the balance sale consideration has to be paid within four months from the date of agreement. But, clause 2(b), 3 & 9 of the agreement are subject to clause 13 of the agreement. As per clause 13 of the agreement, the sale is subject to result of appeal that may be filed against the judgment and decree in O.S.No.639 of 2001. In view of clause 13, the respondent is liable to pay the balance sale consideration only after conclusion of litigation.

9(ii) The respondent only engaged Advocate in Sub Court, Chengalpattu as well as in this Court to conduct the First Appeal and Second Appeal respectively. The respondent paid various amounts, totally



a sum of Rs.28,00,000/- on various dates on the request of the appellants.

Necessary endorsements were made in the agreement of sale which shows that 4 months to pay the balance sale consideration as mentioned in clause 2(b) was extended when the respondent received amounts on various dates up to 17.12.2011. In view of the above, the time is not essence of contract. The contention of the appellants that the agreement is only a loan agreement and it is not an agreement of sale is not correct. The appellants have not taken such a stand in their written statement. Without any pleadings, the appellants cannot argue in the appeal. The respondent has stated that the appellants approached the respondent to sell their property and agreement of sale was entered into. The appellants did not specifically deny the various averments made in the plaint. The respondent has stated in paragraph Nos.5 & 6 of the plaint that since the respondent became agreement holder, he has to necessarily fight the litigation on behalf of the appellants. The respondent did not take a plea in the plaint that the agreement is for funding the litigation. As per Order VIII Rule 5 of the Code of Civil Procedure, the respondent must specifically deny various averments made by the plaintiff / respondent in the plaint.



9(iii) The intention of the parties in the suit agreement is only to sell the property and the same is subject to the appeal to be filed. The Second Appeal filed against the appellants was dismissed on 06.08.2012. The respondent tried to contact the appellants personally and tried to communicate with the appellants through phone, but the appellants evaded the same. After dismissal of Second Appeal, the attitude of the appellants changed and they made arrangements to sell the properties to third parties. Many brokers and politicians contacted the respondent on behalf of the appellants for sale of the property to third parties.

9(iv) The Second Appeal was dismissed on 06.08.2012 and the respondent filed the present suit on 02.07.2013, within 11 months from the date of dismissal of the Second Appeal. The last payment was made on 17.12.2011 and the respondent has filed the suit on 02.07.2013 and the suit is not barred by limitation.

9(v) After filing of the suit, the respondent has deposited the balance sale consideration into Court. The respondent was always ready and willing to perform his part of contract. He had sufficient funds in the Bank as well as immovable property. The fact that he made payments



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between 04.07.2006 to 17.12.2011 and deposited the balance sale consideration of Rs.14,00,000/- on 20.12.2013 clearly shows that respondent was always ready and willing to perform his part of contract. The appellants are utilizing the sum of Rs.38,00,000/- paid by the respondent for more than 14 years.

9(vi) The learned counsel appearing for the respondent further submitted that the appellants have not pleaded that they were put to hardship and loss by the delay on the part of the respondent and therefore, they are not entitled to raise such a plea before the Trial Court as well as before the Appellate Court and prayed for dismissal of the appeal.

In support of his contention, the learned counsel relied on the following judgments:

(i) ***AIR 2018 Mad 14, [S. Deivanai and Ors. vs. V.M. Kothandaraman and Ors.]***

“52.From a perusal of the materials on record, We are of the opinion that the defendants have not denied the case of the plaintiff by putting suggestion in the cross-examination of P.W.1. Failure



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to cross-examine on this aspect has resulted in establishment of the fact by the plaintiff that the plaintiff has proved that he has been ready and willing to perform his part of the contract. In this regard, a reference could be placed in the judgment reported in (2003) 1 SCC 240 [Sarwan Singh v. State of Punjab], wherein it has been held that it is a rule of essential justice that whenever the opponent has declined to avail himself of the opportunity to put his case in cross-examination, it must follow that the evidence tendered on that issue ought to be accepted.

.....

54. But, it is the case of the plaintiff that he had taken earnest efforts through the panchaytors to insist the defendants to perform their part of the contract, but, the same has failed, thereafter, he has filed the suit. Therefore, it cannot be said that the delay in approaching the equity Court by the plaintiff, for a period of two years and two months, is fatal to the claim of the plaintiff. Further, We find that a plea has been raised by the plaintiff regarding his readiness and willingness and there was sincere effort taken by the plaintiff through the panchayators, after exchanging notices till the date of filing the suit; but, this piece of evidence was not denied by the defendants in the manner provided under Order 8 Rule 5 of CPC, as contended by the learned counsel for the 1st respondent/plaintiff.



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There is no specific plea in the written statement filed by the defendants to the effect that the plaintiff has waived and abandoned his right under Ex. A.1-Sale Agreement, by not approaching the equity Court immediately after exchange of notices and such a delay has prejudicially affected the interest of the defendants under the suit agreement. Hence, in view of the failure on the part of the defendants to comply with Order 8 Rule 5 of CPC and failure on their part to cross-examine the plaintiff on materials aspects touching Ex. A.1, the submissions made by the learned senior counsel for the appellants/defendants cannot be accepted.”

(ii) 2012 (5) SCC 712, [Narinderjit Singh vs. North Star Estate Promoters Ltd.]

“24. It is significant to note that the Appellant and his father had set up the case of total denial. They repeatedly pleaded that the agreement for sale was a fictitious document and the Respondent had fabricated the same in connivance with Col. Harjit Singh and Vijay Bhardwaj. However, no evidence was adduced by the Appellant to substantiate his assertion. That apart, he did not challenge the finding recorded by the trial Court on the issue of readiness and willingness of the Respondent to



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perform its part of the agreement. Therefore, we do not find any valid ground much less justification for exercise of power by this Court under Article 136 of the Constitution of India to interfere with the judgment of the lower appellate Court which was approved by the High Court.”

(iii) 2019 (3) SCC 520, [Vijay A. Mittal and Ors. vs. Kulwant Rai

(Dead) thr. L.Rs. and Ors.]

“18. In the first place, in our considered opinion, when the three Courts below have held against the Defendants and in favour of the Plaintiffs that the Plaintiffs were ready and willing to perform their part of the agreement, this finding was binding on the High Court and also on this Court.

19. Indeed, the Trial Court had already recorded this finding in Plaintiffs' favour but since the Trial Court dismissed the suit on other grounds, the Defendants had a right to challenge this finding by filing cross objection before the First Appellate Court in Plaintiffs' appeal but the Defendants did not do so and accepted this finding. The First Appellate Court while decreeing the Plaintiffs' suit upheld this finding being not under challenge and the High Court upheld it by dismissing Defendants' second



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appeal.

20. A finding on the issue of readiness and willingness is one of the important and relevant findings in a suit for specific performance of an agreement. It is a finding based on facts and once it is recorded, it becomes a finding of fact.

21. In this view of the matter, unless such finding is found to be against the pleadings or contrary to the evidence or the law governing the issue, it is binding on the High Court and also on this Court.”

(iv) AIR 2019 SC 4252, [Madhukar Nivrutti Jagtap and Ors. vs. Pramilabai Chandulal Parandekar and Ors.]

“13.5 So far the period between the year 1966 to the year 1968 is concerned, when the Plaintiffs had the limitation of three years for filing the suit for specific performance, it cannot be said that during the aforesaid period, the Plaintiffs were required to show overt act by them in furtherance of the agreement in question. The principles stated in the decisions in Azhar Sultana, Veerayee Ammal and Pushparani S. Sundaram (supra), as relied upon by the learned Counsel for the Appellants, are not of



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any doubt or debate but each of the said cases had proceeded on its own facts. We may also observe that in the case of Azhar Sultana, the Court found that as against the agreement dated 04.12.1978, the suit for specific performance was filed on 07.12.1981, after the property was sold on 31.10.1981; and that the Plaintiff failed to show that she was not having notice of the subsequent sale. However, in the said case, the Court directed monetary payment to the tune of twice the amount advanced by the Plaintiff. In Veerayee Ammal, this Court pointed out that the expression 'reasonable time' for performance on the part of Plaintiff would depend on the circumstances of the case, including the terms of contract. In Pushparani S. Sundaram, the basic requirements of Section 16 of the Act of 1963 were reiterated. In contrast to what is suggested on behalf of the Appellants, we may point out that recently, in the case of R. Lakshmikantham v. Devaraji Civil Appeal No. 2420 of 2018, decided on 10.07.2019, this Court has again explained that when the suit for specific performance is filed within the period of limitation, delay cannot be put against the Plaintiff.....

13.6. *In the present case too, when the Plaintiffs had the limitation of three years for filing the suit and have indeed filed the suit well within limitation; and looking to the overall circumstances of the case, no aspect of delay operates against*



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them.”

(v) 2017 (4) SCC 654, [A. Kanthamani vs. Nasreen Ahmed]

“24. 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/0035/1949 : 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."

.....

32.3 Third, the Plaintiff proved her readiness and willingness to perform her part of agreement and also proved her financial capacity to purchase the suit property by adducing adequate evidence.”



(vi) **2017 SCC Online Madras 30448, [N. Venugopal and Ors. vs.**

N.D. Sukumar and Ors.]

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“19. The learned counsel appearing for the respondents/plaintiffs has relied upon following decisions:

"i) Silvey and others v. Arun Varghese and another reported in (2008) 11 SCC 45, wherein at paragraph 14 it is observed that conduct of the defendant cannot be ignored while weighing the question of exercise of discretion for decreeing or denying a decree for specific performance.

ii) Zarina Siddiqui v. A. Ramalingam alias R. Amarnathan reported in (2015) 1 SCC 705, wherein at Paragraph No. 33, Hon'ble Supreme Court has observed as follows:

"33. The equitable discretion to grant or not to grant a relief for specific performance also depends upon the conduct of the parties. The necessary ingredient has to be proved and established by the plaintiff so that discretion would be exercised judiciously in favour of the plaintiff. At the same time, if the defendant does not come with clean hands and suppresses material facts and evidence and misleads the court then such discretion should not be exercised by refusing to grant specific performance."

20. From a conjoint reading of the decisions referred to supra, it is easily discernible that in a suit



for specific performance the conduct of the defendant must also be looked into. In the instant case as stated earlier, after giving a Power of Attorney Deed for changing the classification of the suit property, abruptly the defendants have cancelled the same and after receipt of subsequent payments, the second defendant has taken a different stand. Therefore, it is needless to say that the defendants have adopted a vulnerable conduct in the instant case.”

(vii) 2004 (8) SCC 689, [Swarnam Ramachandran and Ors. vs.

Aravacode Chakungal Jayapalan]

“11. According to Pollock & Mulla's Indian Contract & Specific Relief Acts - [(2001) 12th Edition page 1086], the intention can be ascertained from:

- i) the express words used in the contract;*
- ii) the nature of the property which forms the subject matter of the contract;*
- iii) the nature of the contract; and*
- iv) the surrounding circumstances.*

12. That time is presumed not to be of essence



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of the contract relating to immovable property, but it is of essence in contracts of reconveyance or renewal of lease. The onus to plead and prove that time was the essence of the contract was on the person alleging it, thus giving an opportunity to the other side to adduce rebuttal evidence that time was not of essence. That when the plaintiff pleads that time was not of essence and the defendant does not deny it by evidence, the Court is bound to accept the plea of the plaintiff. In cases where notice is given making time of the essence, it is duty of the Court to examine the real intention of the party giving such notice by looking at the facts and circumstances of each case. That a vendor has no right to make time of the essence, unless he is ready and willing to proceed to completion and secondly, when the vendor purports to make time of the essence, the purchaser must be guilty of such gross default as to entitle the vendor to rescind the contract.”

(viii) 2019 (6) SCC 233, [Beemaneni Maha Lakshmi vs. Gangumalla

Appa Rao (Since Dead) by L.Rs.]

“At this stage, the decision of this Court in the case of A. Maria Angelena v. A.G. Balkis Bee, reported in AIR 2002 SC 2385 is required to be referred to. In the aforesaid case, the vendor sought



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to raise the plea of hardship for the first time before this Court and this Court did not permit the vendor to raise such a plea of hardship by observing that as no plea as to hardship if relief for specific performance is granted was raised by the Defendant - vendor in written statement nor any issue was framed that the Plaintiff - purchaser could be compensated in terms of the money in lieu of decree for specific performance, such plea cannot be entertained for the first time in appeal by way of SLP, more so, when there are concurrent findings that the Plaintiff was ready and willing to perform his part of the contract has been recorded by the lower courts. Therefore, the plea raised on behalf of the vendor on hardship cannot be permitted to be raised now, more particularly when no such plea was raised/taken in the written statement.”

(ix) AIR 2001 SC 3712, [Adcon Electronics Pvt. Ltd. vs. Daulat and

Ors.]

“16. In a suit for specific performance of contract for sale of immovable property containing stipulation that on execution of the sale deed the possession of the immovable property will be handed over to the purchaser, it is implied that delivery of possession of the immovable property is part of the



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decree of specific performance of contract. But in this connection it is necessary to refer to Section 22 of the Specific Relief Act, 1963 which runs

"22. Power to grant relief for possession, partition, refund of earnest money, etc.-

(1) Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908, any person suing for the specific performance of a contract for the transfer of immovable property may, in an appropriate case, ask for-

(a) possession, or partition and separate possession, of the property, in addition to such performance; or

(b) any other relief to which he may be entitled, including the refund of any earnest money or deposit paid or made by him in case his claim for specific performance is refused.

(2) No relief under clause (a) or clause (b) of sub-section (1) shall be granted by the court unless it has been specifically claimed:

Provided that where the plaintiff has not claimed any such relief in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just for including a claim for such relief."

**(x) 2020 (5) SCC 164, [South East Asia Marine Engineering and
Constructions Ltd. vs. Oil India Limited]**

"20. When the parties have not provided for



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what would take place when an event which renders the performance of the contract impossible, then Section 56 of the Contract Act applies. When the act contracted for becomes impossible, then Under Section 56, the parties are exempted from further performance and the contract becomes void. As held by this Court in Satyabrata Ghose v. Mugneeram Bangur & Co. AIR 1954 SC 44:

15. These differences in the way of formulating legal theories really do not concern us so long as we have a statutory provision in the Indian Contract Act. In deciding cases in India the only doctrine that we have to go by is that of supervening impossibility or illegality as laid down in Section 56 of the Contract Act, taking the word "impossible" in its practical and not literal sense. It must be borne in mind, however, that Section 56 lays down a Rule of positive law and does not leave the matter to be determined according to the intention of the parties.

However, there is no doubt that the parties may instead choose the consequences that would flow on the happening of an uncertain future event, Under Section 32 of the Contract Act."

10. Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the respondent and perused the entire materials on record.



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11. Based on the pleadings and arguments of the learned counsel appearing for the appellants and respondent, the following points have arisen for consideration in this appeal:

(i) Whether suit agreement dated 04.07.2006 is an agreement of sale or loan agreement for funding litigation filed by one D.Balaraman against the appellants?

(ii) Whether time is essence of contract dated 04.07.2006?

(iii) Whether respondent was ready and willing to perform his part of contract?

(iv) Whether respondent is entitled to equitable relief of specific performance?

Point No.(i):

“Whether suit agreement dated 04.07.2006 is an agreement of sale or loan agreement for funding litigation filed by one D.Balaraman against the appellants?”



11(a). It is the case of the respondent that appellants approached him and offered to sell the suit property for total sale consideration of Rs.52,00,000/- for better investment. The respondent agreed for the same and terms and conditions agreed upon were reduced to suit agreement. In the suit agreement it has been stated that appellants are selling the property for better investment. There is no mention in the suit agreement that appellants and respondent have entered into said agreement for funding the litigation that appellants were facing at that time. The appellants in the written statement had not pleaded that agreement is only loan agreement for funding the litigation. They have totally disputed the genuineness and validity of the agreement. In the absence of any such pleading, the evidence of 1st appellant as D.W.1 in this regard cannot be accepted. Similarly the contention of the learned counsel appearing for the appellants that appellants need not plead that suit agreement is only a loan agreement for funding the litigation as respondent himself has admitted in the plaint that agreement is for funding the litigation is not correct. The respondent did not state in the plaint that he entered into the suit agreement with appellants for funding the litigation. On the other hand, he has stated that since he is the agreement holder, he has to fight the litigation on behalf of the appellants and fund the litigation.



Therefore, we hold that suit agreement is only an agreement of sale and not loan agreement.

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11(a) (i). It is the further contention of the learned counsel appearing for the appellants that suit agreement is only a champertous agreement and therefore, cannot be enforced is not acceptable. The appellants have not proved that agreement is only champertous agreement. In the judgment reported in *AIR 1997 MP 106* (cited supra) relied on by the learned counsel appearing for the appellants itself, the Madhya Pradesh High Court has held that -

(I) There is no special enactment in the India barring champertous agreement.

(II) Champertous agreement is not illegal in the sense that they are immoral or opposed to public policy.

(III) If the Court finds that a particular champertous agreement is opposed to principle of equity and good conscience or unconscionable and extortionate in itself, then the Courts would not enforce such an agreement.

(III)(i) Therefore, even if agreement is champertous agreement, unless appellants proves that it is illegal, opposed to public policy and



immoral, the said agreement can be enforced in a Court of law. In the present case, the appellants have failed to prove the same.

Point No.(ii):

“Whether time is essence of contract dated 04.07.2006?”

11(b). The appellants and respondent entered into an agreement of sale dated 04.07.2006. As per the agreement, the respondent agreed to purchase the suit property belonging to appellants for a total sale consideration of Rs.52,00,000/-. The respondent paid a sum of Rs.10,00,000/- as advance on the date of agreement. As per Clause 2(b) of the agreement, four months time is fixed for payment of balance sale consideration of Rs.42,00,000/-. It is also mentioned that “time shall be essence of this contract”. As per clause 3 & 9, it had been agreed that on payment of entire balance sale consideration, the appellants will execute the sale deed in favour of the respondent or his nominee or execute power of attorney and hand over the original documents of title and hand over vacant possession of schedule mentioned property.



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11(b)(i). The respondent has to pay the balance sale consideration within 4 months as per clause 2(b). As per clause 13, sale shall be subject to the out come of any appeal filed against the judgment and decree passed in O.S.No.639 of 2001 dated 07.03.2006. It is also agreed that if appellants fail to succeed in the appeal, the entire advance amount received by them has to be returned to the respondent. The contention of the learned counsel appearing for the respondent that as per clause 13, the payment of balance sale consideration is subject to outcome of appeal is not correct. As per clause 13, the sale only is subject to outcome of appeal and not the payment of balance sale consideration. The respondent has to pay the balance sale consideration of Rs.42,00,000/- within four months from the date of agreement. Time has been fixed as essence of contract. But the appellants did not take any action to cancel the agreement after expiry of four months. On the other hand, they were receiving amounts from 04.10.2006 to 17.12.2011, amounting to Rs.28,00,000/-. The learned counsel appearing for the appellants contended that amounts so received are not towards part of sale consideration, but it is only towards litigation expenses. In the endorsements made by the appellants on the backside of the agreement, it is not mentioned that amounts received were only for litigation expenses.



Therefore, only conclusion that can be arrived at is that the said amounts were paid only towards sale consideration. In view of the amounts received by the appellants after expiry of four months without taking any action to cancel the agreement, we hold that time is not essence of contract.

11(b) (ii). At the same time, we have to take into consideration the time limit fixed in the agreement while considering the point whether respondent was ready and willing to perform his part of contract.

Point No.(iii):

“Whether the respondent was ready and willing to perform his part of the contract?”

11(c). The plaintiff when seeks the relief of specific performance, must allege and prove that he was always ready and willing to perform his part of the contract. From the judgments relied on by the learned counsel appearing for the appellants and respondent, following principles emerge:

(I) The plaintiff must allege and prove that he was always ready



and willing to perform his part of the contract from the date the sale consideration became payable till the decision in the suit. This is a condition precedent.

(II) It is not sufficient for the plaintiff to just allege that he is always ready and willing to perform his part of the contract. He must prove by acceptable evidence that he always had the capacity to pay the sale consideration.

(III) It is not necessary for the plaintiff to have cash in hand or in bank. But he must prove that he has capacity to raise funds even through arrangement with financier.

(IV) The compliance of readiness and willingness has to be in spirit and substance and not in letter and form.

(V) There is no straight jacket formula to decide whether the plaintiff was always ready and willing to perform his part of the contract. The Court has to decide the issue based on facts and circumstances of the case and conduct of the plaintiff.

(VI) Readiness and willingness are two different aspects to be proved by the plaintiff. Readiness is his capacity to pay the sale consideration, while willingness is his intention to perform his part of the contract.



(VII) Deposit of balance sale consideration into Court will not amount to readiness and willingness.

(VIII) The Court can decline to grant the equitable relief of specific performance on the ground of delay and laches.

11 (c) (i).Applying the above principles, we have to decide whether the respondent has proved his readiness and willingness to perform his part of the suit agreement. In paragraph no.9 of the plaint, the respondent has stated as follows:

“9.The plaintiff further submits that the plaintiff is man of means and he is possessed with sufficient funds both in Bank as well as by immovable properties and he is always ready and willing to perform his part of the contract.”

11(c)(ii).The respondent in his proof affidavit, as P.W.1, has stated as follows:

“மீதி கிரைய தொகையை
பிரதிவாதிகளுக்கு கொடுத்துவிட்டு நான்
கிரையத்தை முடித்துக் கொள்ள அப்போதும்,
இப்போதும் எப்போதும் தயாராக உள்ளேன்.
ஆனால் பிரதிவாதிகளுக்கு கிரையத்தை
முடித்துக் கொடுக்க மனமில்லை. 20-12-2013



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அன்று மீதி கிரைய தொகை ரூ.17,00,000/-
நான் ஏ சலான் 82-2013 படி இந்த
நீதிமன்றத்தில் செலுத்தி விட்டேன்”

“நான் கிரையத்தை முடித்துக் கொள்ள
தயாராக இல்லை என்பது தவறு,”

11(c)(iii).From paragraph no.9 of the plaint, it is seen that the respondent has stated that he is man of means and is possessed with sufficient funds in bank as well as by immovable properties. The respondent has not furnished any particulars of his bank account, not filed statement of account and details of his immovable properties in the Trial Court. The respondent also has not stated whether he has made any arrangements for raising the balance sale consideration through any financial institution or through any private financier. The respondent has made a bald statement that he was always ready and willing to perform his part of the contract. Such a statement made by the respondent is only in letter and form and not in spirit and substance. The respondent has first stated that he was and is always ready and willing to perform his part of the contract but he has not produced any material to substantiate such a stand taken by him by any evidence. Considering the above



materials, we have no hesitation to hold that the respondent was not ready to perform his part of the contract from the date the payment of balance sale consideration became due.

11(c)(iv).It is the case of the respondent in his evidence that he has deposited the balance sale consideration on 20.12.2013 by obtaining Challan Number 82-2013 and proved his readiness and willingness to perform his part of the contract. The Hon'ble Apex Court has categorically held that depositing the amount into Court will not amount to prove his readiness and willingness to perform his part of the contract. The learned Judge failed to consider that the respondent has not furnished details of his source to pay the balance sale consideration, but erroneously held that the respondent proved his readiness by depositing the balance sale consideration into the Court. The said conclusion is contrary to the judgment of the Hon'ble Apex Court reported in **2022 SCC Online SC 840, [U.N.Krishnamurthy Vs. A.M.Krishnamoorthy]** . The finding of the learned Judge that the respondent was ready to perform his part of the contract is erroneous and the said erroneous finding is hereby set aside.

11(c)(v).As far as the willingness of the respondent to pay the



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balance sale consideration is concerned, it is the specific case of the respondent that the sale is subject to result of appeal to be filed against the judgment and decree dated 07.03.2006 made in O.S.No.639 of 2001. It is admitted case that A.S.No.89 of 2006 filed against the judgment and decree dated 07.03.2006 in O.S.No.639 of 2001 was dismissed on 29.11.2010 and the S.A.No.1615 of 2011 was dismissed by this Court on 06.08.2012. The respondent has not paid the balance sale consideration to the appellants after dismissal of the Second Appeal. According to the respondent, he tried to contact the appellants in person and also tried to contact them over phone but appellants evaded the respondent. The respondent has not furnished the details as to when he tried to contact the appellants. According to the respondent, when he came to know that appellants were trying to sell the suit property to third parties, he gave a complaint to the Police. Any purchaser in the agreement of sale, when the vendor evades receiving balance sale consideration and completes the agreement will issue a notice to the vendor to receive the balance sale consideration and execute the sale deed. In this case, the respondent curiously has given only a complaint to the Police and when the Police did not take such a complaint on file and informed the respondent that it is civil matter, he has not issued any notice to the appellant, but filed suit



for specific performance. The respondent has not given the date on which he gave complaint to the Police. He has not produced the copy of alleged complaint before the Trial Court. The respondent has filed suit after 11 months of dismissal of Second Appeal. The respondent has not given any valid reason for the delay. The above materials clearly show that respondent was not willing to pay the balance sale consideration and complete the sale agreement. The intention of the respondent was not to complete the contract by paying balance sale consideration.

11(c)(vi).At this point, we have to take into consideration that in the suit agreement, 4 months time was fixed for payment of balance sale consideration of Rs.42,00,000/-. The respondent failed to pay the said amount within the time limit of 4 months fixed in the suit agreement. The conduct of the respondent before and after filing the suit has to be taken into account to decide his readiness and willingness to perform his part of the contract. The failure of the respondent to pay the balance sale consideration within 4 months in one lump sum also proves that he was not ready and willing to perform his part of contract. For the above reason, we answer Point No.(iii) against the respondent.



Point No.(iv):

“Whether respondent is entitled to equitable relief of specific performance?”

11(d). In a suit for specific performance, the Court has to see whether in the facts and circumstances of the case, the purchaser is entitled to the equitable relief of specific performance. As per Section 16(C) of the Specific Relief Act, the Court has power to decline to grant the relief of specific performance. The suit filed after considerable delay just before expiry of limitation is one of the grounds to decline the equitable relief of specific performance. The Courts have deprecated the practice of purchaser filing the suit just before the expiry of limitation and in the judgment of the Hon'ble Apex Court reported in **2022 SCC Online SC 840**, cited supra, the Hon'ble Apex Court has held that the Court will “frown” upon suits which are not filed immediately after the breach or refusal by the vendor. The Court has to take into account the period within which it was intended that purchaser should pay the sale consideration. Earlier the Courts have held that time is not essence of the contract in respect of sale of immovable property. The said view is taken by the Courts on the ground that value / price of immovable property does not increase rapidly. But, now the prices of immovable property are



increasing phenomenally. The Real Estate Business has increased considerably and prices of immovable property also increased at a rapid rate. In the judgment of the Hon'ble Apex Court reported in **2022 SCC Online SC 840**, referred to above, the Hon'ble Apex Court has held that Court is obliged to take judicial notice of the phenomenal rise in the price of Real Estate.

11(d) (i). In the present case, the suit agreement is dated 04.07.2006. As per clause 2(b) of agreement, the respondent has to pay the balance sale consideration of Rs.42,00,000/- within four months from the date of agreement. The learned counsel appearing for the respondent has contended that he said four months time fixed in clause 2(b) is subject to clause 13 of agreement and respondent has to pay the balance sale consideration only after disposal of appeal to be filed challenging the Judgment and Decree dated 07.03.2006 made in O.S.No.639 of 2001. The said contention is not correct. But the respondent paid total sum of Rs.28,00,000/- in various installments from 04.10.2006 to 17.12.2011. After 2011, no payment was made. The Second Appeal filed by the said D.Balaraman against the appellants was dismissed on 06.08.2012. The respondent has not let in any evidence to show that immediately he



contacted the appellants and offered to pay the balance sale consideration and get the sale deed executed in his favour. It is to be taken note of the fact that the respondent is a Real Estate dealer and has undue advantage over the appellants. The suit property is an urban immovable property and as the Hon'ble Apex Court has held that Court has to take judicial note of phenomenal increase in immovable properties. Taking into account, the price of Rs.52,00,000/- was fixed on 04.07.2006 and the respondent has approached the Court for specific performance of the agreement of sale only on 02.07.2013, the respondent is not entitled to equitable relief of specific performance.

11(d) (ii). The question of limitation is different from the question of delay and laches. Unless the purchaser approaches the Court immediately after the breach or refusal by the vendor or within a reasonable time, the purchaser is not entitled to equitable relief of specific performance. Further, we have already held that respondent was not ready and willing to perform his part of contract. For the said reason and delay of respondent in approaching the Court even after dismissal of Second Appeal by this Court on 06.08.2012, phenomenal increase in the suit property which is an urban vacant land and the respondent being a



Real Estate dealer, we hold that respondent is not entitled to equitable relief of specific performance. This point is answered against the respondent.

12.The judgments relied on by the learned counsel appearing for the appellants, especially **2022 Live Law (SC) 588** and **2011 (12) SCC 18**, are squarely applicable to the facts of the present case. The judgments relied on by the learned counsel appearing for the respondent do not advance the case of the respondent.

13.It is admitted by both the parties that respondent paid a sum of Rs.10,00,000/- on 04.07.2006 on entering into agreement of sale and subsequently paid a total sum of Rs.28,00,000/- in various installments. Thus, the respondent has paid a total sum of Rs.38,00,000/-. The appellants in their grounds of appeal have stated that they are bound to pay the said sum together with interest at prevailing rate of interest. The learned counsel appearing for the appellants also during his arguments has stated that appellants are willing to refund the said sum of Rs.38,00,000/- together with interest. We are allowing the appeal setting aside the judgment and decree of the Trial Court granting specific relief



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directing the appellants to execute the sale deed in favour of the respondent within three months and permanent injunction. In view of the same, we direct the appellants to refund the said sum of Rs.38,00,000/- together with interest at the rate of 7.5% from 17.12.2011 till repayment.

14. With the above directions, this appeal is allowed setting aside the judgment and decree of the Trial Court dated 03.07.2020 made in O.S.No.130 of 2013. No costs.

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

17.11.2022

gsa / krk

Index : Yes / No

Internet : Yes / No



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To

1.The Principal District Judge,
Chengalpattu,
Kancheepuram.

2.The Section Officer,
VR Section,
High Court,
Madras.



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V.M.VELUMANI, J.

and

SUNDER MOHAN, J.

gsa / krk

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17.11.2022