

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

**SECOND APPEAL NO. 596 OF 2023
WITH
INTERIM APPLICATION NO. 16456 OF 2023
IN
SECOND APPEAL NO. 596 OF 2023**

Dashrath Yashwant Wadkar and anr. Appellants
v/s.
Umaji Hindurao Wadkar Respondent

Mr. Abhijit Adagule a/w. Mr. Kush Lahankar for the Appellants.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 20th OCTOBER, 2023.

P. C. :-

. By this Appeal filed under section 100 of the Code of Civil Procedure, the Appellants have challenged the judgment and order dated 19/12/2022 whereby the learned District Judge-5, Kolhapur dismissed the Regular Civil Appeal No.224/2018 and thus confirmed the judgment and decree dated 26/07/2018 in a suit for specific performance filed by the Respondent herein.

2. Heard learned counsel for the Appellants. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

3. Learned counsel for the Appellants contends that the Respondent had not proved that he was ready and willing to perform his part of the contract. He has relied upon the decision of the Apex Court in *Sukhwinder Singh v/s. Jagroop Singh and another 2020 SCC Online SC 86* and *U.N. Krishnamurthy (since deceased) through Lrs v/s. A.N. Krishnamurthy 2022 SCC OnLine SC 840*. In both these decisions, the Apex Court has reiterated that in a suit for specific performance of an agreement, the Plaintiff is required to plead and prove his readiness and willingness to perform his obligation under the agreement and that this is a basic requirement in a suit for specific performance. The Apex court has further observed that where a certain amount has been paid in advance and the balance is required to be paid within a stipulated time, it is for the plaintiff to show that he was in a position to pay the balance money. The Plaintiff has to prove that he has the money or has alternatively made necessary arrangements to get the money.

4. It is further held that it is not 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. It is held that 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 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 he 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, the plaintiff would have to specifically plead how the funds would be available to him. The Apex Court has reiterated 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 of the suit.

5. In the instant case, the records indicate that the Appellants and the Respondents had entered into an agreement dated 16/05/2013 for sale of plot no.980 admeasuring 700 sq. feet for sale consideration of Rs.8,40,000/-. The agreement for sale records that the Respondent herein had paid to the Appellants an earnest amount of Rs.4,00,000/- as on the date and execution of the said agreement and the balance amount was to be paid as on the date of execution of the sale deed. The Appellants herein were required to handover to the Respondent

certain documents and the sale deed was to be executed within 90 days from the date of the agreement.

6. Undisputedly, the Appellants had not handed over the said documents to the Respondent – plaintiff. It is also on record that the Respondent had initially made an oral request to the Appellants to execute the sale deed and later issued notice to the Appellants calling upon him to execute the sale deed. The Respondent also caused public notice published in daily newspaper ‘Pudhari’ intimating the public at large not to enter into any sale transaction with the Appellant in respect of the suit property. Since the Appellant failed to fulfill his obligation under the agreement, the Respondent filed the suit for specific performance of the agreement dated 16/05/2013, wherein the Respondent had specifically pleaded that he was ready and willing to perform his part of the contract.

7. The Appellants raised a defence that they did not intend to enter into an agreement for sale and claimed that they had taken handloan of Rs.2,00,000/- from the Respondents due to their financial constraints and executed the agreement as security for repayment of the loan. The Appellants claimed that the Respondent filed a false suit

since they were unable to repay the loan due to their financial difficulty.

8. The trial Court framed the issues and upon considering the evidence adduced by the respective parties, held that the Appellants and the Respondent had admittedly entered into an agreement at Exhibit – 30. The Trial Court further observed that the agreement specifically describes the property, shows the source of ownership of the Appellants, the consideration at which the property was to be sold, earnest money that was paid to the Appellants and the period of completion of the transaction. The agreement for sale also gives details of the mode of delivery of possession of the property. The learned Judge held that the recitals of the agreement amply prove that the Appellant had entered into an agreement for sale.

9. The learned Judge held that the Respondent had already paid to the Appellants part consideration of Rs.4,00,000/- and pleaded and proved his readiness and willingness to pay the balance amount and to perform his obligation under the agreement. The learned Judge took note of the fact that the Appellants herein had admitted that he had not complied with the conditions mentioned in the agreement and that

he was not willing to execute the sale deed. The learned Judge also took note of the fact that the Appellants refused to accept the notice issued by the Respondent and further did not respond to the public notice published in the daily newspaper. The learned Judge therefore held that the Respondent was always ready and willing to perform his part of the contract and it was infact the Appellants herein who had refused to discharge their obligation under the contract.

10. The Appellate court has also appreciated the evidence adduced by the respective parties and has confirmed the findings recorded by the trial court. As stated above, there was a valid concluded contract between the parties. The Respondent – plaintiff had pleaded that he had paid Rs.4,00,000/- towards earnest money and that he was willing to pay the balance amount. He had specifically stated in evidence that he was ready and willing to pay the balance amount by obtaining loan from the Bank and that he had told this fact to the Appellants several times and requested him to accept the balance amount and to conclude the contract, however, the Appellant avoided receiving the money and/or concluding the contract. This evidence which has gone unchallenged proves that the Respondent had financial capacity to pay the balance amount. Furthermore, the willingness on the part of the Respondent

can be gathered from the fact that he had by registered notice called upon the Appellant to complete the transaction and had by public notice intimated the public at large not to enter into any agreement in respect of the suit property. There is thus total compliance of 'readiness and willingness', which is an essential requirement of Section 16(c) of the Specific Relief Act. Having regard to the facts and circumstances of the case and the conduct of the Appellant, it is evident that the Appellant was not willing to perform his part of obligation under the Contract.

11. Under the circumstances, the findings recorded by the trial court as well as by the Appellate Court on the issue of readiness and willingness are based on the evidence on record and cannot be said to be perverse. Considering the above facts and circumstances, in my considered view, no substantial question of law is involved. Hence, the Appeal is dismissed. Interim Application stands disposed of in view of dismissal of the Appeal.

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(SMT. ANUJA PRABHUDESSAI, J.)