



AS.No.425/2012

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR. JUSTICE P.B.BALAJI

AS.No.425/2012 & CMP.No.19205/2022

1.R.Sadasivam
2.Tmt.S.Rajamani
3.K.Velusamy

.. Appellants /
Plaintiffs

Vs.

1.K.Subramanian
2.K.Murugasamy
3.Tmt.Thangathai
4.K.Sivakumar
5.Tmt.Marathal
6.Selvi K.Kalpana

.. Respondents
/ Defendants

Prayer:- Appeal Suit filed under Section 96 of CPC against the judgment and decree dated 27.09.2011 in OS.No.936/2008 on the file of the learned Additional District Judge and Fast Track Court No.IV, Coimbatore at Tiruppur.



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For Appellants	:	Mr.N.Ramesh for Mr.J.Franklin
For R1	:	Mr.Arun Anbumani for Ms.G.Keerthana
For RR2 to 4	:	Mr.S.Subbiah,Senior counsel for Mr.K.Goviganesan
R5	:	Died

JUDGMENT

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

- (1) Plaintiffs in the suit in OS.No.936/2008 on the file of the Additional District Court-cum-Fast Track Court-IV, Coimbatore [Tiruppur], are the appellants in this Appeal Suit.
- (2) The appellants filed the suit in OS.No.936/2008 for specific performance of an Agreement of Sale dated 30.12.2005 and for permanent injunction restraining the defendants/respondents from in any way alienating or creating any encumbrance over the suit property.
- (3) The respondents are admittedly the absolute owners of the property mentioned in the suit Agreement as well as in the plaint. It is



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admitted that the suit property measuring an extent of 3.40 acres were allotted to defendants/respondents as per the final decree dated 31.07.1992 in IA.No.516/1989 in the suit in OS.No.168/1984 on the file of Sub Court, Tiruppur.

- (4) The case of appellants in the plaint is that appellants and respondents entered into an Agreement for sale in respect of suit property on 30.12.2005, for a price of Rs.79,25,000/- per acre. A sum of Rs.50 lakhs was paid as advance under the Agreement. It is admitted that as per the Sale Agreement, appellants have to pay a sum of Rs.20 lakhs as additional advance to the respondents within a period of three months from the date of Agreement and should pay the balance of sale consideration within six months from the date of sale Agreement. It is admitted in the plaint that there is a forfeiture clause by which the appellants will lose their advance amount in case they fail to perform their part of contract within the time stipulated in the Agreement. However, the appellants stated that the respondents agreed to take steps to measure lands in the presence of appellants before the sale is completed and discharge



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the encumbrance if any before the execution of Sale Deed. It is contended by the appellants that the appellants paid additional advance of Rs.20 lakhs to the respondents on 06.04.2006 and the said payment was duly endorsed in the second page of the suit Agreement. It is also pleaded by appellants that time is not the essence of the contract. However, it is stated in the plaint that the appellants were making repeated demands calling upon the respondents to execute the Sale Deed after receiving the balance sale price. It is further contended that one Ramakrishnan filed a suit in OS.No.93/2006 before the Sub Court, Tiruppur, against respondents questioning the final decree proceedings under which the respondents got title to the property. It is the specific case of the appellants that the respondents requested the appellants to wait for solving the litigation and therefore, the sale could not be completed within the time stipulated in the suit Agreement.

- (5) The appellants issued a Notice dated 28.06.2006 asking the respondents to execute the Sale Deed after removing the encumbrance. To the notice issued by appellants, defendants 1, 3



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to 5 sent a reply notice dated 30.07.2006. Apart from denying the appellants' readiness and willingness, defendants/respondents denied even the receipt of additional advance amount on 06.04.2006 as alleged in the plaint. The appellants thereafter issued a rejoinder dated 26.07.2006 specifically referring to the encumbrances. It is pertinent to mention that the appellants have cited pendency of the suit in OS.No.93/2006 at the instance of a stranger as the main reason and took a stand that unless the title is clear, no one will come forward to buy the property and therefore, the appellants cannot be blamed for not paying the balance. The appellants blamed the respondents for demanding the balance of sale consideration without clearing the subsisting encumbrance over the suit property and to execute the Sale Deed free from encumbrance. Later, in the plaint, the appellants made a specific statement that respondents joining with the plaintiff in OS.No.93/2006, were making attempts to sell away the property to third parties and therefore, despite the encumbrance the appellants state that they were constrained to file the present suit for specific



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performance.

- (6) The suit was contested by the 1st defendant/1st respondent by filing a written statement and the written statement of the 1st respondent was adopted by respondents 3 to 5. In the written statement, the suit Agreement dated 30.12.2005 and the receipt of a sum of Rs.50 lakhs as advance is admitted. However, the respondents took a specific stand that time was the essence of contract and that the appellants who were required to pay the entire balance of sale consideration within six months, failed to perform their part of the contract and therefore, they lost their rights under the Agreement and will not get back the advance amount paid by them. It is contended by the respondents that the suit property is a valuable property abutting a highway in a potential locality where price of the lands were rising steeply every week. Referring to the fact that the value of the suit property was Rs.79,25,000/- per acre in the year 2005 and it got doubled in the year 2009 when the written statement was filed, it is contended by respondents that the parties specifically agreed to specify time as the essence of the contract. It



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is stated by the respondents/defendants in the written statement that the appellants never had the intention or financial capacity to perform their part of the contract within the time frame. The defendants specifically denied the receipt of the additional advance amount of Rs.20 lakhs as alleged in the plaint. It is stated that the signatures found below the endorsement are forged.

- (7) Referring to the fact that plaintiffs/appellants had never accumulated necessary funds to complete the sale right from the date of Agreement till filing of suit, defendants contended that the appellants were not ready and willing to perform their part of the contract in terms of the Agreement. Referring to the forfeiture clause in the suit Agreement, it is stated that the entire amount paid as advance stood forfeited on account of failure on the part of appellants to perform their part of the Agreement. With reference to the suit in OS.No.93/2006, it is stated by the respondents that the litigation appears to be one instigated by appellants themselves and that the appellants cannot delay payment of balance on the basis of a vexatious litigation filed by a third party who is bound by the



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final decree proceedings. An additional written statement was also filed by the 1st respondent denying the specific allegations in the plaint that the appellants are entitled to the alternative relief of refund of the advance amount as alleged in the plaint.

- (8) Before, the Trial Court, the 2nd plaintiff was examined as PW.1 and two other witnesses were examined as PWs.2 and 3. Exs.A1 to A7 were filed on the side of plaintiffs. The 1st defendant was examined as DW.1 and Exs.B1 to B8 were marked on behalf of defendants.
- (9) The Trial Court, after referring to the pleadings and the draft issues, framed the following issues:-

1. *Whether the plaintiff is entitled for the relief of specific performance as prayed for?*
2. *Whether the plaintiff is entitled to injunction as prayed for?*
3. *Whether the plaintiff was not ready and willing to purchase the sale agreement?*

Additional Issues:-

1. *Whether the plaintiff have paid Rs.20,00,000/- as additional advance amount?*



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2. *Whether the endorsement made on the second page in the sale agreement was executed by the defendants?*
3. *Whether the suit is barred by limitation?*

Additional Issues framed under Order 14 Rule

5:-

Whether the time is the essence of contract?

- (10) The Trial Court has specifically found that time is the essence of the contract. However, the Trial Court found that the suit is not barred by limitation and the suit Agreement is a genuine transaction binding plaintiffs as well as defendants. Though defendants raised a specific issue disputing the signature found below the endorsement under Ex.A6, the Trial Court held that plaintiffs have proved the endorsement under Ex.A6 and the receipt of a further advance amount of Rs.20 lakhs as part of sale consideration. Referring to the Sale Agreement as well as the contents of the notice, reply and other communications, the Trial Court held that plaintiffs had miserably failed to prove their readiness and willingness to perform their part of the contract under the suit Agreement [Ex.A1]. The contention of plaintiffs that



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defendants did not come forward to measure the suit property, was rejected by the Trial Court. The Trial Court also held that plaintiffs have not even proved that they had the balance amount ready with them and were always ready and willing to purchase the property as per the terms of Sale Agreement [Ex.A1]. The contention of the defendants that the plaintiff in OS.No.93/2006 might have been instigated by plaintiffs themselves, is also accepted by the Trial Court. Further, the Trial Court held that the long delay in filing the suit itself would disentitle the plaintiffs from seeking the relief of specific performance. Therefore, the Trial Court dismissed the suit for specific performance and permanent injunction. However, plaintiffs were given the alternative relief by directing the defendants to refund the advance amount of Rs.70 lakhs with interest at the rate of 12% per annum from the date of suit till the date of payment. Aggrieved by the judgment and decree of the Trial Court, the above appeal is preferred by plaintiffs.

- (11) Mr.N.Ramesh, learned counsel appearing for the appellants, referring to the suit Agreement [Ex.A1] submitted that time is not



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the essence of the contract having regard to the reciprocal promise made by defendants/respondents to measure the suit property and to clear the encumbrance over the suit property. Learned counsel then submitted that the suit filed by the third party in OS.No.93/2006 is an encumbrance over the suit property and therefore, the appellants cannot be blamed for not paying the amount within the time stipulated under Ex.A1-Agreement. Learned counsel also submitted that respondents cannot take advantage of their own wrong and blame that respondents did not perform their part of the contract by clearing the title and by coming forward to measure the property in terms of the Agreement. Referring to the endorsement showing that respondents had received a sum of Rs.20 lakhs as additional advance amount, and the stand that they have not received any further advance amount in the written statement, the learned counsel for the appellants submitted that the conduct of defendants ought to have been weighed by the Trial Court to grant the decree for specific performance. Stating that the appellants were ready to perform



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their part of the contract, but for the encumbrance by the institution of the suit challenging the final decree proceedings under which the respondents got allotment of suit property, the learned counsel for the appellants submitted that the Trial Court failed to consider the admitted facts to show that appellants though were ready and willing to perform their part of the contract under Ex.A1, could not get the Sale Deed executed on account of pendency of litigation in respect of the suit property. The learned counsel also referred to the evidence and submitted that DW1 has admitted that they did not obtain separate patta in the names of defendants/respondents and therefore, the Trial Court ought to have held that the appellants are not capable of executing the Sale Deed in respect of the suit property on account of pendency of litigation in OS.No.93/2006.

- (12) The respective learned counsels appearing for the respondents have conceded that they cannot raise the issue regarding the receipt of further advance amount of Rs.20 lakhs as per Ex.A6-endorsement. However, the learned counsels for the respondents have also submitted that the findings of the Trial Court on the issue regarding



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payment of further advance amount is erroneous. Mr.S.Subbiah, learned Senior counsel appearing for the contesting respondents referred to the evidence and relied upon several judgments of Hon'ble Supreme Court.

- (13) This Court heard the rival submissions made by the learned counsels on either side and also perused the materials placed.
- (14) It is to be seen that defendants/respondents have not filed any appeal as against the findings and the decree granting alternative relief in favour of appellants. Therefore, this Court is not inclined to go into the issue as to whether the sum of Rs.20 lakhs, as alleged by the plaintiffs/appellants, had been paid to the defendants / respondents as further advance as per the endorsement under Ex.A6.
- (15) During the course of hearing, the appellants have filed CMP.No.19205/2022 to permit them to produce the Sale Deed dated 30.10.2014 as additional evidence. In the affidavit filed in support of the Miscellaneous Petition, the appellants stated that the 1st defendant / 1st respondent in this appeal, along with his 3



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daughters executed two Sale Deeds in respect of his undivided 6/20th share in the suit property and therefore, these documents which came into existence after the filing of appeal, should be accepted as additional evidence having regard to the facts admitted. However, this petition was seriously opposed by the 1st respondent on the ground that the two Sale Deeds were obtained by fraud and misrepresentation and that the said Sale Deeds are also challenged in a separate proceedings initiated by the 1st respondent.

(16) Having regard to the submissions of the learned counsel for the 1st respondent and the admitted facts, this Court is of the view that the additional documents may not be necessary or relevant to consider and dispose of the Appeal Suit on merits. Hence, CMP.No.19205/2022 stands **dismissed**.

(17) Having regard to the issues framed and focussed by the parties before the Trial Court on the basis of their respective pleadings and the contentions raised by the learned counsels before this Court in this Appeal, the following points arise for determination in the above Appeal:-



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A) Whether time is the essence of the Suit Agreement under Ex.A1 dated 30.12.2005?

B) Whether appellants were ready and willing to perform their part of contract in terms of the suit Agreement- Ex.A1?

C) Whether the appellants are entitled to the relief of specific performance?

D) Whether the suit for specific performance is liable to be dismissed on the ground of laches?

E) To what other relief the appellants are entitled to?

POINT [A]:-

- (18) The suit Agreement dated 30.12.2005 is marked as Ex.A1. As per the Agreement, there is a reference to the final decree proceedings in IA.No.516/1989 in OS.No.168/1984 on the file of the Sub Court, Tirupur and the allotment of property in favour of the vendors. The terms of the Agreement indicates that balance of sale consideration should be paid within a period of six months from the date of Agreement. The total sale consideration at the rate of Rs.79,25,000/- per acre for an extent of 3.40 acres, comes to Rs.2,69,45,000/-. Out of the balance of Rs.2,19,45,000/-, a sum of Rs.20,00,000/- is required to be paid within three months from the



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date of Agreement. There is a forfeiture clause in the Sale Agreement which reads as follows:-

"....கெடுப்படி 1வது பார்ட்டி 2வது பார்ட்டிக்கு பாக்கி கிரையத் தொகையை செலுத்தி 2வது பார்ட்டியிடம் இருந்து 1வது பார்ட்டி கிரையம் பெறத் தவறினால் இப்போது 1வது பார்ட்டி செலுத்தியிருக்கும் அட்வான்ஸ் தொகையை இழந்துவிடுபவர்கள் ஆவார்கள்...."

- (19) This Court, earlier following the judgment of the Constitution Bench of the Hon'ble Supreme Court in *Chand Rani [Dead] by LRs Vs. Kamal Rani [Dead] by LRs* reported in *AIR 1993 SC 1742 : 1993 [1] SCC 519*, has held that when time is specified in the Agreement, the same will be a relevant factor to decide whether time is the essence of the contract or not. The forfeiture clause referred to above clearly indicate that the parties have prescribed the time limit as the essence of the contract. Therefore, this Court has no hesitation to hold that time is agreed between the parties as the essence of the Agreement. **Hence, Point [A] is answered accordingly and in favour of respondents.**

POINT [B]:-



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(20) As pointed out earlier, the plaintiffs have promised to pay a sum of Rs.20,00,000/- within three months from the date of Agreement. Though it is denied by the defendants, the Trial Court has given a finding that the defendants have received a sum of Rs.20,00,000/- as per the endorsement under Ex.A6 dated 06.04.2006. As agreed, the plaintiffs/appellants are required to pay the balance on or before 30.06.2006. notice was issued by the appellants just before expiry of time stating that they were ready and willing to perform their part of the contract subject to condition. The suit notice was issued on behalf of appellants on 28.06.2006 just before expiry of time specified in the suit Agreement. Even in the suit notice dated 28.06.2006, the appellants called upon the respondents to remove the encumbrance and to execute the Sale Deed as per the Agreement dated 30.12.2005. In the suit notice, it is stated that the respondents were not in a position to execute the Sale Deed on account of the pendency of a litigation in OS.No.93/2006. the following contents would indicate the same:-

"....இந்நிலையில் கீழ்காணும் பூமிக்கு



அருகிலுள்ள பூமியின் உரிமையாளர் பழனிச்சாமிக் கவுண்டர் மகன் பி.ராமகிருஷ்ணன் என்பவர் திருப்பூர் சார்பு நீதி மன்றத்தில் ஒ.எஸ்.93/2006 என்னும் நெம்பரில் கீழ்க்காணும் சொத்துக்கள் சம்பந்தமாக வழக்கு தொடர்ந்துள்ளதை நீங்கள் தெரிவித்து எங்கள் கட்சிக்காரர்கள் தெரிந்துகொண்டுள்ளனர். 30.12.2005ம் தேதிய கிரைய ஒப்பந்த கெடு முடிவடையும் நிலையில் உள்ளது.

கீழ்க்காணும் சொத்துக்கள் சம்பந்தமாக சிவில் வழக்கு நிலுவையில் உள்ள நிலையில் மேற்படி ஒப்பந்தத்தை அனுசரித்து நீங்கள் எங்கள் கட்சிக்காரர்களுக்கு கிரயம் செய்து கொடுக்க இயலாத நிலையில் உள்ளதாக எங்கள் கட்சிக்காரர்கள் தெரிவிக்கிறார்கள்..."

- (21) Therefore, the appellants have not expressed their readiness and willingness to pay the balance and asked the respondents to execute the Sale deed without any encumbrance and cautiously referred to the pendency of OS.No.93/2006 as an encumbrance.
- (22) It is alleged in the written statement that the suit in OS.No.93/2006 itself was engineered by the appellants so as to delay the completion of Sale Deed. The Trial Court has accepted the



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contention of the defendants. In the absence of any positive proof, it may not be proper for this Court to draw inference that the suit itself was engineered by the appellants. However, the appellants have cautiously entered into a Sale Agreement acknowledging title of respondents in respect of the entire suit properties. The final decree in the suit for partition was on the basis of a compromise and the compromise decree is challenged by one Ramakrishnan, who is the son of plaintiff in the previous suit for partition. The final decree is challenged after a decade on the ground that the allotment is unequal. It is a vexatious suit as it was filed nearly 12 years after the final decree is passed based on a compromise. This Court cannot readily infer that there is an encumbrance over the property. The appellants cannot take advantage of pendency of a vexatious litigation to justify non payment of balance of sale consideration within the time stipulated under the Agreement. From the Sale Agreement itself, the source of title is known to the appellants. In such circumstances, the appellants may rescind the contract on that ground by referring to the pendency of the suit at



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the instigation of a stranger. It is admitted that the suit itself was laid after the Agreement. By applying the doctrine of Mutuality, the appellants should either come forward to pay the balance of sale consideration or can rescind the contract and seek refund of the money paid as advance. However, the appellants tried to take advantage of the situation and filed the suit only on 29.12.2008. It has been repeatedly held by Hon'ble Supreme court in several judgments that the plaintiff in a suit for specific performance, should be always ready and willing to perform his part of the contract in terms of the contract. Section 16[c] of the Specific Relief Act bars the relief of specific performance of a contract in favour of a person who fails to aver and prove his / her readiness and willingness to perform his/her part of the contract. It may not be necessary or essential to plaintiff to actually tender money to the defendant or to deposit money in Court unless it is directed by the Court, to prove readiness and willingness, in view of Explanation [i] to Clause [c] of Section 16 of Specific Relief Act. Nevertheless, he must prove his readiness to perform his part of contract [to pay



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balance] by acceptable evidence. In the case of **Man Kaur Vs.**

Arthar Singh Sangha reported **2010 [6] CTC 652 : 2010 [10]**

SCC 512, the Hon'ble Supreme Court has held as follows:-

“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 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



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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.”

- (23) From the illustration given by the Hon’ble Supreme Court, it can be held that the proof of continuous readiness and willingness from the date of contract, time of hearing is mandatory before a person seeks the relief of specific performance. In ***Umabai Vs. Nilkanth Dhondiba Chavan*** reported in ***2005 [6] SCC 243***, the Hon’ble Supreme Court has held that there must be finding by the Court regarding the continuous readiness and willingness of plaintiff to perform his part of the contract before granting specific performance. The Hon’ble Supreme Court recently in

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reported in **2022 [2] MWN [Civil] 799**, after referring to several binding precedents, has held as follows:-

"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 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.



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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."

- (24) From several judgments of Hon'ble Supreme Court, this Court has no difficulty to hold that Section 16[c] of Specific Relief Act is a personal bar and that the mandatory requirement of readiness and willingness cannot be dispensed with merely because the defendants have repudiated the contract or they were not in a position to perform their part of the contract. Section 51 of the Contract Act does not dispense with the proof of readiness of plaintiff to perform his part of the contract. In the instance case, the appellants have not let in any evidence to show that they were ready with the money to complete the transaction within the time



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stipulated in the Agreement [Ex.A1]. The defendants have specifically pleaded that the plaintiffs were not ready with the balance of sale consideration.

- (25) The Hon'ble Supreme Court in the case of ***K.S.Vidyanadam Vs. Vairavan*** reported in ***1997 [1] CTC 628 [SC]***, has taken judicial notice of the phenomenal rise in price of real estate in several parts of the country and held that the Courts cannot be oblivious to reality about rise in the value of properties in urban areas and the inflation. Following the judgment in ***K.S.Vidyanadam's case***, the Hon'ble Supreme Court in ***Saradamani Kandappan Vs. S.Rajalakshmi***, reported in ***2011 [12] SCC 18***, has considered the position in the following lines:-

“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 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-



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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, laches, 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 rupees one lakh and receiving rupees ten thousand as advance may be required to execute a sale deed a quarter century later by



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receiving the remaining rupees ninety thousand, when the property value has risen to a crore of rupees.”

- (26) Even in the suit notice, the appellants have not expressed their readiness but put the defendants on terms to clear the encumbrance for the appellants to come forward to get the Sale deed by paying the balance. The conduct of appellants in this case is to be blamed more than the conduct of defendants in denying the receipt of Rs.20 lakhs as supported by the endorsement under Ex.A6. Having regard to the personal bar under Section 16[c] of the specific Relief Act and the facts and circumstances as discussed above, this Court is inclined to hold that the appellants were not ready and willing to perform their part of the contract in terms of the suit Agreement under Ex.A1. Further, in response to the suit notice, the respondents have issued an interim reply dated 03.07.2006 and another reply to the rejoinder notice issued by the appellants on 02.08.2006. In the reply notice dated 03.07.2006, the respondents have reiterated time as the essence of the contract and gone to the extent of making serious allegations against the appellants that the suit in OS.No.93/2006 was at the instigation of appellants.



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They informed the appellants that the suit is not a bar to perform the contract and the non performance of appellants would only show that the appellants were not ready and willing to perform their part of the contract. To this reply, the appellants once again came forward with a rejoinder notice dated 26.07.2006 stating that respondents did not take steps for measuring the lands and not furnished copies of documents to the appellants. They mentioned further that the respondents who promised to settle the dispute with Ramakrishnan, failed to do that. Therefore, once again the appellants called upon the respondents to clear the encumbrance. As per the Agreement, the parties agreed for measurement of lands at the time of execution of Sale Deed. Payment of balance is not subject to measurement. The terms of the rejoinder notice dated 26.07.2006 would clearly indicate that the appellants are willing to pay the amount only if the respondents take steps for measuring lands, furnish the documents and resolve the dispute with Ramakrishnan who has filed the suit in OS.No.93/2006. The appellants have not let in acceptable evidence to show their



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readiness and willingness even after filing the suit nearly two years after the expiry of time. Finally, by a reply dated 02.08.2006, the respondents replied stating that they will be forced to repudiate the contract in case the appellants do not pay the balance of sale consideration within two weeks. Despite the final reply by respondents reminding the time stipulation in the Agreement, the appellants filed the suit only on 29.12.2008. The balance amount payable is nearly Two Crores. In the absence of any evidence to show at least that the plaintiffs had the money to pay the balance even at the time of filing the suit, this Court has no reason to interfere with the findings of the Trial Court that the plaintiffs have not proved their readiness and willingness. **Hence, Point [B] is answered accordingly.**

POINTS [C] & [D]:-

- (27) Despite the appellants have promised under Ex.A1 that they will pay the balance of sale consideration on or before 30.06.2006 and though the suit notice was issued just 2 days prior to the expiry of the period specified in the Agreement [Ex.A1], the appellants even



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in their notice, have not expressed their willingness to pay the balance of sale consideration. Though it is admitted that a sum of Rs.70 lakhs is paid pursuant to the suit Agreement dated 30.12.2005, the appellants have to pay a sum of Rs.1,99,45,000/- on or before 30.06.2006. This Court has already held that the appellants have not even proved their readiness to pay the balance amount as no evidence is adduced by the appellants to prove that they had sufficient funds to pay the huge balance of nearly Rs.2 Crores before the time stipulated under the Agreement under Ex.A1. As pointed out earlier, while answering Point [B], the appellants have not even proved their readiness in the sense that they had sufficient funds to complete the sale transaction in terms of the Agreement [Ex.A1]. Even when the respondents gone to the extent of rescission of the contract in August 2006, the appellants filed the suit only on 29.12.2008. In the entire plaint, there is no explanation for the long delay of two and half years in filing the suit after the expiry of the time before which the appellants are required to pay the balance.



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(28) The Hon'ble Supreme Court in ***Saradamani Kandappan Vs. S.Rajalakshmi*** reported ***2011 [12] SCC 18***, has considered the delay of six months to file the suit for specific performance after the date agreed for the performance as fatal to the suit for specific performance. In ***Saradamani Kandappan's case***, the Hon'ble Supreme Court has held as follows:-

"43. Till the issue is considered in an appropriate case, we can only reiterate what has been suggested in K.S. Vidyanadam [(1997) 3 SCC 1] :

(i) The courts, while exercising discretion in suits for specific performance, should bear in mind that when the parties prescribe a time/period, for taking certain steps or for completion of the transaction, that must have some significance and therefore time/period prescribed cannot be ignored.

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

(iii) Every suit for specific performance need not be decreed merely because it is filed within the period of limitation by ignoring the time-limits stipulated in



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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 1 or 2 years to file a suit and obtain specific performance. The three-year period is intended to assist the purchasers in special cases, as for example, where the major part of the consideration has been paid to the vendor and possession has been delivered in part-performance, where equity shifts in favour of the purchaser.”

- (29) Though the suit is filed within three years from the date agreed for performance, the delay in filing the suit would show that the appellants were not ready and willing to perform their part of the contract in terms of the Agreement. The respondents are put to serious prejudice on account of rise in price. The suit property in the suit is also situate in a village which is very close to Coimbatore, an industrial city, known for its industrial, commercial and all other urban potentials. Now the question that would arise for consideration is whether this Court would exercise its discretion in favour of plaintiff under Section 20 of the Specific



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Relief Act. Even though Section 20 of the Specific Relief Act is amended in 2018, this Court has to apply the unamended provision in view of few of the recent pronouncement of Hon'ble Supreme Court. A Three Member Bench of Hon'ble Supreme Court in ***Smt.Katta Sujatha Reddy & Another Vs. Siddamsetty Infra Projects Pvt Ltd & Others*** in ***Appeal Nos.5822 to 5824/2022*** ***[Judgment dated 25.08.2022]*** considered the question whether Section 20 of Specific Relief Act as substituted by Act 18 of 2018 is prospective or retrospective and held that it is prospective and cannot apply to those transactions that took place prior to its coming into force. Paragraphs 54 to 56 of the judgment is relevant and hence, extracted:-

"54.In the light of the aforesaid discussion, it is clear that ordinarily the effect of amendment by substitution would be that the earlier provisions would be repealed and amended provisions would be enacted in place of the earlier provisions from the date of inception of that enactment. However, if the substituted provisions contain any substantive provisions which create new rights, obligations, or



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take away any vested rights, then such substitution cannot automatically be assumed to have come into force retrospectively. In such cases, the legislature has to expressly provide as to whether such substitution is to be construed retrospectively or not.

55.In the case at hand, the amendment act contemplates that the said substituted provisions would come into force on such date as the Central Government may appoint, by notification in the Official Gazette, or different dates may be appointed for different provisions of the Act. It may be noted that 01.10.2018 was the appointed date on which the amended provisions would come into effect.

56.In view of the above discussion, we do not have any hesitation in holding that the 2018 amendment to the Specific Relief Act is prospective and cannot apply to those transactions that took place prior to its coming into force."

- (30) In the case of ***V.Dhanasekaran and Others Vs. A.Krishnamurthy [died] and Others*** in ***AS.Nos.355 and 356/2014*** vide common judgment dated 02.02.2023, a Division Bench of this Court in which one of us is a party, has considered the scope of the unamended Section 20 of the Specific Relief Act in the following



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*"66. In the case of **Kamal Kumar Vs. Premlata Joshi and Others** reported in 2019 [3] SCC 704, the Hon'ble Supreme Court has considered the scope of Section 20 of the Specific Relief Act and the material questions which are required to be looked into by Court. It is useful to refer to paragraph No.7 of the said judgment:-*

"7. It is a settled principle of law that the grant of relief of specific performance is a discretionary and equitable relief. The material questions, which are required to be gone into for grant of the relief of specific performance, are:

7.1. First, whether there exists a valid and concluded contract between the parties for sale/purchase of the suit property.

7.2. Second, whether the plaintiff has been ready and willing to perform his part of contract and whether he is still ready and willing to perform his part as mentioned in the contract.

7.3. Third, whether the plaintiff has, in fact, performed his part of the contract and, if so, how and



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to what extent and in what manner he has performed and whether such performance was in conformity with the terms of the contract;

7.4. Fourth, whether it will be equitable to grant the relief of specific performance to the plaintiff against the defendant in relation to suit property or it will cause any kind of hardship to the defendant and, if so, how and in what manner and the extent if such relief is eventually granted to the plaintiff;

7.5. Lastly, whether the plaintiff is entitled for grant of any other alternative relief, namely, refund of earnest money, etc. and, if so, on what grounds.

67. On the question of exercising discretion to grant equitable relief of specific performance, Section 20 of the Specific Relief Act prescribes statutory guidance. A discretion which is required to be exercised by Courts before granting specific performance should be governed by the Rule of law and equity. The law and equity are subservient to the other. The relief of specific performance need not be granted merely because it is lawful. The discretion should be exercised on the basis of sound judicial principles. Courts have repeatedly held that the plaintiff, in a suit for specific performance, is not



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entitled to the relief as a matter of right. While exercising discretion, the Courts are expected to keep in mind the material and peculiar facts and circumstances of the case, the conduct of the parties and consequences or the fallouts by granting specific relief to a party to the contract. In no case the relief can be used as an instrument of oppression to have an unfair advantage to the plaintiff or to the defendant..."

- (31) Applying all principles that are adopted and followed by the Hon'ble Supreme Court while interpreting Section 20 of the Specific Relief Act in different situations, this Court having regard to the peculiar facts and circumstances discussed above, finds that the appellants are not entitled to the relief of specific performance. **Hence, Point [C] is answered in negative and as against appellants and Point [D] is answered in favour of defendants.**

POINT [E]:-

- (32) In view of the conduct of appellants all along, this Court is not inclined to show any indulgence in favour of appellants. The Trial Court has already directed respondents to refund the advance amount of Rs.70 lakhs with interest @ 12% per annum from the



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date of suit till date of payment. No further direction could be granted beyond the relief which has already been granted by the Trial Court. **Hence, all the issues raised by this Court for determination, are answered against the appellants.**

- (33) In the result, the Appeal Suit is **dismissed with cost** confirming the judgment and decree dated 27.09.2011 made in OS.No.936/2008 on the file of the learned Additional District Judge and Fast Track Court No.IV, Coimbatore at Tiruppur.

[SSSRJ] [PBBJ]

14.02.2023

AP

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To

- 1.The Additional District Judge and
Fast Track Court No.IV, Coimbatore at Tiruppur.
- 2.The Section Officer
VR Section, High Court
Madras.



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S.S.SUNDAR, J.,

AND

P.B.BALAJI, J.,

AP

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