



O.S.A.No.277 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.06.2023

DATE OF DECISION : 02.08.2023

CORAM :

THE HON'BLE MR.JUSTICE S.S.SUNDAR
AND
THE HON'BLE MR.JUSTICE C.KUMARAPPAN

O.S.A.No.277 of 2013
and
C.M.P.Nos.8323 & 8324 of 2023

M/s Pan Resorts Ltd
Having its Registered Office at:
125, St. Mary's Road
Alwarpet, Chennai 600 018
rep by its Director Mr.Sarath Kakumanu

substituted in the place of Sri.K.Subbiah,
as per order dated 9.3.2010 in A.No.1372/2010
and order dated 4.7.2012 in A.No.2742/2012 .. Appellant

v.

H.H.Karthika Thirunal Lakshmi Bayi (deceased)

1. H.H.Pooyam Thirunal Gouri Parvathi Bayi
2. H.H.Aswathi Thirunal Gauri Lakshmi Bayi
3. H.H.Moolam Thirunal Rama Varma



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4. H.H.Princess Thiruvathira Thirunal Lakshi Bayi

5. H.H.Pooratathi Thirunal Marthanda Varma

6. H.H.Aswathy Thirunal Rama Varma

7. H.H.Avittam Thirunal Aditya Varma

8. H.H.Uthradam Thirunal Padmanabhadasa (deceased)
Marthanda Varma

9. Indian Bank
Adyar Branch
Chennai 600 020
rep by its Chief Manager

10.A.C.R.Raj Ganesan
(R10 impleaded as party respondent vide Court
order dated 04.03.2021 in OSA.277/13)

11. H.H.Padmanabhavarma

12. H.H.Parvati Devi
(R11 & R12 brought on record as LR
of deceased 8th respondent (H.H.Uthradam Thirunal)
vide order of Court dated 19.06.2023 in MP.1/15
in OSA.277/13) .. Respondents

(Respondents 1 to 3 recorded as LR of
deceased H.H.Karthika Thirunal Lakshmi Bayi
as per order dated 19.4.2012 in Memo dated
19.3.2010 and order dated 4.7.2012 in
A.No.2743/2012)

Memorandum of Grounds of Original Side Appeal under Order
XXXVI, Rule 1 of the Madras High Court Original Side Rules read with
Clause 15 of the Letters Patent, against the judgment and decree dated



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01.10.2012 made in C.S.No.632 of 1997 on the file of this Court.

For Appellant :: Mr.Om Prakash
Senior Counsel for
M/s Abitha Banu

For Respondents :: Mr.T.V.Ramanujam
Senior Counsel for
Mr.S.Prabakar for R1 to R3, 7 & 11
Mr.S.Rajendrakumar for R6
Mr.Rajendran Raghavan for R9
Mr.Ajmal Khan
Senior Counsel for
M/s Ajmal Associates for R10
No appearance for R5
R8-Died (steps taken)
R12- Batta due

JUDGMENT

S.S.SUNDAR,J.

The above original side appeal has been filed by the plaintiff as against the judgment and decree of the learned single Judge dated 01.10.2012 made in C.S.No.632 of 1997 on the file of this Court.

2. The appellant herein has originally filed the suit in C.S.No.632 of 1997 for the relief of specific performance directing the defendants 1 to 9 to execute the sale deed in favour of the plaintiff after receiving the balance of



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sale consideration payable to the defendants in proportion to their respective shares in terms of the agreement of sale dated 3.8.94 and for consequential relief including the relief of directing the defendants to put the plaintiff in full possession of the suit property.

3. The case of the appellant in the plaint can be summarized as follows:-

(a) Defendants 1 to 9 are the joint owners of the suit property called Travancore House/Adyar House situated at L.B.Road, Padmanabha Nagar, Adyar, Chennai measuring about an extent of 20 grounds. Defendants 1 to 8 are entitled to 11.25% of shares and the ninth defendant is entitled to 10% share in the suit property. Earlier, defendants 1 to 9 entered into an agreement of sale dated 10.3.93 with one Shankar Khandadi and one Usman Fayaz along with Indian Bank represented by its Chief Manager, Adyar Branch. Since the said agreement with third parties did not come through, the plaintiff entered into an agreement for sale by executing a memorandum of agreement with the defendants 1 to 9 on 3.8.94. As per the said



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agreement, a sum of Rs.325 lakhs was fixed as sale consideration and a sum of Rs.50 lakhs was paid as advance. A sum of Rs.50 lakhs paid under the previous agreement dated 10.3.93 is also adjusted towards part of sale consideration and therefore the balance of sale consideration payable by the plaintiff to the defendants was Rs.225 lakhs.

(b) In terms of clause 4 of the agreement, the plaintiff agreed to pay a sum of Rs.50 lakhs to the defendants 1 to 9 on production of urban land ceiling clearance if produced before the NOC from the authorities of Income Tax Department or on production of NOC under Chapter XX-C of the Income Tax Act.

(c) In terms of clause 5 of the agreement, the plaintiff was to pay the balance of sale consideration without waiting for clearance under the Urban Land Ceiling Act and complete the transaction and get the sale deed executed within four months from the last date from which the defendants 1 to 9 obtain and produce (a) no objection certificate under Chapter XX-C of the Income Tax Act and (b) income tax clearance in respect of each of the defendants 1 to 9 under Section 230-A of the Income Tax Act.



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(d) In terms of clause 8 of the agreement, defendants 1 to 9 had agreed to register the sale deed at the cost of plaintiff on or before 31.3.95 after obtaining all the necessary clearances and certificates. Though the plaintiff was to be put in possession only on the registration of the sale deed as per the agreement dated 3.8.94, as per clause 15 of the agreement, the plaintiff was in fact put in possession and it had undertaken not to demolish the existing palace over the suit property for a period of two years from 3.8.94 or till the receipt of any statutory notice for demolition, whichever is earlier. Therefore, there was already part performance of the agreement as evident from the conduct of parties, from the terms of agreement dated 3.8.94 and from the subsequent correspondences.

(e) In terms of the agreement, defendants 1 to 9 made an application seeking no objection from the income tax authorities under Chapter XX-C of the Income Tax Act on 4.8.94 and proceeded to obtain urban land ceiling certificate in September, 1994. The income tax authorities granted no objection certificate under Chapter XX-C of the Income Tax Act for the sale of the property in favour of the plaintiff on 21.11.94. However, income tax



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clearance certificates in respect of the defendants 1 to 9 under Section 230-A were yet to be obtained and in order to facilitate the same, a letter dated 2.12.94 was sent by the plaintiff enclosing draft copies of the sale deeds to apply for income tax clearance certificate under Section 230-A of the Income Tax Act. Even in the said letter, the plaintiff pointed out that it would be paying the balance sale consideration to the defendants 1 to 9 before the end of January, 1995 well ahead of the time stipulated under the agreement. Plaintiff also sent a letter dated 19.1.95 to the ninth defendant admitting their commitment to pay the entire consideration before the end of January 1995, in case defendants 1 to 9 obtained income tax clearance certificate by 10.1.95. However, since there was no intimation from the defendants regarding income tax clearance certificate, the plaintiff sent a letter dated 28.3.95 pointing some problem regarding the transfer and rights in the common passage connecting the suit property and L.B.Road.

(f) The plaintiff further highlighted that on survey, the total extent of property was found to be only to an extent of 18 grounds, 2053 sq.ft., and not 20 grounds. The plaintiff wanted to know from the defendants whether



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all the defendants have obtained income tax clearance certificate under Section 230-A of the Income Tax Act and whether the furniture and fittings have been removed from the suit property and whether the defendants were in a position to comply with the requirements of clause 8 of the agreement dated 3.8.94 to complete the sale transaction by 31.3.95. However, the defendants agreed to be present in Trivandrum on 4.4.95 for execution of sale deeds and that in the meanwhile, actual area found on measurement would be exchanged for arriving at the balance of sale consideration. However, the meeting fixed on 4.4.95 could not go through in view of the inconvenience expressed by most of the defendants. Defendants 1 to 9 were duly informed by a communication dated 29.6.95 that the sale transaction could be completed in all respects before the end of June, 1995 emphasising the plaintiff's readiness and willingness to pay the entire balance of sale consideration, so that the sale transaction as per the agreement could be completed at least before 15.7.95.

(g) However, defendants 1 to 9 did not respond to the registered letter dated 29.6.95. But a letter dated 13.8.95 was sent by the counsel for the



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second defendant in response to the communication dated 7.8.95, wherein plaintiff had informed that it had secured banker's payment order dated 2.8.95 for the remaining sale consideration of Rs.23,22,006/- in favour of the second defendant. In all the communications addressed to the defendants, the plaintiff had expressed its readiness and willingness to complete the transaction and requested the defendants to execute the sale deed within 15 days of the receipt of notice sent through its counsel dated 21.8.95. A reply notice was sent by the defendants 1,2,4,5,7 & 9 on 7.9.95 refusing to execute the sale deed. Since defendants refused to comply with the demand made by the plaintiff and thereby committed breach of the agreement dated 3.8.94, the plaintiff caused a public notice dated 7.9.95 in The Hindu newspaper dated 13.9.95, cautioning everyone who may be dealing with the property, about the existence of its rights under the suit agreement. After receipt of the legal notice, defendants 5 & 6 realizing their obligations under the agreement, after producing the necessary income tax clearance certificate under Section 230-A of the Income Tax Act, proceeded to execute the sale deed in favour of plaintiff in respect of their shares. Fifth



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defendant executed two registered sale deeds on 6.11.95 in favour of plaintiff after receiving consideration and accepted correct measurement of the property as put forth by the plaintiff. Similarly, sixth defendant also executed two registered sale deeds dated 24.11.95 conveying his undivided interest in favour of the plaintiff accepting measurement. However, the sale deeds executed by defendants 5 & 6 were pending for registration for complying with certain mandatory formalities. Execution of sale deed would prove that the plaintiff is not anyway responsible for the delay in obtaining the income tax clearance certificate required under Section 230-A of the Income Tax Act. Since the plaintiff did not want to precipitate the matter and was hopeful of an amicable settlement with the defendants, they once again issued notice through their counsel on 22.12.95. In order to show that the plaintiff was always ready and willing to perform its part of the contract, the plaintiff made sufficient arrangements for payment of the balance sale consideration. However, defendants 1 to 4 and 7 to 9 avoided the contract, even though the plaintiff was always ready and willing to part performance of the contract in accordance with the agreement dated 3.8.94.



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The plaintiff gave long rope to the defendants. Being left with no other option, the plaintiff was constrained to institute the suit, as the defendants refused to come forward to execute the sale deed.

4. The suit was resisted by all the defendants, except defendants 5 & 6. Written statements were filed by the fourth and ninth defendants. In the written statement filed by fourth defendant, it is contended that the plaintiff has not come forward with clean hands and hence the plaintiff is not entitled to the equitable relief of specific performance or the consequential relief. The suit agreement dated 3.8.94 is admitted by all defendants. It is the specific case of the defendants that they have obtained urban land ceiling clearance and the necessary certificates under Section 269-UL(i) as well under Section 230-A of the Income Tax Act. Stating that the plaintiff failed to pay a sum of Rs.50 lakhs to the defendants in September, 1994 after the production of urban land clearance as well as the certificate under Section 269-UL(i) of the Income Tax Act, it is contended by the defendants that the defendants failed to honour their commitment, as per the agreement dated



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3.8.94. It was also pointed out in the written statement that the plaintiff proceeded to create correspondences to show that they are ready and willing even though they failed to fulfill or perform their part of the contract. Pointing out that there was some delay in getting the draft sale deed for submission to the Income Tax Department for getting no objection certificate under Section 230-A of the Income Tax Act, the specific case of defendants is that they have obtained necessary income tax clearance on 22.2.95 and on 16.3.95 and that the same was informed to the plaintiff. Referring to the clearance obtained under Chapter XX-C of the Income Tax Act and the clearances from urban land ceiling authorities, the defendants expressed their disappointment referring to the letter dated 28.3.95 received from the plaintiff complaining about the reduction in extent. The alleged averment in the plaint that the plaintiff was put in possession as part performance of the agreement is specifically denied in the written statement filed by fourth defendant. It is also contended that the plaintiff was never ready and willing to perform their part of the contract even though they have been pretending that they are ready with the money and willing to



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perform their part of the contract. With regard to the contention of plaintiff that the plaintiff had obtained banker's pay order to pay the balance of sale consideration, the defendants pointed out that the plaintiff was not ready to pay the balance as agreed under the agreement and that the amount covered by the pay orders do not represent the balance amount payable to the actual extent agreed to be sold. It is also the stand of defendants that the plaintiff had failed to perform its part of the contract and that therefore, plaintiff committed a breach. The defendants therefore justified their reply to put an end to the contract. Though the ninth defendant in his written statement referred to certain facts and contended that the suit is not maintainable for want of valid contract and other formal defence, the ninth defendant also raised all the contentions found in the written statement filed by the fourth defendant.

5. During the pendency of suit, the plaintiff obtained an order of injunction restraining the defendants 1 to 4 and 7 to 9 from alienating the suit property. The learned single Judge framed the following issues and



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additional issues:-

Issues:-

- (i) Whether the plaintiff was ready and willing to perform his part of the contract?
- (ii) Whether the plaintiff has committed breach of the terms of agreement dated 03.08.1994, as alleged by the defendants?
- (iii) Whether the plaintiff is entitled to the relief of specific performance sought for?
- (iv) To what relief the parties are entitled to?

Additional Issues:-

- (i) Whether the plaintiff is entitled to the relief of specific performance based on the alleged agreement for sale dated 03.08.1994 as against the 4th defendant?
- (ii) Whether the alleged agreement for sale dated 03.08.1994 was valid and executable at the time of filing the present suit?
- (iii) Whether the time is essence of the contract viz., the alleged agreement for sale dated 03.08.1994?
- (iv) Whether the claim of the plaintiff for specific performance based on the alleged agreement for sale dated 03.08.1994 is barred by limitation?



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(v) Whether the plaintiff is entitled for a relief of consequential relief of possession?

Before the learned single Judge, the Director of plaintiff company was examined as P.W.1 and Exs.P1 to P25 were marked. The eighth defendant was examined as D.W.1 and documents Exs.D1 to D5 were produced in support of the defendants' case.

6. The learned single Judge found that the agreement of sale dated 3.8.94 is valid and executable at the time of filing the suit and that the suit is not barred by limitation. On the question whether time is the essence of the contract, namely, the agreement of sale dated 3.8.94, the learned single Judge observed that time fixed to execute the sale deed on or before 31.3.95 was not treated as the essence of contract, as the plaintiff was required to perform its part of the contract after the clearance from the urban land ceiling authorities and NOC from the income tax authorities, both under Chapter XX-C and Section 230-A of the Income Tax Act. On the admitted fact that the plaintiff did not pay the further sum of Rs.50 lakhs as agreed to by the plaintiff under the agreement and that the plaintiff has not come



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forward to pay the balance of sale consideration, despite the defendants having obtained income tax clearance and NOC as required under Chapter XX-C and Section 230-A of the Income Tax Act, the learned single Judge has held that the plaintiff was never ready and willing to perform its part of the contract in terms of the memorandum of understanding under Ex.P3. Referring to the conduct of the plaintiff, as seen from the communications and the case pleaded by the plaintiff in the plaint, the learned single Judge came to the conclusion that the plaintiff is not entitled to the equitable relief of specific performance. Though the learned single Judge found that the plaintiff had paid a substantial amount towards advance, holding that the Court cannot grant a decree for refund of advance amount without prayer, held that the suit as such is liable to be dismissed. Aggrieved by the same, the plaintiff has preferred the above appeal.

7. During the pendency of appeal, the appellant took out M.P.No.2 of 2015 for amendment of plaint, seeking alternative relief for refund of a sum of Rs.1,00,00,000/- (rupees one crore only) paid by the appellant to the



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respondents as advance under the agreement for sale dated 3.8.94 along with interest at a rate to be fixed by this Court. After hearing the respective counsels appearing for the parties, by order dated 19.06.2023, this Court ordered the interlocutory application and took the additional prayer on record. The appellant has then, filed C.M.P.Nos.8323 & 8324 of 2023 seeking permission to raise additional grounds and to file certain additional documents. These interlocutory applications are also taken up along with the appeal.

8. We have heard the submissions of Mr.Om Prakash, learned Senior Counsel appearing for the appellant, Mr.T.V.Ramanujam, learned Senior Counsel appearing for the respondent Nos.1 to 3, 7 & 11, Mr.Ajmal Khan, learned Senior Counsel appearing for the respondent No.10 and the respective learned counsels appearing for the respondent Nos.6 & 9 and also perused the materials available on record.

9. Having heard the learned Senior Counsels and the learned counsels



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appearing for the respective parties, this Court finds it appropriate to frame the following issues for consideration in this appeal:-

- (i) Whether time is the essence of the contract having regard to the terms of the agreement dated 3.8.94?
- (ii) Whether the plaintiff was ready and willing to perform its part of the contract in terms of the suit agreement?
- (iii) Whether the plaintiff has committed breach of contract as contended by the defendants and therefore, the defendants are entitled to rescind the contract or put an end to the contract?
- (iv) Whether the plaintiff is entitled to the equitable relief of specific performance, particularly having regard to the conduct of plaintiff all along and the change of events and circumstances after the filing of suit?
- (v) Whether the appellant can be permitted to file additional documents and raise additional grounds by allowing the interlocutory applications as mentioned above?

10. It may be mentioned herein that immediately after the dismissal of the suit by the learned single Judge and before filing the appeal, it appears that the defendants 1 to 9 have sold the property in favour of the tenth respondent. Therefore, the tenth respondent was impleaded as party



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respondent by order dated 4.3.2021. Further, the eighth respondent also died during the pendency of appeal and respondent Nos.11 and 12 were brought on record as legal heirs of the deceased eighth respondent, by order dated 19.6.2023.

11. Issue No.(i): To a specific issue framed as to whether time is the essence of the contract, the learned single Judge, referring to the communications and few judgments of the Hon'ble Supreme Court, observed that 31.3.95 was not the crucial date to comply with the execution of sale deed and the learned single Judge specifically held that the time fixed to execute the sale deed on or before 31.3.95 was not treated as the essence of the contract. Though this finding of the trial Court was relied upon by the learned Senior Counsel appearing for the appellant, the learned Senior Counsels appearing for the contesting respondents submitted that the findings of the learned single Judge are contrary to admitted facts as time was always considered by the parties as the essence of the contract not only from the terms of the agreement, but also from the series of communications



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between the parties and the conduct of parties. Pointing out that the defendants have rescinded the contract only on the ground that the plaintiff had not performed its part of the contract in terms of the agreement within the time frame, they submitted that it is open to the respondents to challenge the findings of the learned single Judge on this issue.

12. The execution of the contract and the terms thereon are not in issue. It is admitted that the defendants 1 to 9 had entered into a sale agreement earlier on 10.03.1993 with a third party and later entered into the suit agreement for fresh term. It is to be noted that the previous sale agreement dated 10.3.93 came to an end, as the execution of sale could not be completed before the last date of validity of the NOC. It is further admitted that a sum of Rs.50 lakhs was paid as advance and a further sum of Rs.50 lakhs was adjusted by settling the dues of previous agreement holder. Therefore, a sum of Rs.100 lakhs was acknowledged by the defendants 1 to 9 towards sale consideration and it is the common case of both sides that the plaintiff has to pay a sum of Rs.2.25 crores towards balance of sale



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consideration.

13. As per clause 4 of the sale agreement, the plaintiff had agreed to pay a further sum of Rs.50 lakhs on the production of urban land ceiling clearance or NOC from the appropriate authority and Income Tax Department or on the production of NOC under Chapter XX-C of the Income Tax Act, whichever is earlier. It is also agreed by the parties to the agreement that the balance sale consideration should be paid within four months from the date of production of NOC under Chapter XX-C of the Income Tax Act and the Income Tax clearance certificate under Section 230-A of the Income Tax Act. Further the parties in any event agreed to get the sale deed executed personally by the defendants 1 to 9 and the plaintiff should arrange to register the same at their cost on or before 31.3.95 after obtaining all the necessary clearances and certificates. In case the defendants fail to execute the sale deed within time, the plaintiff is entitled to recover the advance amount together with interest at 24% per annum from the respective dates of payment till the recovery of amount. Similarly,



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the defendants 1 to 9 had liberty to retain 10% of the advance as liquidated damages when the plaintiff fails to pay the balance of sale consideration within the time stipulated. If the defendants fail to execute the sale deed in favour of plaintiff, it is open to the plaintiff to enforce the agreement by seeking remedy under the Specific Relief Act on depositing the balance amount of sale consideration or claim interest at 24% per annum for the sale consideration already paid from the date of expiry of period fixed for the purpose of the agreement. It is also relevant to point out an important clause to the effect that in case of failure to obtain urban land ceiling clearance certificate, the same cannot be construed as failure on the part of defendants 1 to 9 and that the defendants 1 to 9 shall be discharged from all obligations under the agreement on returning the advance received by them earlier with interest at 6% per annum.

14. It is pertinent to mention that the plaintiff had agreed to do all and whatever necessary at its risk and cost to obtain clearance under the urban land ceiling. The defendants 1 to 9 also have further undertaken to sign all



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applications necessary for the purpose of getting urban land ceiling clearance. Under the terms of agreement, it is seen that the urban land ceiling is not mandatory, as the plaintiff had undertaken the burden to obtain urban land ceiling clearance at their cost. Clause 4 of the agreement is specific that the plaintiff should pay a further advance of Rs.50 lakhs on the production of urban land clearance or NOC from appropriate authority of Income Tax Department or on production of NOC under Chapter XX-C of the Income Tax Act, whichever is earlier. Similarly, parties fixed the outer time limit and 31.3.95 is specified as the last date for completion of sale deed, of course, after obtaining all the necessary clearances and certificates.

15. The learned single Judge, taking note of the fact that the defendants did not terminate the contract when plaintiff failed to complete the sale deed before 31.3.95, has observed that the crucial date 31.3.95 was not treated as the essence of the contract. However, the obligation of plaintiff to pay Rs.50,00,000/- after obtaining NOC is relevant. The defendants only expressed their inability to come to Registrar's office on



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31.3.95, but agreed to execute the sale deed on 4.4.95.
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16. Question whether time is the essence of the contract cannot always be decided merely because the defendants did not terminate the contract upon failure to complete the transaction within the stipulated time by the plaintiff. Rather the question whether time is the essence of the contract should be decided on the basis of (a) intention of the parties at the time of agreement and (b) terms of the agreement and the conduct of parties. In the present case, we have no difficulty in holding that the intention of parties is evident from the terms of the contract. The time specified in the agreement by express language cannot be interpreted to mean quite the opposite to the terms of agreement in its natural meaning. Having said that the contract should be performed on or before 31.3.95, the Court has to analyze the facts with reference to the understanding of parties as borne out from the agreement. Parties never agreed to insist urban land clearance for the due performance of agreement by plaintiff to pay the balance.



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17. In the present case, the plaintiff has agreed to pay a sum of Rs.50 lakhs on getting urban land clearance or income tax clearance under Chapter XX-C of the Income Tax Act or the no objection certificate under Section 230-A of the Income Tax Act. The plaintiff has also not expressed any grievance about the urban land clearance, as they have admitted in their plaint about the urban land clearance. It is admitted during the course of evidence that the income tax authorities granted the certificate under Section 269-UL(i) on 21.11.94. As per the agreement, the plaintiff was required to pay a further sum of Rs.50 lakhs at least in November, 1994. It is also established by the defendants 1 to 9 that they had obtained the necessary income tax clearance on 22.2.95 and no objection certificate in terms of Section 230-A of the Income Tax Act on 22.2.95 and on 16.3.95 and it is not in issue that the NOC obtained was also informed to the plaintiff. Therefore, there is no question of construing the contract to enable the plaintiff to plead that time is not the essence of the contract and the parties were unable to perform some of the terms as contemplated under the agreement before the time stipulated in the agreement. When the defendants



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have obtained urban land clearance and clearance from the income tax authorities under Chapter XX-C and NOC in terms of Section 230-A of the Income Tax Act, this Court is unable to find a ground for the plaintiff to contend that time was never the essence of the contract. In every communication from the plaintiff, the stipulation regarding time is acknowledged. Hence it is not open to the plaintiff to contend otherwise by referring to the fact that the defendants 1 to 9 did not repudiate the contract immediately on the expiry of time specified in the agreement. Whenever a contract is entered into in relation to sale of immovable properties, the inability to perform the contract due to some technical or on unforeseen circumstances not due to the default or negligence of anyone of the parties to the contract, may with mutual consent of either side can be condoned on equitable grounds. This can be explained on the basis of principles of equity and good conscience. Defendants 1 to 9 were required to assemble on a particular day before 31.3.95 on a false promise that the plaintiff was ready and willing to complete the sale deed. The defendants therefore expressed their consent to execute the sale deed on 4.4.95 instead of 31.3.95.



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Similarly, the conduct of parties in the present case would clearly indicate that the parties never had an intention to give a go-by to the time stipulated at any point of time and that the whole contract was designed in such a way that time was the essence of the contract.

18. In this regard, a Constitution Bench of the Hon'ble Supreme Court in the case of *Chand Rani (dead) by Lrs v. Kamal Rani (dead) by Lrs* reported in (1993) 1 SCC 519, after referring to several judgments, has held that there is no presumption as to time being the essence of the contract. Even if time is not the essence of the contract, the Court may infer that the contract should be performed within a reasonable time. It is specifically observed by the Hon'ble Supreme Court that the question whether time is the essence of contract has to be decided from the express terms of the contract, from the nature of the property and from the surrounding circumstances. Stressing on the expression to make time as the essence of the contract in unequivocal terms, the Hon'ble Supreme Court in the said judgment has examined the terms of the agreement which was the subject



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matter of lis before it and one such term reads as follows:-

“1. That in pursuance of the said agreement, the 1st party has received a sum of Rs.30,000 (Rupees thirty thousand only) from the second party as earnest money the receipt whereof the 1st party hereby separately acknowledges. Rs.98,000 (Rupees ninety eight thousand only) will be paid by the second party to the 1st party within a period of ten days only and the balance of Rs.50,000 (Rupees fifty thousand only) at the time of registration of the sale deed before the Sub-Registrar, New Delhi.”

The question argued before the Hon'ble Supreme Court was whether the time stipulation applies to the amount or the time limit of 10 days from August 26, 1971. The Hon'ble Supreme Court confirming the view taken by the Division Bench of the High Court that the word “only” is to qualify the amount as well as the period of 10 days, held that the intention of parties to make time as the essence of the contract is established. Since the plaintiff in the case before the Supreme Court has not proved his readiness and willingness to pay the said sum of Rs.98,000 within the stipulated time, the Hon'ble Supreme Court held that the plaintiff is not entitled to the relief only on the ground of readiness and willingness. Therefore, the judgment of



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the Hon'ble Supreme Court in Chand Rani's case is applicable in this case to hold that the time is essence of the suit agreement.

19. This Court also, in several similar cases, after referring to various judgments of the Hon'ble Supreme Court, has held in unambiguous terms that stipulation with regard to time cannot be ignored. In the case of *K.S.Vidyanadam v. Vairavan* reported in (1997) 3 SCC 1, the Hon'ble Supreme Court has held that the Court should look into all the relevant circumstances including the time limit specified in the agreement and determine whether its discretion to grant specific performance should be exercised. Referring to the ground realities that prices of lands are going up sharply after 1973, the Hon'ble Supreme Court observed that the Court cannot be oblivious to the realities and the rigor of the rule evolved by Courts that time is not of the essence of the contract in the case of immovable properties, evolved in times when prices and values were stable and inflation was unknown, need not be followed and that the principle evolved earlier in judicial precedents requires to be modified/relaxed,



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particularly in the case of urban immovable properties. It is to be noted that the judgment of the Constitution Bench in *Chand Rani's case* was also relied upon by the Court in *K.S.Vidyanadam's case* and pointed out that the plaintiff must perform his part of the contract within a reasonable time even where time is not of the essence of the contract.

20. The Hon'ble Supreme Court in the case of *Saradamani Kandappan v. S.Rajalakshmi and others*, (2011) 12 SCC 18, after referring to several of its earlier judgments including *K.S.Vidyanadam*, (1997) 3 SCC 1, 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*:

(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



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strictness when considering whether the purchaser was “ready and willing” to perform his part of the contract.

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

From the terms of the agreement and the communications between parties, this Court finds that time is the essence of the suit agreement.

21. Issue Nos.(ii) & (iii): The learned Senior Counsel appearing for the appellant submitted that the non-payment of Rs.50 lakhs as per the



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agreement cannot be a reason to repudiate the contract, as the defendants have impliedly agreed for completion of sale deed even after March, 1995 as seen from Exs.P7 to P10. The learned Senior Counsel further submitted that the parties were in consensus for completing the sale deed till the end of August, 1995 as evident from Ex.B4 letter dated 1.7.95 filed by the defendants themselves. Since the parties have arranged for a meeting on 17.6.95 and 18.6.95, the learned Senior Counsel pointed out that the time stipulated originally for execution of sale was mutually extended and that there was no failure on the part of plaintiff to perform its obligations in terms of the contract. Referring to the fact that two of the defendants, namely, defendants 5 & 6, have executed the sale deed in compliance with the terms of the suit agreement, the learned Senior Counsel submitted that the findings of the learned single Judge that the plaintiff was not ready and willing to perform its part of the contract is erroneous. The learned Senior Counsel referred to the copies of the demand draft produced by the plaintiff to prove the bona fide attempt to make the payment to each one of the defendants 1 to 9. The learned Senior Counsel then submitted that the



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overall analysis of all the communications chronologically would only show that the readiness and willingness of the plaintiff in the present case have been established.

22. Mr.T.V.Ramanujam and Mr.Ajmal Khan, learned Senior Counsels appearing for some of the vendors and the tenth respondent respectively, referred to the pleadings and the documents in chronological order to substantiate their contention that the plaintiff was never ready and willing to perform its part of the contract in terms of the suit agreement marked under Ex.P3 dated 3.8.94. They highlighted that the plaintiff has produced Ex.P4 and Ex.P6 to show that the defendants have obtained urban land clearance and income tax clearance under Chapter XX-C of the Income Tax Act. It is pointed out from the plaint averments that the plaintiff admits clearance of urban land ceiling and no objection as required under Chapter XX-C of the Income Tax Act. Referring to the document in Exs.P13 & P14 and Ex.D5 series, the learned Senior Counsel Mr.T.V.Ramanujam pointed out that the defendants have performed their obligation under the agreement. Referring



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to the evidence of P.W.1 during cross examination and other documents, the learned Senior Counsel contended that the plaintiff was never ready and willing to perform its part of the contract by paying a sum of Rs.50 lakhs immediately on production of the urban land clearance and the income tax clearance. Since the plaintiff failed to come forward to pay the entire balance on or before 31.3.95, the learned Senior Counsel submitted that the plaintiff was never ready and willing, but committed breach of agreement to the disappointment of defendants 1 to 9.

23. Having regard to the submissions of the learned Senior Counsels appearing for the respective parties, it is necessary to refer to the following sequence of events as borne out from the records. After the agreement dated 3.8.94, the defendants appear to have gone for getting urban land clearance certificate from the authorities under the Urban Land Ceiling Act, 1978. It is to be noted that the urban land clearance is not required for the plaintiff to perform its part of the contract either for the payment of Rs.50 lakhs or for the remaining amount. It is seen that ULC clearance was obtained in 1983.



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It is once again clarified in September 1994 that the suit properties are within the ceiling limits of present owners as seen from Ex.P4. It is admitted that the plaintiff has produced Ex.P6, the no objection certificate issued by income tax authorities under Chapter XX-C of the Income Tax Act. This document is dated 21.11.94. It is to be seen that the plaintiff has sent a letter only on 2.12.94 with the draft sale deed so as to enable the defendants 1 to 9 to get income tax clearance certificate in terms of Section 230-A of the Income Tax Act. The draft sale deed is essential for getting clearance certificate. Even here, the plaintiff has not explained, the delay of nearly four months in sending the draft sale deed. However, the plaintiff very promptly reminding the ninth defendant of the requirement of getting income tax clearance certificate even by a letter dated 19.1.95. It is stated by defendants that they have obtained no objection certificate under Section 230-A of the Income Tax Act in favour of all of them. Even though the certificates through Ex.D5 series dated 22.2.95 and 16.3.95 were not in favour of 5th defendant and 9th defendant, it is admitted in the plaint, in the notice and proof affidavit that defendants 5 & 9 have obtained NOC in their



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favour. In other words, the plaintiff's complaint is that income tax clearance certificate under Section 230-A produced by defendants was only in respect of defendants 3,4,5,7 & 9. Since the plaintiff admitted the certificate in favour of defendants 5 & 9 and Ex.D5 series is in respect of other defendants, this Court finds that the defendants have obtained the clearance certificate or NOC under Section 230-A of the Income Tax Act in favour of the defendants 1 to 9 long before the final date agreed or specified in the agreement for performance. Hence, defendants have fulfilled their obligation under the suit agreement by getting ULC clearance, NOC and clearance from Income Tax Department for executing the sale deed.

24. It is seen from the evidence of D.W.1 that the plaintiff was duly informed about the clearance obtained from the Urban Land Ceiling authorities, income tax authorities, both under Chapter XX-C and under Section 230-A of the Income Tax Act. By a letter dated 19.1.95, the plaintiff without reference to their obligation to pay Rs.50 lakhs as agreed under the agreement, remind the 9th defendant about plaintiff's previous letter dated



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19.1.95, in which the plaintiff expressed their intention to pay entire balance before end of January and informed that they would make final payment within three weeks of receipt of income tax clearance certificates. The plaintiff has produced Ex.P9 a letter dated 28.3.95 addressed to the defendants. This letter gives a clear indication that the plaintiff is now in search of some excuses to perform their part of the contract by paying a sum of Rs.50 lakhs before September, 1994 and the remaining balance amount on or before 31.3.95. It is stated in this letter that one of the defendants informed the plaintiff as if there was some problem regarding transfer of rights in the common road connecting the suit property and L.B.Road in favour of plaintiff. It is also stated in this letter that on survey, there appears to be some shortage of extent and the defendants have now arranged for a surveyor. It is further indicated that the plaintiff was not informed about the clearance and NOC required from defendants in terms of provisions of the Income Tax Act. Further the plaintiff called upon the defendants 1 to 9 to inform the plaintiff about the defendants' readiness to fulfill their obligations for delivery of vacant possession of an extent of 20



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grounds with an uninterrupted right of way in the common path to the plaintiff. It is the specific case of defendants that they obtained IT clearance on 22.2.95 and 16.3.95 and that the same was duly informed to the plaintiff. Therefore, they also informed the plaintiff that the defendants are ready to execute sale deed on 4.4.95. However, it is admitted that the plaintiff did not respond to the letter dated 28.3.95 (Ex.D2) addressed to plaintiff's advocate in this regard. Even in their letter under Ex.P10 dated 29.6.95, the plaintiff maintained that on survey, extent of property is only 18 grounds and odd and not 20 grounds as per the agreement. Further the plaintiff wanted the defendants to inform the plaintiff whether all the furniture and fittings have been removed from the building to facilitate delivery of vacant possession of the property and that all the defendants are in a position to comply with the requirement of clause 8 of the sale agreement. Plaintiff referred to their advocates visit to Trivandrum and make a reference that the plaintiff's advocate had confirmed the plaintiff's desire to pay the balance of sale consideration and to complete the transaction in all respects before the end of June, 1995.



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25. We have seen that even before receipt of the letter under Ex.P9 dated 28.3.95, the defendants sent a notice through their advocate. The counsel indicated that it is possible to bring all the defendants for execution of sale deed only on 4.4.95, as the plaintiff did not want execution of sale deed through power of attorney. In this letter, on behalf of defendants, it was informed to the plaintiff that by exchange of communications simultaneously, the parties can finalize the measurement. In this letter, the defendants have expressed in unequivocal terms that the date 4.4.95 is the convenient date for them for execution of sale deed. To this letter, there is no response and the impression anyone can get is that the plaintiff has committed breach of contract not only by non payment of Rs.50 lakhs even in September 1994 but also by paying balance well before 31.3.95.

26. Again the plaintiff issued a letter under Ex.P10 dated 29.6.95 to the defendants 1 to 9 reiterating what they have said in their letter under Ex.P9 dated 28.3.95. The two letters, namely, Ex.P10 dated 29.6.95 and



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again the letter under Ex.D4 dated 1.7.95 clearly indicate that the plaintiff had no intention of paying either the sum of Rs.50 lakhs which he had agreed to pay in September, 1994 or the entire balance payable before 31.3.95. The plaintiff's letter dated 7.8.95 under Ex.P11 is only the xerox copies of banker's pay order dated 2.8.95. Without an explanation for the lapses and in utter disregard to the terms of the agreement specifying time, the plaintiff has issued this letter with the xerox copies of demand drafts drawn in favour of defendants in their individual name. To the notice issued by the plaintiff to the defendants, the defendants sent a reply immediately on 13.8.95, which is marked as Ex.P12. This reply was by the advocate of the defendants. In the reply, it is informed that the sale deed which was to be executed on or before 31.3.95, did not get through and that the contract is determined as per the option given to the defendants. It was also pointed out that the amount as per the banker's payment order is not in conformity with the terms of agreement. It was only after this letter dated 13.8.95, plaintiff issued a legal notice dated 21.8.95 without even referring to the reply sent to the plaintiff on behalf of one of the defendants. By this letter/notice, the



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defendants were called upon to execute the sale deed in respect of the suit property in terms of the agreement dated 3.8.94 within a period of 15 days from the receipt of notice under Ex.P13. It was thereafter the defendants through their advocate sent a reply notice dated 17.9.95 marked as Ex.P14. In the notice, the plaintiff stated as if the plaintiff was never at fault and that the delay was purely on account of failure to give NOC in favour of some of the defendants. In the reply notice, the defendants relied upon the terms of the agreement and how the plaintiff failed to perform his part of the contract specifically referring to the clearance certificates issued to the defendants on various days and handed over to the plaintiff. In fact, it was specifically mentioned that the doubt as to area entertained by the plaintiff regarding extent is without bona fides and that there was no mention as to the deficiency in area at any point of time earlier. It is stated in the reply that the plaintiff was never ready and willing to perform its part of the contract and that the parties have mutually agreed to drop the agreement. It was made clear to the plaintiff that the plaintiff has no right to demand for specific performance or possession or damages, as the plaintiff had miserably failed



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to perform its obligations under the suit agreement. Simultaneously, the plaintiff issued a public notice about the subsisting agreement dated 3.8.94 between the plaintiff and the defendants. Thereafter, it is admitted that the fifth defendant executed two sale deeds dated 6.11.95 and the sixth defendant executed two sale deeds dated 24.11.95 in favour of plaintiff. However, it is also admitted that the sale deeds are yet to be registered and the petition filed by the plaintiff for compulsory registration of the document is opposed seriously by the defendants 5 & 6. Even though the defendants repudiated the contract followed by specific reply legal notice under Ex.P14 dated 17.9.95, on the ground that the agreement has come to an end by efflux of time, the suit came to be filed by the plaintiff only on 3.5.97.

27. This Court has already held that time is the essence of the contract. Question now is whether the plaintiff was ready and willing to perform its part of the contract or whether the plaintiff has committed breach of the terms of agreement dated 3.8.94 as alleged by the defendants.



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On the question of readiness and willingness of the plaintiff, the submissions of the learned Senior Counsels appearing for the respondents are acceptable. As evident from the agreement, as per clause 4 of the agreement, the plaintiff agreed to pay a further advance of Rs.50 lakhs on production of either urban land ceiling clearance certificate or no objection certificate under Chapter XX-C of the Income Tax Act or the clearance under Section 230-A of the Income Tax Act. Admittedly, the urban land ceiling clearance certificate was obtained in September 1994 and the no objection certificate was obtained on 21.11.94 under Chapter XX-C of the Income Tax Act by the defendants. It is now demonstrated before this Court that the income tax clearance as required under Section 230-A is obtained in the name of defendants 1 to 9. From the evidence it is seen that the plaintiff was duly informed about the income tax clearance both under Chapter XX-C and Section 230-A of the Income Tax Act as evident from the communications. Even though the income tax clearance as seen from Ex.D5 series is not there for defendants 5 & 9, in the pleading, in the proof affidavit and in the evidence, the plaintiff has admitted the income tax



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clearance under Section 230-A of the Act issued to the defendants 5 & 9.

When the defendants had promptly applied and obtained income tax clearance within a reasonable time from the date when draft sale deed was furnished by the plaintiff, this Court finds no reasonable cause for the non performance by the plaintiff. Absolutely there is no reason stated anywhere in the pleading or evidence for non-payment of a sum of Rs.50 lakhs which was agreed to be paid even in September, 1994 or at least in November, 1994, when no objection certificate was obtained under Chapter XX-C of the Income Tax Act as per the documents Exs.P4 & P6 filed by the plaintiff. During the cross examination of D.W.1, P.W.1 has admitted that he has not filed any proof to show the availability of funds as on the date of agreement or in September, 1994. When a specific issue is raised by the defendants that the plaintiff was not ready and willing, burden lies on the plaintiff to prove its case. The contention of plaintiff that there is shortage of extent and that there is some problem in getting NOC from income tax department in relation to all the defendants cannot be accepted as an excuse for non payment of a sum of Rs.50 lakhs which is an essential term of the



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agreement. The balance amount of Rs.2.25 crores was not paid before 31.3.95 as agreed. This Court finds no evidence to prove plaintiff's readiness and willingness to perform the contract as agreed. The plaintiff has no material or evidence to justify their doubt to complain about the reduction of extent or about the inability of defendants to transfer the right of way. This Court from the conduct of plaintiff finds that the plaintiff was never ready and willing to perform its part of the contract in terms of the agreement.

28. Let us examine whether the contention of the plaintiff about reduction of extent can be considered as a valid excuse. This Court finds that the suit agreement is in continuation of the previous agreement, where the parties have referred to the same extent and sale consideration. The parties have no dispute at the time of entering into the agreement about the extent. What was the reason for this disagreement by the plaintiff regarding extent is not known. It was not the case of the plaintiff that the plaintiff made an arrangement for measurement of land on its own and found that



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there was reduction in extent. However, in the course of correspondence, the plaintiff complained about the reduction of extent. The defendants have no quarrel to reduce the balance of sale consideration corresponding to any reduction. The defendants have also informed the plaintiff that measurement can be done in due course. However, the plaintiff who is in Chennai did not invite the defendants or their representatives for fixing actual extent. In the absence of any reason for the plaintiff to suspect or doubt the actual extent available on ground, this Court finds that the complaint regarding reduction of extent is purposely made to delay execution. Even without making further payment of Rs.50 lakhs, the plaintiff wanted the defendants to vacate the suit property.

29. Secondly, the plaintiff had obtained sale deeds from two of the defendants in respect of their share in total extent. From the description of the property, it is seen that each one of the defendants had sold their share in an extent of 20 grounds and thereabouts with the building measuring about 2374 sq.mts. Even though the measurement given in the sale agreement is



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20 grounds approximately, the sale deed executed in favour of all the defendants refers to the extent precisely. The defendants have also executed the sale deed after the disposal of the suit in favour of the tenth defendant showing the entire extent as 20 grounds. The suit itself is laid for the entire extent of 20 grounds of land together with building in terms of the agreement. Therefore, this Court finds no merit in the contention that the plaintiff could not complete the sale deed due to reduction in extent.

30. Under the sale agreement, the defendants have agreed to convey an extent of 20 grounds together with the right of way and right of amenities and facilities through a common way having 33 feet width. However, in some of the correspondence, the plaintiff's advocate has referred to the information from one of the defendants about the problem relating to the conveyance in respect of common passage or the right of way. The learned Senior Counsel relied upon the fact that the entire title in respect of the pathway is also conveyed along with the land which is abutting the road. It is not in dispute that the plaintiff is the absolute owner of not only the suit



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property, but also the property which is adjacent to the suit property abutting the road. Since the defendants have not executed any sale deed in favour of third parties before the suit agreement, the defendants who had absolute right over the property, had absolute right to convey easementary right of way. Hence, this Court finds that the stand taken by the plaintiff's counsel in some of the letters shows the real conduct of the plaintiff who has specifically instructed their counsel to invent reasons only to delay further payments. A person who is ready and willing to purchase the property should be fair, honest and perform his obligation under the agreement so that the other party to the agreement will have no reason to rescind the contract. The intention of the plaintiff in the present case to delay payment is expressed in all the communications and the learned Senior Counsel appearing for the appellant has no explanation for the conduct of the plaintiff in complaining reduction of extent or regarding the right of way which was agreed to be conveyed under the agreement. The defendants 1 to 9 had no reason to believe that the plaintiff would perform its part and hence the defendants have rightly put an end to the contract.



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31. The learned Senior Counsel appearing for the appellant relied upon the following judgments of the Hon'ble Supreme Court. In *P.D'Souza v. Shondrilo Naidu*, reported in (2004) 6 SCC 649, the Hon'ble Supreme Court dealt with a case where the defendants had consciously revived the contract at a later stage. Hence it was held that it is too late in the day for the defendant to contend that the contract should be performed within time as per the agreement, after waiving his right. In other words, the defendants who had brought about a situation waiving their right to seek performance within the time stipulated, cannot turn around and contend that time was of the essence of the contract and that the plaintiff was not ready and willing to perform their part of the contract within the time specified. In that case the defendant who had agreed to discharge the mortgage before May 1981, failed to discharge its mortgage, but demanded further amount and sought extension of time. Hence it was held that the defendant cannot insist the time stipulation after receiving substantial amounts even after the expiry of time stipulated in the agreement. The Hon'ble Supreme Court relied upon



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its judgment in the case of *Nirmala Anand v. Advent Corporation (P) Ltd.*, reported in (2002) 5 SCC 481, wherein the Hon'ble Supreme Court has observed that the defendants cannot take advantage of their own wrong and then plead that the decree for specific performance would give an unfair advantage to the plaintiff.

32. The judgment of the Hon'ble Supreme Court in *Boramma v. Krishna Gowda and others*, reported in (2000) 9 SCC 214 relied upon by the learned Senior Counsel appearing for the appellant is by interpreting Explanation to clause (c) of Section 16 of the Specific Relief Act which makes it clear that where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendants or to deposit in Court, except when so directed by the Court. This judgment has no application to the facts of the present case, where the plaintiff was never ready and willing to perform its part of the contract in terms of the agreement. When the plaintiff establishes its readiness and willingness, may rely upon this judgment to show that it is not necessary for them to jingle



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coins, unless the Court directs the plaintiff to deposit the money in Court.

Again the learned Senior Counsel appearing for the appellant relied upon the judgment of the Supreme Court in the case of *Laxman Tatyaba Kankate and another v. Taramati Harishchandra Dhatrak*, reported in (2010) 7 SCC 717, wherein the Hon'ble Supreme Court has held as follows:-

“25. It was contended on behalf of the appellants that there has been considerable increase in the price of the land in question. Though that may be true, it cannot be a ground for denying the decree of specific performance to the respondent. The learned first appellate court, by a well-reasoned judgment, has granted the relief of specific performance instead of only granting refund of money, as given by the trial court. The judgment of the first appellate court has been upheld by the High Court and we see no reason whatsoever to interfere with the concurrent findings of facts and law as stated in the judgment under appeal. However, the learned counsel appearing for the respondent volunteered and after taking instructions stated that they would be willing to pay a sum of Rs.1,50,000/- instead of



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Rs.40,000/- as the total sale consideration. We find this offer of the respondent to be very fair.

26. We have already held that the defence taken up by the appellants in the suit was totally unbelievable. There is no reason or ground as to why the relief of specific performance should be declined to the respondent. She satisfied all the requirements of Section 20 of the Act. Even then, if we examine this case purely from the point of view of equity, the offer now made by the respondent substantially balances the equities between the parties and the very argument raised on behalf of the appellants that there has been increase in the price of the land in question loses its significance. Now, no prejudice will be caused to the appellants in any manner whatsoever.”

The above judgment has no application to the facts when the plaintiff has not proved their readiness and willingness. The learned Senior Counsel in the course of hearing mentioned that the plaintiff is willing to pay around three times more than the balance to compensate the defendants for the delay. This plea cannot be accepted when the property had already been sold



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in favour of tenth respondent after dismissal of suit.

33. The learned Senior Counsel then relied upon the judgment in *B.Santoshamma and another v. D.Sarala and another*, reported in (2020) 19 SCC 18 and contended that the plaintiff is entitled to enforce part of the agreement, as they have already obtained sale deed from two of the defendants on their accepting substantial amount as consideration. The learned Senior Counsel also relied upon the judgment of the Hon'ble Supreme Court in the case of *Prakash Chandra v. Angadlal and others*, reported in (1979) 4 SCC 393 for the proposition that ordinarily specific performance should be granted and that it can be denied only when equitable considerations of the case point to its refusal and the circumstances show that damages would constitute an adequate relief. We do not find any support from the said judgments to the arguments of the learned Senior Counsel for the appellant.

34. The learned Senior Counsel relied upon a judgment of the



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Division Bench in the case of *Rajamani and others v. L.P.Alagappa Chettiar*, reported in *2017 SCC Online Mad 8006* for the proposition that mere escalation of price is not a ground for rejecting relief of specific performance for the plaintiff in a case for specific performance based on his readiness and willingness to perform its part of the contract from the inception of sale agreement. We have no quarrel with the said proposition. But the said judgment has no application to the facts of this case. Similarly, he relied upon the judgment of Hon'ble Supreme Court in *Silvey and others v. Arun Varghese and another*, reported in *(2008) 11 SCC 45*, where the plaintiff's suit for specific performance was dismissed despite the trial Court having found that the defendants had not yet obtained the certificates of registration from the Rubber Board as envisaged by the agreement for sale and that they had not even obtained possession certificates. The principle or the point raised and answered in the said judgment cannot be applied in the present case.

35. The learned Senior Counsel appearing for the appellant relied



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upon the judgment of the Hon'ble Supreme Court in the case of *R.Lakshmikantham v. Devaraji*, reported in (2019) 8 SCC 62, wherein the Hon'ble Supreme Court has relied upon its earlier judgment in *Mademsetty Sathyanarayana v. G.Yelloji Rao*, reported in AIR 1965 SC 1405 to hold that the suit filed within the period of limitation cannot be dismissed on any equitable principle. In other words, the Hon'ble Supreme Court held that the delay may not be a ground to dismiss the suit when it is filed within the period of limitation. The Hon'ble Supreme Court in several other judgments had considered the delay and laches on the part of plaintiff as a reason not to exercise discretion in favour of the plaintiff who has approached the Court with unexplained delay and has put the defendants in a precarious and disadvantageous position. At least the Court's power under Section 20 of the Specific Relief Act cannot be curtailed when the Court decides several issues on the principle of equity.

36. Another judgment of the Hon'ble Supreme Court in the case of *Ferrodous Estates (Pvt.) Ltd. v. P.Gopirathnam (dead) and others*, reported



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in 2020 SCC Online SC 825 was relied upon for the same proposition that a suit for specific performance filed within limitation cannot be dismissed on the sole ground of delay and laches. It is to be noted that in the said judgment, quoting earlier judgments, while exercising discretion, it is held that the Court should decide, regard being had to the facts of each case. Section 20 confers a discretion to Court while granting specific performance or refusing specific performance depending upon the facts. As held repeatedly by Hon'ble Supreme Court in several other judgments which we have referred to in several of our decisions, the plaintiff who is expected to prove his readiness right from the agreement till execution of sale, if fails to prove his case, this Court cannot grant relief on the basis of any of the judgments relied upon by the learned Senior Counsel appearing for the appellant.

37. We have already discussed the facts of the case elaborately. Though the Specific Relief Act, 1963 has seen a drastic change by the Specific Relief (Amendment) Act, (18 of 2018), whereby Sections 10, 14,



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16 and 20 have been amended, the amendment is held to be prospective by a three-Judge Bench of the Hon'ble Supreme Court in the case of *Smt.Katta Sujatha Reddy v. Siddamsetty Infra Projects Pvt.Ltd. and others etc.* reported in *AIR 2022 SC 5435*. In tune with the said judgment of the Supreme Court, this Court finds that the 2018 amendment to the Specific Relief Act cannot be applied to the transactions in the present case which took place prior to coming into force of the amendment. Therefore, the judgments on the existing provisions of Specific Relief Act prior to the amendment alone are relevant.

38. The Hon'ble Supreme Court in *Saradamani Kandappan v. S.Rajalakshmi and others*, (2011) 12 SCC 18 has applied the provisions of the Contract Act, 1872, particularly, Sections 51 to 55, in terms of Section 9 of the Specific Relief Act. It is to be noted that the issue whether the plaintiff in a suit for specific performance is ready and willing to perform the terms of the contract or not, can be assessed without much guess work, if the Court examines the rights, obligations, privileges of parties to the



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contract in terms of the provisions of the Contract Act, particularly, Sections 46 and 51 to 55 of the Contract Act. Section 52 of the Contract Act relates to the order of performance of reciprocal promises. In the present case, the plaintiff who had agreed to pay a sum of Rs.50 lakhs immediately after the urban land clearance or income tax clearance in terms of the provisions of the Income Tax Act has not paid the amount and therefore has failed to perform in the order in which the plaintiff was supposed to. Section 55 of the Contract Act renders the contract voidable at the option of the party who has prevented the other from performing his promise. The Supreme Court in *Saradamani Kandappan's case*, in similar circumstances, has held as follows:-

“70. We are therefore of the view that the failure of the appellant to pay the balance of Rs.75,000 on 6-4-1981 and failure to pay the last instalment of Rs.75,000 on or before 30-5-1981 clearly amounted to breach and as time for such payment was the essence of the contract, the respondents were justified in determining the agreement of sale which they did by the notice dated 2-8-1981 (Ext.P-



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5). Therefore rejection of the prayer for specific performance is upheld.”

39. This Court finds that the view expressed by the Hon'ble Supreme Court in *Saradamani Kandappan's case* can be applied in the present case, where the plaintiff has failed to establish their readiness and willingness and did not come forward to pay a sum of Rs.50 lakhs as agreed under the agreement and the entire balance on or before 31.3.95. The Hon'ble Supreme Court in the case of *Man Kaur v. Hartar Singh Sangha*, reported in (2010) 10 SCC 512, has held as follows:-

“40. This contention has no merit. There are two distinct issues. The first issue is the breach by the defendant vendor which gives a cause of action to the plaintiff to file a suit for specific performance. The second issue relates to the personal bar to enforcement of a specific performance by persons enumerated in Section 16 of the Act. 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



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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 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 defendant. But in that case, if the plaintiff did



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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.”

40. This Court has already seen that P.W.1 has admitted that he has not produced any document to show that the plaintiff was ready with the money to perform its part in terms of the agreement. When readiness and willingness is an issue, the burden lies on plaintiff to prove readiness and willingness which are required in terms of Section 16(c) of the Specific Relief Act. From the conduct of plaintiff, this Court is convinced that the plaintiff has not proved its readiness and willingness to pay a sum of Rs.50 lakhs immediately after urban land ceiling and income tax clearances and the remaining balance on or before 31.3.95 as agreed under suit agreement. Therefore, the plaintiff has committed breach of suit agreement for no good reasons and the defendants 1 to 9 are therefore entitled to put an end to the



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contract. Therefore, issue Nos.(ii) and (iii) are decided against the plaintiff.

41. Issue No.(iv): In the present case, this Court has already referred to the relevant dates. The defendants, consequent to the legal notice issued by the plaintiff dated 21.8.95, have issued a reply notice through their advocate with specific reference to the failure on the part of the plaintiff to come forward to pay the balance of sale consideration in terms of clause 4 of the agreement and the final payment as specified in the agreement. By this notice, the defendants have informed that the plaintiff had no right to demand for specific performance, as the plaintiff has failed miserably. Earlier, in the reply, they also refer to the option of dropping the agreement. In such circumstances, the termination of agreement was also referred to in the previous reply issued by one of the defendants. The plaintiff, though issued a paper publication dated 7.9.95, came with the suit for specific performance only in May, 1997. Absolutely there is no explanation for not filing the suit after the repudiation of agreement. As pointed out by the Hon'ble Supreme Court in several judgments, particularly, in the judgments



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in *K.S.Vidyanadam's case* and in *Saradamani Kandappan's case* (supra), though an attempt was made by the plaintiff to explain the delay by saying that the plaintiff wanted to settle the issues amicably between the plaintiff and the defendants, absolutely there is no material on record about the bona fide attempt made by the plaintiff. The delay of nearly two years to file the suit after the repudiation of contract by the defendants in unequivocal terms, only proves the case of defendants. The property is situated in a prime locality at Adyar. In fact, the plaintiff even at the time of filing the suit has come with different figures and the learned Senior Counsel appearing for the appellant has now come with a proposal by quoting a price which is few times more than the price agreed. However, the learned Senior Counsels appearing for the respondents pointed out that the market price has gone very high and the offer even now is unfair. Therefore, the unreasonable delay in approaching the Court is one of the circumstances for this Court not to exercise its discretion in favour of the appellant/plaintiff. The learned single Judge has held that the plaintiff is not entitled to the discretionary relief giving several reasons.



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42. The learned Senior Counsel Mr.T.V.Ramanujam relied upon a few judgments of this Court where conduct of the plaintiff has been considered to refuse the discretionary relief of specific performance. A learned single Judge of this Court in the case of *Ramasamy Gounder v. K.M.Venkatachalam and others*, reported in 1976 (1) MLJ 243, has held that the false case put forth by the plaintiff would disentitle him from obtaining the discretionary relief of specific performance. The learned single Judge referred to the few earlier decisions of this Court, wherein it is reiterated that the plaintiff who is setting up a false case cannot expect a Court of equity to grant him relief. In the said judgment, an unreported judgment of this Court in A.S.Nos.367 and 696 of 1970 dated 11.04.1975 (*Kuppuswami Naidu v. Mannarswami Naidu*), the judgment in *Easwari Amma and another v. M.K.Korah and others*, AIR 1972 Mad 339 and the judgment of this Court in the case of *Sririgineedi Subbarayadu v. Kopsnathi Tatayya and others*, 1973 M.W.N. 1158 were relied upon for the proposition that a person who comes forward with a false case is not entitled to discretionary



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relief of specific performance.
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43. In the present case, the learned Senior Counsel referred to the plaint where the plaintiff has come forward with a false case that possession was handed over pursuant to the agreement by relying upon one of the clauses in the agreement quite contrary to the specific clause in the agreement that the plaintiff is entitled to possession only after the registration of the sale deed. Referring to the proof affidavit and the evidence let in on behalf of the plaintiff, the learned Senior Counsel submitted that the plaintiff who came to Court with a false case will not be entitled to the equitable relief. The learned Senior Counsel relied upon a judgment of the Division Bench of this Court in the case of *Nallaya Gounder and another v. P.Ramaswami Gounder (died) and 3 others* reported in 1993-2-L.W. 86 for the same proposition.

44. The Hon'ble Supreme Court in the case of *Lourdu Mari David and others v. Louis Chinnaya Arogiaswamy and others* reported in (1996) 5



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SCC 589, has also reiterated the principle that a person who comes to Court with a false plea is not entitled to the equitable relief of specific performance. A Division Bench of this Court in the case of *Arunachala Mudaliar v. Jayalakshmi Ammal and another*, 2003 (1) CTC 355 (Mad), where a plea of plaintiff regarding possession was found to be false, held that the plaintiff is not entitled to the relief of specific performance. In the said judgment, the previous judgment of the Division Bench of this Court in the case of *Nallaya Gounder and another v. P.Ramaswami Gounder etc.* (*supra*) was relied upon. A learned single Judge of this Court in the case of *G.Anbazhagan and another v. G.Manoharan (deceased) and others*, reported in 2013 (6) CTC 624 has followed the principle that the plaintiff who has come with a false plea that possession was given to him under the agreement of sale, is not entitled to the specific relief.

45. It is true that the plaintiff in paragraph-13 of the plaint has pleaded that the plaintiff was in fact put in possession and it had undertaken not to demolish the existing building in the suit property for a period of two



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years from 3.8.94. Though this Court finds such a false plea is made, is not inclined to record a finding that the plaintiff is not entitled to equitable relief solely on the ground that there is a false plea in the plaint about the plaintiff being put in possession. However, this could certainly be one of the reasons for which the plaintiff can be non-suited when there are several other circumstances indicated in this judgment. As pointed out earlier, the delay in filing the suit is also an important factor to be considered. The plaintiff was never honest and fair to fulfill its obligations. Complaining reduction of extent and entertaining doubt regarding transfer of right to have access through the common passage is a deliberate attempt of plaintiff to gain time. This shows that plaintiff has projected a false case just for the purpose of this case. Therefore, issue no.(iv) is also decided against the plaintiff.

46. Issue No.(v): The appellant, just before the commencement of arguments, filed two applications. C.M.P.No.8323 of 2023 is filed by the appellant to raise additional grounds with specific reference to the subsequent events. C.M.P.No.8324 of 2023 is filed for reception of



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additional documents. In the affidavit filed in support of C.M.P.No.8324 of 2023, the appellant has prayed for permission to file the following documents:-

- “i. Agreement of sale between the Respondents 1,2,3,7 and Raj Ganesh, for the sale of their undivided share in Plot No.2
- ii. Power of Attorney given by the Respondents 1,2,3,6,7 and 8 to Raam Prabhu Raaj, son of 10th Respondent to sell, register and collect the money from the buyer
- iii. Sale deed dated 09.10.2012 registered as Document No.2249 of 2012
- iv. Memorandum of Understanding dated 04.11.2012 between the Appellant company and 6th Respondent
- v. Memorandum of Understanding dated 04.11.2012 between the 6th Respondent and Kakumanu Charitable Trust
- vi. Cancellation of Power of Attorney dated 19.11.2012 registered as Document No.457 of 2012 by the 6th Respondent in favour of B.R.Raam Prabhu Raaj
- vii. Copy of sale deed dated 10.07.2013 executed by Aswathi Thirunal Rama Varma in favour of the



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Appellant Company but not registered by the Sub Registrar of Adyar

viii. FIR No.297 of 2014 lodged against Royal Family Members

ix. Letter from Aswathi Thirunal Rama Varma to Mr.Sarath Kakumanu dated 28.05.2013

x. Unregistered Sale Deed to be executed by Aswathi Thirunal Rama Varma in favour of Pan Resorts Ltd dated 10.07.2013

xi. Payment receipt from the Registration Department for Rs.10,100/- dated 11.07.2013

xii. Letter from P.Kannadasan to the Sub Registrar Assurances, Adyar dated 16.08.2013

xiii. Letter from R.Manikandan, SRO Adyar to Mr.P.Kannadasan dated 06.09.2013

xiv. Letter from P.Kannadasan to the IG, Registration dated 25.10.2013

xv. Stay obtained by Raj Ganesh in C.S.No.501 of 2013, O.A.No.549 of 2013

xvi. Affidavit of Aswathi Thirunal Rama Varma in C.S.No.869 of 2013

xvii. Letter from Aswathi Thirunal Rama Varma to IG Registration dated 04.01.2014



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- xviii. Letter from Pooratathi Thirunal Marthanda Varma to Mr.Sarath Kakumanu dated 20.10.2014
- xix. Letter from Adithya Varma to Mr.Sarath Kakumanu dated 01.11.2014
- xx. Payments made to Aswathi Thirunal Rama Varma, Pramodh Kumar and Gulam Mohideen
- xxi. Letter from Aswathi Thirunal Rama Varma to Advocate Mr.R.Sibi Chakravarthy regarding withdrawal of C.S.No.869 of 2013.”

A common affidavit is filed by the appellant indicating that the additional grounds raised by the appellant are necessary having regard to the subsequent events and the events that had happened after the institution of the suit. The documents which are sought to be filed as additional documents are not required to be considered in the present case for deciding the issues framed by this Court. The tenth respondent is not claiming any right under Section 19(b) of the Specific Relief Act, as he purchased the property with the knowledge of this litigation. All the documents relied upon by the appellant are after the suit agreement or after the filing of suit and that this Court, having found that the documents are not relevant for



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deciding the enforceability of suit agreement, cannot accept those documents to enlarge the scope of litigation. The learned Senior Counsel appearing for the appellant has not made any submissions to convince this Court that the application is filed satisfying the requirement of Order XLI, Rule 27 of the Code of Civil Procedure. Therefore, this Court finds no merit in the petition for reception of additional documents. For the same reasons, this Court is unable to find any merit in the petition to raise additional grounds also. Therefore, issue no.(v) is also decided against the plaintiff.

47. The learned Senior Counsel appearing for the defendants submitted that the sale in favour of the plaintiff by the defendants 5 & 6 was not registered and that therefore property is not conveyed. In other words, it is stated that the transfer in favour of the plaintiff by the defendants 5 & 6 has not taken place. The learned counsels appearing for the respondents have expressed their willingness to refund the amount. This Court finds that the plaintiff may have an independent cause of action to pursue the remedy, in case the plaintiff is not successful in getting the documents



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compulsorily registered.

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48. In a suit for specific performance, the Court is expected to frame issues regarding the enforceability of contract and the entitlement of the plaintiff to get the discretionary and equitable relief of specific performance. In the present case, all the issues have been answered against the appellant/plaintiff. However, this Court finds no valid reasons to deny the alternative relief to the plaintiff. By order dated 19.06.2023, this Court ordered the interlocutory application in M.P.No.2 of 2015 to amend the plaint to introduce the alternative prayer refund for of a sum of Rs.1,00,00,000/- (Rupees one crore only) paid by the appellant to the respondents as advance under the suit agreement dated 3.8.94 along with interest. Though as per the agreement dated 3.8.94, the plaintiff is entitled to refund with interest at the rate of 6% per annum, considering the fact that a huge amount of Rs.1,00,00,000/- had been paid as advance and the property value has gone manifold, this Court is inclined to grant interest at the rate of 12% per annum.



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49. In view of the conclusions we have reached above on all the issues, while confirming the judgment and decree of the trial Court in C.S.No.632 of 1997 dismissing the suit for specific performance, the alternative prayer for refund of advance is allowed by directing the defendants 1 to 9 to refund a sum of rupees One Crore with interest at 12% per annum from the date of agreement till the date of payment. The appellant is entitled to enforce a charge over the suit property in terms of Section 55(b) of the Transfer of Property Act.

50. The original side appeal is thus partly allowed as indicated above. Consequently, C.M.P.Nos.8323 & 8324 of 2023 are also dismissed. No costs.

Index : yes/no
Neutral citation : yes/no

(S.S.S.R.,J.) (C.K.,J.)
02.08.2023

ss

To

The Sub Assistant Registrar (O.S.)
High Court, Madras.



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S.S.SUNDAR, J.
AND
C.KUMARAPPAN,J.

SS

Judgment in
O.S.A.No.277 of 2013

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S.S.SUNDAR, J.
and
C.KUMARAPPAN, J.

O R D E R

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

This matter is today posted before us under the caption 'for being mentioned'.

2. Learned counsel appearing for the respondents states that there is a mistake in paragraph 30 of the judgment, wherein, instead of defendants, the plaintiff has been shown as absolute owner of not only the suit property but also the property which is adjacent to the suit property abutting the road.

3. Even though we are sure that instead of plaintiff, the defendants should be referred to, learned counsel



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appearing for the appellants wants to say something about the description of the property with reference to the facts.

4. Hence, the respondents/defendants are at liberty to file an affidavit to that effect along with the petition seeking correction in the judgment.

[S.S.S.R, J.] [C.K., J.]
21.09.2023

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