



C.S.No.82 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 23.02.2023

Judgment Pronounced on : 10.07.2023

CORAM : JUSTICE N.SESHASAYEE

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1.Kamakshi Kumaran

2.M/s.Sree Builders

Rep. by its Proprietor V.Radhakrishnan (Deceased)

No.15, I Avenue, Besant Nagar

Chennai - 600 090.

Represented through its Power Agent

Tmt.Kamakshi Kumaran

3.R.Suchitra

4.V.R.Vignesh

5.V.R.Vaishnave

.... Plaintiffs

[Plaintiffs 3 to 5 impleaded as per order dated
07.07.2021 in A.No.2298/2021]

Vs

1.N.Venkatramani

2.C.R.Chandrasekaran

3.C.Revathi alias Gowri Chandrasekaran

4.C.Kirupa Shankar

.... Defendants

[Defendants 2 to 4 impleaded as per order
dated 25.09.2014 in Appln.No.5381 of 2014]



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Prayer : Civil Suit filed under Section Order VII Rule 1 & 2 C.P.C. read with Order IV Rule 1 of O.S.Rules praying for a judgment and decree against the defendants :

- (a) to specifically enforce the Agreement of Sale dated 21.07.2005 pertaining to the suit schedule property entered into between the plaintiffs and the first defendant by directing the first defendant to execute and register the sale deed in favour of the plaintiffs' or their nominee/s after receiving the balance sale consideration and in the event of the first defendant declining to execute the sale by directing the Registrar, Original Side, High Court of Judicature at Madras to execute and register the sale deed pertaining to the suit schedule property in favour of the plaintiffs and to order delivery of vacant possession of the suit schedule property besides damages;
- (b) to grant an order of permanent injunction restraining the first defendant or anybody on his behalf from alienating and encumbering the suit schedule property to any other person other than the plaintiffs;
- (c) to direct the first defendant to pay a sum of Rs.50,00,000/- as damages;
- (d) to direct the first defendant to refund Rs.10,00,000/- being advance money paid under the Agreement of Sale dated 21.07.2005 in case the applicants claim for specific performance is refused by this Court;



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(e) to award the costs of this suit; and

(f) to pass such further other orders as this Court may deem fit and proper in the circumstances of the case.

[Prayers (c) and (d) were added as per order dated 10.02.2016 passed in Appl.No.818 of 2015]

[Prayer Amended as per order dated 13.07.2016 in A.No.3231/2016]

For Plaintiffs : Mrs.Chitra Sampath
Senior Counsel
Assisted by Mr.R.Venkatraman
for M/s.Tatva Legal

For Defendants : Mr.R.Thiagarajan for D1
Mr.Aniruth Krishnan for D2 to D4

JUDGMENT

1.2 The suit is laid for specific performance of an agreement for sale of the suit property, dated 21.07.2005, with alternative reliefs for refund of the advance amount plus damages for the breach of contract by the first defendant.

1.2 The suit was laid by two plaintiffs, of which the second plaintiff is shown as



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the proprietary concern of one Radhakrishnan (which *per se* has no legal status). Pending the suit, Radhakrishnan had passed away and his legal representatives were impleaded as plaintiffs 3 to 5.

1.3 On 06.06.2011, the suit was decreed *ex parte* but later vide order in A.733 of 2013, dated 13.11.2011, the same was set aside and it went to trial.

2. The plaintiffs have come forward with a straight forward case.

- The suit property belonged to the first defendant. On 21.07.2005, the plaintiffs 1 and 2 have jointly entered into a sale agreement with the first defendant for purchase of suit property for a total consideration of Rs.59.0 lakhs. An advance of Rs.10.0 lakhs was paid under the agreement. The agreement stipulates 90 days for both sides to perform their mutual contractual obligations. It also provided that the vendor/first defendant would complete the sale free of all encumbrances, and in case of breach of contract by the plaintiffs, the first defendant was granted the right to forfeit Rs.2.0 lakhs out of the advance amount given as liquidated damages, and that the first defendant is liable to return Rs.8.0 lakhs to the plaintiffs.



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- It is an admitted case on either side that on the date of the sale agreement, the suit property was outstanding on mortgage with M/s.Bank of India.
- On 26.02.2006, the plaintiffs communicated their readiness and willingness to perform their part of the contract.
- The 1st defendant however, issued a reply notice dated 02.03.2006, in which he has conveyed to the plaintiffs that the agreement was terminated as the plaintiffs did not show that they were ready and willing to perform their part of the contract within the time stipulated in the agreement, and after adjusting Rs.2.0 lakhs as liquidated damages as provided in the agreement, he issued a cheque for the balance Rs.8.0 lakhs along with this reply.
- Refuting the same, the plaintiffs returned the cheque Vide communication dated 17.03.2006. There are other exchange of notices between the parties and the suit was ultimately laid on January 2007.
- During the pendency of the suit, it came to the knowledge of the plaintiffs that the first defendant had entered into a sale agreement dated 05.02.2007 for the same property with the second defendant. Hence, the plaintiffs 1 & 2 issued a public notice through newspaper



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intimating about their claim over the property.

- Subsequently, it also came to the knowledge of the plaintiffs that the first defendant had executed a sale deed in favour of the defendants 2 and 3, and also on the strength of the sale deed, the defendants 2 and 3 settled the property in favour of the fourth defendant.
- In these circumstances, the plaintiffs 1 and 2 impleaded the defendants 2 to 4 to the suit.
- Later, the plaintiffs have amended the plaint, claiming a sum of Rs.50.0 lakhs as damages, on account of loss of profit owing to the breach of contract by the first defendant in addition to their prayer for a specific enforcement of the sale agreement dated 21.07.2005. There is yet another prayer introduced by this amendment, by which the plaintiffs demanded return of Rs.10.0 lakhs paid as advance.

3. The first defendant had filed a written statement resisting the suit and also two additional written statements, and raised a counter claim against the plaintiffs for damages for their breach of contract. His contentions are:

- The first plaintiff is the mother-in-law of Radhakrishnan, who as indicated in paragraph 1.2 above was the proprietor of the 2nd plaintiff.



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They are in the real-estate business. They entered into a sale agreement with the first defendant for purchasing the suit property with a view to develop it and to build few apartments.

- About a week prior to the sale agreement, on 13.07.2005, the second plaintiff addressed a letter to this defendant and made the following offer which varied from the sale agreement was that of the balance sale consideration of Rs.49.0 lakhs, Rs.10.0 lakhs would be paid a week before the registration of the sale deed and that the balance Rs.39.0 lakhs would be paid at the time of registration.
- Even before the execution of the sale agreement, the first defendant had handed over the copies of title deed and allied documents to the plaintiffs. Besides they were informed that the property was outstanding on a mortgage with M/s Bank of India, Cathedral Road branch since 22.06.2004, to secure a loan of Rs.8.0 lakhs, and that the original title deed of the suit property had been deposited with it, and that he was still due to pay the bank a sum of Rs.7.5 lakhs. The plaintiffs had verified these facts with the bank pursuant to a written request made by this defendant to his banker. Indeed, the letter dated 13.07.2005 referred to earlier was given by the plaintiffs only after they had verified the facts as



stated above.

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- The first defendant had agreed to obtain the documents only after receiving the balance sale consideration of Rs.10.0 lakhs out of the balance sale consideration and not otherwise. In this regard, even though there is no express stipulation in the sale agreement that the plaintiffs should pay Rs.10.0 lakhs a week before the registration, there was a consensus on this aspect, as the intent was to utilise this fund to discharge the debt dues to the bank and to redeem the mortgage to render the property free of encumbrance.
- The three months time stipulated in the agreement is an essential term of the contract. This is because the bank which is the mortgagee of the suit property was preparing to initiate action to realise the loan dues, and the intention to sell the property *inter alia* was for averting the coercive action by the bank. This apart, the defendant required funds for arranging an alliance for his daughter. Due to the breach of contract by the plaintiff, that alliance came to be dropped. This apart, trusting the promise of the plaintiffs that they would perform their part of the contract, the defendant even vacated the tenant of the suit property and paid him the rental advance of Rs.70,000/- that the tenant had earlier left



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with him, and lost the rental income of Rs.7,000/-p.m., plus the interest income on the advance amount left by the tenant. This apart this defendant had also booked an apartment then under construction and paid an advance of Rs.10.0 lakhs to the builder on 23.07.2005, on the very next day after the execution of the sale agreement. As the defendant intended to make subsequent payment to his builder from and out of the sale proceeds, and since due to the plaintiffs' default to perform their part of the contract, this defendant could not pay the builder, and consequently, the builder terminated the contract, and had returned only Rs.7.0 lakhs as against a payment of Rs.10.0 paid by this defendant as stated supra.

- The plaintiffs were never ready and willing to pay the balance sale consideration, despite several demands made by this defendant. They did not have requisite funds to perform their part of the contract.
- Due to breach of contract by the plaintiffs, the first defendant could not service his debt to the bank and redeem the suit property in time. He was forced to pay Rs.8.80 lakhs towards the repayment of loan liability and redeemed the mortgage.
- The sale agreement dated 21.07.2005 stands automatically terminated on



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21.10.2005. The plaintiffs have waived and abandoned their contractual right and cannot keep the contract alive for eternity. It is in these circumstances, this defendant forfeited Rs.2.0 lakhs towards liquidated damages and returned Rs.8.0 lakhs through a cheque along with his reply notice, but that was refused. Again on 07.12.2005, he issued a demand draft for Rs.8.0 lakhs, drawn in favour of the first plaintiff, and sent the same along with the reply notice dated 02.03.2006. This demand draft was not accepted and was returned, but the plaintiffs have concealed this fact in their plaint.

- Be that as it may, this defendant had deposited a fixed deposit receipt issued by M/s City Union Bank for Rs.10.0 lakhs to the credit of the suit (though there was some initial confusion about the deposit of this money).
- In fitness of things, the plaintiffs ought to have challenged that the termination of contract by the first defendant with a specific prayer to that effect. The plaintiffs cannot enforce the contract at the time of their convenience as it would cause irreparable injury and hardship to this defendant. Indeed, this defendant had dealt with the suit property since the termination of the contract and sold the property to defendants 2 and



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3, who have since their purchase have made major improvements to it.

This apart, the value of the property too has increased manifold now.

The plaintiffs have come to the court with unclean hands and they are not entitled to the discretionary and equitable remedy of specific performance.

- So far as the prayer for alternate relief of damages is concerned, the plaintiffs have not explained the damage they had suffered establish how they are entitled to damages. On the other hand, it was the first defendant who suffered damages due to the breach of contract by the plaintiffs.

Pleading thus, the first defendant has raised a counter claim of Rs.15.0 lakhs as damages.

4. Toeing the line of defence of the first defendant, the defendants 2 to 4 in their written statement have pleaded as below:

- On 05.02.2007 defendants 2 and 3 had entered into a sale agreement with the first defendant for the purchase of the suit property for a total consideration of Rs.96.0 lakhs and that under the agreement they had paid Rs.4.0 lakhs as advance, and upon payment of the entire sale



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consideration, the first defendant executed a sale deed on 08.12.2008 in favour of defendants 2 and 3.

- Subsequently on 08.06.2011, these defendants had settled the suit property in favour of the 4th defendant. These defendants had made substantial improvements to the property since the purchase.
- Presently the 4th defendant is in occupation of the property. Since the defendants 2 and 3 have paid the full consideration, the suit is not specifically enforceable.

5. The plaintiffs have filed their rejoinder cum written statement to the counter claim of the first defendant, wherein they plead:

- The counter claim is badly barred by limitation. In terms of the reply notice of the first defendant, the suit sale agreement stood terminated even on or before 02.03.2006, and if the first defendant has a right to claim damages, that should have been done within three years at least from 02.03.2006. The counter claim however was raised only on 29.06.2016 and hence is terribly barred by limitation.
- In terms of the sale agreement, the first defendant is under an obligation to sell the property free of encumbrance, but he had never made the



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redeemed the mortgage from his banker. He has not explained why he did not utilise Rs.10.0 lakhs which he had received as advance amount under the sale agreement for discharging the loan and for clearing the encumbrance over the property.

- The plaintiffs' readiness, or their turn to perform their part of the contract would arise only after the first defendant had cleared the encumbrance over the property. When the first defendant is a defaulter, it is absurd for him to plead that the contract stood terminated for the reasons that he had suggested.
- Time is not an essential term of the contract. The first defendant's allegation that he was in dire necessity to avert a distress sale under SARFAESI Act is belied by the fact he was able to hold on the situation for over two years as he finally discharged the loan only on 03.06.2008. This apart, his allegation that the marriage proposal of his daughter came to be dropped by linking it to the alleged default of the plaintiffs to perform their part of the contract is also unsustainable as his daughter got married only after about one and a half year since the date of the suit agreement, in August, 2007.
- The intention of the first defendant is to break the contract and to sell the



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property for a higher consideration. Under the agreement dated 05.02.2007, the first defendant was to sell the property to defendants 2 and 3 for a total consideration of Rs.96.0 lakhs, but the sale deed dated 08.12.2008 that he had later executed in their favour, it is for a sum of Rs.44.0 lakhs. It exposes the first defendant's conduct to suspicion as there is major discrepancy between the sale consideration as stated in the sale agreement with defendants 2 and 3 and the one stated in the sale deed. And the sale consideration stated there is less than the one agreed in the suit agreement.

6.1 On the above pleadings following issues were framed:

- (1) Whether time is of the essence of the Agreement of Sale dated 21.07.2005, entered between the plaintiffs and the 1st defendant, for sale of the schedule property?*
- (2) Whether the plaintiffs are entitled for the relief of specific performance of the Agreement of sale dated 21.07.2005?*
- (3) Whether the plaintiffs are entitled for the relief of permanent injunction restraining the 1st defendant or anybody on his behalf from alienating or encumbering the schedule property to any other person except the plaintiffs?*



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- (4) *Whether the plaintiffs are entitled to seek damages of a sum of Rs.50,00,000/- from the 1st defendant?*
- (5) *Whether the plaintiffs are entitled to claim refund of Rs.10,00,000/- being advance money paid under the Agreement of sale dated 21.07.2005, in case the plaintiffs claim for specific performance is refused by this Hon'ble Court?*
- (6) *Whether defendant nos.2 to 4 can be terms as bonafide purchasers, when they have purchased the schedule property from the 1st defendant, by a sale deed dated 08.12.2008, registered as Doc.No.2798 of 2008, on the file of the Sub Registrar, Mylapore?*
- (7) *Whether the 1st defendant is entitled to claim damages of a sum of Rs.15,00,000/- together with interest @ 18% p.a. from the date of the suit, till the date of realisation, from the plaintiff?*
- (8) *Whether the plaintiffs are entitled for grant of costs of the present suit?*
- (9) *Whether the parties are entitled for grant of any other reliefs?*
- (10) *Is the transfer of the suit property of the first defendant in favour of the other defendants is hit by the doctrine of lis pendence i.e., Section 54 of the Transfer of Property Act, 1882?*



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(11) Whether the 2nd and 4th defendants have spent considerable amount of money on suit premises? If so, whether special equity are in their favour?

(12) Whether value of the suit property has gone up considerably since the date of the Agreement of sale between the plaintiffs and the 1st defendant and if so, whether hardship would be caused by granting relief of specific performance?

(13) Are defendants 2, 3 bonafide purchasers, who have purchased the suit property for valuable consideration. If so, would it be equitable to grant the relief of specific performance sought?

(14) Whether the 1st and 2nd plaintiffs are speculative purchasers, dealing in real estate and if so, is this a bar to the relief of specific performance?

Issues re-cast:

6.2 Of the 14 issues framed, seven issues focus on the entitlement of the either side to the respective reliefs they claim. Four issues pertain to the bonafide of the purchase of the suit property by defendants 2 and 3 from the first defendant vide Ext.D27. The critical issue is Issue No:1 which relates to ascertaining if the time for performance is an essential term of Ext.P2 contract. And, there is



one point where there is a serious bone of contention between both the sides, and on which both sides have adduced evidence and spent considerable time in arguing (as would be seen later), no issue is seen framed. This relates to the readiness and willingness of the plaintiffs to perform their part of the contract.

Hence the issues are re-cast as below:

1. *Whether time is the essence of the Agreement of Sale dated 21.07.2005, entered between the plaintiffs and the 1st defendant, for sale of the schedule property?*
2. *Were the plaintiffs ready and willing to perform their part of the contract?*
3. *Who among the parties here to has committed breach of contract?*
4. *Whether the plaintiffs are entitled for the relief of specific performance of the the contract dated 21.07.2005? Or, to the alternate prayer for refund of advance amount paid thereunder.*
5. *Who among the parties on either side is entitle to damages for breach of contract, and if anyone is so entitled, what is the decree as to the quantum of damages?*
6. *Whether the defendants 2 and 3 are bonafide purchaser for value without notice of the contract between the plaintiffs and*



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the first defendant? And, will the doctrine of lis pendens affect their purchase

7. To what other reliefs are the parties entitled to ?

7. During trial, the plaintiffs had examined one Lakshmi Narayanan as P.W.1. He is the power agent of the first plaintiff, through whom they produced Exts.P-1 to P-27. For the defendants, the first defendant examined himself as D.W.1 and one of his *pendente lite* purchaser, namely the 3rd defendant was examined as D.W.2. Together they have produced Exts. D-1 to D-31.

Arguments for the Plaintiffs:

8. The learned counsel for the plaintiff argued that it is an admitted fact that the plaintiffs and the first defendant had, with one eye and heart, entered into Ext.P2 agreement, dated 02.03.2006, and that its terms are clear, candid and unambiguous. It is not in dispute that Ext.P-2 agreement provides for three months period for performance of mutual contractual obligations. But the principal defence of the first defendant is that (a) the plaintiffs were not willing to perform their part of the contract, and (b) the time for performance stipulated in Ext.P2 is an essential term of the contract, both of which could be



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demonstrated as false. The learned counsel submitted:

- Ex.P13 is the bank account of the 1st plaintiff, and Ext.P14 is the bank-statement relating to the 2nd plaintiff. During the relevant period, as per Ex.P1 and P13, the total amount standing to the credit of the 1st plaintiff varied between Rs.10 lakhs and odd and Rs.5 lakhs and odd. During the same period, the account of the 2nd plaintiff shows that there was Rs.47lakhs available. And, it is also available in evidence that during the same period, the 1st plaintiff was able to raise a sum of Rs.9.0 lakhs Ex.P21 sale. This apart, when the suit was decreed ex parte on 06.06.2011, the said decree directed the plaintiffs to deposit the balance sale consideration within three months from the date of the Order, and on 28.09.2011, the plaintiffs have deposited the entire balance sale consideration, well within the time specified. While law does not require the plaintiffs to jingle the coins before it, the plaintiffs did demonstrate that they, not only have the wherewithal to purchase the property, but also have the ability to perform their part of the contract.
- Readiness and willingness of the plaintiffs will have to be reckoned only after the first defendant had performed his part of the contract. In terms of Ext.P-2 he is required to sell the property free of all encumbrances.



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Admittedly, the suit property was outstanding on a mortgage with Bank of India. And if time were to be the essential term of the contract, then the first defendant ought to have redeemed the suit property from his banker within the stipulated time. Admittedly, the first defendant had not discharged the bank loan and redeemed the mortgage within the stipulated time of three months, even though he had received Rs.10.0 lakhs under Ext.P2 agreement, and chose to redeem the mortgage only on 03.06.2008, about 18 months after the institution of the suit as evidenced by Ex.D11. This implies that even the first defendant had not taken the time stipulated for performance seriously, and hence he is incompetent to lecture on it to the plaintiffs. What is relevant in the context is that the first defendant had received Rs.10.0 lakhs under Ext.P.2 agreement, with which he could have repaid his debt to the bank which was around Rs.8.0 lakhs only at the relevant time. He did not do it.

- The plaintiffs' turn to perform their contractual obligations had arisen only after the mortgage was redeemed on 03.06.2008, their time to perform the same arises only thereafter. But by then the plaintiffs have already instituted the suit. Given the circumstances, the plaintiffs can ignore Ext. P3 legal notice issued by the first defendant informing the



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plaintiffs about the termination of Ext.P2 contract, since the time for performance has arisen only after 03.06.2008, the date of redemption of mortgage over the suit property. Reliance was placed on the ratio in ***M.Chinnaiyan Vs Kasthuri Radhakrishnan & Others.*** [2020-3-LW.351 : 2020(4) CTC 241].

- After the redemption of the mortgage, vide Ext.D11, the defendant did not intimate the the plaintiffs about it. He did not even disclose it in the first written statement that he filed on 06.04.2007. And, only in the additional written statement that he filed on 29.06.2016, the first defendant had disclosed about the redemption of mortgage for the first time. But, by then the plaintiffs had obtained an ex parte decree, and in due deference to the same they had even deposited the entire balance sale consideration before this Court on 28.09.2011.
- Ordinarily, time for performance of a contract involving the sale of an immovable property is not considered as an essential term of the contract. The first defendant, however, pleads certain circumstances to give an effect that the three months time stipulated in the sale agreement was of the essence of the contract. For this, he relies on the communication in



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Ex.D6 dated 01.11.2006, but not one of which finds a place in Ext.P2.

- For contending that the time for performance as stipulated in Ext.P2 is an essential term, the defendant relies on Ext.D1, dated 13.07.2005 a pre-(Ext.P2) agreement, addressed by Radhakrishnan, the then proprietor of the second plaintiff to the first defendant. It provides a payment-schedule which is slightly different from that which is provided in the subsequently executed Ext.P-2 agreement. But when the terms of the contract are reduced to writing without any ambiguity, it is impermissible in law to look to extraneous material such as Ext.D.1 letter to alter the terms of the contract. Sec.91 of the Evidence Act imposes an embargo on it.
- There is considerable amount of suspicion even about the bonafides of the conduct of the first defendant. He had issued Exts.D.2, D3, and D7. The first defendant is entitled to forfeit Rs.2.0 lakhs and return Rs.8.0 lakhs only in the eventuality of the plaintiffs committing breach of his contract, and providing a cause for termination of contract. Ext.D.3 is a pay order dated 07.12.2005 and Ext.D.2 is a cheque dated 09.12.2005. If the property was already been purchased on 07.12.2005, why at all there is a necessity to draw a cheque two days later, on 09.12.2005 and along



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with D.6 notice, the first defendant had issued Ext.D.7 cheque dated 01.03.2006. The cheque numbers of Ext.D2 and D7 show considerable difference and hence, the intend supporting it is suspicious.

- The first defendant is keen to relate the performance of the contract to his obligation to redeem mortgage on the suit property. Ext.P.2 requires that the first defendant must sell the property free of all encumbrances. In this context, the first defendant would plead in his written statement that on the date of agreement the loan outstanding was Rs.7.5 Lakhs, that on the date of written statement it was Rs.6,00,000/-, and on the date of D.11 when he actually discharged the loan, it was Rs.8.80 Lakhs. He will also say that the bank had initiated proceedings under the SARFAESI Act. However, no notice under the SARFAESI Act is produced to demonstrate that the bank was indeed proceeding for a distress sale of the suit property. Indeed, in Ext.D.24 notice dated 27.12.2005 which the bank had issued to the first defendant, there is only a request to pay Rs.1.50 Lakhs.
- In his testimony D.W.1 admits that the bank has granted him another six months period to pay the said sum. This puts the date to June 2006, but if only the first defendant was keen to repay the loan amount, the advance



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amount was available with him to discharge the loan. Indeed, in his cross-examination, the first defendant as D.W.1 lists his list of liabilities and they do not match his allegations in the written statement.

- The next contention which the first defendant has taken in his written statement is that his daughter's marriage was arranged with somebody, and for want of dowry amount payable to the daughter, he could not conduct that marriage. In the cross-examination, he could not give details pertaining to this fact and hence, this is not proved. What is significant here is when the first defendant has received Rs.10,00,000/- as advance under Ex.P.2, and he neither opted to discharge the bank loan nor utilized the funds for meeting his parental responsibilities associated with the marriage of his daughter. Instead, he diverted the funds for the purchase of plots from certain Nirmala Sethuraman. If only the first defendant believe what he now contends, the ordinary course of human conduct would have impelled him to discharge either the bank loan or attend to the obligations associated with his daughter's marriage first. Indeed, if only the first defendant had discharged the mortgage debt, the plaintiff would have even paid the balance sale consideration of Rs.49,00,000/- with which he could have celebrated the marriage of his daughter better.



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Reliance was placed on the authorities in *Mademsetty Satyanarayana Vs G.Yelloji Rao and Others* [(1965) 2 SCR 221 : AIR 1965 SC 1405]; *R.Lakshmikantham Vs Devaraji* [(2019) 8 SCC 62]; *Lala Durga Prasad and Another Vs Lala Deep Chand and Others* [1954 SCR 360 : AIR 1954 SC 75]; *Kushal Infraproject Industries India Ltd., Vs Dalel Singh and Another* along with cases connected thereto [2019 SCC OnLine Del 8832 : (2019) 200 AIC 778 ; (2019) 261 DLT 345; (2019) 176 DRJ 111 : (2021) 1 RCR (Civil) 851]; *D.Kamalavathi Vs P.Balasundaram (deceased) & Others* [2011-1-L.W.940]; *Guruswamy Nadar Vs P.Lakshmi Ammal (Dead) Through LRs and Others* [(2008) 5 SCC 796]; *M.Kaja Nijamuddin Vs A.Rajamani* [2017 SCC OnLine Mad 413] and *Mohana Sundaram Vs Kishan Lal* [2010 SCC OnLine Mad 6211].

Arguments for the First Defendant:

8.1 The learned counsel appearing for the first defendant argued:

- In response to the suit notice Ext.P3 dated 26.02.2006, the 1st defendant had terminated the contract vide Ex.P4 dated 02.03.2006. This



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termination was not independently challenged and without challenging the termination, the plaintiffs are not entitled to maintain the suit for specific performance. Reliance was placed on the ratio in ***I.S.Sikandar (Dead) by LRs. Vs K.Subramani and Others*** [(2013) 15 SCC 27].

- Time is of the essence of Ext.P2 contract, even though ordinarily it is considered otherwise. But time may be made an essential term, and whether it so made can either be gathered from the very contract, or from other attending circumstances. Reliance was placed on the ratio in ***Chand Rani (Dead) by LRs Vs Kamal Rani (Dead) by LRs*** [(1993) 1 SCC 519]. In the instant case the first defendant was in dire need of money (a) to discharge the housing loan vis-a-vis the property in question with M/s. Bank of India and to save the property from SARFAESI proceedings; (b) for arranging an alliance for his daughter; (c) to buy an apartment, and (d) to educate his son. Now, all these facts are known to the plaintiffs and this is spoken to by the son of the 1st plaintiff, who examined himself as P.W.1.
- The plaintiffs were never ready and willing to perform their part of the contract.



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8.2 Expanding the contention of the first defendant as to why time for performance ought to be treated as an essential term of the contract, the learned counsel argued:

- So far as the present case is concerned, P.W.1 has categorically stated that the property was outstanding on a loan with M/s. Bank of India, that the title deeds of the property were given as security for the said loan, and that his father was taken to the bank by the first defendant to inspect the original title deeds. And, if the debt is not serviced the property was in danger of being sold in a distress auction sale, and this is proved by Ex.D24 dated 27.02.2005. He was keen to avert the distress sale through auction under SARFAESI Act and to enable him to give vacant possession with clear title, the 1st defendant had vacated from the suit property and moved to a rented accommodation.
- Earlier, on 05.02.2007, Vide Ex.P19, the 1st defendant had entered into a certain agreement for the purchase of an apartment for a total consideration of Rs.96.0 lakhs. Due to the breach of contract on the part of the plaintiffs, the agreement stood terminated, spoiling the 1st defendant's dream of buying an apartment for himself.



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- This apart, the 1st defendant needed finances to conduct the marriage of his daughter. P.W.1 indeed admits it in his cross-examination that the first defendant's daughter at the relevant time was of marriageable age. Ext. D23 is the invitation card that shows that the marriage indeed was celebrated in August, 2007.

It may be that they are not recited in Ext.P2 = Ext.D12 sale agreement, but given the fact that P.W.1 concedes that he was aware about them, is adequate enough circumstance to conclude that the 1st defendant was in urgent need to raise requisite finance by sale of the suit property.

8.3 Shifting the focus to the aspect on readiness and willingness of the plaintiffs to perform their part of the contract, it was argued:

- So far as plaintiffs' readiness and willingness are concerned, they have produced Exts. P9 to P14 of which Ext.P14 relates to the bank account of the 2nd plaintiff, and the others are savings bank accounts, which the 1st defendant maintained with the Post Office. Not one of these documents show that the plaintiffs indeed were ready with the entire balance sale consideration to complete the sale when the 90 days time stipulated for performance of the contract had expired. P.W.1, on his part, admits in



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his cross-examination that they knew that the contract had to be completed within 90 days and that they did not pay the balance sale consideration on or before the time fixed for completing the contract and that even after the termination of the sale agreement under Ext.P4, dated 02.03.2006 and even on the date of Ext.P5, dated 17.03.2006, they did not have the requisite funds with them. Indeed, under Ext.P21, the first plaintiff sold a property along with another and mobilised Rs. 8.0 lakhs through the sale proceeds, but that was on 24.03.2006, some five months after the expiry of the time for performance. When the plaintiffs fail to establish their readiness and willingness right from the time stipulated for performance, the plaintiffs will not be entitled to the discretionary relief in equity.

- After the termination of Ext.P2 contract, the 2nd plaintiff had nominated the 1st plaintiff for purchasing of the entire property vide Ex.P20 dated 04.05.2006. P.W.1 admits that at no point of time, to his knowledge, the 2nd plaintiff possessed funds and also confesses to the fact that he has not verified any of the books of accounts of the 2nd plaintiff. The 2nd plaintiff himself is the proprietor of a construction business, but P.W.1 states that



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to his knowledge, he never had an office nor any other establishment to support his business. In other words, it can be said that the 2nd plaintiff was heading a business but without any business.

Reliance was also placed on the authorities in *N.Thirugnanam (Dead) by LRs Vs Dr.R.Jagan Mohan Rao & Others* [1995 (5) SCC 115]; *Lourdu Mari David and Others Vs Louis Chinnaya Arogiaswamy and Others* [1996(5) SCC 589]; *A.C.Arulappan Vs Ahalya Naik* [(2001) 6 SCC 600] ; *Mahender Pratap Vs Krishan Pal and Others* [(2003) 1 SCC 390]; *Umabai and Another Vs Nilkanth Dhondiba Chavan (Dead) by LRs and Another* [(2005) 6 SCC 243]; *Citadel Fine Pharmaceuticals Vs Ramaniyam Real Estates Private Limited and Another* [(2011) 9 SCC 147]; *K.Nanjappa Vs R.A.Hameed and Others* [(2016) 1 SCC 762]; *A.Kanthamani Vs Nasreen Ahmed* [(2017) 4 SCC 654]; *Sushil Kumar Agarwal Vs Meenkashi Sadu and Others* [(2019) 2 SCC 241]; *Atma Ram Vs Charanjit Singh* [(2020) 3 SCC 311]; *C.S.Venkatesh Vs A.S.C.Murthy* [(2020) 3 SCC 280]; *Bhavyanth Vs K.V.Balan (Dead) through LRs* [(2020) 11 SCC 790]; *Aniglase Yohannan Vs Ramlatha and Others* [AIR 2005 SC 3503]; *Shamsher Singh and Others Vs Rajinder Kumar and*



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Ors. [(2015) 5 SCC 531]; ***Speech and Software Technologies (India) Private Limited Vs Neos Interactive Limited*** [(2009) 1 SCC 475]; ***Mohinder Kaur Vs Sant Paul Singh*** [(2019) 9 SCC 358]; ***Satya Jain (Dead) Through LRs and Others Vs Anis Ahmed Rushdie (Dead) Through LRs and Others*** [(2013) 8 SCC 131]; ***V.Israel Jeyakumar Vs P.Rasalraj*** [2020 (3) MWN (Civil) 276]; ***M.Chinnaiyan Vs. Kasthuri Radhakrishnan and Ors.*** [2020 (4) CTC 241]; ***Man Kaur (Dead) by LRs Vs Hartar Singh Sangha*** [(2010) 10 SCC 512]; ***Mehboob-Ur-Rehman (Dead) Through LRs Vs Ahsanul Ghani*** [(2019) 19 SCC 415]; ***C.S.Venkatesh Vs A.S.C. Murthy (Dead) by LRs and Others*** [(2020) 3 SCC 280]; ***Madhukar Nirvutti Jagtap and Others Vs Pramilabai Chandulal Parandekar and Others*** [(2020) 15 SCC 731]; ***Rajiah Nadar Vs Manonmani Ammal*** [1999 (1) CTC 245 : 1999-1-L.W. 536]; ***Shenbagam & Others Vs KK.Rathinavel*** [2022 LiveLaw (SC) 74] and ***G.T.Girish Vs Y.Subba Raju (Dead) by LRs and Another*** [2022 LiveLaw (SC) 61].

9. So far as defendants 2 and 3 are concerned, they are *pendente lite* purchasers of the suit property from the 1st defendant. Indeed, the 1st plaintiff put defendants 2 and 3 on notice vide Ex.P23 dated 26.08.2008. Mr.Aniruddh



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Krishnan added that in paragraph No.12 of the amended plaint, the plaintiffs admit that the real estate price has been witnessing unprecedented rise and this applies not just to the plaintiffs, but also to the defendants. Learned counsel also brought to the notice of this Court that P.W.1 has conceded in cross-examination dated 24.09.2007 that the value of the suit property would be around Rs.2.5 crores to Rs.3 cores as at the time when he testified before the Court. Reliance was made to ***Saradamani Kandappan Vs S.Rajalakshmi and Others*** [(2011) 12 SCC 18]. The learned counsel for defendants 2 and 3 submitted that no concrete statement or materials is disclosed even in the chief affidavit of P.W.1 about their ability to perform their part of the contractual obligations. Reliance was also placed on the ratio in ***Rajendran and Another Vs S.V.Natarajan and Others*** [2013 SCC OnLine Mad 538]; ***Vijay Kumar and Others Vs Om Parkash*** [(2019) 17 SCC 429]; ***Janki Narayan Bhoir Vs Narayan Namdeo Kadam*** [(2003) 2 SCC 91]; ***Thomson Press (India) Limited Vs Nanak Builders and Investors Private Limited and Others*** [(2013) 5 SCC 397].



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Reply Arguments for the Plaintiffs:

10. So far as Ext.P20 communication is concerned, it is a correspondence between the 2nd plaintiff and the 1st defendant. It does not affect the cause of action since the 2nd plaintiff has joined the 1st plaintiff to institute the suit. This is essentially internal to the plaintiffs and nothing more.

11. So far as the arguments that the plaintiffs ought to have challenged the termination of the contract pointedly with a specific prayer is concerned, based on the ratio in *I.S.Sikandar (Dead) by LRs. Vs K.Subramani and Others* [(2013) 15 SCC 27] is concerned, neither in Ex.P.4 reply notice nor in Ex.D.6 notice from the defendant it was alleged that the first defendant had terminated the contract. Instead, it is his contention that owing to non performance of contract by the plaintiffs, the contract itself has become void. When the defendant has only spelt out certain consequences that might visit the validity of the contract based on the allegation of non performance, the same is only his construction of the contract, and not a conscious decision to terminate the contract. Hence, there is no need for seeking declaration. This apart when a contract is terminated before the time for its performance has arrived, the



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plaintiffs can ignore it vide ratio in *Chinnaiyan case* [2020-3-LW 351 : 2020

(4) CTC 241] referred to supra.

Discussion & Decision:

Issue No:6

12. Admittedly, the defendants 2 and 3 have purchased the suit property during the pendency of the suit under Ext.D27, dated 08.12.2008 from the first defendant, and therefore, it is immaterial whether they are *bonafide* purchasers for value without notice of Ext.P2 agreement or not, for the doctrine of *lis pendens* would makes the same irrelevant, and this implies that the fate of the defendants 2 and 3 hinges on the outcome of the dispute between the plaintiffs and the first defendant. Having stated thus, D.W.2 did admits that he knew something about the Ext.P.2 contract, which implies that these defendants did have notice about the agreement before the sale. Issue 6 is answered accordingly.

Issue No: 1

13. This issue is critical to both sides followed by the Issue No.2, which relates



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to readiness and willingness of the plaintiffs to perform their part of the contract.

14. The plaintiffs, inasmuch they have not indicated their readiness and willingness to perform their part of the contract on or immediately after the expiry of 90 days time stipulated for performance under Ext.P2, necessarily will have to canvass the traditionally held view that ordinarily in a contract for the sale of an immovable property, time is not considered as an essential term of the contract, for at a time this presumption originated, land price did not show a tendency to increase steeply in a short period. The foundation of this presumption is found to be on a slippery turf these days, as the land price do not remain reasonably stable even during a short period, with private and public investments on developments competing to affect the market price for lands. See: ***Saradamani Kandappan Vs S.Rajalakshmi and Others*** [(2011) 12 SCC 18]. But then or now, before or after the dictum of ***Saradamani Kandappan***, time for performance in a contract for the sale of immovable property can still be made an essential term of the contract. The point is whether there is anything in evidence to indicate that the plaintiffs in this case knew beforehand



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that time was of the essential term of Ext.P2 contract?

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15. Here, the first defendant brings in Ext.D1 dated 13.07.2005, a letter addressed by Radhakrishnan, the proprietor of the second plaintiff concern (while in law, a proprietary concern does not have a juristic personality) to the first defendant. It does disclose the offer of the plaintiffs to pay Rs.10.0 lakhs a week before the registration of the sale deed, the same does not gets reflected in Ext.P2 contract.

16. Where the terms of any contract, grant, or other disposition of property is reduced to writing, then no evidence can be looked into for altering any of the terms of the contract, Vide Sec.91 of the Evidence Act. And, where any ambiguity in understanding any material term of the contract is found to exist then it may be permissible for the court to look to attending circumstances which include relying on any pre-contractual correspondences between the contracting parties during negotiations. Turning to Ext.P2 contract, this court does not find any of its term indicating any ambiguity in understanding. Necessarily this court cannot look to Ext.D1.



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17. It is in these circumstances, the Court may have to consider if it needs to stick to the traditionally held presumption that time for performance of a contract for the sale of an immovable property is not to be treated as an essential term of a contract for the sale of an immovable property, or should follow the *Saradamani Kandappan* view. While the Court can take judicial notice that the value of land are not stable as it used to be, and that land price does exhibit tendency to escalate even within a short time broadly, yet in a given case it can still be a question of fact. It depends on the time difference between the date of agreement, and the date on which the plaintiff notifies his or her readiness to perform the contract to the defendant. Turning to the facts of this case, Ext.P-2 agreement was made on 21.07.2005. Ext.P3 suit notice was issued on 26.02.2006, barely some five months after the date of expiry of 90 days stipulated for the performance of contract, and the suit itself was filed on 27.01.2007. Whether the value of the suit property had undergone a steep price escalation between October, 2005 when the contract should have been performed, and till the issuance of Ext.P.3 notice, and also till January, 2007 when the suit was laid? It requires some evidence how the market behaved in



the locality where the suit property is situated, but there is none on record.

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18. Moving next to the circumstances which the first defendant lists for sustaining his contention that the time stipulated in Ext.P2 is an essential term of the contract, this Court has its reservation in accepting it. And, they are explained:

- His first contention is that the suit property faced a distress-auction- sale under a SARFAESI proceedings at the instance of M/s Bank of India who was holding the property as a security for the repayment of the housing loan obtained by the first defendant. He had produced Ext.D24, communication from the bank, dated 27.12.2005, which is essentially a reminder to the first defendant to pay his EMIs duly to avoid declaring his loan account as NPA. There is nothing to indicate that a distress sale of the property was imminent at that point of time.
- Secondly, it may be that the plaintiffs knew about the fact that property was outstanding on a mortgage with the bank, but does it imply that they knew the urgency of the first defendant to discharge the loan? And, can the knowledge of an encumbrance on the property to be purchased will automatically clothe the plaintiffs with the knowledge that they shared



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the same anxiety of the first defendant to discharge the loan first? And, on facts, the first defendant had received Rs.10.0 lakhs under Ext.P2 agreement, and if only his top priority-anxiety was to discharge his loan and redeem the property, he had all the amounts to do it. But he apparently shifted his priority to book an apartment. That obviously was his priority. And he discharged the loan at least a year after the suit was laid, on 03.06.2008, vide Ext.D11. This implies that that the threat perception of losing the property in a SARFAESI is exaggerated since the first defendant himself did not believe that it was imminent.

- The next ground which the first defendant puts forward is about his urgency to arrange the marriage of his daughter. On this aspect while PW1 merely admits that the first defendant has a daughter of marriageable age, still it is not adequate to establish that it was one of his top priority-anxiety to make time for performance as stipulated in Ext. P2 agreement an essential term of contract.
- The third aspect which the 1st defendant pleads to make the time for performance an essential term of contract was that, he had booked an apartment and that owing to default in performance of contract by the plaintiffs his contract with his builder was forced – terminated by latter.



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This, to this court, is too remote an event to render the time for performance an a essential term of contract, more so when there is nothing on record to indicate that the plaintiff knew about the contract which the first defendant had entered into with the latter's builder.

This Court therefore, holds that the 90 days time stipulated in Ext.P2 for the performance of contract cannot be held to be an essential term of the contract, since the conduct of the first defendant, who has pleaded it, does not seem to indicate that he considered it so. Issue No:1 is decided against the first defendant.

Issue No: 2 and 3

19. Ext.P2, contract is essentially executory in character with reciprocal promises to be performed by both, but in a certain order. Turning to the order of performance, as per Ext.P2 agreement, the first defendant is required to free the property of the encumbrance – the mortgage with Bank of India, as he has undertaken as per clause 3 & 6 therein that he would sell the property free of encumbrance. Till such time the first defendant redeems the mortgage, the plaintiffs can wait for their turn to perform. Hence, even though the first



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defendant vide Ext.P4 reply notice dated 02.03.2006, has informed the plaintiff that the contract was terminated, but if in terms of Ext.P2, the time for performance for the plaintiff was to arise only after the first defendant had cleared the encumbrance on the property, then the plaintiffs can ignore the same and insist for the performance of the contract by the first defendant. See: ***V.K.Kumaraswami Chettiar & Others Vs P.A.S.V. Karuppuswami Moopanar*** [AIR 1953 Mad 580] and followed in ***M.Chinnaiyan Vs. Kasthuri Radhakrishnan & Ors.*** [2020 (4) CTC 241].

20. How the first defendant proposed to redeem the mortgage is a challenge that belongs to him entirely, since it is he who had made a loud and unequivocal promise to sell the property free of all encumbrance in Ext.P2 contract. Indeed, he even had Rs.10.0 lakhs with him which was adequate enough to discharge his loan liability of around Rs.7.0 lakhs on the date of Ext.P2. Therefore, he is not seen ready to perform his part of the contract at any time before the filing of the suit. As stated earlier, the plaintiffs can wait for their turn to perform. However, there is one issue that they still need to negotiate: Whether they are ready and willing to perform their part of the contract?



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21. The readiness and willingness expected of the plaintiffs to perform their part of the contract is a statutory mandate, and it cannot be made to depend on the readiness of the defendant to perform his/her part of the contract. In other words, if the defendant has to perform something in furtherance of his obligation as a precondition to enable the plaintiffs to perform their part of the contract, then it benefits the plaintiffs only to a limited extent of delaying their performance till the defendant has fulfilled the precondition, and not entirely since the plaintiffs must still need to demonstrate, when disputed, that they have always been always ready and willing to perform their part of the contract right from the date of the agreement and at all times since then.

22. This Court has found that the first defendant has not fulfilled the precondition and cleared the encumbrance over the property to facilitate performance by the plaintiffs, but were the plaintiffs ready and willing, with or without the first defendant not fulfilling the condition precedent? This brings to sharp focus if the plaintiffs were in possession of requisite funds sufficient to pay the balance sale consideration of Rs.49.0 lakhs plus the expenses necessary for registering the sale deed?



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23. To prove their readiness to perform their part of the contract, the plaintiffs rely on the following sources:

- a) Exts. P-9 to P-11, saving banks account which the first plaintiff has been maintaining in the post office, either in her individual name, or as a first holder along with another. The combined total sum available on all the three accounts as on 21.10.2005, the date on which the time for performance as stipulated in Ext.P2 agreement expired, was around Rs.8,400/-.
- b) Ext.P13 is the passbook of a savings bank account which the first defendant had with M/s Indian bank. This document shows that on 21.10.2005, she had a balance of about Rs.7.05 lakhs, which within 4 days was reduced to around Rs.5.04 lakhs.
- c) Ext.P-14 is a bank pass book of the account which the second defendant maintained. According to this document, as on 21.10.2005, the balance available to the credit of this account is a mere Rs.943/-. It also shows that by 16.11.2005 it increases to Rs.38,57,752/- but by 21.12.2005 it



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was reduced to Rs.7.55 lakhs/-.

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- d) Ext.P21 sale deed which the first plaintiff had executed as regards some of her property through which she had mobilised Rs.8.0 lakhs.

These accounts show that at no point of time was the plaintiffs ready to perform the contract. Now, in this backdrop, the proprietor of the second plaintiff has executed Ext. D20, requiring the first plaintiff to purchase the entire property herself. But P.W.1 concedes that at no point of time was the first plaintiff ever in possession of the requisite finance for performing her contractual obligation.

24. What are the implications now? This court finds that neither side is ready to perform their respective contractual obligations, and both are at breach in performing the same. It is a case of pot calling kettle black, with both sides volley blame on the other, but neither side is free of any blames.

25. But the odds are always against the plaintiff, since in a suit for specific performance it is their readiness and willingness matter the most to the court in weighing whether the plaintiffs qualify for the grant of an equitable remedy.

As found earlier, the plaintiffs were never ready and willing to perform their



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part of the contract. Issue 2 is decided against the plaintiffs, and so far as issue 3 is concerned, the honours are shared by both the plaintiffs and the first defendant.

Remedies:

26. Now it is a foregone conclusion that the plaintiffs would not be entitled to a decree for specific performance. And since the plaintiff are found to be in breach they cannot claim any damages either. For the same reason the first defendant too will not be entitled to any damages and his counter claim is also liable to be dismissed.

27. The only question left is whether the plaintiffs would be entitled to the return of Rs.10.0 lakhs which they had paid as advance? Of this, the first defendant has always shown his readiness to return Rs.8.0 lakhs, after forfeiting the remaining Rs.2.0 lakhs as liquidated damages. Whether the first defendant is entitled to forfeit it? Since this Court has found that the first defendant is not free of blames, and since the first level breach was committed by him when he



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did not make available the suit property free of encumbrance on the date stipulated for performance, it will be inequitable for him to forfeit Rs.2.0 lakhs towards damages. Damages are meant for compensating the one who is a victim of the breach of contract by the other, and not intended for benefiting the one who by his omission has contributed to it. The first defendant, therefore, shall return the entire advance amount of Rs.10.0 lakhs to the plaintiffs. The first defendant will be further liable to pay interest on Rs.2.0 lakhs at 7.5% from 07.12.2005, (the date on which first defendant purchased the demand draft for Rs.8.0 lakhs) till he deposits Rs.10.0 lakhs in the court. His liability to pay interest on Rs.8.0 lakhs does not arise, as he had tendered the same to the plaintiffs, which the plaintiff refused.

28. In conclusion, the suit is partially decreed and the first defendant is directed to pay the plaintiffs a sum of Rs.10.0 lakhs, with interest at 7.5% per annum on Rs.2.0 lakhs from 07.12.2005 till the time the amount was deposited in the court, and as to the rest the suit is dismissed. The counter claim too is dismissed. Since, both the parties are found to be blameworthy, there is no order as to costs.

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Index : Yes / No

Speaking order / Non speaking order
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APPENDIX

I. Witnesses :

<i>Plaintiffs :</i>	
P.W.1	V.K.Lakshmi Narayanan
<i>Defendants :</i>	
D.W.1	N.Venkatramani (1st defendant)
D.W.2	C.R.Chandrasekaran (3rd defendant)

II. Exhibits :

<i>Plaintiffs :</i>		
Ex.P1	27.10.2016	General Power of Attorney executed by Mrs.Kamakshi Kumaran in favour for Mr.V.K.Lakshmi Narayanan
Ex.P2	21.07.2005	Agreement of Sale entered between Mr.N.Venkatramani and Mrs.Kamakshi Kumaran and Mr.V.Radhakrishnan
Ex.P3	26.02.2006	Legal notice to the first defendant by the plaintiffs 1 & 2
Ex.P4	02.03.2005	Reply notice by the defendant counsel
Ex.P5	17.03.2006	Rejoinder to defendant's counsel
Ex.P6	09.11.2006	Legal notice by the plaintiff's counsel
Ex.P7	15.12.2006	Complaint given by the plaintiff to the Commissioner of Police against the first defendant
Ex.P8	26.01.2007	Power of Attorney executed between the plaintiffs
Ex.P9		Post Office Passbook of Mrs.Kamakshi Kumaran
Ex.P10		Post Office Monthly Savings Scheme Passbook of Mrs.Kamakshi Kumaran
Ex.P11		Post Office Monthly Savings Scheme Passbook of Mrs.Kamakshi Kumaran
Ex.P12		Post Office Monthly Savings Scheme Passbook of Mr.V.R.Kumar & Mrs.K.K.Kamakshi
Ex.P13		Indian Bank Passbook of Mrs.Kamakshi Kumaran
Ex.P14		Statement of Accounts of M/s.Sree Builders from



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		01.04.2005 to 04.09.2006 in UCO Bank, Adayar, Chennai
Ex.P15	08.06.2011	Settlement Deed executed by the second and third defendants in favour of the fourth defendant
Ex.P16	07.01.2013	Encumbrance Certificate for the period 01.01.2008 to 06.01.2013
Ex.P17	02.01.2014	Memorandum of Grounds of Appeal in OSA.No.166 of 2014 filed before this Court
Ex.P18	08.08.2014	Paper Publication in English Daily 'Times of India'
Ex.P19	08.08.2014	Paper Publication in Tamil Daily 'Dhinathanthi'
Ex.P20	04.05.2006	Letter addressed to the first defendant by the second plaintiff
Ex.P21	24.03.2006	Sale Deed executed by Mrs.Veena and Mrs.Kamakshi Kumaran in favour of Mrs.V.Vijayalakshmi
Ex.P22	29.10.2007	Paper Publication in English Daily 'The Hindu'
Ex.P23	26.08.2008	Letter addressed to the second defendant by the first plaintiff
Ex.P24	08.12.2008	Sale Deed executed by the first defendant in favour of the second and third defendants
Ex.P25	28.09.2011	Letter addressed to the Registrar General of this Court by the plaintiff counsel enclosing DD for Rs.49,00,000/- in compliance with the direction of this court in C.S.No.82/2007 dated 06.06.2011.
Ex.P26	22.09.2014	Fund Certificate issued by Deputy Registrar (O.S.)
Ex.P27		Website contents of Geeyam Constructions
Defendants :		
Ex.D1	13.07.2005	Letter addressed to the first defendant by the second plaintiff.
Ex.D2	09.12.2005	Cancelled cheque bearing No.774578 for Rs.8.0 lakhs in favour of Mrs.Kamakshi Kumaran
Ex.D3	07.12.2005	Photocopy of cheque bearing No.038164 dated 07.12.2005 for Rs.8.0 lakhs in favour of Mrs.Kamakshi Kumaran
Ex.D4	18.12.2006	Notice issued to the first respondent by the Inspector of Police under Section 91 Cr.P.C.
Ex.D5	20.12.2006	Reply sent to the Inspector of Police by the advocate of the



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		first defendant for the summons issued.
Ex.D6	01.11.2006	Reply to the rejoinder by the first defendant's counsel to the plaintiff counsel
Ex.D7	01.03.2006	Cancelled cheque bearing No.770990 for Rs.8.0 lakhs in favour of Mrs.Kamakshi Kumaran
Ex.D8	04.05.2006	Letter to the first defendant by the second plaintiff
Ex.D9		UCO Bank Statement
Ex.D10	18.08.2012	Death Certificate of Mr.J.Pachiayappan
Ex.D11	03.06.2008	Loan Release Receipt given by Bank of India to the the first defendant
Ex.D12	21.07.2005	Agreement of Sale entered between Mr.N.Venkatramani and Mrs.Kamakshi Kumaran and Mr.V.Radhakrishnan
Ex.D13	18.02.2006	Photocopy of cheque issued to the first defendant by Mr.MG.Venkatasubramaniam for Rs.7.0 lakhs
Ex.D14	26.02.2006	Legal notice issued to the first defendant by the plaintiff's counsel
Ex.D15	02.03.2006	Reply to the plaintiff's counsel sent by the counsel for the first defendant.
Ex.D16	17.03.2006	Letter addressed to the defendant's counsel by the plaintiff counsel
Ex.D17	09.11.2006	Letter addressed to the defendant counsel by the plaintiff counsel
Ex.D18	31.01.2007	Letter addressed to the first defendant ny the plaintiff's counsel
Ex.D19	05.02.2007	Sale Agreement entered between the first defendant and the second defendant
Ex.D20		Receipt for Rs.12,00,000/- towards Court fees and other charges received from the first defendant by his counsel
Ex.D21	09.01.2008	Lodgment schedule for Rs.10,00,000/- by the first defendant's counsel
Ex.D22	22.10.2013	Deposit receipt for Rs.10,00,000/- issued by City Union Bank in favour of the first defendant
Ex.D23	31.08.2007	Wedding invitation card in respect of marriage of first defendant's daughter
Ex.D24	27.12.2005	Letter issued by Bank of Baroda to the first respondent



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		regarding payment of housing loan
Ex.D25	18.12.2006	Notice issued to the first respondent by the Inspector of Police under Section 91 Cr.P.C.
Ex.D26		Affidavit of declaration by Mr.V.Rahul
Ex.D27	08.12.2008	Sale Deed executed by the first defendant in favour of respondents 2 to 4.
Ex.D28	18.08.2018	Notice issued by the counsel for the first defendant to the counsel for the defendants 2 to 4 requiring to produce certain documents before the learned Master II
Ex.D29	24.10.2018	Reply notice sent by the counsel for the defendants 2 to 4 to the counsel for the first defendant.
Ex.D30	12.11.2018	Letter sent by the counsel for the first defendant to the M/s.A.K.Law Chambers
Ex.D31	23.11.2018	Letter addressed to the fourth defendant by City Union Bank

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