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A.S.Nos.9 of 2014 & 266 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.03.2023

Pronounced on : 28.04.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE P.B. BALAJI

A.S.Nos.9 of 2014 & 266 of 2013

and

M.P.Nos.1 of 2014 & 1 to 3 of 2013

A.S.No.9 of 2014 :

1.Kuttub K.Z.
2.Ibrahim K.Z.
3.Yunub K.Z.

... Appellants

Vs.

1.A.Selvaraj
2.Moyyed K.Z.

... Respondents

Prayer : Appeal Suit filed under Section 96 of Code of Civil Procedure against the judgment and decree dated 18.06.2013 in O.S.No.825 of 2007 on the file of the IV Additional District and Sessions Court, Coimbatore.



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For Appellants : Mr.S.Parthasarathy
Senior Counsel
for Mr.P.Dinesh Kumar

For R1 : Mr.V.Raghavachari
Senior Counsel
for Mr.A.R.Balaji

R2 : Left

A.S.No.266 of 2013 :

A.Selvaraj ... Appellant
Vs.

1.K.Z. Kuttub
2.K.Z. Ibrahim
3.K.Z. Yunub
4.K.Z. Moyyed ... Respondents

Prayer : Appeal Suit filed under Section 96 read with Order 41 Rule 1 of Code of Civil Procedure against the judgment and decree dated 18.06.2013 in O.S.No.825 of 2007 on the file of the IV Additional District and Sessions Court, Coimbatore.

For Appellant : Mr.ARL.Sundaresan
Senior Counsel
for Mr.A.R.Balaji

For R1 to R3 : Mr.S.Parthasarathy
Senior Counsel
for Mr.P.Dinesh Kumar

R4 : No appearance



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COMMON JUDGMENT

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S.S. SUNDAR, J.

The plaintiff in the suit in O.S.No.825 of 2007 on the file of the IV Additional District and Sessions Court, Coimbatore, is the appellant in A.S.No.266 of 2013 and the defendants 1 to 3 in the same suit in O.S.No.825 of 2007 are the appellants in A.S.No.9 of 2014. Since both the appeals arise out of the common judgment and decree of learned IV Additional District Judge, Coimbatore, in the suit in O.S.No.825 of 2007, these two appeals are disposed of by this common judgment.

2.For convenience, parties are referred to as per their litigating status before the trial Court.

3.Brief facts that are necessary for the disposal of both the appeals are as follows :



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3.1.The appellant in A.S.No.266 of 2013 filed the suit in O.S.No.825 of 2007 for specific performance of an agreement of sale dated 15.11.2006 and for consequential reliefs including a prayer for mandatory injunction directing the defendants to deposit the original documents of title in respect of the suit property.

3.2.It is the case of the plaintiff that the defendants 1 to 4 are the joint owners of the suit property measuring an extent of 2.15 Acres comprised in two Survey Fields in Chettipalayam Village, Coimbatore South Taluk, Coimbatore District. It is stated that the plaintiff approached the defendants to purchase the suit property and after negotiation, the plaintiff and defendants entered into an agreement of sale dated 15.11.2006 for a consideration of Rs.49,00,000/-. As per the sale agreement, a sum of Rs.5,00,000/- was paid as advance on 15.11.2006 and the plaintiff agreed to pay a further sum of Rs.10,00,000/- on or before 23.11.2006. It is the common case of both sides that time for performance of the contract was 3½ months, i.e., on or before 28.02.2007. As per the agreement, in case the



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balance of sale consideration is not paid on or before 28.02.2007, the plaintiff, by way of penalty, is required to pay interest @ 24% p.a. upto 31.05.2007 and the parties agreed that the agreement would stand cancelled without further notice to the plaintiff in case the plaintiff does not pay the balance of sale consideration on or before 31.05.2007.

3.3.It is the case of the plaintiff that he paid a further sum of Rs.10,00,000/- on 19.11.2006 and the 4th defendant, for himself and on behalf of other defendants, gave a receipt for the said sum of Rs.10,00,000/-. In the plaint, it is stated that, despite readiness and willingness by plaintiff to pay the balance of Rs.34,00,000/-, the defendants willfully infringed the terms of agreement by not co-operating with the plaintiff in completing the sale. It is further stated that, after repeated demands, the plaintiff sent a telegram dated 24.05.2007 requesting all the defendants to come and receive the balance of sale consideration and execute the sale deed in his favour. It is also contended by the plaintiff that he called upon the defendants to come to the Registrar's Office on 28.05.2007 and that the plaintiff though was waiting with the balance sale consideration from 09.30 a.m. in the office of



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the Sub-Registrar, Kinathukadavu, the defendants did not turn up till 05.00 p.m. on that date. It is further stated that the defendants did not respond to the telegraphic notice and that the plaintiff was constrained to issue a lawyer's notice dated 01.06.2007 to the defendants and also effected a paper publication to inform the public about the agreement the plaintiff had with defendants. The plaintiff admitted in the plaint that the notice sent to defendants 1 to 3 were returned unserved. It is also pleaded in the plaint that, after paper publication, the defendants met the plaintiff and assured him to execute the sale deed, but they did not turn up thereafter.

4.The suit is contested by all the defendants. The 4th defendant filed a written statement in June, 2008. It appears that there was an *ex parte* decree as against defendants 1 to 3. Later, the order setting defendants 1 to 3 *ex parte* was set aside and defendants 1 to 3 filed a detailed written statement. In the written statement filed by defendants 1 to 3, it is seen that defendants 1 to 3 specifically denied the receipt of Rs.10,00,000/- which was paid by plaintiff on 19.11.2006. It is the case of defendants 1 to 3 that the 3rd defendant was badly in need of funds to meet out his urgent requirements in



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business and that therefore, the defendants 1 to 4 had agreed to sell the property, even though the value of the property was something more than the consideration that was shown in the suit agreement.

5. Defendants 1 to 3 denied every averment in the plaint. Apart from questioning the payment of further sum of Rs.10,00,000/- by the plaintiff, it is mentioned that no telegraphic notice nor further notice issued by the plaintiff reached the defendants 1 to 3, as they are all residing in Chennai where they are also carrying on business. It is the specific case of defendants 1 to 3 that the plaintiff is aware of the fact that the defendants are residing in Chennai and that the Coimbatore address is referred to in the sale agreement with a motive. It is contended by defendants 1 to 3 that the defendants hesitated to sign the agreement for the reason of wrong address and pleaded that the plaintiff explained to them that it was by mistake which would be rectified while preparing the sale deed. It is specifically stated in the written statement filed by defendants 1 to 3 that they did not receive nor did they have any knowledge about the reply telegram, pre-suit notice and the reply thereto. Since the plaintiff refused to come forward to pay the



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balance as stipulated in the agreement and also did not come forward to pay the same with interest for the extended period, it is contended that the plaintiff was not ready and willing to perform his part of the contract under the suit agreement.

6.Further, it is stated in the written statement filed by defendants 1 to 3 that 4th defendant is not an authorised agent of defendants 1 to 3 and therefore, the further amount of Rs.10,00,000/- paid by plaintiff to the 4th defendant is not binding on defendants 1 to 3. Since the telegram and legal notice were all sent to Coimbatore, defendants 1 to 3 pleaded that they did not have knowledge about the telegram, reply telegram and pre-suit notice and reply thereto. It is contended by the defendants 1 to 3 that, after the expiry of time stipulated in the agreement, they were requesting the 4th defendant to arrange for sale of suit property to some other party without further delay stating that they were in urgent need of money. Admittedly, the suit summons were sent to defendants 1 to 3 as if they were residing at Coimbatore and this has resulted defendants 1 to 3 being set *ex parte*.



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7. Referring to all the facts, the defendants pointed out that they were constrained to file separate written statement after engaging a different counsel. It is admitted that the 4th defendant sent copies of plaint and written statement filed by the 4th defendant. Since it is stated in the plaint that a further payment of Rs.10,00,000/- was received by 4th defendant on 19.11.2006 and the 4th defendant had denied the receipt of Rs.10,00,000/- on 19.11.2006, it is contended that the defendants 1 to 3 then only felt the need to engage a counsel on their own. Therefore, in the written statement, defendants 1 to 3 mentioned that they did not know whether the sum of Rs.10,00,000/- was paid to the 4th defendant and that 4th defendant did not inform defendants 1 to 3 about receipt of any further advance as pleaded in the plaint. It is the specific case of defendants 1 to 3 that, from 19.11.2006 till June 2010, the defendants 1 to 3 had been kept in dark about the alleged payment of Rs.10,00,000/-.

8. It is also contended by defendants 1 to 3 that, as per Clause 4 of suit agreement, the plaintiff was under obligation to pay the balance on or before



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28.02.2007 and the performance can be extended till 31.05.2007 only if plaintiff was ready and willing to pay interest @ 24% p.a. for the balance sale price. Stating that the plaintiff nowhere in the notice or in the plaint expressed his willingness to pay interest for the belated payment of balance sale price, it is contended by defendants 1 to 3 that plaintiff was not ready and willing to perform his part in terms of the agreement and hence, the plaintiff is not entitled to any relief. It is repeatedly stated in the written statement filed by defendants 1 to 3 that time was the essence of the agreement and that the plaintiff did not have funds to complete the sale in terms of the agreement and hence, the plaintiff was not ready and willing.

9.The 4th defendant filed a written statement specifically denying the averments in the plaint and referring to the conduct of the plaintiff indicating that the plaintiff was never ready and willing to perform his part of the contract, it is contended by the 4th defendant that the plaintiff has to prove the fact that he had paid a sum of Rs.10,00,000/- on 19.11.2006 to all the vendors towards part of the sale price. In the written statement of 4th defendant, it is reiterated in several places that the plaintiff was not



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possessed with sufficient funds and that was the reason behind the plaintiff's non-performance in terms of the agreement. Every allegation in the plaint is meticulously denied by the 4th defendant, apart from questioning the enforceability of agreement on other grounds. While reiterating that time was essence of the contract, 4th defendant stated that the plaintiff was not willing to complete the sale despite repeated requests and that the plaintiff abandoned the agreement by his conduct. It is further stated that the plaintiff himself came to the 4th defendant in person and requested to terminate the agreement and to refund the amount paid towards advance as part of sale consideration. It is further stated that the 4th defendant also accepted the request and promised to repay the advance money within a few weeks. In the written statement, the 4th defendant referred to the reply telegram sent by the 4th defendant to the plaintiff and the suppression of reply telegram by the plaintiff to suit his convenience.

10. Referring to the fact that the plaintiff called upon the defendants to produce the original documents to prepare the sale deed, the 4th defendant very seriously disputed the averment in the plaint that the plaintiff was ready



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and willing to perform his part of the contract. The 4th defendant also contended that the defendants were forced to borrow huge amount for their business commitments on account of the failure of the plaintiff to pay the balance sale consideration within the stipulated time. Therefore, the 4th defendant came forward with a positive case that the plaintiff has failed to perform his part of the contract and the plaintiff, who has no financial capacity to complete the sale by paying the balance sale consideration, is not entitled to any relief.

11.A reply statement was also filed by the plaintiff reiterating the contentions in the original plaint and the payment of Rs.10,00,000/- on 19.11.2006. The plaintiff reiterated that he is not liable to pay any interest upto 31.05.2007, as he was always ready and willing to perform his part of the contract within the stipulated time and that the sale could not be completed only because of the non-cooperation of the defendants. It is specifically pleaded that plaintiff never asked for any extension of time to pay balance sale consideration and therefore, the plaintiff contended that the defendants, who did not respond to the telegraphic notice, have come



forward with a false case in defence. The plaintiff specifically denied the receipt of reply telegram as pleaded in the written statement. Stating that the defendants have committed breach, the plaintiff contended that the plaintiff is entitled to the equitable relief of specific performance.

12.An additional written statement was filed by the 4th defendant reiterating what was stated in the original written statement. It was further stated that the case of plaintiff that he was waiting from 09.30 a.m. to 05.00 p.m. on 28.05.2007 in the office of Sub-Registrar is false and that the intention of plaintiff by issuing a telegraphic notice calling upon the defendants to furnish the title deeds to prepare the sale deed itself would reveal the conduct of plaintiff. The means of plaintiff to complete the sale by paying the balance sale consideration is specifically denied as it was contended by the defendants in the original written statement.

13.The trial Court framed the following issues :

- i. *Whether the plaintiff is entitled for decree of specific performance ?*
- ii. *Whether the plaintiff was ready and willing to perform his part*



of contract ?

iii. Whether the plaintiff is having sufficient means to comply the sale ?

iv. Whether the agreement dated 15.11.2006 is valid under law ?

v. Whether time was agreed to be the essence of the contract ?

vi. Whether plaintiff is entitled for decree of mandatory injunction ?

vii. To what other relief ?

14.The plaintiff examined himself as P.W.1 and two others as P.W.2 and P.W.3. Exs.A1 to A12 were marked on the side of the plaintiff. The 3rd defendant was examined as D.W.1 and the 4th defendant was examined as D.W.2. Exs.B1 to B26 were marked on behalf of the defendants.

15.On the issue whether agreement dated 15.11.2006 (Ex.A1) is valid under law, the trial Court held that the sale agreement is legally valid. The trial Court also held that time is the essence of the contract. However, referring to the fact that the suit agreement is dated 15.11.2006 and the plaintiff has paid a further sum of Rs.10,00,000/- on 19.11.2006 and the other dates relating to exchange of notices and the filing of suit within a



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reasonable time, the trial Court held that the plaintiff was always ready and willing to perform his part of the contract and that the plaintiff was having sufficient means to complete the sale. The trial Court disbelieved the case of plaintiff that he was ready to complete the sale before 28.02.2007 and held that the plaintiff is liable to pay interest @ 24% p.a. for the delayed payment of balance sale consideration. Though the trial Court observed that the conduct of plaintiff demanding title deed for the purpose of preparing the sale deed is against the terms of the agreement, it held that plaintiff cannot be treated as one who has violated the terms of the agreement. Therefore, the suit for specific performance was decreed by the trial Court, however, on condition that the plaintiff must deposit interest calculated @ 24% p.a. for Rs.34,00,000/- from 28.02.2007 till date of payment.

16. Aggrieved by the judgment and decree of the trial Court, the plaintiff has preferred the appeal in A.S.No.266 of 2013 challenging the finding and decree of the trial Court directing the plaintiff to pay interest @ 24% p.a. for Rs.34,00,000/- from 28.02.2007 till date of payment; defendants have preferred the appeal in A.S.No.9 of 2014 as against decree



granting specific performance.

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17.Mr.S.Parthasarathy, learned Senior Counsel appearing for the defendants 1 to 3, referred to every document that was filed before Court and the pleadings of respective parties. Since time is the essence of the contract, the learned Senior Counsel submitted that the plaintiff has failed to establish his readiness and willingness in terms of the suit agreement by referring to the agreement and conduct of plaintiff as can be inferred from the contents of telegraphic notice and his evidence. Since the trial Court has rendered a finding that the plaintiff has not proved that he was ready and willing to pay balance before 28.02.2007 and the plaintiff was not willing to pay interest as agreed, Senior Counsel submitted that the plaintiff has not pleaded and proved readiness and willingness in terms of the agreement in terms of Section 16(c) of Specific Relief Act.

18.On the other hand, Mr.V.Raghavachari, learned Senior Counsel appearing for the plaintiff/1st respondent in A.S.No.9 of 2014 and Mr.ARL.Sundaresan, learned Senior Counsel appearing for the



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plaintiff/appellant in A.S.No.266 of 2013 elaborately made their submissions by referring to pleadings, documents and several precedents.

19.Having regard to the pleadings, issues raised before the trial Court and the arguments of learned Senior Counsels before this Court, the following points arise for consideration in these appeals :

- i. *Whether time is essence of the suit agreement dated 15.11.2006 ?*
- ii. *Whether the plaintiff was ready and willing to perform his part of the contract in terms of the suit agreement ?*
- iii. *Whether the plaintiff is entitled to the discretionary/equitable relief of specific performance having regard to the admitted facts and circumstances of the case ?*

Point No.(i) :

20.On the first issue whether time is the essence of the contract, there is no dispute regarding recitals. Under the suit agreement dated 15.11.2006, a sum of Rs.5,00,000/- was received by defendants 1 to 4 as advance out of the total sale consideration of Rs.49,00,000/-. The plaintiff was required to pay a further sum of Rs.10,00,000/- on or before 23.11.2006. The balance



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of sale consideration was required to be paid on or before 28.02.2007. In case the plaintiff fails to pay the balance sale consideration on or before 28.02.2007, the vendor can claim interest @ 24% p.a. on the balance sale consideration for the default period upto 31.05.2007. In case the plaintiff fails to pay the balance as stipulated, parties agreed that the agreement will stand cancelled. From the recitals of the agreement, it is seen that parties have consciously drafted the agreement to specify time as the essence of the contract. The trial Court also came to the conclusion that time is the essence of the suit agreement. ***This Court, having regard to the specific terms of the agreement, has no hesitation to hold that parties have agreed that time is the essence of the contract.***

Point No.(ii) :

21. Even though the 4th defendant, in his written statement, disputed the genuineness and *bona fides* of the suit agreement, the trial Court has accepted the case of plaintiff that suit agreement is a *bona fide* sale transaction and that the parties have admitted the real transaction as such. However, it is the specific case of defendants in both the written statements



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that the plaintiff did not have enough funds to complete the sale in accordance with the terms agreed under the suit agreement and that the plaintiff was never ready and willing to perform his part of the contract in terms of the suit agreement.

22.As per the sale agreement which is marked as Ex.A1 dated 15.11.2006, the total sale consideration for the suit property is a sum of Rs.49,00,000/-. A sum of Rs.5,00,000/- was paid by cash as advance and it was agreed by the plaintiff to pay a further sum of Rs.10,00,000/- before 23.11.2006 and to complete the sale on or before 28.02.2007. Clause 9 of the sale agreement reads as follows :

“9.If The PURCHASER fails to pay the balance consideration within the stipulated period viz. 28/5/2007, The VENDOR can claim 24% interest on the balance sale consideration for the default period, upto 31/5/2007, after which this Agreement will stand cancelled without any notice to the purchaser.”

23.It is now admitted that the plaintiff paid a sum of Rs.10,00,000/- on 19.11.2006. However, thereafter, there was no notice or communication



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from plaintiff regarding further payment before 28.02.2007. Just few days before the expiry of the time, i.e., 31.05.2007, the plaintiff issued a telegram to the defendants in the following lines :

“As per the terms of sale agreement dated 15.11.2006, I was ready and willing to pay the sale price to have the sale deed in my favour. But you all evaded to perform your part of agreement despite of repeated request of mine. I will be waiting at Sub-Registrar Office at Kinathukadavu with balance sale price payable to you on 28.05.07 from 09.00 am onwards. You are hereby requested to bring all the original documents to prepare the sale deed either on 28.05.07 to the S.R.O., Kinathukadavu or before it to my residence.”

24.From the above telegram, the plaintiff, even after making serious allegations against the defendants that defendants evaded to perform their part of agreement, informed the defendants that he will be waiting at Sub-Registrar's Office on 28.05.2007 with balance sale price and called upon the defendants to bring all the original documents to prepare the sale deed either on 28.05.2007 or before it to the plaintiff's residence. There is no acceptable evidence to show that the plaintiff was ready with the money



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even before 28.02.2007 as agreed under Ex.A1 agreement. Even in the notice calling upon the defendants to come to the Registrar's Office on 28.05.2007, the plaintiff wanted the defendants to bring the original documents. Even in the pre-suit notice dated 01.06.2007, it is stated as follows :

“7.You are therefore hereby called upon by our client to receive the balance sale consideration of Rs.34,00,000/- produce the original title deeds for verification by our client and execute the sale deed in favour of our client in the Office of The Sub Registrar Office, Kinathukkadavu on or before 10.06.2007 by prior intimation to our client, failing which, our client will be constrained to initiate appropriate legal steps against all of you at cost and risks which you please avoid. The cost of this notice is Rs.1500/-.”

25.Though the sale agreement requires the defendants to handover the xerox copies of original title deeds to prepare the sale deed, the demand in the first notice to bring original documents indicates that the plaintiff's readiness and willingness to perform his part of the contract is conditional. It is not the case of plaintiff that copies of original title deeds were not given



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to plaintiff. When nothing more than execution of sale deed is required from the defendants on getting the balance sale consideration, the condition to bring original documents to prepare the sale deed is a relevant factor while considering the issue of readiness and willingness.

26.It is admitted that the first notice was issued to defendants 1 to 3 by giving an address in Coimbatore. Though the sale agreement shows that all the defendants are residing at Door No.54/1B, Mettupalayam Road, Coimbatore, it is admitted that defendants 1 to 3 are permanent residents of Chennai and all of them have independent business establishments only in Chennai. This fact is admitted by plaintiff. The stamp paper for the agreement was admittedly purchased by the plaintiff. It is the case of the plaintiff that the agreement was prepared by defendants by using a computer. From the agreement, we find that there is a correction in Clause 9. It is admitted that the material correction in Clause 9 was done by 4th defendant. The following portion namely, *“upto 31/5/2007, after which this Agreement will stand cancelled without any notice to the purchaser.”* is inserted to Clause 9 and parties have signed after this addition. When the



correction is done by 4th defendant to the effect that the agreement would stand cancelled in case the balance sale consideration is not paid on or before 28.02.2007, it is not probable that the defendants had prepared the sale agreement under Ex.A1, as they would have made the correction before typing it. From the facts and surrounding circumstances, this Court accepts the case of defendants that the sale agreement was prepared by plaintiff.

27.The question is who is responsible for giving the wrong address of defendants 1 to 3 in the suit agreement, as the plaintiff himself admits that defendants 1 to 3 are not residing in Coimbatore. In the written statement, the defendants 1 to 3 have stated that this was pointed out by defendants at the time of signing the agreement and that the plaintiff convinced them that the address can be corrected in the sale deed. During the course of evidence, the defendants have admitted that defendants 1 to 3 are having their permanent residence only in Chennai as they were carrying on separate business on their own independently. The telegraphic notice and the paper publication also was done showing only the defendants' address in Coimbatore. Therefore, notice issued by the plaintiff was not even meant to



reach the defendants 1 to 3 who are all co-owners, who executed the suit agreement jointly. The irregularity in issuing notice by giving wrong address of defendants 1 to 3 may not be fatal, but the conduct of plaintiff in issuing telegram, pre-suit notice to defendants 1 to 3 and paper publication by showing a wrong address, is also a circumstance pointing out how the plaintiff was so artificial in communicating his readiness to defendants 1 to 3. When plaintiff knew that the notice would not reach defendants 1 to 3, he cannot expect defendants to come to the Registrar's office to receive the balance as stated in the telegraphic notice and in the pre-suit notice. Since the plaintiff has no explanation for sending notice to defendants 1 to 3 to a wrong address, the plaintiff has come forward with another false story that the agreement itself was prepared by defendants.

28.To the telegram dated 24.05.2007, the 4th defendant has given a reply telegram promptly conveying the cancellation of agreement. This reply by 4th defendant is not referred to in the pre-suit notice or in the plaint. However, in the course of evidence, the plaintiff disputed the receipt of the telegraphic reply issued by 4th defendant. The reply telegram issued by 4th



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defendant is marked as Ex.B25 and the receipt for sending the telegram to the plaintiff's address is marked as Ex.B26. From the documents Exs.B25 and B26, this Court is convinced that the reply telegram has been promptly sent to the plaintiff and the plaintiff has come forward with a false case that the reply was not communicated to the plaintiff. The reply telegram in all probability had reached the plaintiff, but the plaintiff did not respond to the reply telegram and chose to issue a reply ignoring the reply telegram. Therefore, the conduct of plaintiff in not responding to the reply telegram is a relevant fact to show that the plaintiff did not come forward to perform his part and issued the pre-suit notice only to gain time.

29.After the expiry of time on 28.02.2007, the plaintiff issued a telegram under Ex.A3 dated 24.04.2007 and the pre-suit notice dated 01.07.2007 calling upon the defendants to come forward to furnish the original title deed for drafting the sale deed and to get it registered. Thereafter, there was no correspondence and the suit was filed only on 22.11.2007. Therefore, the plaintiff, even after knowing that the defendants have refused to perform their part of the contract by reply telegram on



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26.05.2007 before pre-suit notice, has filed the suit nearly six months after the reply telegram was issued by the 4th defendant. The plaintiff has specifically admitted that he has not produced any document to prove that he had enough money at the time of filing the suit or to pay the money before the expiry of the date specified in the agreement Ex.A1. This would clearly show that the plaintiff did not have the money to perform his part of the contract to complete the sale and that he was not ready and willing to perform his part of the contract.

30.In the additional written statement filed by defendants, the specific stand taken by them is that the plaintiff never had the required money, viz., a sum of Rs.34,00,000/-, the balance of sale consideration to perform his part of the agreement. The plaintiff has not produced any documentary evidence or acceptable evidence to show that he was ready with the money even on 28.02.2007 or on 31.05.2007. It is not necessary that the plaintiff should jingle the coins. Though it is not necessary that the plaintiff should show the money to the defendant, he has to prove his readiness and willingness in terms of the agreement. When a specific issue has been raised seriously by



defendants that the plaintiff had no means to mobilise funds required and payable as balance of sale consideration, it is the duty of plaintiff to prove his readiness by showing that he had the funds necessary to fulfill his obligation, i.e., to pay the balance of Rs.34,00,000/-. The amount, Rs.34,00,000/- is not a small amount where it can be presumed that the amount can be mobilised within a short time.

31.The plaintiff has examined P.W.2 and P.W.3. During the chief-examination, P.W.2 has stated that he has signed as a witness in Ex.A1. He has only stated that the plaintiff has informed him that he is waiting with the balance sale consideration to complete the sale and that defendants 1 to 3 are abroad. It is not even the case of plaintiffs that defendants 1 to 3 are abroad. It is not the case of plaintiff or defendants 1 to 3 that defendants 1 to 3 have any permanent business or avocation abroad. Defendants 1 to 3 are business men doing permanent business in Chennai. Merely because defendants had occasion to go abroad, the case of plaintiff that he was ready with the money but the non-performance was due to non-availability of defendants 1 to 3, cannot be believed. P.W.3, in his proof affidavit, has



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stated that the 4th defendant informed the plaintiff in his presence that defendants 1 to 3 are abroad. This is not even the case of the plaintiff.

During cross-examination, D.W.3 only says that the plaintiff told him he was having money. He has no personal knowledge whether the plaintiff had sufficient funds.

32.Evidence of P.W.3 does not inspire confidence. Both P.W.2 and P.W.3 admitted that they have very good relationship with plaintiff and the plaintiff is their friend. In such circumstances, this Court is unable to accept the evidence of P.W.2 and P.W.3 as independent witnesses. Their evidence do not corroborate the evidence of plaintiff to prove plaintiff's readiness and willingness. Even though plaintiff deposed that he was ready with the money to pay balance before 28.02.2007, he has deposed that he did not issue notice prior to 28.02.2007 as he had time to pay balance till 31.05.2007. Therefore, the case of plaintiff in the plaint that he was ready and willing to pay balance before 28.02.2007 is false. Though the plaintiff has agreed to pay interest at 24% for the period upto 31.05.2007, he maintained his stand that he is not liable to pay interest. Therefore, the



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plaintiff has not proved his readiness and willingness to perform his part in terms of the agreement Ex.A1 as required under Section 16(c) of Specific Relief Act. Having come forward with a specific plea that plaintiff was ready and willing to pay the balance before 28.02.2007, the plaintiff miserably failed to prove his readiness and willingness.

33.It is well settled that, without specific averment and proof as regards readiness and willingness, a person is not entitled to the decree for specific performance and the bar created under Section 16 of Specific Relief Act is absolute and personal. The only argument canvassed by both the Senior Counsels appearing for plaintiff in the respective appeals for not paying the money to defendants is that the defendants 1 to 4 were not seen together. This argument cannot be accepted for obvious reasons, particularly having regard to the sequence of events and the absence of any evidence to prove either readiness or willingness. The Hon'ble Supreme Court, in the case of *Man Kaur (dead) by LRs v. Hartar Singh Sangha* reported in **2010 (10) SCC 512**, has held as follows :



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“40. ... A person who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him (other than the terms the performance of which has been prevented or waived by the defendant) is barred from claiming specific performance. Therefore, even assuming that the defendant had committed breach, if the plaintiff fails to aver in the plaint or prove that he was always ready and willing to perform the essential terms of contract which are required to be performed by him (other than the terms the performance of which has been prevented or waived by the plaintiff), there is a bar to specific performance in his favour. Therefore, the assumption of the respondent that readiness and willingness on the part of plaintiff is something which need not be proved, if the plaintiff is able to establish that 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 plaintiff did not have the balance Rs. 9 lakhs (and the money required for stamp duty and



registration) or the capacity to arrange and pay such money, when the contract had to be performed, the plaintiff will not be entitled to specific performance, even if he proves breach by defendant, as he was not 'ready and willing' to perform his obligations.”

34.The Hon'ble Supreme Court, in the case of ***U.N. Krishnamurthy (Since Deceased) through LRs v. A.M. Krishnamurthy*** reported in ***AIR 2022 SC 3361***, after referring to several binding precedents, has held as follows :

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

...



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

35.In ***K.S.Vidyanadam and others v. Vairavan*** reported in (1997) 3 ***SCC 1***, the Hon'ble Supreme Court has observed that, while exercising discretion in a suit for specific performance, Courts 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 and that Courts will apply greater scrutiny and strictness when considering whether the purchaser was ready and willing to perform his part of the contract. The Hon'ble Supreme Court, in the case of ***Saradhamani Kandappan v. S.Rajalakshmi and others*** reported in 2011 (12) ***SCC 18***, has held that the normal rule that time cannot be the essence of the contract cannot be any

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more applied when there are specific stipulations regarding time within which the contract has to be performed. The Hon'ble Supreme Court considered various factors like steady increase in prices of immovable properties, inflation and other factors and held that there is an urgent need to revisit the principle that time is not the essence of the contract relating to immovable properties, in view of the change in circumstances.

36.In the present case, as per Clause 9 of the sale agreement, the agreement will stand cancelled without any notice to the purchaser, if plaintiff fails to pay the balance before 31.05.2007. Though the time specified in the agreement was 28.02.2007, the plaintiff had an option to pay the balance and perform his part of the contract even after 28.02.2007, if he is willing to pay 24% p.a. interest on the balance sale consideration for the default period upto 31.05.2007. There is no direct evidence that the plaintiff approached the defendants to pay the balance before 28.02.2007. When a specific question was put to P.W.1 why the plaintiff had not issued any notice before 28.02.2007, the plaintiff admitted that he did not issue any notice before 28.02.2007 as he had time till 31.05.2007. The evidence of



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plaintiff is, therefore, contrary to his own case that he was ready and willing to perform his part of the contract before 28.02.2007.

37.Having admitted that the plaintiff did not come forward to make any payment or issue any notice before 28.02.2007 as he had time till 31.05.2007, the plaintiff failed to realise that he is liable to pay interest @ 24% p.a. on the balance sale consideration for the period of default. However, in the telegraphic notice, pre-suit notice and in the plaint, the plaintiff has not come forward to pay the balance with interest as agreed under Ex.A1. Therefore, it goes without saying that the plaintiff was not ready and willing to perform his part of the contract strictly in terms of the agreement, as he never came forward nor was willing to pay interest till the filing of suit.

38.A Division Bench of this Court, in which one of us was a party, in the case of *R.Gnana Arulmoni v. R.S. Maharajan* reported in **2019 (3) CTC 564**, considered a similar issue where the plaintiff in the suit came forward with the suit for specific performance. It was the case of plaintiff



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therein that he had already paid a sum of Rs.37,45,000/- out of the total sale consideration of Rs.84,74,500/-. It was the case of defendant therein that plaintiff has paid only a sum of Rs.23,25,000/- and not a sum of Rs.37,45,000/- as alleged. In the course of evidence, the plaintiff failed to prove the payment to the tune of Rs.14,19,500/-. The trial Court decreed the suit by directing the plaintiff to pay the further sum to complete the sale. In the absence of any evidence to prove the payment to the tune of Rs.14,19,500/-, the plaintiff conceded that the finding of the trial Court on the balance payable, is well founded. This Court, in the said case, on the admitted facts, held that the plaintiff, who has failed to prove that he was ready and willing to perform his part of the contract strictly in terms of the agreement right from the date of suit, is not entitled to a decree for specific performance. The point focussed therein by the Division Bench is that the plaintiff, who came with a specific case that he is liable to pay only lesser amount than what is payable as per the terms of the agreement, is not entitled to the relief of specific performance, as it would amount to his being not ready and willing to perform his part of the contract in terms of the agreement.



WEB COPY 39. The Hon'ble Supreme Court and this Court have made distinction between readiness and willingness. Readiness always means the capacity of plaintiff to perform the contract. Financial ability of the purchaser and his capacity to mobilise funds sometimes will show a person's readiness. However, question whether a person was willing to perform his part of the contract even if he had financial capacity to do so will have to be examined. If the conduct of plaintiff, if properly scrutinised, shows that he is not willing to perform his part of the contract, Court can never grant decree for specific performance, as such person will not cross the personal bar created by Section 16(c) of the Specific Relief Act.

40. Mr. V. Raghavachari, learned Senior Counsel appearing for the 1st respondent in A.S.No.9 of 2014/plaintiff, relied upon a judgment by one of us in the case of ***R. Kasilingam v. S.P. Vadivelu (deceased) and others [2022 (6) CTC 419]***. This Court, in the said case, considered the judgments of the Hon'ble Supreme Court in *K.S. Vidyadnam and others v. Vairavan (supra)* and *Saradamani Kandappan v. S. Rajalakshmi and others (supra)*. The facts



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in that case are entirely different. The question posed before this Court was whether the suit for specific performance filed by the plaintiff who has paid more than 90% of the sale consideration long before the time specified for performance can be dismissed merely on the ground that there was some delay in filing the suit. This Court was unable to dismiss the suit on the ground of laches. The said judgment cannot be a precedent or a judgment which will have a persuasive value in the present case where the plaintiff has filed the suit several months after the time specified in the agreement without an explanation for the long delay, especially when the 4th defendant issued a reply telegram repudiating the contract.

41.Mr.V.Raghavachari, learned Senior Counsel appearing for the 1st respondent in A.S.No.9 of 2014/plaintiff, relied upon a judgment of the Hon'ble Supreme Court in the case of ***R.Lakshmikantham v. Devaraji*** [2019 (8) SCC 62], wherein, it is held that a short delay in filing the suit cannot be put against the plaintiff to state that he was not ready and willing to perform his part of the contract when the suit for specific performance is filed within the period of limitation. However, on verification of facts, it is



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seen that the Hon'ble Supreme Court was dealing with the case where the defendant had agreed to redeem the mortgage within the time stipulated in the agreement for completion, but the defendant did not redeem the mortgage and thereby committed breach of an essential term of the agreement.

42.Mr.V.Raghavachari, learned Senior Counsel appearing for the 1st respondent in A.S.No.9 of 2014/plaintiff, relied upon a judgment of the Hon'ble Supreme Court in the case of **Aniglase Yohannan v. Ramlatha and others [2005 AIR SCW 4789]**, wherein the Hon'ble Supreme Court has observed that readiness and willingness could not be treated as a straight-jacket formula and that it has to be determined from the entirety of facts and circumstances relevant to the intention and conduct of the party concerned. In that case, it has been held as follows :

“11.The basic principle behind Section 16(c) read with Explanation (ii) is that any person seeking benefit of the specific performance of contract must manifest that his conduct has been blemishless throughout entitling him to the specific relief. The provision imposes a personal bar. The Court is to



grant relief on the basis of the conduct of the person seeking relief. If the pleadings manifest that the conduct of the plaintiff entitles him to get the relief on perusal of the plaint he should not be denied the relief.

*12. Section 16(c) of the Act mandates the plaintiff to aver in the plaint and establish as the fact by evidence aliunde that he has always been ready and willing to perform his part of the contract. On considering almost identical fact situation it was held by this Court in *Surya Narain Upadhyaya v. Ram Roop Pandey and Ors.*, AIR (1994) SC 105 that the plaintiff had substantiated his plea.”*

The said judgment is purely on facts. This Court cannot apply the principles laid down in any judgment without reference to the facts narrated in the judgment. In the above judgment, the Hon'ble Supreme Court has examined whether a specific phraseology is required to show whether there is averment in terms of Section 16(c) of Specific Relief Act. The judgment is more about pleading and we do not have any quarrel with the proposition. However, on facts, the said judgment has no application in the present case.



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43.Mr.V.Raghavachari, learned Senior Counsel appearing for the 1st respondent in A.S.No.9 of 2014/plaintiff, also relied upon a judgment of the Kerala High Court in the case of ***K.S.Krishnan v. Krishnan [AIR 1993 Kerala 134]***. In the said judgment, the High Court of Kerala has held that the sale agreement can be enforced against some of the co-owners who have jointly contracted to convey the property even if some of the co-owners are unable to convey their portion, as there is no legal bar in getting specific performance of the remaining portion against the other co-owners. The High Court of Kerala considered Section 12 of the Specific Relief Act. This Court wonders how the said judgment has any relevance to the present case where a plea by relying upon Section 12 was not raised by the plaintiff.

44.Mr.V.Raghavachari, learned Senior Counsel appearing for the 1st respondent in A.S.No.9 of 2014/plaintiff, relied upon a judgment of the Hon'ble Supreme Court in the case of ***Ramathal v. Maruthathal and others [AIR 2018 SC 340]***, wherein the Hon'ble Supreme Court has held as follows:



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“23.Point No. v: That there was default on the part of the defendant in performing his part admits of no doubt. The registered notice Ext. A6 was sent on 1 -8-85 to respondent and his brother Govindan. Respondent was not willing to execute the assignment whereas he denied execution and receipt of consideration. Govindan executed the assignment in respect of his two-third share. A separate document had to be obtained from Govindan alone in view of the refusal of the defendant to perform his part of the contract. There is sufficient evidence on record to show that default was committed by the defendant in not receiving the balance consideration due to him and in not executing the assignment deed.”

The said judgment is in a case where the High Court has reversed the findings of the trial Court on material facts regarding readiness and willingness of the buyer who performed his part of the contract at all stages. Therefore, the above judgment has no application to the facts of this case.

45.Mr.V.Raghavachari, learned Senior Counsel appearing for the 1st respondent in A.S.No.9 of 2014/plaintiff, also relied upon a judgment of the Hon'ble Supreme Court in the case of ***Surya Narain Upadhyaya v. Ram***



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Roop Pandey and others [AIR 1994 SC 105], wherein, the Hon'ble Supreme Court, in the peculiar facts of the case, held that the plaintiff has specifically stated that he was ready to deposit the balance sale consideration and to get the sale deed executed and registered in his favour in terms of the contract and that he had deposited Rs.9,000/- within the time allowed by the trial Court after the suit was decreed. This Court is unable to find any relevance of the said judgment to the facts of the present case.

46.Mr.V.Raghavachari, learned Senior Counsel appearing for the 1st respondent in A.S.No.9 of 2014/plaintiff, also relied upon a judgment of the Hon'ble Supreme Court in the case of ***Beemaneni Maha Lakshmi v. Gangumalla Appa Rao [AIR 2019 SC 3013]***, wherein the Hon'ble Supreme Court has specifically held that the vendee was insisting to deliver the land ceiling papers and the original sale deed in favour of the vendor as a prudent person to be satisfied with the title and that the defendant did not produce the required documents. Holding that the appellant-vendor did not perform her part of the contract, the Hon'ble Supreme Court dismissed the appeal in favour of the plaintiff. Even the said judgment has no application



to the facts of the present case.

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47. Similarly, the judgment of the Hon'ble Supreme Court in the case of ***A.R.Madana Gopal etc., v. M/s.Ramnath Publications Pvt. Ltd. And another [AIR 2021 SC 1886]*** relied upon by Mr.V.Raghavachari, learned Senior Counsel appearing for the 1st respondent in A.S.No.9 of 2014/plaintiff, cannot be applied to the present case, as the facts are entirely different.

48. Mr.V.Raghavachari, learned Senior Counsel appearing for the 1st respondent in A.S.No.9 of 2014/plaintiff, also relied upon a judgment of the Hon'ble Supreme Court in the case of ***Sughar Singh v. Hari Singh (dead) through LRs and others [AIR 2021 SC 5581]***, wherein the Hon'ble Supreme Court has made an observation that the amendment to the Specific Relief Act, 1963, by which Section 10(a) has been inserted, would be applicable retrospectively. It was observed by the Hon'ble Supreme Court in the said judgment that the amendment should be made applicable to all pending proceedings including the appeals which are pending. Recently, a



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Three Member Bench of Hon'ble Supreme Court, in the case of **Smt.Katta**

Sujatha Reddy & another v. Siddamsetty Infra Projects Pvt Ltd & Others

[Appeal Nos.5822 to 5824/2022, dated 25.08.2022], considered the question whether Section 10 of Specific Relief Act as substituted by Act 18 of 2018 is prospective or retrospective in nature and held that it is prospective and cannot apply to those transactions that took place prior to its coming into force. Paragraphs 54 to 56 of the judgment is relevant and hence, extracted :

“54.In the light of the aforesaid discussion, it is clear that ordinarily the effect of amendment by substitution would be that the earlier provisions would be repealed and amended provisions would be enacted in place of the earlier provisions from the date of inception of that enactment. However, if the substituted provisions contain any substantive provisions which create new rights, obligations, or take away any vested rights, then such substitution cannot automatically be assumed to have come into force retrospectively. In such cases, the legislature has to expressly provide as to whether such substitution is to be construed retrospectively or not.



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

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

Therefore, this Court is unable to appreciate the argument of the learned Senior Counsel for the plaintiff.

49. Mr. V. Raghavachari, learned Senior Counsel appearing for the 1st respondent in A.S.No.9 of 2014/plaintiff, also relied upon a judgment of the Hon'ble Supreme Court in the case of **Rameshwar Prasad (D) by LRs v. Basanti Lal [AIR 2008 SC 2050]**, wherein the Hon'ble Supreme Court has observed that High Court was wrong in holding that there was no indication



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about the readiness and willingness to pay interest by the plaintiff. In the said case before the Hon'ble Supreme Court, the plaintiff agreed to pay interest at the rate of 9% on the balance amount with effect from 13.09.1963. The plaintiff in the plaint specifically stated that he was always ready and willing to execute the sale deed and fulfill his part of the contract in terms of the sale agreement. The Hon'ble Supreme Court construed the pleadings as one to indicate that the plaintiff was ready to pay interest and that therefore, accepted the case of plaintiff. In the present case, the plaintiff has specifically come forward with a plea that he is not liable to pay interest for the delay as he was ready and willing to perform his part of the contract even on 28.02.2007 and hence, not liable to pay interest, however, admitted during evidence that he did not approach the defendant to make further payment as he had time till 31.05.2007.

50.Mr.V.Raghavachari, learned Senior Counsel appearing for the 1st respondent in A.S.No.9 of 2014/plaintiff, also relied upon a judgment of the Hon'ble Supreme Court in the case of *Urvashi Aggarwal (since deceased) through LRs and another v. Kushagr Ansal (successor in interest of*



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erstwhile Defendant No.1 Mrs.Suraj Kumari) and others [AIR 2019 SC

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1280], where the defendants were directed to pay a sum of Rs.2 Crores to the plaintiff after recording the fact that the plaintiff had paid a sum of Rs.70,000/- way back in 1975. The facts of that case are totally different and this Court cannot venture to determine any amount as damages or by way of compensation, when this Court is of the view that the plaintiff has failed to prove his readiness and willingness in terms of the contract and that he has committed breach.

51. When an issue relating to readiness comes for hearing, the question cannot be resolved as a pure question of law, as several facts are involved. The plaintiff in a suit for specific performance should be always ready and willing to perform his part of the contract in terms of the agreement and there is no excuse. If the plaintiff exhibits irresponsible, irrational or recalcitrant attitude, the Court is expected to examine the issue with reference to bundle of facts in each case and no principle can be applied unmindful of the factual details and sequence of events. That being so, ***this Court without any fear or contradiction or doubt holds that the***



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plaintiff has failed to plead and prove his readiness and willingness to perform his part of the contract in terms of the suit agreement Ex.A1.

Point No.(iii) :

52.This Court has already found that time is the essence of the contract in this case. It is the specific case of the defendants in the written statement that the suit agreement was executed by them in favour of the plaintiff even though the price agreed was lower than the market value, as he was the one who came forward to complete the sale within three months. The plaintiff has chosen to issue telegram, legal notice only to Coimbatore address, and even the trial Court has observed that the reason for not sending legal notice or telegram to residential address of defendants 1 to 3 is not properly explained. The plaintiff did not come forward to pay interest even though he has not proved his readiness and willingness to perform his part of the contract in terms of the agreement before 28.02.2007. The trial Court believed that there is no documentary evidence to show that the plaintiff was having money in his hands on the relevant period. Even though, out of total sale consideration of Rs.49,00,000/-, substantial amount



of Rs.15,00,000/- is paid to the defendants 1 to 4, the plaintiff's readiness and willingness to complete the sale is not proved. The suit was filed only on 22.11.2007 nearly six months after the repudiation of the contract by the 4th defendant by way of reply telegram. The delay of six months is not explained by plaintiff. Though it may not be proper to dismiss the suit on the ground of laches, the conduct of the plaintiff has caused serious prejudice to the defendants 1 to 3. The Hon'ble Supreme Court, in the case of **Kamal Kumar Vs. Premlata Joshi and others** reported in **2019 [3] SCC 704**, has considered the scope of Section 20 of the Specific Relief Act and the material questions which are required to be looked into by Court. It is useful to refer to Paragraph No.7 of the said judgment:-

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

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

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



ready and willing to perform his part as mentioned in the contract.

7.3.Third, whether the plaintiff has, in fact, performed his part of the contract and, if so, how and to what extent and in what manner he has performed and whether such performance was in conformity with the terms of the contract;

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

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

53.When we examined the entire case with reference to pleadings, documents and other evidence, we are able to see difference of opinion between defendants 1 to 3 and 4th defendant regarding the receipt of a sum of Rs.10,00,000/- by the 4th defendant. The 4th defendant, who has received a sum of Rs.10,00,000/-, has not informed he same to the defendants 1 to 3 and this has created some confusion. Though we have reasons to believe



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that the stand taken by the 4th defendant is not appropriate, we cannot put the stake of defendants 1 to 3 at risk. The conduct of plaintiff throughout would only lead to an inference that he was never ready and willing to perform his part of the contract before 28.02.2007 or atleast before 31.05.2007. Even when he filed the suit six months after repudiation, he was not willing to pay interest. In such circumstances, applying all the binding principles that are reiterated by the Hon'ble Supreme Court and this Court while interpreting Section 20 of the Specific Relief Act in different situations, this Court finds that there are several circumstances which are relevant to refuse the equitable relief to the plaintiff. Therefore, this Court is unable to exercise its discretion in favour of the plaintiff. ***Therefore, this Court holds that the plaintiff is not entitled to the equitable relief of specific performance.***

54.The plaintiff has paid a sum of Rs.15,00,000/- pursuant to the suit agreement, but he has not prayed for refund of the said amount paid as advance. Court may not grant relief when it is not prayed for as an alternative relief, even though the Court has got powers to allow an



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application for amendment of plaint even at this stage. Unfortunately, the plaintiff has not chosen to file an application even though it was indicated at the time of hearing arguments. The plaintiff has to blame himself and we felt that he is not entitled to any indulgence from this Court, especially when we have found that the plaintiff has committed breach of contract. By virtue of the judgment of this Court, the defendants have saved the property for themselves. By virtue of the suit property adjoining the city of Coimbatore which is a potential city with several prospects, even if an alternative relief is not granted, it is open to the plaintiff to pursue the relief of recovery of money.

55.In such circumstances, having regard to the fact that the plaintiff has succeeded before the lower Court, this Court grants liberty to the plaintiff to file a suit for recovery of a sum of Rs.5,00,000/- from defendants 1 to 4 and a sum of Rs.10,00,000/- from the 4th defendant. When such a suit is filed in view of the leave granted by this Court, the plaintiff's suit cannot be opposed on the ground of Order II Rule 2 of CPC.



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WEB COPY 56. In fine, the judgment and decree of the trial Court dated 18.06.2013 in O.S.No.825 of 2007 is set aside and **the appeal in A.S.No.9 of 2014 filed by the defendants 1 to 3 is allowed and the appeal in A.S.No.266 of 2013 filed by the plaintiff is dismissed.** No costs. Consequently, connected miscellaneous petitions are closed.

(S.S.S.R., J.) (P.B.B., J.)
28.04.2023

mkn

Internet : Yes

Index : Yes / No

To

1. The IV Additional District and Sessions Judge,
Coimbatore.

2. The Section Officer, VR Section, High Court, Chennai.		<i>with a direction to return the records to the Court below, forthwith</i>
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A.S.Nos.9 of 2014 & 266 of 2013

S.S. SUNDAR, J.
and
P.B. BALAJI, J.

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Common Judgment in
A.S.Nos.9 of 2014 & 266 of 2013

28.04.2023