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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

S.A.No.1085 of 2015 and
M.P.No.1 of 2015

P.N.Narasimhan

Rep. by Power of Attorney

Agent N.Parthasarathy

... Appellant / Defendant

Vs.

J.Santhanam

... Respondent / Plaintiff

Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 11.06.2015 passed by the learned Principal District Judge, Chengalpattu in A.S.No.2/2012 reversing the judgment and decree the suit in O.S.No.42 of 2006 on the file of the Additional Sub-Judge, Chengalpattu.

For Appellant : Mr.ARL.Sundaresan, Senior Counsel for
Mr.T.K.S.Gandhi

For Respondent : Mr.A.Saravanan



JUDGMENT

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This Second Appeal has been filed to set aside the judgment and decree dated 11.06.2015 passed by the learned Principal District Judge, Chengalpattu in A.S.No.2/2012 reversing the judgment and decree the suit in O.S.No.42 of 2006 on the file of the Additional Sub-Judge, Chengalpattu.

2. Heard Mr.ARL.Sundaresan, learned Senior Counsel for the appellant and Mr.A.Saravanan, learned counsel for the respondent and perused the materials available on record.

3. The Appellant is the defendant. The plaintiff has filed a suit in O.S.No.42 of 2006 for specific performance of agreement of sale dated 07.12.2003. The Trial Court has refused to grant the relief of specific performance and directed the defendant to pay a sum of Rs.3,40,000/- within 6 months from the date of the decree. Aggrieved over the same, the plaintiff has preferred a First Appeal in A.S.No.02 of 2012 and the same was allowed. Challenging the same, the defendant has filed the present Second Appeal.



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4. The averments made in the plaint are as follows:

On 07.12.2003, the defendant has entered into a sale agreement with the plaintiff to sell the suit property for Rs.2,65,000/-. The said agreement was reduced into writing. On the date of sale agreement, the plaintiff has paid a sum of Rs.1,00,000/- towards advance by way of cheque. The defendant has encashed the said cheque and received the said amount. Further, the defendant has agreed to receive the balance sale consideration at the time of registration. In pursuant to the said sale agreement, possession of the suit property was handed over to the plaintiff. Thereafter, the plaintiff has put up a compound wall and dug a bore well and formed a garden in the suit property.

4.1. At the time of entering into the sale agreement, the defendant informed the plaintiff that he has a proposal to go to USA and assured that he will execute the sale deed as soon as he returned from USA. Hence, it was not considered that the time was an essence of the contract. Believing his words, the plaintiff was waiting for all those years and he was always ready and willing to perform his contract. On several occasions when the plaintiff tried to contact the defendant through phone only his son



responded and informed that his father was in USA and he had not yet returned to India. Hence, on 21.01.2006, the plaintiff issued a lawyer's notice calling upon the defendant to receive the balance sale consideration and execute a sale deed. He also informed him that he will wait in the office of the Sub-Registrar on 06.02.2006. Though the defendant has received the said notice, he neither sent any reply nor came forward to perform his part of contract. Hence the suit.

5. The averments made in the written statement are as follows:

The suit is not maintainable either in law or on facts. The plaintiff expressed his desire to the defendant that he would purchase the suit land for Rs.2,65,000/- and agreed to complete the transaction within 10 or 15 days. The defendant was in urgent need of funds for his trip to USA to see his daughter. Believing the representation of the plaintiff that he would complete the transaction within 15 days, the defendant received a cheque for Rs.1,00,000/- and that was the reason for not executing a detailed sale agreement and the defendant drafted only a short letter in favour of the plaintiff for acknowledgment of Rs.1,00,000/-. The defendant was waiting for the plaintiff to come up with the balance sale consideration and



complete the sale. But the plaintiff did not turn up in spite of the defendant's best efforts and reminders sent to him about his undertaking.

5.1. The property being at the outskirts of the City of Madras where prices have been increasing daily and hence, the defendant was keen to finish the transaction immediately. The plaintiff was also aware of the situation. The price of the suit property is now more than Rs.20,00,000/- and the plaintiff did not turn up thereafter. The allegation that possession of the suit property was handed over to the plaintiff and that he had put up a compound wall and dug a bore well and formed a garden and that the defendant promised to execute the sale deed as soon as he returned from USA and so, the plaintiff was waiting for all these years are all false. The averments that the plaintiff was always ready and willing to perform his part of contract is false. The allegation that the plaintiff was waiting at the Sub Registrar's Office on 06.02.2006, but the defendant did not turn up for executing the sale deed are all false. The defendant has sent a detailed suitable reply to the plaintiff. It is obvious that the plaintiff has never made any attempt to pay the balance sale price and completed the sale deed. Obviously the plaintiff did not have necessary funds to complete the sale.



The plaintiff has not performed his part of contract at any point of time. He is not ready and willing to do so. The defendant will be put to prejudice if the relief of specific performance is granted. The description of the property given in the plaint schedule is defective. The plaintiff has not come to the Court with clean hands. He has not disclosed the entire facts. Therefore, the suit should be dismissed.

6. On the basis of the above pleadings, the Trial Court has framed the following issues:

"1. Whether the sale agreement dated 07.12.2003 is true, valid and acted upon?

2. To what relief the plaintiff is entitled to?"

7. During the course of the trial, on the side of the plaintiff, P.W.1 to P.W.4 were examined and Exs.A1 to A6 were marked. On the side of the defendant, D.W.1 was examined and Ex.B1 & Ex.B2 were marked.

8. At the conclusion of the trial and on considering the evidence available on record, the Trial Court has dismissed the suit, however, directed the defendant to pay a sum of Rs.3,40,000/- within 6



months from the date of the decree. The First Appeal preferred by the plaintiff against the judgment and decree of the Trial Court was allowed.

Now, the defendant has filed this Second Appeal.

9. Upon hearing the rival submissions, the following substantial question of law is framed in the present Second Appeal:

"Whether in law, the First Appellate Court is right in allowing the Appeal without appreciating the vital fact that the plaintiff has not proved that he was ready and willing to perform his part of contract throughout the time from the date of the sale agreement, in the absence of any time limit fixed in the sale agreement?"

10. The learned Senior Counsel for the appellant / defendant submitted that there is no evidence to show that the plaintiff / respondent was ready and willing to perform his part of contract. The sale agreement Ex.A1 was dated 07.12.2003 and after three years, the legal notice has been sent by the plaintiff which is marked as Ex.A2. From December 2003 to January 2006, there is no written communication between the plaintiff and the defendant. At the time of executing the sale agreement, the plaintiff



assured that he will pay the balance sale consideration within 10 or 15 days and get the sale deed executed. But, the plaintiff did not have sufficient funds to pay the balance sale consideration. Therefore, he did not approach the defendant to perform his part of contract. The plaintiff himself has deposed in his evidence that he did not contact the defendant after the execution of the sale agreement. The First Appellate Court without considering these aspects, has granted the relief sought by the plaintiff.

11. The learned Senior Counsel further submitted that the contention of the plaintiff that on 06.02.2006, he waited in the Registrar Office for Registration is false and there is no proof that he waited in the Registrar Office and he has not purchased any stamp papers on that day. As per Section 16(c) of the Specific Relief Act, the plaintiff has to prove his readiness and willingness to perform his part of contract.

12. The learned counsel for the respondent submitted that it is the defendant who has been pro-active. The defendant has not disputed the fact that he had received Rs.1,00,000/-; he has not disputed that the plaintiff has been always ready and willing to perform his part of the contract. The



plaintiff has also constructed a compound wall and dug a bore well in the suit property under the impression that he will get the sale deed executed in his favour. When the plaintiff contacted the defendant, his son replied that the defendant went to USA and he would execute the sale deed once he returned to India. He further submitted that the learned Senior Counsel was harping on the fact that there is no evidence for the appearance of the plaintiff for registration on 06.02.2006, but the plaintiff had been waiting in the Sub-Registrar's Office on the said date.

13. The fact that the sale agreement has been executed between the plaintiff and the defendant on 07.12.2003 is not denied. The said agreement has been marked as Ex.A1. The above agreement does not have the proper terms of contract and it was not written on a stamped paper. Whatever may be the case, the contents of the agreement would show that it is more or less like a receipt where the defendant has received a sum of Rs.1,00,000/- towards an advance payment of the sale of the suit property for a sale consideration of Rs.2,65,000/- and the balance has to be paid at the time of registration. The essential elements as to what is in the minds of the parties to the agreement has not been crystalized and given with any clarity in the



alleged agreement. It does not even say whether the plaintiff has agreed to purchase and the defendant had agreed to sell the suit property for the sale consideration of Rs,2,65,000/-.

14. Ex.A1 is seen to have been understood as a full-fledged agreement. In fact, the witnesses who have signed Ex.A1 agreement has also not given their details and it contained only the signatures of the witnesses. It appears that Ex.A1 is more or like the receipt which ought to have been supported by an agreement of some other kind already executed or proposed to be executed subsequently. Had there been terms of contract, it would have been appreciated better whether any time limit has been agreed or whether the parties were in a hurry that they did not even want to execute the sale agreement, but wanted to go straight to registration. The manner in which Ex.A1 has been written would only show that the executant who is the defendant had given an acknowledgment for having received Rs.1,00,000/- which he admitted as an advance payment for the sale of his property.



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15. The fundamental fact that the agreement ought to have been signed by both the parties to the agreement is also not seen to be present in Ex.A1. Ex.A1 has been signed only by the defendant and that is why it appears more like passing of the receipt than like agreement executed by both parties by setting out their terms by meeting minds in respect of the proposal to sell the suit property. Even in the absence of any written sale agreement on the strength of Ex.A1, it has to be presumed that there is an oral agreement for sale. Even then, the party who pleads that there is a sale agreement either oral or written, has the initial burden to prove the terms.

16. It is to be taken note that the appellant / defendant did not deny the fact that there was an understanding to sell the suit property belonging to him for a sale consideration of Rs.2,65,000/- and in pursuant to that, he had received Rs.1,00,000/- as advance. The one and only stand that has been taken by the defendant after having admitted the above terms as to the aggrieved sale transaction is that the plaintiff was not all along ready and willing to tender the balance sale consideration and get the sale deed executed.



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17. In this regard, the attention of this Court was drawn to Section 16(c) of Specific Relief Act by both the learned counsels for the parties. So far as the amendment to Section 16(c) is concerned, it has been brought into force on 01.10.2018. Without any doubt, the above amendment has been prospective in nature. For the sake of clarity, Section 16(c) of the Specific Relief Act before amendment and after amendment is given as follows:

"16(c) of the Specific Relief Act (before amendment)"

'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 terms the performance of which has been prevented or waived by the defendant."

16(c) of the Specific Relief Act (after amendment)"

'who fails to 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 terms the performance of which has been prevented or waived by the defendant."

18. Prior to the amendment what found in Section 16(c) was "*who fails to aver and prove*". The only difference prior to the amendment was



that the party who asserts that he has been ready and willing to perform his part of contract, has to plead and prove the same. The said fact has to be necessarily pleaded in his pleadings. Subsequent to the amendment even if it is not pleaded, if the readiness and willingness is proved, the plaintiff is entitled to get a decree in his favour. So far as the proof is concerned, there is no difference in the provision which stood prior and subsequent to the amendment. So the readiness and willingness has to be proved even when it is not pleaded. In the instant case, the plaintiff has averred in his pleadings that he was always ready and willing to perform his part of contract and further, the date of the sale agreement relates back anteriorly to the date of the amendment brought into force. Hence, the amended Section 16(c) does not make any difference in fixing respective burden of proof on the respective party to the litigation and ensuring whether the party who has the burden had discharged the same.

19. The contention of the learned counsel for the respondent / plaintiff is that subsequent to the sale agreement, the plaintiff was very much ready and willing to perform his part of contract. He further submitted that the plaintiff has put up a compound wall and dug a well in the suit



property. That would not only show his interest in the property and also his readiness with funds so as to comply the transaction.

20. However, it is the contention of the appellant / defendant that the plaintiff has never been put into possession of the suit property. During his absence, the plaintiff has taken advantage and trespassed into the property and built a compound wall and dug a well. The essential document Ex.A1 also does not have any recital as to handing over possession or any other terms as to the construction of compound wall or digging of well. The fact remains that the plaintiff has not chosen to seek any relief as to the possession probably because of Ex.A1 is an unregistered document. So this Court has limited its responsibility of just appreciating the essential aspects relating to the relief of specific performance which is sought by the plaintiff in the plaint.

21. The evidence of P.W.1 would assume more relevance in this regard because the burden is on the plaintiff to prove that he has been all along ready and willing to perform his part of contract. P.W.1 has stated during his cross examination that after the agreement was entered, he did



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not remember when did he contact the defendant. He further stated that in the absence of any time limit prescribed in Ex.A1, he did not contact the defendant to get clarification as to when he is supposed to get the balance sale consideration and get the sale deed registered. His further evidence would show that the defendant was about to go to USA and the document of sale deed can be registered after he returned from USA.

22. The defendant has gone to USA during the beginning of 2004. The evidence of P.W.1 would confirm the fact that he had come back after two months. It is stated by the plaintiff that he went and enquired the defendant about the execution of the sale deed and the defendant agreed that he would execute the sale deed within a week. In such case, all these transactions ought to have been completed in the year 2004 itself. But the missing of continuity is only subsequent to the year 2004 and there is no explanation given on the side of the plaintiff as to why he did not insist to execute the sale deed when the defendant had come back to India and assured the plaintiff that he would execute the sale deed within a week.



23. The plaintiff has sent a legal notice on 21.01.2006 i.e., Ex.A2. In the said notice, the plaintiff has alleged that he would be waiting at the Sub-Registrar Office on 06.02.2006 and that the defendant should come to the Registrar Office to get the sale deed executed. The defendant has received the legal notice, but he had not sent any reply immediately or atleast before 06.02.2006, on which date, the plaintiff had assured to be present in the Sub-Registrar Office. However, the defendant has sent the reply notice only after the plaintiff had filed the suit. There is an indifference on the side of the defendant also. But, that alone cannot be taken as a proof to show that the plaintiff has been all along ready and willing to perform his part of contract.

24. Readiness would be the capability of performing the contract by having sufficient funds and willingness is making all the arrangements towards getting the sale deed executed. The respondent has chosen to mark the bank statement to show that he had sufficient funds in his bank account and hence, he cannot be presumed as a person who did not have enough funds to pay the balance sale consideration as agreed.



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25. On perusal of the bank statement Ex.A6, it is seen that it relates back to the period 01.04.2006 to 30.04.2006. But the suit has been filed on 19.02.2006. It would have been relevant had the plaintiff chosen to produce the bank statement from the date of the sale deed till the date of issuing legal notice. Ex.A6 would reflect his financial position subsequent 01.04.2006 to 30.04.2006. The crucial time which would relate to his readiness would be prior to the issuance of the legal notice and no evidence in the form of bank statement has been produced to show the above fact. The plaintiff has submitted that his conduct of putting up the compound wall and digging well by investing money would show his capacity. Hence, that itself is sufficient to show his readiness.

26. A person's interest in the property for which he had entered a sale agreement is different from his interest to tender the balance sale consideration as agreed. For whatever reason, the plaintiff could get into the suit property and erect the compound wall and dig a well, that alone will not prove the fact that the plaintiff had the balance amount in his hands, after having spent money on the above constructions and that he was all along ready and willing to pay the balance sale consideration and get the sale deed



registered. This is especially so in view of the fact that the plaintiff himself has not signed Ex.A1 and that the witnesses who signed Ex.A1 did not set out his details in Ex.A1. As already stated, Ex.A1 appears to be a rough document which would give a presumption that the parties did not prefer to wait long and there was a mutual proposal that they would see the sale deed executed after the defendant came back from USA.

27. It is seen from the evidence of P.W.1 that the defendant was available in India in the year 2004 and he assured that he would execute the sale deed within a week. In such case, the sale deed could have got executed at that time itself. But there was some lack of initiative on the part of the plaintiff for the reasons best known to him. Even though the defendant has stated that it was only the plaintiff who was not ready and willing to perform his part of contract, the defendant also did not bring an end to the contract by sending any legal notice by saying that the plaintiff did not pay the balance sale consideration and hence, he cancelled the agreement. The defendant also continued to retain the advance amount of Rs.1,00,000/- without any forfeiture clause prescribed in Ex.A1 that in the event of failure



to comply the terms by the plaintiff, he is entitled to retain the advance amount.

28. Though both parties blame each other for not getting the sale deed executed, the burden is much on the part of the plaintiff than on the defendant to prove the essential facts for getting a decree for specific performance. Though the plaintiff had put up a compound wall and dug a well in the suit property, the plaintiff has not proved his continuous readiness and willingness. In this regard, I feel it is appropriate to refer the judgment of the Hon'ble Supreme Court rendered in the case of ***U.N.Krishnamurthy Vs. A.M.Krishnamurthy, reported in 2023 11 SCC 775***. The Hon'ble Supreme Court has observed in that case that in a suit for specific performance, proof of readiness and willingness is a responsibility bestowed on the plaintiff and he has to plead that he had sufficient money or he was in a position to raise funds at the time when he is expected to discharge his obligation under the contract. In this regard, I feel it is relevant to extract the paragraph Nos.25, 33, 34, 46 and 47 of the above judgment as under:

"25. To aver and prove readiness and willingness to perform an obligation to pay money, in terms of a contract,



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the plaintiff would have to make specific statements in the plaint and adduce evidence to show availability of funds to make payment in terms of the contract in time. In other words, the plaintiff would have to plead that the plaintiff had sufficient funds or was in a position to raise funds in time to discharge his obligation under the contract. If the plaintiff does not have sufficient funds with him to discharge his obligations in terms of a contract, which requires payment of money, the plaintiff would have to specifically plead how the funds would be available to him. To cite an example, the plaintiff may aver and prove, by adducing evidence, an arrangement with a financier for disbursement of adequate funds for timely compliance with the terms and conditions of a contract involving payment of money.

33. In a suit for Specific Performance of a contract, the Court is required to pose unto itself the following questions, namely:-

(i) Whether there is a valid agreement of sale binding on both the vendor and the vendee and

(ii) Whether the Plaintiff has all along been and still is ready and willing to perform his part of the contract as envisaged under [Section 16\(c\)](#) of the Specific Relief Act, 1963.

34. There is a distinction between readiness and willingness to perform the contract and both ingredients are



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necessary for the relief of Specific Performance. In *His Holiness Acharya Swami Ganesh Dassji v. Sita Ram Thapar*⁷ cited by Mr. Venugopal, this Court said that there was a difference between readiness and willingness to perform a contract. While readiness means the capacity of the Plaintiff to perform the contract which would include his financial position, willingness relates to the conduct of the Plaintiff. The same view was taken by this Court in *Kalawati v. Rakesh Kumar*.

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.

47. In this case, the Respondent Plaintiff has failed to discharge his duty to prove his readiness as well as willingness to perform his part of the contract, by adducing cogent evidence. Acceptable evidence has not been placed on record to prove his readiness and willingness. Further, it is clear from the Respondent Plaintiff's balance sheet that he



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did not have sufficient funds to discharge his part of contract in March 2003. Making subsequent deposit of balance consideration after lapse of seven years would not establish the Respondent Plaintiff's readiness to discharge his part of contract. Reliance may be placed on [Umabai v. Nilkanth Dhondiba Chavan](#) (supra) where this Court speaking through Justice SB Sinha held that deposit of amount in court is not enough to arrive at conclusion that Plaintiff was ready and willing to perform his part of contract. Deposit in court would not establish Plaintiff's readiness and willingness within meaning of [section 16\(c\)](#) of Specific Relief Act. The relevant part of the judgment is reproduced below: -

“45. ...Deposit of any amount in the court at the appellate stage by the plaintiffs by itself would not establish their readiness and willingness to perform their part of the contract within the meaning of [Section 16\(c\)](#) of the Specific Relief Act...”

29. The same principle has been adopted in the subsequent judgment of the Hon'ble Supreme Court in the case of ***Sukhwinder Singh Vs. Jagroop Singh and Ors, reported in 2021 (20) SCC 245*** and it is held that the plaintiff is expected to prove his readiness and willingness in order to



get the decree for specific performance. For better clarification, paragraph

No.9 of the above judgment is extracted as under:

"9. The suit being the one for specific performance of the contract on payment of the balance sale consideration, the readiness and willingness was required to be proved by the plaintiff and was to be considered by the Courts below as a basic requirement if a decree for specific performance is to be granted. In the instant case though the defendant No.2 had denied the agreement as also the receipt of the earnest money, the same would not be of consequence as the agreement claimed by the plaintiff is with the defendant No.1 and the contention of the defendant No.2 to deny the same is without personal knowledge on that aspect. However, even in the absence of the defence put forth, the plaintiff was required to prove his readiness and willingness and that aspect of the matter was to be considered by the Courts below. In the present case though the plaintiff examined himself as PW1, as also PW2 and PW3, the document writer, and the witness to the agreement who stated with regard to the execution of the agreement, the evidence to prove the readiness and willingness with regard to the resources to pay the balance sale consideration is insufficient. In the absence of denial by the defendant No.1, even if the payment of Rs.69,500/ and the claim by the plaintiff of having gone to



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the office of SubRegistrar on 15.06.2004 is accepted, the fact as to whether the plaintiff had notified the defendant No.1 about he being ready with the balance sale consideration and calling upon the plaintiff to appear before the Sub-Registrar and execute the Sale Deed was required to be proved. From among the documents produced and marked as Exhibit P1 to P9 there is no document to that effect, more particularly to indicate the availability of the balance sale consideration as on 15.06.2004 and as on the date of filing the suit. Despite the same, merely based on the oral testimony of PW1, the Courts below have accepted the case put forth by the plaintiff to be ready and willing to complete the transaction."

30. Unfortunately, the plaintiff has not sought any alternate relief of refund of advance amount along with any compensation for the well and compound wall alleged to have been raised by him. In fact, the said improvement has not been valued in terms of money and for which no Court fee has been paid. The plaintiff has not proved his readiness and willingness to pay the balance sale consideration and get the sale deed registered and hence, I feel that the plaintiff is not entitled to get the equitable remedy of



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specific performance. However, I feel that the plaintiff can be given with an alternate relief of refund of the advance amount.

31. In the result, this Second Appeal is partly allowed and the judgment and decree dated 11.06.2015 passed by the learned Principal District Judge, Chengalpattu in A.S.No.2/2012 is modified to the effect of decreeing the suit to the relief of refund of the advance amount of Rs.1,00,000/- along with interest at the rate of 9% from the date of the sale agreement till the date of repayment. In all other aspects, this Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Speaking order

25.11.2024

Index : Yes

Neutral Citation : Yes

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To

1.The Principal District Judge,
Chengalpattu.

2.The Additional Sub-Judge,
Chengalpattu.

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R.N.MANJULA, J.

gsk

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M.P.No.1 of 2015

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