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O.S.A.No.121 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2024

CORAM

THE HON'BLE Mr. JUSTICE S.S.SUNDAR

AND

THE HON'BLE Dr. JUSTICE A.D.MARIA CLETE

O.S.A.No.121 of 2021

S.Rajeswari

.. Appellant

Vs.

C.Parimala

.. Respondent

Original Side Appeal filed under Order XXXVI Rule 9 of O.S. Rules read with Clause 15 of Letters Patent, against the order dated 12.08.2020 passed in C.S.No.513 of 2006.

For Appellant : Mr.S.Sadasharam

For Respondent : Mr.R.Thiagarajan

J U D G M E N T

(Delivered by S.S.SUNDAR, J.)

The plaintiff in the suit in C.S.No.513 of 2006, filed for specific performance of an agreement of sale dated 28.10.2005, is the appellant in this appeal.



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2. Brief facts of the case that are necessary for the disposal of this appeal, are as follows :

2.1. The defendant who is the owner of the suit property, entered into an agreement of sale with the plaintiff on 28.10.2005, agreeing to sell the property to the plaintiff for a total sale consideration of Rs.48,00,000/-. As per the terms of the agreement, a sum of Rs.3,00,000/- was paid by cash on the date of agreement and a receipt of Rs.2,00,000/- was also acknowledged. The balance sum of Rs.43,00,000/- was agreed to be paid at the time of execution of sale deed. Both parties mutually agreed that the sale transaction should be completed within a period of three months from the date of agreement and time can be extended for a period of another two months, if it is required by the vendor.

2.2. The vendor agreed to hand over the vacant possession of the property on the date of execution of the sale deed, on receipt of the balance sale consideration. The vendor also agreed to hand over all the title deeds in respect of the suit property to the plaintiff, discharging the bank dues payable by the vendor to the UCO Bank. The vendor declared that there is no other subsisting encumbrance over the suit property. Both parties mutually agreed that they should not violate any of the terms and conditions of the agreement.



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2.3. After the date of agreement, it is also admitted that the defendant had discharged the outstanding loan on 28.03.2006. Even though time was specified in the agreement, the plaintiff has not produced any document to show that he was demanding the defendant to execute the sale deed on receipt of balance of sale consideration. However, the defendant sent a notice on 24.06.2006, which is marked as Ex.P3 to the plaintiff, calling upon her to receive the amount, which was received by the defendant on various dates, *i.e.*, a sum of Rs.13,30,000/-, pursuant to the sale agreement. In the said notice, the defendant came forward with a specific case that the plaintiff who had agreed to complete the sale transaction within three months from 28.01.2006, had not come forward to pay the balance and therefore, the agreement had come to an end.

2.4. The plaintiff immediately sent a reply under Ex.P5 dated 29.06.2006, stating that the defendant failed to clear the loan amount due to UCO Bank as undertaken by her. Further, it is stated that the defendant also failed to vacate and hand over the possession of the property as agreed in the sale agreement. It is also stated that the defendant who had agreed to vacate the tenants from the suit property, failed to hand over vacant possession to the plaintiff.



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2.5. It is further stated in the reply notice that the plaintiff used to contact the defendant over phone weekly twice expressing her willingness to complete the transaction and she was having the balance of sale consideration readily available and that it is the defendant who failed to initiate action to get the tenants vacated, so that vacant possession can be handed over to the plaintiff.

2.6. The essence of the reply of the plaintiff is that the defendant has no *locus standi* to withdraw from the sale agreement and hence, called upon the defendant to withdraw the notice and express her readiness before 30.06.2006 so that the plaintiff will be able to get the sale deed prepared to proceed with the registration on 03.07.2006. The relevant portion from the reply notice in which, the plaintiff expressed her willingness, is as under :

“In the above circumstances your client is hereby called upon to withdraw the notice under reply and express your client's readiness before 5.00 p.m. on 30.06.2006 so that my client will be able to get the sale deed prepared and go for registration on 03.07.2006 and my client is also hereby returning the demand draft for a sum of Rs.13,30,000/-. In spite of this reply notice if your client fails to come forward to execute the sale deed, my client will be initiating necessary legal action to enforce the sale agreement against your client and your client will be held liable and responsible for all costs and consequences incidental thereto.”



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After the reply notice, without much delay, the plaintiff filed the suit for specific performance.

2.7. In the plaint, the plaintiff contended that she was always ready and willing to perform her part of contract and the defendant failed to come forward to execute the sale deed, despite the plaintiff was ready with the balance sale consideration. It is the specific case of the plaintiff that the defendant did not take steps to vacate the tenants and she was not in a position to hand over the vacant possession to the plaintiff upon registration of sale. Further, the defendant failed to discharge the mortgage within the due date to hand over the original title deeds as stipulated in the agreement.

2.8. On 21.11.2005, the plaintiff paid a sum of Rs.4,00,000/- by way of cash to the defendant for payment to UCO Bank towards loan liability. There were further payment of Rs.30,000/- on 07.12.2015 and Rs.2,00,000/- on 19.12.2005 by way of cash. Since a sum of Rs.13,30,000/- had been paid by the plaintiff, the balance sum of Rs.34,70,000/- is due as per the sale agreement.

2.9. In the written statement, though the defendant admitted the sale agreement, disputed the contention of the plaintiff that she was ready and



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willing to execute her part of contract within the time stipulated in the agreement. The specific case pleaded by the defendant in her written statement is that because of the failure of the plaintiff to comply with the terms of the agreement by making payment of sale consideration and completing the sale, the defendant was unable to pay the amount due to the bank before the end of January 2006. It is contended that on 28.03.2006, with the money borrowed from outside for interest, the defendant approached the bank and paid a sum of Rs.22,00,000/- towards full settlement and got the property documents released.

2.10. It is the specific plea of the defendant that time is the essence of the contract and the very purpose for which the defendant agreed to sell the property was to clear the bank loan and the plaintiff failed to perform her part of contract as agreed. In respect of the readiness and willingness of the plaintiff, it is contended that due to the conduct of the plaintiff and the breach committed by her, the defendant was subjected to mental and physical agony and humiliation and also incurred substantial expenditure in discharging the loan, out of the money she borrowed at an exorbitant rate of interest.

2.11. It is stated further that, in the meanwhile, the market value of the



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property has gone high and this had caused serious prejudice to the defendant, on account of the breach of contract by the plaintiff. The other portion of the written statement are mainly by referring to principles of equity. While making a specific statement that the plaintiff was not possessed of sufficient funds to remit the balance sale consideration to the defendant, it was contended by the defendant that she was constrained to terminate and rescind the contract. It is stated in defence that the defendant averted the distress sale by the bank with much difficulty. Subsequently, along with the notice, defendant returned Rs.13,30,000/- to the plaintiff, which was paid towards advance sale consideration. This amount was returned. Thereafter, the plaintiff filed a suit in C.S.No.513 of 2006 for specific performance based on the sale agreement dated 28.10.2005, entered into between them, after issuing notice to the defendant, calling upon her to come to the registration office on 03.07.2006. It is admitted that the amount received by the defendant was deposited in Court in 2007, by direction of the learned Single Judge. In the written statement, a counter claim was made by the defendant.

3. The learned Single Judge framed the following issues in C.S.No.513 of 2006 :

"1. Whether the defendant is liable to honour the terms of the sale



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agreement dated 28.10.2005 and execute the sale deed on receipt of the balance sale consideration?

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2. Whether defendant violated the terms of the agreement and failed to honour the commitment under sale agreement dated 28.10.2005?

3. Whether the defendant deliberately avoided the execution of the sale deed on receipt of the balance sale consideration and neglected to honour the commitment under the sale agreement dated 28.10.2005?

4. Whether the plaintiff has been always ready and willing to perform her part of contract?

5. Whether the plaintiff failed and neglected to pay the balance sale consideration within the time stipulated as per the terms of the contract?

6. Whether the time is essence of contract?

7. Whether the specific performance would make hardship to defendant?

8. Whether the counter claim of the defendant is to be allowed?

9. Whether the defendant is entitled to declaration that the contract dated 28.10.2005 has been duly rescinded and termination by the defendant on 24.06.2006?

10. Whether the defendant is entitled to counter claim as prayed for in the written statement?

11. To what reliefs the plaintiff and defendant are entitled to?"



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3.1. The learned Single Judge, while considering the issues 1 to 5, held that the plaintiff has not proved that she had sufficient funds to make the balance sale consideration and that she was ready and willing to perform her part of contract and answered all these issues against the plaintiff.

3.2. It is further held that since the defendant had to clear the UCO Bank dues to the tune of Rs.22,00,000/-, the plaintiff should have paid Rs.22,00,000/- to the bank and should have sent notice to the defendant that she was ready to clear the bank dues and that after vacating the tenant at the time of execution of the sale deed, she would pay the balance sale consideration. As regards issue No.6, the learned Single Judge, held that time is the essence of the contract.

3.3. Regarding issue No.7, the learned Single Judge, held that the relief of specific performance would cause great hardship to the defendant.

3.4. As far as issue Nos.8 and 10 is concerned, it is answered against the defendant, as she has not established the relief prayed for by way of counter claim.



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3.5. The learned Single Judge, while deciding issue No.9, held that unilateral cancellation of contract is not permissible. Having regard to the conduct of the plaintiff that she did not make the payment to clear the bank dues and other attendant circumstances, it is held that the defendant was forced to cancel the agreement. It is also found that the plaintiff who did not come forward to pay the balance sale consideration to redeem the mortgage, is not entitled to get the equitable relief of specific performance.

3.6. As a result, the suit for specific performance was dismissed by the learned Single Judge and the counter claim filed by the defendant is also dismissed. Aggrieved by this judgment and decree, the plaintiff preferred this appeal.

4. The learned counsel for the appellant submitted that the learned Single Judge failed to consider the material evidence available on record and the judgment and decree passed by the learned Single Judge is liable to be set aside, as there was a long delay in delivering the judgment, after hearing the arguments on merits. The learned counsel further submitted that time was not the essence of the contract. Though there is a stipulation regarding time, the learned counsel submitted that time is not the essence of the contract, when the



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contract is in relation to the sale of immovable property. Regarding the findings of the learned Single Judge in respect of the readiness and willingness to get the sale deed executed on payment of balance sale consideration, the learned counsel reiterated the grounds raised by the appellant in the memorandum of grounds, without referring to, any other document or oral evidence except the sale agreement, notice and reply notice *i.e.*, Ex.P2, Ex.P3 and Ex.P5.

5. On the other hand, the learned counsel appearing for the respondent submitted that the findings of the learned Single Judge on the question of readiness and willingness are unassailable and the plaintiff exposed herself by her conduct that she was never ready and willing to perform her part of contract. The learned counsel then pointed out that time is the essence of the contract as per the terms of the agreement. The learned counsel, also pointed out that the parties had agreed to a specific time for execution of sale deed in the sale agreement, and that therefore they had consciously made time as essence of the contract. When the parties agreed to perform the contract within time as per the date of agreement and subsequently, extended the time for a specific period, the plaintiff, who failed to perform her part of contract and made the defendant to suffer, is not entitled to the relief of specific



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performance. The conduct of the plaintiff was also pointed out by the learned counsel for the defendant to sustain his argument that the plaintiff is not entitled to the relief of specific performance.

6.This Court, considering the pleadings, issues raised before the Trial Court and arguments of the learned counsel on either side, is inclined to frame the following points for determination in this appeal :

- i. Whether time is the essence of the contract ?
- ii. Whether the plaintiff was always ready and willing to perform her part of contract ?
- iii. Whether the plaintiff is entitled to the equitable relief of specific performance ?

POINT [I]:-

7.Learned counsel for the appellant relied upon the judgment of Constitution Bench of Hon'ble Supreme Court in ***Smt.Chand Rani [Dead] by LRs. Vs. Smt.Kamal Rani [Dead] by LRs. [AIR 1993 SC 1742 : 1993 [1] SCC 519]***. This Court has considered the said judgment in several cases and has properly understood the said judgment in several context and held that the question whether time is essence of the agreement can be gathered from the express terms of the contract. In this case, time was specifically prescribed.



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Since both parties have mutually agreed that the sale transaction should be completed within a period of three months from the date of Agreement, parties have specified time as the essence of the contract. No doubt, in the Agreement of Sale, time can be extended for a period of another two months if it is required by the vendor. It was only in the context that the property was mortgaged with the Bank, the vendor had to reserve such time to save the contract. Merely because there was an agreement to extend time at the request of vendor, there is no logic in the agreement that the time is not the essence of the contract. After agreeing to pay the balance of sale consideration within a period of three months from the date of agreement, the appellant is estopped from contending that time is not the essence of the contract. This contention itself is against the terms of the contract and it only shows that the plaintiff was not ready to perform his part of the contract. Having regard to the pleadings, oral and documentary evidence, this Court is convinced that time is the essence of contract.

POINT [ii]:-READINESS AND WILLINGNESS:-

8.The Trial Court has categorically held that the plaintiff had not proved his readiness and willingness to perform his part of the contract. The issue was answered against the plaintiff by referring to the pleadings and evidence. It is



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pertinent to mention that the Hon'ble Supreme Court in ***Man Kaur Vs. Arthar***

Singh Sangha reported 2010 [6] CTC 652 : 2010 [10] SCC 512 has dealt with

the issue as to the readiness and willingness of the plaintiff when the plaintiff

has not produced any evidence to prove his readiness. The Hon'ble Supreme

Court in ***Man Kaur's case [cited supra]*** has held as follows:-

“40.A person who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him (other than the terms the performance of which has been prevented or waived by the defendant) is barred from claiming specific performance. Therefore, even assuming that the defendant had committed breach, if the plaintiff fails to aver in the plaint or prove that he was always ready and willing to perform the essential terms of contract which are required to be performed by him (other than the terms the performance of which has been prevented or waived by the plaintiff), there is a bar to specific performance in his favour. Therefore, the assumption of the respondent that readiness and willingness on the part of the plaintiff is something which need not be proved, if the plaintiff is able to establish that the defendant refused to execute the sale deed and thereby committed breach, is not correct. Let us give an example. Take a case where there is a contract for sale for a consideration of Rs. 10 lakhs and earnest money of Rs. 1 lakh was paid and the vendor wrongly refuses to execute the sale deed



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unless the purchaser is ready to pay Rs. 15 lakhs. In such a case there is a clear breach by the defendant. But in that case, if the plaintiff did not have the balance Rs. 9 lakhs (and the money required for stamp duty and registration) or the capacity to arrange and pay such money, when the contract had to be performed, the plaintiff will not be entitled to specific performance, even if he proves breach by the defendant, as he was not “ready and willing” to perform his obligations.”

9. In the case on hand, the Trial Court has specifically held that the plaintiff has not proved that he had funds to perform his part of the contract. Dealing with a similar issue, referring to the judgment of Hon'ble Supreme Court in **Man Kaur case**, this Court in **R.Sadasivam and Others Vs. K.Subramanian and Others [AS.No.425/2012]** vide judgment dated **14.02.2023**, has held as follows :-

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



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and willingness of plaintiff to perform his part of the contract before granting specific performance. The Hon'ble Supreme Court recently in **U.N.Krishnamurthy through LRs Vs. A.M.Krishnamurthy** reported in **2022 [2] MWN [Civil] 799**, after referring to several binding precedents, has held as follows:-

"45. The Respondent Plaintiff has relied upon the notice dated 13.02.2003 and evidences of PW2 & PW3 to prove that he was always ready and willing to perform his part of the contract. Even though it may be true that the Respondent Plaintiff had deposited the balance sale consideration in court on 06.04.2010, it cannot be ignored that such deposit was made by him seven years after 15.3.2003, being the date by which the sale had to be concluded. No evidence has been adduced on behalf of the Respondent Plaintiff as to how the Respondent Plaintiff was in a position to pay or make arrangements for payment of the balance sale consideration within time. The Courts below also erred in not adjudicating upon this vital issue except to make a sweeping observation that, given that the Respondent Plaintiff was a businessman he had sources to arrange the balance funds. Careful study of balance sheet



dated 31.03.2003 of the Respondent Plaintiff would demonstrate that he did not have sufficient funds to discharge his part of contract.

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."

10. When this Court wanted the learned counsel for the appellant to prove the appellant's readiness and willingness at least by showing his wherewithal to pay the remaining amount, learned counsel was unable to produce anything or show from the evidence, the readiness and willingness of the appellant by showing that she had enough funds at her disposal at the relevant point of time or that, she had sufficient reserves to mobilise funds. **Hence, this Court is of the view that the appellant/plaintiff miserably failed to prove that she was ready and willing to perform her part of contract.**



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ISSUE No.[iii]:-EQUITABLE RELIEF

11.The question whether the plaintiff is justified in refusing to come forward to pay the balance within the stipulated time, has to be examined. When a person is seeking equitable relief of specific performance, he / she should come with clean hands and his/her intention behind delaying performance shall not be to deceive the defendant/s.

12.Section 20 as it was read before amendment, clearly demonstrate that specific performance is a discretionary and equitable relief. Assuming that there exists a valid and concluded contract between the parties, it is necessary for the plaintiff that he was ready and willing to perform his part of the contract from the date of Agreement till the execution of the Sale Deed. Only when the plaintiff says that he had performed his part of the contract or he was ready and willing to perform his part of the contract in conformity with the terms of the contract, the Court will examine whether the plaintiff is entitled to the discretion.

13.Now the question that would arise for consideration in the instant case



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is whether this Court would exercise its discretion in favour of plaintiff under

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

Paragraphs 54 to 56 of the judgment is relevant and hence, extracted:-

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



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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."

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

"66.In the case of Kamal Kumar Vs. Premlata Joshi and Others reported in 2019 [3] SCC 704, the Hon'ble Supreme Court has considered the scope of Section 20 of the Specific Relief Act and the material questions which are required to be looked into by Court. It is useful to refer to



paragraph No.7 of the said judgment:-

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

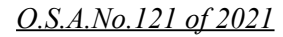
7.1. First, whether there exists a valid and concluded contract between the parties for sale/purchase of the suit property.

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

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



67. On the question of exercising discretion to grant equitable relief of specific performance, Section 20 of the Specific Relief Act prescribes statutory guidance. A discretion which is required to be exercised by Courts before granting specific performance should be governed by the Rule of law and equity. The law and equity are subservient to the other. The relief of specific performance need not be granted merely because it is lawful. The discretion should be exercised on the basis of sound judicial principles. Courts have repeatedly held that the plaintiff, in a suit for specific performance, is not entitled to the relief as a matter of right. While exercising discretion, the Courts are expected to keep in mind the material and peculiar facts and circumstances of the case, the conduct of the parties and consequences or the fallouts by granting specific relief to a party to the contract. In no case the relief can be used as an instrument of oppression to have an unfair advantage to the plaintiff or to the defendant..."

15. Applying all principles that are adopted and followed by the Hon'ble Supreme Court while interpreting Section 20 of the Specific Relief Act in different situations, this Court having regard to the peculiar facts and circumstances discussed above, finds that the appellant is not entitled to the



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relief of specific performance. For the foregoing discussions, this Court is of the view that the appeal is liable to be dismissed.

16.In the result, the Original Side Appeal stands **dismissed** confirming the judgment and decree of this Court dated 12.08.2020 passed in C.S.No.513 of 2006. No costs.

[S.S.S.R.,J.] [A.D.M.C.,J.]
04.10.2024

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