



A.S.No. 86 of 2021

IN THE HIGH Court OF JUDICATURE AT MADRAS

RESERVED ON : 22.11.2023

PRONOUNCED ON: 13.02.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

A.S.No. 86 of 2021
&
C.M.P. Nos. 5917 & 10280 of 2021

V.Manikandan

... Appellant

Vs.

1.Arulswamy

2.Ponnuswamy

...Respondents

PRAYER: Appeal Suit filed under Section 96 r/w Order XLI Rule 1 of the Code of Civil Procedure to set aside the Judgement and Decree dated 10.07.2020 passed by the learned III Additional District and Sessions Judge, Coimbatore in O.S.No.445 of 2018.

For Appellant : Mr. Sricharan Rangarajan
Senior Counsel
for M/s. Anu Ganesan.

For Respondent : Mr. N.Manokaran
for Mr. K.S.Karthik Raja

JUDGEMENT



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The plaintiff is the appellant herein. The suit in respect of which this First Appeal has been preferred is a suit filed by the appellant for specific performance of an agreement of sale dated 22.08.2013. The pleadings and the facts are set out herein below in order to appreciate the challenge to the Judgement and Decree in OS.No.445 of 2018 on the file of the III Additional District and Sessions Court, Coimbatore. For an easy understanding of the narrative of facts the parties to the lis are referred to in the same ranking as before the Trial Court.

Plaintiff's case:

2. It is the case of the plaintiff that the suit property which is the subject matter of the aforesaid suit belongs to defendants 1 and 2 herein, the same having been settled on them by their mother under a registered settlement deed dated 10.07.2012. On the very next day, i.e. 11.07.2012, defendants 1 and 2 had executed a general power of attorney in favour of the 3rd defendant, who is none else than the father of the plaintiff.



3. The plaintiff would submit that he was on a look out for a property to purchase as he wanted to have an asset for himself and for his son to be enjoyed at a later point in time. On learning about this desire, the defendants requested the plaintiff to purchase the suit property and the incentive that they had offered was flexibility of time for completing the contract. On this assurance, the plaintiff had agreed to purchase the property. Accordingly, a registered agreement of sale dated 22.08.2013 was entered into between the plaintiff and the 3rd defendant representing defendants 1 and 2 as their power of attorney. The total sale consideration was fixed at a sum of Rs.10,00,000/-. On the date of the agreement, a sum of Rs.1,00,000/- was paid as an advance and the balance was to be paid within a year. The plaintiff would submit that though the agreement contains such a recital, parties had agreed that time was not the essence of the contract. The plaintiff would also submit that he had been handed over the original title deeds and revenue records.

4. Thereafter, on 20.02.2015 an extension agreement was executed by the plaintiff and the 3rd defendant as a power agent of defendants 1 and 2. As per the terms of the extension agreement,



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the sale was to be completed on or before 20.02.2017. The plaintiff would submit that in all he had paid a sum of Rs.8,02,000/- on various dates to the bank account as requested by the 3rd defendant. The payments were made via RTGS / NEFT Bank transfers. By an email dated 13.07.2018, issued by the plaintiff's bank giving details of the payments made to the 3rd defendant. Though the sale agreement had stipulated that balance sale consideration was to be paid in cash at the time of execution of the sale deed, the plaintiff in his earnestness to honour the terms of agreement had been paying the money in a phased manner as provided in the extension agreement.

5. The plaintiff would submit that in all 90% of the sale consideration was paid and what remained was only a sum of rupees Rs.1,00,000/-. The plaintiff would submit that he had been ready and willing to pay the balance consideration and have the sale executed and he was awaiting for the 3rd defendant to honour his side of the contract.



6. The plaintiff would submit that he had contacted the 3rd defendant on 03.02.2017 and he had stated that he was grievously ill and admitted in hospital at various interval and as soon as he got better, he would execute the sale deed in favour of the plaintiff. Thereafter, in the month of August 2017, when he had visited the 3rd defendant at hospital defendants 1 and 2 had also visited the 3rd defendant and defendants in the presence of one Selvam who had also come to visit the 3rd defendant had promised that the sale deed would be executed when the 3rd defendant recovered.

7. Believing these words, the plaintiff had patiently waited for the execution of the sale deed in his favour. However, though considerable time had passed, since the defendants were not coming forward to execute the deed, the plaintiff had contacted the defendants 1 and 2 over their mobile phone, however, there was no response to the same. The evasive attitude adopted by the defendants gave raise to a suspicion in the mind of the plaintiff, who thereupon applied for an encumbrance certificate in respect of the property. A perusal of the encumbrance certificate brought to light the fact that the power of attorney executed by defendants 1 and 2 in



favour of the 3rd defendant had been cancelled by them by a registered document dated 16.09.2016.

8. On 02.05.2018, the plaintiff had sent a registered letter to the 3rd defendant informing him about the cancellation of the power of attorney and calling upon him to immediately contact defendants 1 and 2 and to execute the sale deed in his favour as he is ready and willing with the balance. This was followed by a legal notice dated 11.06.2018, to all the defendants. The notice has been served on all of them and it was only the 3rd defendant who had submitted a reply to the said notice, in which the 3rd defendant would submit that he had sent registered letter to his Principals on 02.03.2018 intimating them that he would proceed with the execution of the sale deed on receiving the balance amount of Rs.1,00,000/-, since he has recovered and left the hospital. The said letter has been served on defendants 1 and 2. In the said notice, the 3rd defendant also submitted that it was only when he had received the registered letter from the plaintiff on 02.05.2018 that he had come to know about the cancellation of his power of attorney. The 3rd defendant in his reply



notice would submit that he is suffering from various ailments, which are set out in detail in paragraph no. 3 of the said reply.

9. The 3rd defendant would also submit that he was ready to execute the sale deed, however, his health condition was not permitting him to do so. In the said reply notice, he would also state that his medical condition was known and seen not only by the plaintiff but also by the 1st and 2nd defendants who had seen this when they had come to visit the 3rd defendant in hospital in August 2017.

10. Since there was no reply from the defendants, the plaintiff proceeded to file a suit, in which the relief claimed was not only for a specific performance but also an alternative relief for refund of the advance amount.

11. The defendants 1 and 2 though served had not entered appearance. The 3rd defendant in the meanwhile had also passed away and his death has also been recorded. However, no steps have



been taken to bring his legal representatives on record. There is also nothing to show if the plaintiff was his only legal heir.

Trial Court:

12. Since the defendants 1 and 2 were set ex parte, the plaintiff had submitted his chief examination and marked Exhibits A1 to A29.

13. The Trial Court has framed the following issues:

(i) Whether the plaintiff is entitled to the relief of specific performance?

(ii) Whether the plaintiff was ready and willing to perform his part of the contract?

(iii) What other relief the plaintiff is entitled to?

14. The learned III Additional District Judge, Coimbatore, on considering the evidence and documents dismissed the suit.

15. Challenging the said dismissal, the plaintiff is before this

Court.



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16. Before proceeding to the narration, the points for consideration and the submission made by the counsel on the either side, it would be necessary to briefly set out the few dates and events which would throw light to the issue on hand:

<i>Date</i>	<i>Exhibit</i>	<i>Description</i>
14.05.2012	Ex.A5	The suit I Item of the property purchased by Mani, the wife of the deceased Arumugam and the mother of the defendants 1 and 2.
10.07.2012	Ex.A.6	The mother of the defendants 1 and 2, Mani had settled the suit property upon the defendants 1 and 2.
11.07.2012	Ex.A.7	Defendants 1 and 2 executed a registered Power of Attorney in favour of the 3rd defendant, giving him powers to enter into sale deed for a part or the whole of the suit property. There is also a clause permitting him to enter into an extension agreement.
22.08.2013	Ex.A.8	The 3rd defendant as a power of attorney executed agreement of sale in favour of the plaintiff. An advance of Rs.1,00,000/- is paid and a balance of a sum of Rs.9,00,000/- is payable within a period of two years, from the date of the agreement of sale. The balance is also payable on the date of the registration of the sale deed by cash to the 3rd defendant.
20.02.2015	Ex.A.9	Registered extension agreement entered into between the plaintiff and the 3rd defendant as power of attorney of defendants 1 and 2 extending the period of agreement by a further period of 2 years.



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<i>Date</i>	<i>Exhibit</i>	<i>Description</i>
19.10.2015	Ex.A.10	The 3rd defendant sends an e-mail to the plaintiff asking him to make cash deposits or online transfer to the 3rd defendant's proprietary concern M/s.Varunas Heavenly Water. The 3rd defendant informs the plaintiff that he is re-mentioning his account details, which is also given.
12.05.2016	Ex.A.11	E-mail from the 3rd defendant to the plaintiff setting out three online transfers done by the plaintiff to the 3rd defendant and also stating that the amount have been handed over to the land owners. After the extension agreement entered into, a sum of Rs.2,80,000/- is claimed to have been transferred to the 3rd defendant's account on 23.12.2015, i.e., after ten months.
12.09.2016	Ex.A.12	Power executed by defendants 1 and 2 in favour of the 3rd defendant on 11.07.2012 is cancelled. The deed would also mention that the cancellation has been intimated to the 3rd defendant.
07.04.2017	Ex.A.13	The 3rd defendant acknowledges three more payments. There is no mention about these amounts having been paid to the land owners, namely, defendants 1 and 2.
02.05.2018	Ex.A.15	Registered letter from the plaintiff to the 3rd defendant informing him about the cancellation of the power of attorney and asking the 3rd defendant to speak to the defendants 1 and 2 and execute the sale deed in his favour quickly
11.06.2018	Ex.A.16	Legal notice issued by appellant to defendants, which is received by all.
12.07.2018	Ex.A.27	Reply notice from the 3rd defendant to the appellant enclosing the letter sent by the 3rd



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<i>Date</i>	<i>Exhibit</i>	<i>Description</i>
		defendant to the 2nd defendant.

Submissions:

Plaintiff's Submission:

17. Mr.Sricharan Rangarajan, learned senior counsel appearing on behalf of the learned counsel for the appellant would submit that the time was never intended to be the essence of the contract and the plaintiff has entered into this agreement only on account of the fact that a flexibility was offered to him in making the payment in installments.

18. The learned senior counsel would submit that the plaintiff has also been adhering to this which is evident from a perusal of the payments made by him to the 3rd defendant. He would submit that by executing Exhibit A9, extension agreement, the parties have made it clear that time was not the essence of the contract. That



apart, the period of reckoning as to whether the plaintiff was ready and willing would commence only from this extended period i.e., from 20.02.2015 and not from 22.08.2013, when the original agreement was executed.

19. The learned senior counsel would submit that the extension of the agreement was made on 20.02.2015 and the extension was for a period of 2 years. Even before the end of the two years the 1st and 2nd defendants had proceeded to cancel the power of attorney under Exhibit A 13. The 3rd defendant had acknowledged the payment up to 27.03.2017 and the cancellation has not been intimated either to the power agent or to the plaintiff.

20. The learned senior counsel would refer to the letter dated 02.03.2018 sent by the 3rd defendant to the 2nd defendant and which was enclosed along with the 2nd defendant's reply to the legal notice issued by the plaintiff. In the said letter he had refreshed the 2nd defendant's memory to their meeting at the hospital in the month of August 2017 where the 3rd defendant was taking treatment and when the 3rd defendant had informed all that as soon as he recouped



his health, he would be executing the sale in favour of the plaintiff, after receiving the balance of a sum of Rs.1,00,000/-. He would also state that against the total sale consideration of Rs.10,02,000/-, the plaintiff had paid a sum of Rs.9,02,000/-.

21. Therefore, it is the contention of the learned senior counsel that the suit having been instituted on 29.08.2018, there was no delay on the part of the plaintiff as the cancellation deed had been executed only in the year 2015. He would rely upon the judgement of the Hon'ble Supreme Court reported in **2004 (8) SCC 689 – Swarnam Ramachandran and Another Vs. Aravacode Chakungal Jayapalam**, with particular reference to paragraph no.16 therein.

22. He would submit that in the instant case by February 2017 substantial consideration has been paid and therefore the enforcement of the agreement is in time and laches cannot be attributed to the plaintiff. He would rely upon the judgement of the Hon'ble Supreme Court reported in **AIR 2022 SC 1793 – P.Ramasubbamma Vs. V.Vijayalakshmi and others.**



23. The learned senior counsel would submit that the Trial Court had discarded the email addressed by the banker to show the balance available in the plaintiff's account, the emails that have been received from the banker etc., to show proof that they had the required wherewithal. He would submit that these evidences could atleast be considered as secondary evidence. In support of this contention, he would rely upon the Judgement reported in **2006 (5) SCC 353 – Prem Singh and Others Vs. Birbal and others.**

24. He would submit that in order to substantiate the extension of a contract or its alteration there was no necessity that the same should be in writing, it could also be proved by oral evidence or in some cases through conduct. To support this contention, he would rely upon the judgement reported in **AIR 2006 SC 2281 – Panchanan Dhara Vs. Monmatha Nath Maity.**

25. On the issue of readiness and willingness, the learned senior counsel would rely upon the judgements of the Hon'ble Supreme Court reported in **AIR 2022 SC 5009 – P.Daivasigamani**



Vs. S.Sambandan and AIR 2021 SC 5581 - Sughar Singh Vs. Hari Singh (Dead).

26. The learned senior counsel would argue that the termination of the authority of the power agent does not take effect till it is made known to the plaintiff. In this regard he would draw strength from the judgements reported in *MANU/TN/2449/2022 – T.Lawrence Vs. State of Tamilnadu and others* and 2017 SCC Online Mad 4978 – *M.Masilamani Vs. M.Veeramani and others*.

27. With regard to proof of payment, the plaintiff would once again rely upon the judgement in the cases of *T.Lawrence Vs. State of Tamilnadu and others* and *M.Masilamani Vs. M.Veeramani and others*.

28. The learned senior counsel would therefore submit that the plaintiff has established the execution of the agreement, extension of the agreement and the payment of the sale consideration. He would submit that in the light of the above the Judgement and Decree of the Trial Court ought to be set aside and the above appeal allowed.



Defendant's Submission:

29. Per Contra Mr. N.Manokaran, learned counsel appearing on behalf of the learned counsel for the defendants 1 and 2 would submit that the time is the essence of the contract, which is evidenced from a reading of the recitals in the agreement of sale and particularly the extension agreement Exhibit A9, wherein it is stated that if the contract is not completed within a given time of 2 years from the date of execution of extension of agreement, the agreement will automatically stand cancelled. Therefore, he would submit that the parties had made time the essence of the contract.

30. He would also draw the attention of the Court to the recitals in the extension agreement, which would clearly show that even on that day, the plaintiff was not ready with the balance sale consideration and therefore failure to establish readiness and willingness is Writ large.

31. The learned counsel would submit that the suit has been filed nearly 5 years after the date of the original agreement of sale.



As regards the production of the original deeds, the learned counsel would submit that even without paying the balance sale consideration the power of attorney has handed over the original documents to the agreement holder, since he is the son of the 3rd defendant. There is a clear collusion between the 3rd defendant and the plaintiff. He would highlight the fact that this collusion between the 3rd defendant and the plaintiff is clearly evident on perusing the emails that have been sent and their being a lack of *consensus ad idem* between the defendants 1 and 2 and the 3rd defendant.

32. The learned counsel would submit that the suit is barred by limitation. In support of this argument, he would rely upon the very judgement cited on the side of the plaintiff reported in **2004 (8) SCC 689 – Swarnam Ramachandran and another Vs. Aravacode Chakungal Jayapalan.**

33. He would also rely upon the following judgements :

(i) **2022 SCC Online SC 71 – Shnbagam Vs. KK Rathinave.**



(ii) 2022 SCC Online SC 840 –

U.N.Krishnamurthy Vs. A.M.Krishnamurthy.

34. The learned counsel would submit that there is absolutely no explanation as to why the plaintiff has not taken any steps to come forward to institute the suit between the years 2013 and 2017. The fact that the payments have not been completed even on the extended date as provided under the extension deed and on the date of instituting the present suit would only go to show that the plaintiff lacked the readiness and willingness to proceed with the agreement of sale. He would submit that all these factors have been taken note of by the Trial Court while dismissing the suit. He would therefore submit that this Court should uphold the Judgement and decree of the Trial Court.

35. Points for consideration:

(i) Whether the time was the essence of the contract?

(ii) Whether by executing the extension agreement parties had agreed that time would not be treated as an essence of the contract?



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(iii) Whether the plaintiff has proved his readiness and willingness?

36. The pleadings in the instant case is a classic example of an astute drafting whereby a cause of action is sought to be woven with the help of documents which appears to have been prepared for the purpose. The reason for making the above observation is clear from the narration given herein below.

37. At the outset, it has to be borne in mind that the plaintiff is the son of the 3rd defendant and both the plaintiff and the 3rd defendant reside in the very same premises. The plaintiff has come to the Court stating that he had entered into the agreement of sale with defendants 1 and 2 through their power agent, the 3rd defendant and that it was the flexibility of payment offered by the defendants that had encouraged the plaintiff to enter into an agreement of sale. Therefore, from the above contention, it is clear that the plaintiff had entered into an agreement to purchase the property.



defendant to extend the time for performance of an agreement of sale.

41. After the payment of the sum of Rs.1,00,000/- on the date of the execution of the agreement of sale, no further amounts had been made by the plaintiff either in installments or as a whole. Nearly one and half years later the 3rd defendant has executed Ex.A.9, extension agreement in favour of the plaintiff on 20.02.2015. The said agreement was also registered. Under this extension agreement, the time for performance of the contract was extended by a further period of two years and even on the date of the execution of extension agreement, except for the advance amount of Rs.1,00,000/- which was paid originally no further payments had been made by the plaintiff to the 3rd defendant. However, this agreement contains a clause which says that if within this extended period the plaintiff fails to get the sale deed executed, the plaintiff would automatically forfeit his right to seek refund of the advance amount and the agreement would also stand cancelled automatically. Therefore, the parties had decided to make time the essence of the contract.



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42. The plaintiff and the 3rd defendant despite residing in the same residence have been exchanging e-mails. Under Ex.A.10 e-mail dated 19.10.2015, the 3rd defendant has instructed the plaintiff to make all the payment with regard to the extension agreement dated 20.02.2015 only to his proprietary concern Varunas Heavenly Water. The e-mail would state that this is in order to enable the 3rd defendant to keep track of the payments and also to pay the owners of the land. The 3rd defendant had also shared his bank account. This is followed by an e-mail Ex.A.11 dated 12.05.2016, wherein the 3rd defendant would state that he had received the following amounts by online transfer.

(i)Rs.2,80,000/- on 23.12.2015.

(ii)Rs.3,50,00/- on 11.02.2016.

(iii)Rs.40,000/- on 30.04.2016.

43. The 3rd defendant had also volunteered to state that he had made payments to the land owners and that they were happy. It is rather strange that when a father and son live under one roof, they



were exchanging e-mails and the father would request the son and his grand son to visit him.

44. From a perusal of this e-mail it is seen that after the sum of Rs.1,00,000/- that was paid on 22.08.2013, the next sum of Rs.2,80,000/- had been paid only on 23.12.2015, that too nearly 10 months after the extension agreement. In the extension agreement the reasons given for the extension are the plaintiff is not in a position to mobilise funds and it is not convenient for the 3rd defendant to execute the sale deed. Therefore, from a perusal of the statement in the extension agreement and the time taken for making payments, the readiness on the part of the plaintiff and his willingness to proceed with the agreement is clearly wanting. Despite the extension agreement stating that the extension is necessitated also on account of the 3rd defendant not being in a position to execute the sale deed the plaintiff has not taken any steps to get the deed executed directly by defendants 1 and 2.

45. The next e-mail that the 3rd defendant, has father sent to his son, the plaintiff is dated 07.04.2017, under Ex.A.13, wherein he



would acknowledge the further sum of Rs.52,000/- on 03.01.2017, Rs.50,00,000/- on 08.02.2017 and Rs.30,000/- on 27.03.2017. This e-mail does not contain the statement that the amount have been paid to the 1st and 2nd defendants. He would further state that he is not keeping well and that he would execute the sale deed when he gets better.

46. Once again as on on 27.03.2017, the plaintiff has not paid the entire amount and a sum of Rs.1,00,000/- still remained payable. It would be pertinent to note that the extension agreement had come to an end on 20.02.2017 and as on 20.02.2017, the amounts outstanding was a sum of Rs.1,30,000/-. Therefore, as per terms of the extension agreement, the agreement automatically stand cancelled and the plaintiff had to forfeit the amount already paid by him.

47. The plaintiff in his pleadings had stated that he had visited his father in the month of August 2017 at which point in time the defendants 1 and 2 had also come to the hospital and they had assured him that the sale deed would be executed at the earliest.



When defendants 1 and 2 had agreed to execute the sale deed there is no explanation from the plaintiff as to why he had not asked the defendants 1 and 2 themselves to execute the sale deed particularly taking into consideration the fact that the 3rd defendant had been unwell. Thereafter, the plaintiff would submit that he had applied for encumbrance certificate on 30.04.2018, wherein he came to learn that the defendants 1 and 2 had cancelled the power deed Ex.A.7 under Ex.A.12 cancellation deed dated 12.09.2016.

48. In the background of this, the plaintiff's statement that in August 2017 defendants 1 and 2 and the 3rd defendant had agreed to execute the sale deed in his favour appears to be an absolutely false statement. The said statement and the visit to the hospital is sought to be confirmed by the 3rd defendant by his reply issued to the plaintiff's legal notice Ex.A.16. This clearly proves the collusion between the plaintiff and the 3rd defendant. To this reply the letter issued by the 3rd defendant to the 2nd defendant dated 02.03.2018 has been enclosed.



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49. In the said letter, the 3rd defendant would inform the 2nd defendant that there is an agreement to sell the suit property to the plaintiff for a total sale consideration of Rs.10,02,000/- out of which Rs.1,00,000/- was paid and a balance of Rs.9,02,000/- has already been paid to the 2nd defendant. From a reading of this letter, it would indicate that entire sale consideration has been paid. However, the plaintiff has himself admitted that a balance amount of Rs.1,00,000/- was still due and owing from him to the defendants 1 and 2 as on that date.

50. The plaintiff has not proved the contention that the defendants 1 and 2 had agreed to receive the balance sale consideration in installments. That this statement is false is evident from the fact that such a recital is not found in the agreement of sale Ex.A.8. On the contrary, the recitals would read that the sum of Rs.9,00,000/- has to be paid in cash when the sale deed is executed and registered. The period for performance is one and half years. Thereafter, under the extension letter, a further period of two years is granted and the deed specifically states that if the amounts are not paid before the extended period, the deed would automatically stand



cancelled and the amounts would stand forfeited. Such a clause is absent in the original agreement of sale. Therefore, it is crystal clear that the time was the essence of the contract. Therefore, points for consideration 1 and 2 are answered against the plaintiff.

51. Coming to the issue as to whether the plaintiff has proved his readiness and willingness, the following facts would clearly establish the fact that the plaintiff has not proved his readiness and willingness. Under Ex.A.8, agreement of sale the balance payment were to be made within one and half year and therefore the balance ought to have been made on or before 21.02.2015.

52. On 20.02.2015, the 3rd defendant as a power agent has executed an extension deed, wherein the period was extended by a further period of 2 years. The deed would clearly read that the extension deed is being executed because the plaintiff was unable to mobilise the funds. After the payment of Rs.1,00,000/- on 22.08.2013, no further payment has been made and even when executing the extension deed Ex.A.9, no payment had been made.

Thereafter, a sum of Rs.2,80,000/- has been paid ten months later on



23.12.2015. Even as per the extended period, the plaintiff has not paid the entire sale consideration and as on the date on which extension agreement came to an end i.e., on 21.02.2015, the plaintiff was still due and owing the balance of Rs.1,30,000/-. This amount has also not been deposited at the time of institution of the suit.

53. Be that as it may, considering the above factor, it is crystal clear that the plaintiff has been neither ready nor willing to proceed with the agreement of sale. Therefore, point for consideration 3 is also answered against the plaintiff.

54. The argument of the learned senior counsel that to prove readiness and willingness, it would suffice if the plaintiff shows sufficient means and capacity to pay as laid down in the Judgement reported in *AIR 2022 SC 5009 – P.Daivasigamani Vs. S.Sambandan*, may not apply to the case on hand.

55. Under Ex.A.9 extension agreement, the plaintiff has clearly stated that he has not been able to mobilise the funds. The plaintiff who has entered into an agreement on 22.08.2013 has not



been able to pay the balance sale consideration even at the time of the filing of the present suit. The plaintiff has only produced the bank statement as on the date of the filing of the suit by which point in time, the balance sale consideration was only a sum of Rs.1,00,000/-. The plaintiff has not provided the Bank statement from the date of entering into an agreement of sale or from the date of the extension agreement Ex.A.9. Therefore, the Judgement and Decree above referred will not apply to the case of the plaintiff.

56. In the Judgement reported in **2020 (3) SCC 280 – C.S.Venkatesh Vs. A.S.C.Murthy**, the Hon'ble Supreme Court had discussed what the words ready and willing would imply. The learned Judges has observed as follows:

“The words ‘ready and willing’ imply that the plaintiff was prepared to carry out those parts of the contract to their logical end so far as they depend upon his performance. The continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of performance. If the plaintiff fails to either aver or prove the same, he must



fail. To adjudge whether the plaintiff is ready and willing to perform his part of contract, the court must take into consideration the conduct of the plaintiff prior, and subsequent to the filing of the suit along with other attending circumstances. The amount which he has to pay the defendant must be of necessity to be proved to be available. Right from the date of the execution of the contract till the date of decree, he must prove that he is ready and willing to perform his part of the contract. The court may infer from the facts and circumstances whether the plaintiff was ready and was always ready to perform his contract.”

57. The learned Judges had referred to the earlier Judgement and Decree of the Hon'ble Supreme Court. The case before them was one where the plaintiff had pleaded that he had suffered a huge loss in business and that he did not have any source of income and it was proved that the plaintiff had suffered a loss in business and had no source of income. There was a mere plea that he is ready to pay the balance consideration. The Hon'ble Supreme Court observed that



a mere averment that one is ready and willing will not suffice.

Similar is the case now before this Court.

58. In the Judgement of the Hon'ble Supreme Court reported in **2022 SCC Online SC 840 – U.N.Krishnamurthy (since deceased) Vs. A.M.Krishnamurthy**, the learned Judges had discussed Section 16 (c) of the Specific Relief Act and observed 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 true construction.

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



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59. In the instant case, the plaintiff has merely stated that he is ready and willing to pay the balance sale consideration after paying an advance sum of Rs.1,00,000/- and getting the agreement extended and after the extension agreement taking 10 months to make the second installment. The Bench had drawn the distinction between readiness and willingness to perform his contract by borrowing the observation of the Hon'ble Supreme Court in an earlier Judgement in ***Holiness Acharya Swami Ganesh Dassji Vs. Sita Ram Thapar.***

The Bench had observed as follows:

“There is a distinction between readiness and willingness to perform the contract and both ingredients are 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](#)”

60. Therefore, in the case on hand, it is crystal clear that the plaintiff had failed to establish his readiness and willingness.

61. The conduct of the plaintiff and the 3rd defendant particularly taking into account the exchange of communication between the two despite the fact that both of them live under the same roof creates doubt in the mind of this Court, with regard to the contention of the plaintiff that he has been ready and willing to perform his contract.

62. In the result, the above first appeal is dismissed with costs and the judgment in O.S.No.445 of 2018 of the III Additional



A.S.No. 86 of 2021

District and Sessions Court, Coimbatore, is confirmed.

Consequently, the connected Miscellaneous Petitions are closed.

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13.02.2024

Index : Yes/No
Internet : Yes/No
Speaking Order / Non Speaking Order
kan

To

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



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A.S.No. 86 of 2021

P.T. ASHA, J,

kan

Pre-Delivery Judgment in
A.S.No. 86 of 2021

13.02.2024