

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**Reserved on 18th of November, 2024
Pronounced on 17th December, 2024**

Regular Second Appeal No.5382 of 2019 (O&M)

Pushap Lata

.....Appellant

Versus

Varun Singla

.....Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Aashish Chopra, Senior Advocate with
Ms. Priyanka Kansal, Advocate and
Ms. Nitika Sharma, Advocate
for the appellant.

Mr. Puneet Kumar Bansal, Advocate
for the respondent.

PANKAJ JAIN, J.

Defendant is in second appeal.

2. For convenience, the parties hereinafter are referred to by their original position in the suit i.e. the appellant as the defendant and the respondent as the plaintiff.

3. Plaintiff filed suit for specific performance claiming that defendant agreed to sell land measuring 8 Kanals in his favour for a total sale consideration of Rs.20,60,000/- per acre. On 12th of May, 2009 when the agreement was executed, plaintiff paid defendant a sum of Rs.4,00,000/- as earnest money. Both the parties agreed to get the sale deed executed on or before 20th of November, 2009. It was further agreed that in case

defendant fails to execute sale deed on receipt of balance sale consideration, plaintiff will have a right to get the sale deed executed through Court. It was further claimed that a sum of Rs.10,00,000/- was paid by the plaintiff to the defendant through 10 separate cheques dated 20.05.2009, 25.05.2009, 09.07.2009, 12.07.2009, 09.08.2009, 12.08.2009, 09.09.2009, 12.09.2009, 09.10.2009 and 12.10.2009 amounting to Rs.1,00,000/- each. Thus, the plaintiff paid a sum of Rs.14,00,000/- to the defendant. He always remained ready and willing to perform his part, still defendant failed to execute the sale deed in favour of the plaintiff as she did not turn up in the O/o Sub Registrar on 20th of November, 2009. Plaintiff served defendant with notice dated 30th of November, 2009 calling upon her to execute the sale deed on 15th of December, 2009. Plaintiff again went to the O/o Sub Registrar, Saha on 15th of December, 2009, but the defendant failed to turn up. On 18th of December, 2009, on the asking of the defendant, plaintiff purchased stamp-papers, but the defendant still failed to come present in the O/o Sub Registrar, Saha on 18th of December, 2009. Defendant in reply dated 6th of December, 2009 to legal notice dated 30th of November, 2009 though admitted receipt of Rs.14,00,000/-, yet has failed to perform her part. Thus, the plaintiff prayed for decree of specific performance.

4. Suit was resisted by the defendant by filing written statement. It was admitted that the agreement to sell was executed and Rs.4,00,000/- was received by the defendant. It was also admitted that the last date for execution and registration of sale deed was fixed as 20th of November, 2009.

However, defendant claimed that the plaintiff never appeared before the Sub-Registrar on 20th of November, 2009 which led to forfeiture of the earnest money. Defendant claimed that she was always ready and willing to execute the sale deed on 20th of November, 2009 and appeared in the O/o Sub-Registrar, Saha and waited for plaintiff from 9.00 AM to 5.00 PM, but the plaintiff never turned up. It was also pleaded that the defendant rather approached Superintendent of Police for non-execution of sale deed. It was claimed that Rs.4,00,000/- have been received and the amount due is Rs.16,60,000/-. Plaintiff never paid Rs.10,00,000/- as claimed. It was further claimed that the plaintiff was short of funds and was having no money to perform his part.

5. On the basis of the pleadings, following issues were framed:

- “1. Whether the plaintiff is entitled for specific performance of agreement to sell on the ground as prayed for? OPP
2. Whether the plaintiff has locus stand to file the present suit? OPP
3. Whether the suit plaintiff is not maintainable in the present form? OPD
4. Whether the plaintiff has not come to the court with clean hands? OPD
5. Relief.”

6. While deciding issue No.1, Trial Court held that both the parties proved on record that they were present in the O/o Sub Registrar, Saha on 20th of November, 2009. Onus was upon the plaintiff to show that he was ready and willing to perform his part of agreement on 20th of November,

2009. He having failed to examine Sub Registrar, Saha to show his readiness and willingness, was held not entitled for decree of specific performance.

7. In appeal preferred by the plaintiff, lower Appellate Court came to the conclusion that it is admitted case of the parties that the agreement to sell was executed and Rs.4,00,000/- was received by the defendant on the date of agreement to sell. Plaintiff has proved on record payment of Rs.10,00,000/- as well. Though, in the written statement it was denied by the defendant of having received Rs.10,00,000/- but in reply dated 6th of December, 2009, defendant admitted that the total sale consideration received by her was Rs.14,00,000/- and the amount remaining was Rs.6,60,000/-. Lower Appellate Court further held that from perusal of affidavit dated 20th of November, 2009, Exhibit P-2 and that dated 15th of December, 2009, Exhibit P-5, it has been proved that the plaintiff was willing to perform his part on the said date. Plaintiff already having parted away with more than 70% of the sale consideration and having proved on record the purchase of stamp-papers worth Rs.1,03,000/-, Exhibit P-6, and the sale deed scribed thereon on 18th of December, 2009, show his readiness and willingness. Lower Appellate Court further found that from statement of PW-4 Umesh Goyal, it is evident that an amount of Rs.3,45,000/- was withdrawn on 13th of November, 2009 and Rs.3,00,000/- were withdrawn on 17th of November, 2009 by the plaintiff which evidently proves that he was in possession of sufficient funds and was ready to perform his part on 20th of

November, 2009. So far as the plea raised by the defendant w.r.t. repudiation of the agreement to sell vide reply dated 6th of December, 2009 is concerned, Lower Appellate Court held that since defendant admits that she visited O/o Sub Registrar on 15th of December, 2009 and has placed on record her affidavit Ex.D-3, repudiation vide communication dated 6th of December, 2009, is of no consequence. Resultantly, Lower Appellate Court reversed the findings recorded by the Trial Court and decreed the suit filed by the plaintiff for main relief.

8. Ld. Senior Counsel representing the appellant/defendant fairly admits that so far as finding w.r.t. payment of Rs.10,00,000/- by way of different cheques is concerned, the same has been rightly recorded by the Lower Appellate Court on the basis of admission made in communication dated 6th of December, 2009. However, he submits that it is a case wherein plaintiff by his conduct proved that he was not ready to perform his part. Mr. Chopra submits that the presence of plaintiff on 20th of November, 2009 and thereafter, on 15th of December, 2009 in the O/o Sub Registrar may be adequate to prove willingness of the plaintiff, but the same does not prove his readiness. He further submits that from communication dated 6th of December, 2009, Exhibit P-4, it is evident that the agreement to sell was repudiated. No challenge was raised to said repudiation in the plaint. In the absence of there being any challenge to the cancellation of agreement to sell, suit for specific performance would not be maintainable. He contends that the due date for performance of agreement was 20th of November, 2009 and

even if the extension pleaded by the plaintiff is taken on its face value, the same was to be performed latest by 18th of December, 2009. The suit was filed after more than 2 years on 5th of January, 2012. The aforesaid conduct of the plaintiff itself is sufficient to deny him relief of specific performance. He further contends that the defendant sold the aforesaid property to purchase another property. Agreement to purchase the same was executed believing that the plaintiff will perform his part and the defendant shall get the proceeds in time. However, owing to failure of the plaintiff to perform his part, defendant suffered losses. The time being essence, plaintiff cannot be granted main relief of specific performance. In support of his arguments, Senior Counsel relies upon law laid down in the case of **K.S. Vidyanadam vs. Vairavan, (1997) 3 SCC 1, Sant Ram vs. Brij Mohan Kaura and another, 2006(2) R.C.R. (Civil) 769, Bal Krishna and another vs. Bhagwan Das (Dead) and others, 2008(2) R.C.R. (Civil) 732, RSA No.5258 of 2012 titled as Makhan Singh vs. Ajit Singh and others, decided on 1st of March, 2016, U.N. Krishnamurthy (since deceased) thr. LRs. vs. A.M. Krishnamurthy, 2022(3) R.C.R.(Civil) 479, I.S. Sikandar (D) by LRs vs. K. Subramani and others, (2013) 15 SCC 27 and Anita G. Hawa vs. Navtej Singh Bains, 2023(2) R.C.R. (Civil) 696.**

9. Per contra, Mr. Bansal representing the respondent/plaintiff submits that dishonest intention of the defendant is evident from the record. Despite having admitted receipt of Rs.10,00,000/- in communication dated 6th of December, 2009, defendant deliberately and dishonestly denied receipt

of Rs.10,00,000/- in her written statement filed in the present suit. He submits that from the chronological events, it is evident that the plaintiff always remained ready to perform his part and was well in possession of sufficient means to perform his part. Thus, the Lower Appellate Court rightly exercised its discretion and granted relief of specific performance to the plaintiff.

10. I have heard counsel for the parties and have carefully gone through records of the case.

11. The precise issues that falls for consideration of this Court are:

- (i) *Whether the plaintiff can be non-suited for having not challenged the cancellation of agreement to sell by the vendor vide communication dated 6th of December, 2009?*
and
- (ii) *Whether delayed filing of the suit can be a ground to deny relief of specific performance to the plaintiff?*

12. The execution of the agreement to sell is not in dispute. Terms thereof are also not in dispute. It stands proved before the Courts below that prior to the agreed date of execution of sale deed, plaintiff had already paid an amount of Rs.14,00,000/- out of total sale consideration of Rs.20,60,000/- to the defendant. As per the plaintiff, defendant having failed to come present before the O/o Sub Registrar, Saha on the agreed date of 20th of

November, 2009, he served upon her legal notice dated 30th of November, 2009 calling her to come and execute the sale deed on 15th of December, 2009. Defendant responded to the communication dated 30th of November, 2009 and claimed of having cancelled agreement to sell in question. However, still she appeared before the Sub Registrar, Saha on 15th of December, 2009. Plaintiff also claims that he appeared before the Sub Registrar, Saha on 15th of December, 2009.

13. In view of the aforesaid admitted facts, this Court is of the considered opinion that the cancellation of agreement to sell vide communication dated 6th of December, 2009, stands aborted by the conduct of defendant once she claims to have appeared before the Sub Registrar on 15th of December, 2009 to perform her part. Hence, this Court finds that the ratio of law laid down in the case of *I.S. Sikandar vs. K. Subramani and others* (supra) and that in *Anita G. Hawa vs. Navtej Singh Bains* (supra) is not applicable to the present case as the cancellation of the agreement to sell has been condoned by the defendant herself.

14. There can't be any quarrel with the proposition that plaintiff seeking decree of specific performance need not wait for the last date of limitation. Delayed filing of the suit is also one of the considerations while assessing readiness of the plaintiff. However, the same alone cannot be a ground to non-suit the plaintiff. Law on the issue is well settled. Supreme Court in the case of '**Mademsetty Satyanarayana v. G. Yelloji Rao**', 1964 SCC OnLine SC 33 observed as under :

“7. The following are cases in which the court may properly exercise a discretion not to decree specific performance:

I. Where the circumstances under which the contract is made are such as to give the plaintiff an unfair advantage over the defendant, though there may be no fraud or misrepresentation on the plaintiff's part.

Illustrations

II. Where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff.

Illustrations

The following is a case in which the court may properly exercise a discretion to decree specific performance:

III. Where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.

The First Schedule to the Limitation Act		
Description of suit	Period of Limitation	Time from which period begins to run
Article 113. For specific performance of a contract	Three years	The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.

Under Section 22 of the Specific Relief Act, relief of specific performance is discretionary but not arbitrary : discretion must be exercised in accordance with sound and reasonable judicial principles. The cases providing for a guide to courts to exercise discretion one way or other are only illustrative; they are not intended to be exhaustive. As Article 113 of the Limitation Act prescribes a period of 3 years from the date fixed thereunder for specific performance of a contract, it follows that mere delay without more extending up to the said period cannot possibly be a reason for a court to exercise its discretion against giving a relief of

specific performance. Nor can the scope of the discretion, after excluding the cases mentioned in Section 22 of the Specific Relief Act, be confined to waiver, abandonment or estoppel. If one of these three circumstances is established, no question of discretion arises, for either there will be no subsisting right or there will be a bar against its assertion. So, there must be some discretionary field unoccupied by the three cases, otherwise the substantive section becomes otiose. It is really difficult to define that field. Diverse situations may arise which may induce a court not to exercise the discretion in favour of the plaintiff. It may better be left undefined except to state what the section says, namely, discretion of the court is not arbitrary, but sound and reasonable guided by judicial principles and capable of correction by a court of appeal.

8. Mr Lakshmaiah cited a long catena of English decisions to define the scope of a court's discretion. Before referring to them, it is necessary to know the fundamental difference between the two systems — English and Indian — qua the relief of specific performance. In England the relief of specific performance pertains to the domain of equity; in India, to that of statutory law. In England there is no period of limitation for instituting a suit for the said relief and, therefore, mere delay — the time lag depending upon circumstances — may itself be sufficient to refuse the relief; but, in India mere delay cannot be a ground for refusing the said relief, for the statute prescribes the period of limitation. If the suit is in time, delay is sanctioned by law; if it is beyond time, the suit will be dismissed as barred by time; in either case, no question of equity arises.

9. With this background let us look at the English text-books and decisions relied upon by the learned counsel for the appellant. In *Halsbury's Laws of England*, Vol. 36, at p. 324, it is stated:

“Where time is not originally of the essence of the contract, and has not been made so by due notice, delay by a party in performing his part of the contract, or in commencing or prosecuting the enforcement of his rights, may constitute such laches or acquiescence as will debar him from

obtaining specific performance. The extent of delay which has this effect varies with circumstances, but as a rule must be capable of being construed as amounting to an abandonment of the contract. A much shorter period of delay, however, suffices if it is delay in declaring an option or exercising any other unilateral right; and if the other party has already given notice that he does not intend to perform the contract, the party aggrieved must take proceedings promptly if he desires to obtain specific performance.”

In *Fry on Specific Performance*, 6th Edn., at p. 517, it is said:

“Where one party to the contract has given notice to the other that he will not perform it, acquiescence in this by the other party, by a comparatively brief delay in enforcing his right, will be a bar : so that in one case two years' delay in filing a bill after such notice, in another case one year's delay, and in a third (where the contract was for a lease of collieries) five months' delay was held to exclude the intervention of the Court.”

Learned counsel cited many English decisions in support of his argument that there shall be promptitude and diligence in enforcing a claim for specific performance after a repudiation of the contract by the other party and that mere continual claim without any active steps will not keep alive the right which would otherwise be defeated by laches : see *Clegg v. Edmondson* [(1857) 114 RR 336] , *Eads v. Williams* [(1854) 43 ER Chan 671] , *Lehmann v. McArthur* [(1968) LR 3 Ch AC 496] , *Watsoh v. Reid* [(1830) 39 ER Chan 91] , and *Emile Erlanger v. New Sombrero Phosphate Company* [(1878) LR 3 AC 1218] . But as stated earlier, the English principles based upon mere delay can have no application in India where the statute prescribes the tune for enforcing the claim for specific performance. But another class of cases which dealt with the doctrine of laches have some bearing in the Indian

context. In *Lindsay Petroleum Company v. Prosper Armstrong Hurd, Abram Farewell, and John Kemp*[(1874) LR 5 PCA 221, 239-240] Sir Barnes Peacock defined the doctrine thus:

“Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material.”

This passage indicates that either waiver or conduct equivalent to waiver along with delay may be a ground for refusing to give a decree for specific performance. In *Caesar Lamare v. Thomas Dixon* [(1873) 6 HLC 414, 423] Lord Chelmsford said:

“The conduct of the party applying for relief is always an important element for consideration.”

The House of Lords in *Emile Erlanger v. New Sombrero Phosphate Company* [(1878) LR 3 AC 1218] approved the passage in *Lindsay Petroleum Company v. Prosper Armstrong Hurd, Abram Farewell, and John Kemp* [(1874) LR 5 PCA 221, 239-240] which we have extracted earlier.

10. It is clear from these decisions that the conduct of a party which puts the other party in a disadvantageous position, though it does not amount to waiver, may in certain circumstances preclude him from obtaining a decree for specific performance.

11. Now we shall consider some of the Indian decisions cited at the Bar. A Division Bench of the Allahabad High Court held in *Nawab Begum v. A.H. Creet* [(1905) ILR 27 All 678] that great delay on the part of the plaintiff in applying to the court for specific performance of a contract of which he claimed the benefit was of itself a sufficient reason for the Court in the exercise of its discretion to refuse relief. But it will be seen from the facts of that

case that apart from the delay the conduct of the plaintiff was such that it induced the other party to change his position to his detriment. A Division Bench of the Patna High Court in *Rameshwar Prasad Sahi v. Mt. Anandi Devi* [(1960) ILR 39 Pat 79] held on the facts of that case that the delay in bringing the suit for specific performance was always fatal to a suit, and that it amounted to an abandonment of the contract and waiver of his rights to sue for specific performance. If the learned Judges meant to lay down that mere delay would amount to abandonment of a right, we find it difficult to agree with them. The decision of the Calcutta High Court in *Gosthe Behari v. Omiyo Prosad* [AIR 1960 Cal 361] recognized that mere delay was not sufficient to deny the relief of specific performance, but pointed out that though it was not necessary to establish that the plaintiff had abandoned his right, the Court may, in view of the conduct of the plaintiff coupled with his delay that had prejudiced the defendant, refuse to give the equitable relief. In *Chamarti Suryaprakasarayudu v. Arardhi Lakshminarasimha* [(1914) 26 MLJ 518, 521, 523] , a Division Bench of the Madras High Court rightly pointed out that delay by itself was not a ground for refusing to give a decree in a suit for specific performance. Sadasiva Aiyar, J., observed:

“I think that it is an error of law to hold that mere delay amounts to a waiver or abandonment apart from other facts or circumstances or conduct of the plaintiff indicating that the delay was due to a waiver or abandonment of the contract on the plaintiffs part.”

Seshagiri Aiyar, J., said much to the same effect, thus:

“There is nothing in the Specific Relief Act which says that laches in bringing a suit will by itself be a ground for refusing specific performance.... Having regard to the fact that a special period of limitation has been fixed for bringing a suit for specific performance, I think the legislature has not intended that mere laches should be one of the grounds for refusing specific performance.”

We do not think, though the observations of Sadasiva Aiyar, J., are rather wide, that the learned Judges intended to lay down that unless there is a waiver or abandonment by the plaintiff of his rights to sue for specific performance, he should be non-suited, for if that was the law, as we have pointed out earlier, the substantive part of Section 22 of the Specific Relief Act would become nugatory. A Division Bench of the Calcutta High Court in *Jadu Nath Gupta v. Chandra Bhusan* [AIR 1932 Cal 493] again emphasized the fact that the English doctrine of delay and laches showing negligence in seeking relief in a court of equity cannot be imported into the Indian law in view of Article 113 of the Limitation Act. But it pointed out that where the conduct of the plaintiff was such that it did not amount to abandonment but showed waiver or acquiescence especially when inaction on his part induced the defendant to change his position, the plaintiff ought not to be allowed any relief. This case brings out not only the distinction between English and Indian law but also that waiver or abandonment of a right is not a pre-condition for refusing relief of specific performance.

12. The result of the aforesaid discussion of the case law may be briefly stated thus : While in England mere delay or laches may be a ground for refusing to give a relief of specific performance, in India mere delay without such conduct on the part of the plaintiff as would cause prejudice to the defendant does not empower a court to refuse such a relief. But as in England so in India, proof of abandonment or waiver of a right is not a pre-condition necessary to disentitle the plaintiff to the said relief, for if abandonment or waiver is established, no question of discretion on the part of the Court would arise. We have used the expression “waiver” in its legally accepted sense, namely, “waiver is contractual, and may constitute a cause of action : it is an agreement to release or not to assert a right”; see *Dawson's Bank Ltd. v. Nippon Menkwa Kabushiki Kaisha* [(1935) LR 62 IA 100, 108] . It is not possible or desirable to lay down the circumstances under which a court can exercise its discretion against the plaintiff. But they must be such

that the representation by or the conduct or neglect of the plaintiff is directly responsible in inducing the defendant to change his position to his prejudice or such as to bring about a situation when it would be inequitable to give him such a relief.”

15. Further, in the case of **P. Daivasigamani v. S. Sambandan, (2022) 14 SCC 793**, Apex Court held as under:

“15. It cannot be gainsaid that even though time is not considered as the essence of the contract in case of immovable property and that the suit could be filed within three years as provided in Article 54 of the Limitation Act, the respondent-plaintiff had to perform his part of the contract within the reasonable time having regard to the term of the agreement prescribing the time-limit. **The time-limit prescribed in the agreement cannot be ignored on the ground that time was not made the essence of the agreement or that the suit could be filed within three years from the date fixed for performance or from the date when the performance is refused by the vendor. Nonetheless, as discussed above, the suit having been filed by the respondent well within the prescribed time-limit under Article 54 of the Limitation Act, the respondent could not have been non-suited on the ground of the suit being barred by limitation as sought to be submitted by the learned counsel for the appellant.**

16. As regards the delay in filing the suit, it is very pertinent to note that the rule of equity that exists in England, does not apply in India, and so long as a suit for specific performance is filed within the period of limitation, delay cannot be a ground to refuse the relief of specific performance to the plaintiff. In *Mademsetty Satyanarayana v. G. Yelloji Rao* [*Mademsetty Satyanarayana v. G. Yelloji Rao*, 1964 SCC OnLine SC 33 : AIR 1965 SC 1405] it has been observed as under : (AIR p. 1409, para 7)

“7. Mr Lakshmaiah cited a long catena of English decisions to define the scope of a court's discretion. Before referring

to them, it is necessary to know the fundamental difference between the two systems—English and Indian—qua the relief of specific performance. In England the relief of specific performance pertains to the domain of equity; in India, to that of statutory law. In England there is no period of limitation for instituting a suit for the said relief and, therefore, mere delay — the time lag depending upon circumstances — may itself be sufficient to refuse the relief; but, in India mere delay cannot be a ground for refusing the said relief, for the statute prescribes the period of limitation. If the suit is in time, delay is sanctioned by law; if it is beyond time, the suit will be dismissed as barred by time; in either case, no question of equity arises.”

17. The aforesaid ratio has also been followed recently by this Court in *R. Lakshmikantham v. Devaraji* [*R. Lakshmikantham v. Devaraji*, (2019) 8 SCC 62] . **We, therefore, have no hesitation in holding that mere delay alone in filing the suit for specific performance, without reference to the conduct of the plaintiff, could not be a ground for refusing the said relief, when the suit was filed within the statutory time-limit by the respondent-plaintiff.**

31. There is a distinction between limitation and delay and laches. Limitation is a ground for dismissing a suit even if the plaintiff is otherwise entitled to specific performance, while delay operates to determine the discretion and exercise under Section 20 of the Specific Relief Act, even if the suit is not dismissed on account of limitation. However, not one but several aspects have to be considered when the court, in terms of Section 20 of the Specific Relief Act, exercises discretion, guided by judicial principles, sound and reasonable.

33. Though much reliance was placed by the learned counsel for the appellant on the decisions of this Court in *Ritu Saxena v. J.S. Grover* [*Ritu Saxena v. J.S. Grover*, (2019) 9 SCC 132 : (2019) 4 SCC (Civ) 302] , in *Abdullakoya Haji v. Rubis Tharayil* [*Abdullakoya Haji v. Rubis Tharayil*, (2019) 17 SCC 216 : (2020)

3 SCC (Civ) 399] , and other cases, to submit that the respondent had failed to establish his financial capacity to pay the balance amount of consideration at the relevant time and had also failed to deposit the said amount in the court at the time of filing of the suit, he was not entitled to the discretionary relief of specific performance as granted by the Court, we do not find any substance in any of the said submissions. As per the ratio of judgment laid down by the three-Judge Bench in *Syed Dastagir* [*Syed Dastagir v. T.R. Gopalakrishna Setty*, (1999) 6 SCC 337] , the compliance of “readiness and willingness” has to be in spirit and substance and not in letter and form, while making averments in the plaint. As per Explanation (i) to Section 16(c), he need not tender to the defendant or deposit the amount in the court, but he must aver performance of, or readiness and willingness to perform the contract according to its true construction.

34. Having regard to the facts and circumstances of the case and to the conduct of the parties, we have no hesitation in holding that there was due compliance of Section 16(c) read with its Explanation on the part of the respondent and that it was the appellant who had failed to perform as per the terms of the agreement, though called upon by the respondent to perform. The High Court also had rightly held that the plaintiff had complied with the requirements of Section 16(c) of the said Act by making a specific pleading with regard to his readiness and willingness and also proving the same by reliable evidence. This Court does not find any illegality or infirmity in the impugned judgment [*S. Sambandam v. P. Daivasigamani*, 2010 SCC OnLine Mad 3459] passed by the High Court. We, therefore confirm the same, so far as granting of decree for specific performance of the agreement in question is concerned.”

16. In the case of **Motilal Jain v. Ramdasi Devi, (2000) 6 SCC 420**, Supreme Court held as under :

6. The first ground which the High Court took note of is the delay in filing the suit. It may be apt to bear in mind the following aspects of delay which are relevant in a case of specific performance of contract for sale of immovable property:

(i) delay running beyond the period prescribed under the Limitation Act;

(ii) delay in cases where though the suit is within the period of limitation, yet:

(a) due to delay the third parties have acquired rights in the subject-matter of the suit;

(b) in the facts and circumstances of the case, delay may give rise to plea of waiver or otherwise it will be inequitable to grant a discretionary relief.

Here none of the above-mentioned aspects applies. That apart factually also, the High Court proceeded on an incorrect assumption with regard to cause of action. Ext. 2 was executed on 20-2-1977 and under it the sale deed was to be executed on or before 19-7-1977. The last notice was issued on 26-11-1978 and from that date the suit was filed only after nine months and not after more than a year as noted by the High Court. Therefore on the facts of this case the ground of delay cannot be invoked to deny relief to the plaintiff.

9. That decision was relied upon by a three-Judge Bench of this Court in *Syed Dastagir case* [(1999) 6 SCC 337] wherein it was held that in construing a plea in any pleading, courts must keep in mind that a plea is not an expression of art and science but an expression through words to place fact and law of one's case for a relief. It is pointed out that in India most of the pleas are drafted by counsel and hence they inevitably differ from one to the other; thus, to gather the true spirit behind a plea it should be read as a whole and to test whether the plaintiff has performed his obligations, one has to see the pith and substance of the plea. It was observed: (SCC Headnote)

“Unless a statute specifically requires a plea to be in any particular form, it can be in any form. No specific

phraseology or language is required to take such a plea. The language in Section 16(c) of the Specific Relief Act, 1963 does not require any specific phraseology but only that the plaintiff must aver that he has performed or has always been and is willing to perform his part of the contract. So the compliance of 'readiness and willingness' has to be in spirit and substance and not in letter and form."

It is thus clear that an averment of readiness and willingness in the plaint is not a mathematical formula which should only be in specific words. If the averments in the plaint as a whole do clearly indicate the readiness and willingness of the plaintiff to fulfil his part of the obligations under the contract which is the subject-matter of the suit, the fact that they are differently worded will not militate against the readiness and willingness of the plaintiff in a suit for specific performance of contract for sale.

17. Apex Court in the case of **Saradamani Kandappan v. S. Rajalakshmi**, (2011) 12 SCC 18 observed as under :

"40. The principle underlying the said decisions with reference to statutes, would on the same logic, apply to decisions of courts also.

41. A correct perspective relating to the question whether time is not of the essence of the contract in contracts relating to immovable property, is given by this Court in *K.S. Vidyanadam v. Vairavan* [(1997) 3 SCC 1] (by Jeevan Reddy, J. who incidentally was a member of the Constitution Bench in *Chand Rani* [(1993) 1 SCC 519]). This Court observed: (SCC pp. 7 & 9, paras 10-11)

"10. It has been consistently held by the courts in India, following certain early English decisions, that in the case of agreement of sale relating to immovable property, time is not of the essence of the contract unless specifically provided to that effect. ... *in the case of urban properties in India, it is well-known that their prices have been going up*

sharply over the last few decades—particularly after 1973.

...

11. ... We cannot be oblivious to the reality—and the reality is constant and continuous rise in the values of urban properties—fuelled by large-scale migration of people from rural areas to urban centres and by inflation. ... Indeed, we are inclined to think that the rigor of the rule evolved by courts that time is not of the essence of the contract in the case of immovable properties—evolved in times when prices and values were stable and inflation was unknown—requires to be relaxed, if not modified, particularly in the case of urban immovable properties. It is high time, we do so.”

(emphasis supplied)

42. Therefore there is an urgent need to revisit the principle that time is not of the essence in contracts relating to immovable properties and also explain the current position of law with regard to contracts relating to immovable property made after 1975, in view of the changed circumstances arising from inflation and steep increase in prices. We do not propose to undertake that exercise in this case, nor referring the matter to a larger Bench as we have held on facts in this case that time is the essence of the contract, even with reference to the principles in *Chand Rani* [(1993) 1 SCC 519] and other cases. Be that as it may.

43. Till the issue is considered in an appropriate case, we can only reiterate what has been suggested in *K.S. Vidyadnam* [(1997) 3 SCC 1] :

(i) The courts, while exercising discretion in suits for specific performance, should bear in mind that when the parties prescribe a time/period, for taking certain steps or for completion of the transaction, that must have some significance and therefore time/period prescribed cannot be ignored.

(ii) The courts will apply greater scrutiny and strictness when considering whether the purchaser was “ready and willing” to perform his part of the contract.

(iii) Every suit for specific performance need not be decreed merely because it is filed within the period of limitation by ignoring the time-limits stipulated in the agreement. The courts will also “frown” upon suits which are not filed immediately after the breach/refusal. The fact that limitation is three years does not mean that a purchaser can wait for 1 or 2 years to file a suit and obtain specific performance. The three-year period is intended to assist the purchasers in special cases, as for example, where the major part of the consideration has been paid to the vendor and possession has been delivered in part-performance, where equity shifts in favour of the purchaser.”

18. Applying the aforesaid parameters to the present case, willingness is not in issue, as the same stands proved in terms of affidavits demonstrating presence of plaintiff before Sub-Registrar, Saha. Counsel for the appellant disputes readiness. The factors need to be analysed holistically. Agreed target date was 20th of November, 2009. By then, plaintiff had already paid Rs.14,00,000/-. Date was thereafter extended to 15th of December, 2009. Even though, defendant claims to have repudiated agreement to sell vide communication dated 6th of December, 2009. However, she also claims to have come present before Sub Registrar, Saha on 15th of December, 2009. Plaintiff claims that the date was thereafter extended to 18th of December, 2009. Plaintiff claims that he appeared before the Sub Registrar on the said date. On the asking of the defendant, he

purchased stamp-papers on 18th of December, 2009 spending Rs.1,03,000/-. Stamp-papers have been brought on record as Exhibit P-6. Stamp-papers were utilized for scribing sale deed. Further from testimony of PW-4, it has come on record that prior to agreed date i.e. 20th of November, 2009, plaintiff withdrew an amount of Rs.6,45,000/-. This shows that he was in possession of sufficient funds to honour his part of agreement to sell.

19. In view of aforesaid overwhelming evidence, solitary reason of delay in filing the suit, is not adequate to deny the plaintiff main relief of specific performance.

20. In view of above, finding no merit in the present appeal, the same is ordered to be dismissed.

21. Pending application(s), if any, shall also stand disposed off.

December 17, 2024
Dpr

(Pankaj Jain)
Judge

Whether speaking/reasoned : Yes
Whether reportable : Yes