

Form No. J(2)

In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side

Present: The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Supratim Bhattacharya

F.M.A. 1499 of 2025
IA No: CAN 1 of 2025
CAN 2 of 2025

Francom Ventures (OPC) Pvt. Ltd.
Vs.
Shampa Das and others

For the appellants	:	Mr. Siddhartha Banerjee Mr. Paritosh Sinha Mr. Shounak Mukhopadhyay Ms. Soni Ojha Ms. Sambrita B. Chatterjee
For the respondents	:	Mr. Jaydip Kar Mr. O. Sinha Ray Mr. Sarasij Dasgupta Ms. Sreelekha Dey
Heard on	:	03.11.2025
Judgment on	:	03.11.2025

Sabyasachi Bhattacharyya, J.:-

1. The present appeal involves questions of both fact and law and as such is admitted to be heard on the grounds as taken in the memorandum of appeal.

2. The issues involved in the main appeal and the admission stage being identical, we take up the appeal itself for hearing.
3. The appeal arises out of the refusal to grant *ad interim* injunction in favour of the plaintiff/appellant in a suit for specific performance of a purported agreement comprised in a 'term sheet' dated April 30, 2025, whereby allegedly the parties entered into a contract for sale of the suit property.
4. The learned trial Judge, in the impugned order, despite having come to the conclusion that a *prima facie* case had been made out, refused to grant injunction since apparently no urgency had been made out.
5. Learned counsel for the appellant argues that although at a previous stage of the present appeal, the appellant had expressed its willingness to deposit fifty per cent of the entire consideration amount of Rs. 7 crore 50 lakh, an application has been filed subsequently for extension of such time due to unavoidable circumstances on the part of the appellant.
6. It is argued further that, in any event, there is no scope for the court to insist upon readiness and willingness of the appellant to be shown in the form of deposit of any sum of money in the present case, in view of the circumstances of the case and the terms of the agreement itself.

7. Learned counsel takes the court through certain clauses of the agreement, in particular Clauses 13 and 15, which conjointly provide that simultaneously with the execution of the term sheet, the vendors had issued a termination notice to a tenant which is in possession of the property-in-question and the vendors were to assist the purchaser in the swift and effective termination of Lawrence and Mayo (the tenant) within six months from the execution of the term sheet.
8. Clause 15 provides that the vendors (respondents) would hand over clear, *khas* and vacant possession of the premises simultaneously upon execution of conveyance/sale deed, within six months from the execution of the term sheet.
9. Learned counsel submits that since till date no steps for eviction of the said tenant of the suit property and handing over the vacant possession of the same to the appellant has been taken by the respondents, there arose no occasion for payment of the consideration amount, which was supposed to be simultaneous with the execution and registration of the deed of conveyance.
10. As such, learned counsel for the appellant argues that the question of readiness and willingness does not arise in the present circumstances, since even as per the terms of the

agreement, the time has not come for the consideration amount to be paid by the appellant.

- 11.** It is mentioned in the passing that twice, quanta of Rs.5 lakh on each occasion were tendered to the respondents by the appellant.
- 12.** However, by returning the said amount, the respondents have lost the right to plead that the appellant is not ready and willing to perform its part of the contract.
- 13.** Learned counsel for the appellant places reliance on *Nanik Lal Karmakar vs. Shankar Lal Shah and another* reported at AIR 1962 Cal 103.
- 14.** In the said judgment, a Division Bench of this court, while considering several facets of the Contract Act, came to the conclusion that the ordinary rule governing vendors and purchasers is that the payment of the consideration is to be simultaneous with the execution of the deed and shall be made at the time when the conveyance is executed by the vendor.
- 15.** The Division Bench dwelt on reciprocal promises and the consequences thereof and observed that a previous Division Bench, in a judgment reported at AIR 1928 PC 174, did not lay down as a general proposition of law that payment or tender of the consideration was the only method of exhibiting readiness and willingness.

16. The Division Bench further observed that the prior tender of money was made obligatory under the agreement in that case and such tender could not be a blanket proposition in every possible suit for specific performance.
17. Learned counsel next cites *International Contractors Ltd. vs. Prasanta Kumar Sur (Deceased) and others* reported at AIR 1962 SC 77 where the Hon'ble Supreme Court observed, *inter alia*, that in cases of the kind as dealt with by the court therein, where the consideration amount had been tendered but was refused by the defendants, no question of formal tender of the amount to be paid arises and the question to be decided was not whether any money was within the power of the respondents to be paid but whether the appellant therein definitely and unequivocally refused to carry out his part of the contract and intimated that money would be refused if tendered.
18. Learned counsel, by placing reliance on the above judgment, argues that in the circumstances of the case at hand as well, the defendants/respondents had categorically returned the money tendered to them and as such, there is no dearth of readiness and willingness on the part of the plaintiff/appellant and the appellant should not be called upon to prove the same afresh.
19. Learned counsel next cites a judgment of a learned Single Judge of the Allahabad High Court in *Rahat Jan vs. Hafiz Mohammad*

Usman (deceased by LR's) and others reported at AIR 1983 All 343 where the learned Single Judge, *inter alia*, observed that the plaintiff's readiness and willingness must be in accordance with the terms of the agreement.

20. In the present case, it is argued that the question of putting in the consideration money would arise only upon vacant and peaceful possession of the premises being handed over to the appellant by the respondents upon eviction of the tenant thereat.
21. Learned counsel next cites a Division Bench judgment of the Bombay High court in *Bharat Barrel & Drum Mfg. Co. Pvt. Ltd. vs. Hindusthan Petroleum Corporation Ltd. and others* reported at AIR 1989 Bom 170 in support of the self-same proposition.
22. Learned counsel argues that the Supreme Court, in *R.C. Chandiok and another vs. Chuni Lal Sabharwal and others* reported at (1970) 3 SCC 140, had also observed that in that case, there was nothing to show that the appellant did not have the funds.
23. In the said case, a sanction was to be obtained by the respondents, that is, the defendants in the said suit, for transfer of the plot from the Rehabilitation Ministry.

- 24.** It was held by the Hon'ble Supreme Court that in view of the said sanction having not been obtained, the question of readiness and willingness of the plaintiff did not arise.
- 25.** Learned counsel for the appellant further submits that in the circumstances of the instant case, there is a negative covenant in Clause 18 of the term sheet which stipulates that the vendors shall not enter into any contract, agreement or MoU with any third party during pendency of the term sheet.
- 26.** Learned counsel, by placing reliance on Section 42 of the Specific Relief Act, 1963, argues that even in the event the positive part of the agreement cannot be enforced, there is no bar in the court passing an injunction with to enforce the negative covenant therein.
- 27.** Learned senior counsel for the respondents argues that the term sheet relied on by the appellant does not amount to an agreement which can be specifically performed at all.
- 28.** The said term sheet, it is pointed out, is at best an agreement to enter into a further agreement, which is not specifically enforceable in law.
- 29.** Learned senior counsel places particular reliance on Clause 16 of the term sheet which provides that the vendors will enter into an MoU with the purchaser subsequent to the term sheet being

executed and thereafter will execute the deed of conveyance as per terms of such MoU.

- 30.** Learned senior counsel relies on the judgment of the Supreme Court in the matter of *Speech and Software Technologies (India) Private Limited vs. Neos Interactive Limited* reported at (2009) 1 SCC 475 where it was laid down that it is a well-settled legal proposition that an agreement to enter into an agreement is not enforceable, nor does it confer any right upon the parties.
- 31.** Learned senior counsel next argues that readiness and willingness is implicit in a suit for specific performance and at all points of time the readiness and willingness of the plaintiff has to be established.
- 32.** It is argued that Section 16(c) of the 1963 Act mandates compliance with the said provision.
- 33.** In support of such argument, learned senior counsel cites *J.P. Builders and another vs. A. Ramadas Rao and another* reported at (2011) 1 SCC 429 where the Supreme Court, *inter alia*, held that the distinction between “readiness” and “willingness” is that the former refers to financial capacity and the latter to the conduct of the plaintiff wanting performance.
- 34.** Generally, it was held, readiness is backed by willingness.
- 35.** Also relying on the other proposition laid down in the said judgment, learned senior counsel points out that the Supreme

Court observed that in a suit for specific performance, a plaintiff must allege and prove a continuous readiness and willingness to perform the contract on his part from the date of the contract, the onus of establishing which is on the plaintiff.

- 36.** Learned senior counsel relies on *N.P. Thirugnanam vs. Dr. R. Jagan Mohan Rao and others* reported at (1995) 5 SCC 115, where it was laid down that the remedy of specific performance is an equitable remedy and is in the discretion of the court, which discretion requires to be exercised according to settled principles of law and not arbitrarily as adumbrated under Section 20 of the Specific Relief Act.
- 37.** The readiness and willingness of the plaintiff to perform his part of the contract, it is argued, is an integral part of such exercise of discretion by the court.
- 38.** Under such circumstances, it is argued that the learned trial Judge was justified in refusing injunction.
- 39.** Before parting with the matter, learned senior counsel points out that as per Clause 13 of the purported agreement, which is also relied on by the appellant, the vendors/respondents were only to assist the purchaser/appellant in a swift and effective termination of the tenancy in respect of the property within six months from the execution of the term sheet.

- 40.** Simultaneously with the execution of the term sheet, the vendors had accordingly issued a termination notice as well to the tenant.
- 41.** However, the appellant neither complied with Clause 13 by taking any initiative for filing an eviction suit and having the plaint vetted by the respondents nor was there any due diligence compliance on the part of the appellant.
- 42.** Learned senior counsel lastly submits that the term sheet is not stamped or registered and, as such, cannot be the premise of grant of a decree of specific performance.
- 43.** Upon hearing learned counsel for the parties, it transpires that the term sheet-in-question is the plinth of the submission of both the parties.
- 44.** We are aware of the settled legal proposition that at the ad interim stage, the learned Trial Judge could not look beyond the plaint pleadings and the pleadings in the injunction application and annexures thereto.
- 45.** As such, we have to proceed on the premise that the pleadings in the plaint are sacrosanct insofar as the consideration of ad interim prayer of injunction is concerned.
- 46.** On the premise of the plaint case, the term sheet raises an arguable question as to whether the stipulation therein to enter into an MoU prior to execution of the deed of conveyance is an

essential feature of the term sheet or the same is an ancillary condition of the agreement.

- 47.** We say so because there are contradictory provisions in the term sheet itself.
- 48.** Whereas Clause 16 provides that an MoU has to be entered first and thereafter a deed of conveyance executed as per terms thereof, at the same time we cannot gloss over the fact that even as per Clause 16, the parties are mandated to execute a deed of conveyance by virtue of the term sheet itself, although via the intermediary of an MoU.
- 49.** That apart, there are certain clauses in the term sheet which directly relate to the deed of conveyance, without reference to any intermediate step of a further agreement.
- 50.** For example, Clause 14 provides that the vendors will pay all the KMC tax and clear all arrears on or before the execution of the conveyance.
- 51.** Again, Clause 18 provides that term sheet is valid and binding upon the vendors and purchaser “as a contract” and will come to an end “upon execution of conveyance in favour of the purchaser”, thus, creating a continuum notionally between the term sheet and the deed of conveyance, without mandatorily introducing any stop-over of an MoU in the interregnum.

- 52.** Thus, it is arguable as to whether the term sheet is merely an agreement to enter into a further MoU or comprises of the agreement for sale itself, consisting of the essential clauses necessary for entering into a deed of conveyance directly.
- 53.** No hiatus is contemplated in some of the clauses of the term sheet, between the execution of the term sheet and the deed of conveyance.
- 54.** Since such triable and arguable issue has been raised, undoubtedly a *prima facie* case has been made out to justify grant of injunction, at least at the ad interim stage, in favour of the appellant, in order to obviate the suit from being rendered infructuous by creation of third party interest, particularly if such third party-transferees acquire bona fide right, title and interest in the subject property without having notice of the term sheet or the pending *lis*.
- 55.** The question which arises, however, is whether the appellant is required to show its readiness and willingness at this juncture.
- 56.** The interpretation sought to be lent to Section 16(c) of the 1963 Act by the appellant is not borne out by the judgments cited by the appellant.
- 57.** The judgments in *Nanik Lal Karmakar (supra)* and *International Contractors (supra)*, respectively authored by a Division Bench of

this Court and the Supreme Court, were rendered prior to the coming into force of the Specific Relief Act, 1963.

- 58.** In none of those judgments, Section 16(c) of the 1963 Act was discussed. Also, the context of *Nanik Lal Karmakar (supra)* was somewhat different from the present case, since in the said case, as a general proposition, it was being considered whether monetary payment was the only method of exhibiting readiness and willingness.
- 59.** Such dispute has been set at rest now by several judgments of the Supreme Court, particularly in *N.P. Thirugnanam (supra)* where it has been categorically held that specific performance is an equitable remedy in the discretion of the court and readiness and willingness has to be proved by the plaintiff at all stages.
- 60.** We hasten to add that we are aware of the fact that by a subsequent amendment of 2018, the 1963 Act has been amended, particularly the previous Section 20 thereof, which granted discretion on the court to grant or not grant a decree of specific performance.
- 61.** However, still then, the settled proposition of law remains that the decree of specific performance by its very nature is an equitable remedy and can be granted or not granted at its discretion by the court, subject to equitable conditions being satisfied by the plaintiff.

- 62.** Also, in *J.P. Builders and another (supra)*, the Supreme Court categorically laid at rest any doubt as to readiness and willingness by observing that readiness refers to financial capacity and that the plaintiff must show continuous readiness and willingness to perform the contract on its part from the date of the contract, which onus of proving which is on the plaintiff. Although by amendment to Section 16(c), the necessity to aver readiness and willingness in the plaint itself has been omitted, the amended provision still provides that the plaintiff has to prove that he has performed and has always been ready and willing to perform the essential terms of the contract.
- 63.** The expression “always” in the said Section clearly indicates that at all points of time the plaintiff, is required to be ready and willing to perform his part of the contract.
- 64.** Also Explanation (i) to sub-Section (c) of Section 16 provides that a plaintiff need not make any payment “unless directed by the Court to do so”.
- 65.** The other submission of the appellant, that prior vacant possession was to be handed over by the respondents to the appellants before the deed of conveyance is to be executed, is neither here nor there.
- 66.** Readiness and willingness has to be proved on the premise that as on the date of filing of the suit for specific performance, the

plaintiff is ready to perform his part of the contract if a decree of specific performance is passed in his favour.

- 67.** It is not the case of the appellant that the appellant would desist from taking the fruits of the decree if a decree of specific performance is passed today even without any eviction of the current tenant being effected by the respondents.
- 68.** Thus, it is an absurd proposition that the show of readiness and willingness is dependent upon prior eviction by the respondents of the tenant as per the terms of the purported contract.
- 69.** As held in *J.P. Builders and another (supra)*, the plaintiff has to show that it is “continuously” ready (meaning thereby having financial capacity to pay the consideration), from the date of the contract all through, to perform its part of the contract.
- 70.** Hence, we find that in the event the readiness of the plaintiff is substantiated by deposit of 50 per cent of the total consideration of money of Rs. 7 crore 50 lakh, as undertaken previously before this Court by the plaintiff, the plaintiff is entitled to an order of injunction since even the trial court has held that a *prima facie* case has been made out in the matter and the pleadings of the injunction application indicate, in our opinion, the urgency involved.
- 71.** In view of the above, FMA 1499 of 2025 is allowed on contest, thereby setting aside the impugned order bearing Order No. 2

dated July 16, 2025 passed by the learned Civil Judge (Senior Division), Ninth Court (in-charge) at Alipore, District: South 24 Parganas in Title Suit No. 1054 of 2025. We hereby grant injunction restraining the respondents and their men and agents from selling, transferring, alienating and/or transferring the suit property, which is the subject of the agreement-in-question, in favour of third parties in any manner whatsoever till disposal of the temporary injunction application pending in the trial court, subject to the plaintiff/appellant depositing 50 per cent of the total consideration of Rs. 7 crore 50 lakh in the trial court within a period of three weeks from date.

- 72.** There shall be unconditional injunction in terms of the above order for a period of three weeks.
- 73.** In default of such deposit of 50 per cent of the consideration amount within the said period, the ad interim order of injunction shall stand automatically vacated.
- 74.** In the event such deposit is made, the ad interim injunction shall continue till disposal of the temporary injunction in the court below.
- 75.** The defendants/respondents shall file their written objection to the temporary injunction application in the court below, if not already filed, within three weeks from date.

- 76.** It is expected that the learned Trial Judge shall dispose of the injunction application itself as expeditiously as possible, preferably within a period of four weeks from the date of filing of the written objection by the respondents.
- 77.** It is made clear that the merits of the injunction application and the suit pending in the court below have not been gone into by this Court.
- 78.** CAN 1 of 2025, CAN 2 of 2025 are also disposed of in the light of the above observations.
- 79.** There will be no order as to costs.
- 80.** Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)

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