



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

SECOND APPEAL NO.113 OF 2022

Uddhavrao S/o Marotraoji Mankar (Patil)
Through legal heirs

...Orig.Defnd.No.1 on R.A.

1. Malu Wd/o Uddhavrao Mankar
Aged about 63 years,
Bendhere Road, R/o Near Rajapeth Police
Station, Rukmini Nager, Amrawati.
2. Shri Sonal S/o Uddhavrao Mankar,
Aged about 42 years,
R/o Mudholkar Peth, 492, Ukli,
Near Rajapeth Police
Station, Rukmini Nager, Amrawati.
3. Shri Ritesh S/o Uddhavrao Mankar,
Aged about 38 years,
R/o Near Rajapeth Police
Station, Rukmini Nager, S.O. Amrawati.
4. Smt. Yogita D/o Uddhavrao Mankar,
Aged about 45 years,
R/o Near Rajapeth Police Station, Rajapeth
Rukhmini Nager, S.O. Amrawati.

....**APPELLANTS**

...V E R S U S...

1. Vijay Kumar S/o Manikchand Lulla (HUF)
Aged 45 years, Occ: Business,
2. Vasant S/o Manikchand Lulla (HUF)
Aged 40 years, Occ: Business,

Both R/o Lulla Lane, Rampuri
Camp, Amravati, Tahsil & Dist. Amravati
(Maharashtra State)
3. Ramdhan S/o Marottrao Mankar
Through LR's since deceased

... Orig. Plaintiffs on R.A.

... Orig.defendant no.2 on R.A.

3(i) Sushila Wd/o Ramdhan Mankar
Aged 91 years, Occ: Nil.

3(ii) Sanjay s/o Ramdhan Mankar
Aged 61 years, Occ: Private

3(iii) Ajay s/o Ramdhan Mankar
Aged 66 years, Occ: Private,

3(i) to 3(iii) all R/o Near Dr. Kuthe's
Hospital, Rajapeth Police Station,
Badnera Road, Amravati, Tahsil &
District Amravati (Maharashtra State)

...RESPONDENTS

Shri Abhijeet Khare, Advocate for appellant/s.

Ms Gauri Venkatraman, Advocate for respondent nos.1 and 2.

	CORAM	: M.W. CHANDWANI, J.
RESERVED ON		: 06.03.2025
PRONOUNCED ON		: 13.06.2025

JUDGMENT:

1. This appeal challenges the judgment and order passed by the Principal District Judge, Amravati in Regular Civil Appeal No.139/2015 thereby overturning the decree of dismissal, dated 03.05.2008 passed by the Adhoc District Judge-1, Amravati in Special Civil Suit No.121/2002 and directing the present appellant Uddhavrao to execute the registered sale-deed in respect of the suit property in favour of respondent nos.1 and 2.

2. Respondent nos.1 and 2 filed a suit bearing Special Civil Suit No.121/2002 before the trial Court for specific performance of contract contending that they are members of the

Hindu undivided family and claimed to have entered into an agreement of sale with the original defendant- Uddhavrao Marotiraoji Mankar. The plaint depicts that by an agreement of sale dated 06.07.2000 Uddhavrao agreed to sell the plot and house to respondent nos.1 and 2 for consideration mentioned in the agreement. The sale-deed was to be executed on or before 30.01.2000. Uddhavrao got the time for execution of the sale-deed extended. Respondent nos.1 and 2 paid total amount of Rs.5,40,000/- including the earnest amount of Rs.3,00,000/-. When respondent nos.1 and 2 published a public notice dated 28.12.2000 thereby calling for objections, respondent no.3, the brother of Uddhavrao, raised an objection contending that Uddhavrao has no right to sell the suit property. Thereafter, respondent no.3 filed suit bearing Regular Civil Suit No.16/2001 for injunction against Uddhavrao and also moved an application for temporary injunction. Uddhavrao assured the plaintiffs that he shall execute the sale-deed after decision in the temporary injunction application. By the order dated 20.02.2001, the application for temporary injunction came to be rejected but Uddhavrao did not pay attention and failed to execute the sale-deed in favour of respondent nos.1 and 2; therefore, on 19.04.2002, they issued a notice to Uddhavrao enquiring him

about the date of sale-deed. In reply, Uddhavrao contended that he did not agree to sell the suit property and claimed that the alleged transaction is a loan transaction.

3. Pursuant to the suit summons, Uddhavrao filed written statement and *inter alia* denied to have entered into an agreement to sell the suit property and claimed that the document dated 06.07.2000 was executed towards security of the financial assistance taken by him from respondent nos.1 and 2. It has also been adduced that respondent nos.1 and 2 did not take any steps from 22.02.2001 to 19.04.2002 and therefore, they are not entitled to seek a decree of specific performance. It was also one of the defences that the suit property is a joint property owned by Uddhavrao and his brother respondent no.3. He sought rejection of the suit.

4. Defendant no.2 (present respondent no.3) filed the written statement stating that there is no partition between him and Uddhavrao and therefore, the agreement dated 16.07.2000 is not binding on him.

5. Though, the trial Court held that Uddhavrao agreed to sell the suit property to respondent nos.1 and 2 but also observed that respondent nos.1 and 2 failed to prove that they were and are

ready and willing to perform their part of the contract and consequently, dismissed the suit. The decree passed by the learned trial Court was assailed before the District Judge, Amravati. By the impugned judgment and decree, the learned Principal District Judge set aside the finding of the trial Court against the readiness and willingness of respondent nos.1 and 2 and decreed the suit by allowing the appeal.

6. This Court by order dated 14.11.2022 framed the following substantial questions of law:

“(i). Whether the judgment and decree of the learned First Appellate Court can be sustained in view of the decision of the Hon’ble Supreme Court of India as regards writing a judgment of reversal reported in 2001(III) Mh.L.J. p-786, Santosh Hazare Vs. Purushottam Tiwari ?

(ii) Whether the learned Appellate Court rightly appreciated that plaintiff was ready and willing to perform his part of contract ?

(iii) Whether the findings of learned Trial Court could have been disturbed by the learned First Appellate Court especially in view of the admitted position on record that the plaintiffs have not even pleaded let alone proved as to why they did not either take any steps for getting the sale deed executed or make any payment towards balance consideration of Rs.11,39,250/- between the period from 20/02/2001 to 14/09/2002? (The plaintiffs have also neither pleaded nor proved that sufficient money available with them for the entire duration, nor did they deposit any money in the court during the trial)?”

7. Mr. Abhijeet Khare, learned counsel appearing on

behalf of the appellants vehemently submitted that the first appellate Court did not discharge the duty expected of it as laid down in the case of *Santosh Hazari Vs. Purshottam Tiwari deceased by LRs*¹ According to him, the judgment of the first appellate Court is based on conjuncture and surmises. The first appellate Court, on the basis of conjuncture and surmises disturbed the finding of the trial Court on the point of readiness and willingness of respondent nos.1 and 2 in performing their part of the contract. According to him, no steps were taken by respondent nos.1 and 2 between 20.01.2001 and 14.09.2002 which itself goes to show that respondent nos.1 and 2 were not ready and willing to perform their part of the contract.

8. Next, Mr. Khare would submit that respondent nos.1 and 2 did not plead and prove that they had sufficient funds available with them to honour the agreement at all times. Therefore, they failed to prove their capacity to perform their part of the contract and they did not offer to pay the balance consideration to Uddhavrao. Therefore, the learned trial Court rightly held that respondent nos.1 and 2 were not ready to perform their part of the contract but the first appellate Court on flimsy grounds, set aside the findings of the trial Court. According

¹ 2001 (2) MhLJ 786

to him, for claiming the relief of performance of contract, the purchaser has to plead and prove that he has the financial capacity to pay the consideration and is also willing to perform his part of the contract, which is absent in this case. To buttress his submission, he seeks to rely on the decision of ***U.N. Krishnamurthy Vs. A.M. Krishnamurthy***¹, wherein the Supreme Court has observed as under:

“44. The Respondent Plaintiff has relied upon the notice dated 13.02.2003 and evidences of PW2 & PW3 to prove that he was always ready and willing to perform his part of the contract. Even though it may be true that the Respondent Plaintiff had deposited the balance sale consideration in court on 06.04.2010, it cannot be ignored that such deposit was made by him seven years after 15.3.2003, being the date by which the sale had to be concluded. No evidence has been adduced on behalf of the Respondent Plaintiff as to how the Respondent Plaintiff was in a position to pay or make arrangements for payment of the balance sale consideration within time. The Courts below also erred in not adjudicating upon this vital issue except to make a sweeping observation that, given that the Respondent Plaintiff was a businessman he had sources to arrange the balance funds. Careful study of balance sheet dated 31.03.2003 of the Respondent Plaintiff would demonstrate that he did not have sufficient funds to discharge his part of contract.”

9. Reliance is also placed on the decision of ***N.P. Thirugnanam (dead) by LRs Vs. Dr. R. Jagan Mohan Rao and others***² wherein, in para 3 the Supreme Court has held as under:

1 2022 SCC OnLine SC 840

2 (1995) 5 SCC 115

“3. It is settled law that remedy for 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 1963 (for short, 'the Act'). Under section 20, the court is not bound to grant the relief just because there was valid agreement of sale. Section 16(c) of the Act envisages that plaintiff must plead and prove that he had performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than those terms the performance of which has been prevented or waived by the defendant. The continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of specific performance. This circumstance is material and relevant and is required to be considered by the court while granting or refusing to grant the relief. 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 the contract, the court must take into consideration the conduct of the plaintiff prior and subsequent to the filing of the suit alongwith other attending circumstances. The amount of consideration which he has to pay to the defendant must of necessity be proved to be available. Right from the date of the execution till date of the decree he must prove that he is ready and has always been willing to perform his part of the contract. As stated, the factum of his readiness and willingness to perform his part of the contract is to be adjudged with reference to the conduct of the party and the attending circumstances. The court may infer from the facts and circumstances whether the plaintiff was ready and was always ready and willing to perform his part of contract.”

10. Lastly, Mr. Khare would submit that though, a second appeal can be entertained only on substantial question of law and that facts cannot be re-appreciated but if there is perversity in the

findings of the first appellate Court, this Court is not precluded from interfering with the findings of facts. For this purpose, he seeks to rely on the decision of *Illoth Valappil Ambunhi (dead) by legal representatives Vs. Kunhambu Karanavan*¹ wherein, it has been held that perversity in arriving at a factual finding gives rise to a substantial question of law, attracting intervention of the High Court under Section 100 of the Code of Civil Procedure.

11. Conversely, Ms Gauri Venkatraman, learned counsel appearing on behalf of respondent nos.1 and 2 would submit that the first appellate Court, which is the last Court of fact has rightly re-appreciated the evidence and set aside the perverse finding recorded by the learned trial Court that respondent nos.1 and 2 were sleeping over their right. The learned trial Court failed to appreciate the entire facts of the case, more particularly the part of consideration paid by respondent nos.1 and 2 from time to time apart from other circumstances and erroneously held that respondent nos.1 and 2 were not ready and willing to perform their part of the contract, which has been rightly set aside by the first appellate Court by giving cogent reasons. Therefore, the first appellate Court has rightly discharged its duty by overturning the finding recorded by the learned trial Court and allowed the appeal

1 (2020) 18 SCC 317

by observing that respondent nos.1 and 2 were ready and willing to perform their part of the contract.

12. Next, Ms Venkatraman submitted that the plaint itself depicts the essential requirement provided under Section 16(c) of the Specific Relief Act, wherein respondent nos.1 and 2 pleaded that they were and are ready and willing to perform their part of the contract and also proved the said fact. Considering the overall conduct of respondent nos.1 and 2, the appellate Court found that they were ready and willing to perform their part of the contract. According to her, it is not necessary for respondent nos.1 and 2 to produce the money or vouch a concluded scheme facing the financial transaction to prove the readiness and willingness. It is not necessary that they should always carry the money with them from the date of suit till the date of decree. To buttress her submission, she seeks to rely on the decision of ***A. Kanthamani Vs. Nasreen Ahmed***¹.

13. Lastly, Ms Venkatarman emphasized that interference of the High Court with the finding of facts of the first appellate Court is not permissible in second appeal as it is confined only to the substantial question of law. Therefore, according to her, no

1 (2017) 4 SCC 654

substantial question of law arises in the present appeal. For this purpose, she seeks to rely on the decision in the cases of ***Chacko and another Vs. Mahadevan¹, Commissioner, Hindu Religious & Charitable Endowments Vs. P. Shanmugama and others² and Vidhyadhar Vs. Manikrao and another³***.

14. Let me state here that, Uddhavrao came up with a case that the document dated 06.07.2000 is not an agreement of sale but a writing towards security of financial assistance provided by respondent nos.1 and 2 to Uddhavrao. The trial Court as well as the first appellate Court discarded the defence of Uddhavrao and held that the agreement dated 06.07.2000 is an agreement for sale of immovable property executed by Uddhavrao. The trial Court as well as first appellate Court have also recorded the finding of fact that at the time of agreement, respondent nos.1 and 2 paid Rs.3 Lakhs to Uddhavrao on 06.07.2000 at the time of sale and thereafter, Rs. One lakh each on 24.06.2000 and 13.10.2000 by endorsing the receipt on the agreement of sale and also Rs.40,000/- on 11.01.2001 by cheque and the time for execution of sale-deed was extended from time to time upto 31.01.2000.

15. It is also a matter of record that when respondent nos.1

1 (2007) 7 SCC 363

2 (2005) 9 SCC 232

3 (1999) 3 SCC 573

and 2 issued a public notice inviting objections to the sale-deed, respondent no.3, brother of Uddhavrao, raised an objection to the transaction claiming that the property is joint property and thereafter, he filed a suit bearing Regular Civil Suit No.16/2001 for injunction alongwith an application for temporary injunction. Further, the version of respondent nos.1 and 2 is that Uddhavrao assured that he shall execute the sale-deed as soon as the application for temporary injunction is decided in the suit filed by his brother.

16. However, the trial Court opined that respondent nos.1 and 2 have not made any attempt from 20.02.2001 when the application for temporary injunction came to be rejected till 19.04.2002 when the notice came to be issued by respondent nos.1 and 2. Respondent nos.1 and 2 did not make any attempt to get the sale-deed executed by calling upon the defendants. The trial Court in para 13 of the judgment has observed as under:

“13. According to the case of the plaintiffs, as the defendant no.2 filed the suit and application for temporary injunction, the defendant No.1 has not executed the sale-deed and he assured that after passing of the order on temporary injunction application he will execute the sale-deed. The plaintiffs have issued notice to the defendant No.1 on 19.04.2000 and called upon him to execute the sale-deed and to perform his part of contract. The temporary injunction application filed by the defendant no.2 in

Regular Civil Suit No.16/2001 was rejected on 20.02.2001 and admittedly, between the period of 20.02.2001 to 19.04.2002 the plaintiffs have not made any attempt to get execute the sale-deed by calling upon the defendant No.1 to execute the sale-deed. As per the case of the defendant No.1, as the plaintiffs slept over their right and have not taken any steps to perform their part of contract, they are not entitled for the relief of specific performance of contract. Plaintiff Vasant Lulla admitted in his cross-examination that between the period of 31.10.2000 to 19.04.2002 he had not written any letter nor sent any notice to the defendant No.1 to get execute the sale-deed. There is much delay on the part of the plaintiffs to get execute the sale-deed and to perform their part of contract. In such circumstances, it cannot be said that the plaintiffs (sic) were ever ready and willing to perform their part of contract. Readiness and willingness which is condition precedent for passing a decree for specific performance of contract is not fulfilled by the plaintiffs and as they were not continuously ready and willing to perform their part of contract, I found much substance in the submissions of the learned Advocate for defendant No.1 that the plaintiffs are not entitled for the decree of specific performance of contract.”

17. The first appellate Court while observing the fact of extension of time for execution by Uddhavrao till 15.12.2000 alongwith the pleadings, the plaint as well as evidence from respondent nos.1 and 2's witnesses opined that the evidence of respondent nos.1 and 2 stating that Uddhavrao is avoiding the execution of the agreement in spite of dismissal of temporary injunction application has not been challenged in the cross-examination and Uddhavrao has also not examined himself. The

first appellate Court found that respondent nos.1 and 2 proved readiness and willingness to perform their part of the contract and set aside the finding recorded by the trial Court.

18. It is the contention of the appellant that respondent nos.1 and 2 failed to prove that they took any steps for the getting sale-deed executed after dismissal of the temporary injunction application till 14.09.2002 when notice came to be issued by respondent nos.1 and 2. The first appellate Court, without there being any pleadings made by respondent nos.1 and 2 considered the oral evidence of respondent no.2 that Uddhavrao avoided to execute the sale-deed. It is also submitted that respondent nos.1 and 2 have neither pleaded nor proved that sufficient funds were available with them for the entire duration and even did not make any payment towards balance consideration of Rs.11,39,520/-. Therefore, respondent nos.1 and 2 were not ready and willing to perform their part of the contract.

19. There is no dispute to the settled position of law. Rather, it clearly emerges from Section 16(c) that specific performance of contract cannot be enforced in favour of a person who fails to prove that he has performed or has always been ready and willing to perform essential terms of the contract which were

supposed to be performed by him. It can also not be enforced in favour of a litigant who did not aver in the plaint, performance of, or readiness and willingness to perform the contract according to its true construction.

20. With regard to the submission of pleadings, let me state that in construing the plea, the Court must keep in mind that the plea is not an expression of art and signs but expression through words to place the facts and law once for all reliefs. Therefore, just because the plaint does not depict in specific words about the availability of sufficient funds with respondent nos.1 and 2 for the entire duration, it cannot be said that the readiness is not pleaded. To gather the truth behind the plea, it should be read as a whole. To test whether one has performed his obligation, one has to see the pith and substance of the plea. Unless the statute specifically requires a plea in a particular form, it can be in any form.

21. Perusal of para 5 of the plaint reveals that respondent nos.1 and 2 pleaded that inspite of dismissal of application for temporary injunction, Uddhavrao did not pay any attention to execute the sale-deed and failed to execute the sale-deed in favour of respondent nos.1 and 2. The first appellate Court opined that respondent nos.1 and 2 have come up with a specific case that

Uddhavrao is avoiding to execute the sale-deed even after dismissal of the temporary injunction application. That version was not challenged in cross-examination. Though, respondent no.1 has not mentioned the word “avoiding” specifically in plaint depicts that respondent nos.1 and 2 have pleaded that Uddhavrao was not paying any attention and failed to execute the sale-deed in favour of these respondents; which suggests avoidance on the part of Uddhavrao to execute the sale-deed. Therefore, the submission of learned counsel for the appellant that the first appellate Court has considered the evidence of respondent no.2 with regard to avoidance of execution of sale-deed without any pleading to that effect does not sustain.

22. Likewise, Section 16(c) does not prescribe that the plaintiff has to plead his financial capacity. Rather, it says that he must plead his readiness and willingness to perform his part of the contract which has been pleaded by respondent nos.1 and 2. The compliance of readiness and willingness has to be seen in substance and not in the form of letters and words [See : ***Syed Dastagir vs T.R. Gopalakrishna Setty***¹]

23. Turning to proof, it is also the bounden duty of the plaintiff to prove his readiness and willingness by adducing

¹ (1999) 6 SCC 337

evidence. This crucial facet has to be determined by considering all circumstances and mere statement or averment of readiness and willing made in the plaint would not suffice. Readiness means the capacity of the plaintiff to perform the contract; whereas, willingness refers to the intention of the purchaser to perform his part of the contract. To adjudicate whether the plaintiff is ready and willing to perform his part of the contract, the Court must take into consideration, the conduct of the plaintiff prior to and subsequent to the filing of the suit, alongwith other attendant circumstances. The Court may infer from facts and circumstances whether the plaintiff was and is ready and willing to perform his part of the contract for the entire duration.

24. In the present case, respondent nos.1 and 2 not only paid the earnest amount of Rs.3 lakhs at the time of agreement but also paid further amounts from time to time i.e. Rs.1,00,000/- was paid twice by respondent nos.1 and 2 as and when requested by Uddhavrao. Further, an amount of Rs.40,000/- was paid by respondent nos.1 and 2 even after objection raised by respondent no.3/original defendant no.2 on the transaction. The notice dated 19.04.2002 asking them to fix a date for the execution of sale-deed after acceptance of the balance consideration also shows the

readiness of respondent nos.1 and 2 to pay the amount. All these acts are positive acts on the part of respondent nos.1 and 2 to prove that they had the necessary funds to execute the sale-deed. It is not necessary for respondent nos.1 and 2 to show that they have cash ready with them.

25. A reference can be made to the decision in case of ***Sukhbir Singh and others Vs. Brij Pal Singh and others***¹ the Supreme Court in para 5 has held as under :

“5.Law is not in doubt and it is not a condition that the respondents should have ready cash with them. The fact they attended the Sub-Registrar's office to have the sale deed executed and waited for the petitioners to attend the office of the Sub-Registrar is a positive fact to prove that they had necessary funds to pass on consideration and had with them the needed money with them for payment at the time of registration. It is sufficient for the respondents to establish that they had the capacity to pay the sale consideration. it is not necessary to pay the sale consideration. It is not necessary that they should always carry the money with them from the date of the suit till date of the decree. It would, therefore, be clear that the courts below have appropriately exercised their discretion for granting the relief of specific performance to the respondents on sound principles of law.”

26. That apart, respondent no.2 by stepping into the witnesses box specifically deposed that Uddhavrao avoided to execute the sale-deed inspite of rejection of temporary injunction

1 (1997) 2 SCC 200

application coupled with the fact of issuance of notice asking Uddhavrao/original defendant no.1 to execute the sale-deed by accepting the balance consideration. Indisputably, this version has nowhere been challenged by Uddhavrao in cross-examination, therefore, there cannot be any inference against readiness and willingness of respondent nos.1 and 2 especially in absence of evidence adduced by Uddhavrao/original defendant no.1 to that effect, by entering into witness box.

27. Additionally, there is unchallenged version of PW2-Dhirubhai an independent witness, a broker who was involved in the entire picture of sale transaction that even after objection raised by brother of Uddhavrao i.e. respondent no.3, respondent nos.1 and 2 were ready to get the sale-deed executed from Uddhavrao but he failed to execute the same in favour of respondent nos.1 and 2 and it is Uddhavrao who committed breach of the agreement to sell. Thus, the version of respondent no.2 is also corroborated by an independent witness. These aspects have not been considered by the trial Court and dismissed the suit of respondent nos.1 and 2 and erroneously held that from the date of rejection of temporary injunction application till the date of issuance of notice respondent nos.1 and 2 have not proved

readiness and willingness to perform their part of the contract. The first appellate Court by advertent to the unchallenged version of respondent no.2 and his witness dealt with the finding / reasoning assigned by the trial Court and rightly came to the conclusion that respondent nos.1 and 2 proved continuous readiness and willingness to perform their part of the contract. The first appellate Court by giving cogent reasons came to close quarters with the reasons assigned by the trial Court and thereafter, by its own reasoning arrived at a different finding. Therefore, it performed its duty as held in the case of ***Santosh*** (supra).

28. A strong reliance has been placed on the decisions of the Supreme Court in the case of ***U.N. Krishnamurthy*** and ***N.P. Thirugnanam*** (supra) to submit that respondent nos.1 and 2 had failed to establish their financial capacity to pay the remaining amount of consideration and it has also been contended that during pendency of the suit, respondent nos.1 and 2 did not deposit the amount of consideration in the Court to show bonafides and therefore, they were not entitled to the discretionary relief of grant of specific performance of contract.

29. In the case of ***U.N. Krishnamurthy*** (supra) the

balance-sheet of the plaintiff was demonstrating that he did not have sufficient money to discharge his part of contract. So, considering the facts of that case, the Supreme Court has opined that the plaintiff was not in a position to prove his readiness and willingness by showing his financial capacity. So far as case of ***N.P. Thirugnanam*** (supra) is concerned, the specific defence of the defendant was that the plaintiff did not even pay the further advance as contracted by December, 1979 to discharge the mortgage debt due to the Madras Corporation. Further, the trial Court had directed the plaintiff on the application made by the defendant, to deposit an amount of Rs.2,00,000/- in the Court, which the plaintiff failed to deposit and therefore, the Supreme Court has opined that the plaintiff has not been able to prove his capacity to perform his part of the contract.

30. A reference can also be made to para 33 of the decision in the case of ***P. Daivasigamani Vs. S. Sambandan***¹, which reads thus:

“33. Though much reliance was placed by the learned counsel for the appellant on the decisions of this Court in case of Ritu Saxena vs. J.S. Grover & Another (2019) 9 SCC 132, in case of Abdullakoya Haji Vs. Rubis Tharayil (2019) 17 SCC 216, 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

¹ (2022) 14 SCC 793

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 case of Syed Dastagir (supra), 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 the 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.”

31. Considering the facts and circumstances of the case which have been discussed by the first appellate Court hereinabove, no interference is required in the findings recorded by the learned first appellate Court with regard to readiness and willingness of respondent nos.1 and 2 to perform their part of contract. The first appellate Court has rightly held that respondent nos.1 and 2 had complied with the requirement of Section 16(c) of the Specific Relief Act. No illegality or infirmity is found in the impugned judgment.

32. Lastly, one cannot overlook the fact that the prices of immovable property since the last two decades are rising continuously particularly, in the urban areas. The agreement was entered into by the parties in the year 2000 and due to delay in

disposal of the case of specific performance of contract and almost 25 years have passed after the agreement. Considering this aspect and the steep rise in the prices of immovable property, in the interest of justice, respondent nos.1 and 2 can be directed to pay some more amount. Considering the fact that Uddhavrao had enjoyed the possession of the said land all throughout and considering the facts and circumstances of the case, respondent nos.1 and 2 are directed to deposit a sum of Rs.10,00,000/- [Rs. Ten lakhs only] in the trial Court towards sale consideration over and above the agreed sale consideration. On depositing the same, the appellants being legal representatives of Uddhavrao s/o Marotraoji Mankar (Patil) shall execute the sale-deed in favour of respondent nos.1 and 2 and shall be at liberty to withdraw the said amount deposited by respondent nos.1 and 2.

33. In view of the above, the appeal stands **dismissed** subject to the aforesaid directions.

JUDGE

Wagh