



WEB COPY



A.S.No.328 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 19.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

A.S.No.328 of 2022
and CMP.No.12000 of 2022

Selvaraj

... Appellant

Versus

Pappathi

... Respondent

Prayer: Appeal filed under Section 96 of Code of Civil Procedure, to set aside the judgment and decree dated 27.04.2022 made in O.S.No.21 of 2017 on the file of the learned III Additional District Judge, Villupuram @ Kallakurichi

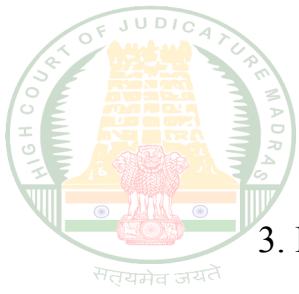
For Appellant : Mr.N.Manokaran

For Respondent : Mr.P.Valliapan, Senior Counsel
for M/s.P.V.Law Associates

JUDGMENT

Aggrieved over the judgment and decree of the Trial Court decreeing the suit for specific performance, the present appeal is filed.

2. The parties are arrayed to as per their own ranking before the Trial Court.



A.S.No.328 of 2022

3. Brief facts on the case is as follows:

WEB COPY

3.a. The defendant has agreed to sell the suit property to the plaintiff for a sale consideration of Rs.15 lakhs out of which, Rs.10 lakh was received as an advance from the plaintiff and executed a sale agreement dated 26.05.2015. It is agreed between the parties that the sale shall be completed within one year from the date of the sale agreement. The plaintiff was ready and willing to perform his part of contract and contacted the defendant to execute the sale deed in favour of him after receiving the balance sale consideration of Rs.5,00,000/-. Despite several requests, the defendant avoided to execute the sale deed. Hence, the suit.

3.b. It is the stand of the defendant in the written statement that the agreement was not intended for sale of the property, in fact, the defendant has borrowed a sum of Rs.10 lakhs for family necessity. At the time, the plaintiff insisted the defendant to execute a registered sale agreement. Accordingly, agreement was executed. It is denied by the defendant that after receipt of balance sale consideration, the defendant has to execute sale deed in favour of the plaintiff, in fact, after receipt of legal notice, the defendant has approached the plaintiff and informed that he will pay Rs.10 lakhs/- along with interest for which the plaintiff



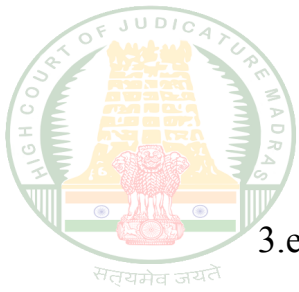
A.S.No.328 of 2022

has agreed. The value of the suit property is more than 1 crore and the defendant is ready to pay the loan amount of Rs.10 lakhs with interest. Hence, opposed the suit.

3.c. Based on the above pleadings, the Trial Court framed the following issues:

- 1) Whether the plaintiff is entitled to the relief of specific performance of sale agreement dated 26.05.2016 ?
- 2) Whether the sale agreement was executed as security for loan advanced as per defendant version ?
- 3) To what other relief, the plaintiff is entitled to ?

3.d. On the side of the plaintiff, the plaintiff has been examined as PW1 and the attestors of the sale agreement has been examined as PW2 and PW3 and Ex A1 to A3 were marked. On the side of the defendant, the defendant has been examined as DW1 and no documents were marked on his side.



3.e. On consideration of oral and documentary evidences, the Trial Court decreed the suit for specific performance. Hence, this appeal by the unsuccessful defendant.

4. The learned counsel for the appellant submitted as follows:

- a. the plaintiff has neither pleaded nor proved his continuous readiness and willingness right from the date of Ex.A1 till the date of filing the suit.
- b. The plaintiff has not proved the capacity to mobilize the balance amount.
- c. A substantial advance amount of Rs.10 lakhs is paid on the date of agreement, i.e., 26.05.2016 and one year time is stipulated for payment of remaining Rs.5 lakhs, this itself clearly shows that it is a loan transaction.
- d. Legal notice was issued on 02.05.2017, thereafter, the suit filed on 21.11.2017, hence, ready and willingness is not proved as required under law.
- e. The Trial Court has not even framed issue with regard to the readiness and willingness and the specific performance being equitable relief cannot be granted to the plaintiff.
- f. Even at the time of filing the suit or during the pendency of the suit, remaining sale consideration has not been paid, this conduct itself shows that the plaintiff has



A.S.No.328 of 2022

established the readiness and willingness

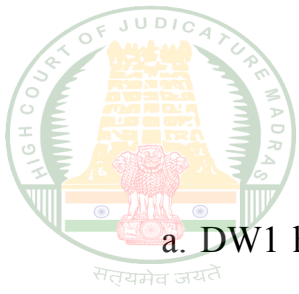
WEB ONLY

g only the amount has been deposited before the Court after the exparte decree passed in the year 2019. This itself clearly shows that it is only a loan transaction and the appellant/defendant is ready to pay the advance amount of Rs.10 lakhs along with interest @18% p.a., Hence, submitted that suit is liable to be dismissed.

5. In support of his submissions, he placed reliance on the following judgments:

1. *U.N.Krishnamurthy (Since Deceased) Through Legal Representatives vs. A.M.Krishnamurthy* reported in (2023) 11 SCC 775
2. *Shenbagam and others Vs. KK Rathinavel* reported in 2022 SCC OnLine SC 71
3. *Atma Ram vs. Charanjit Singh* reported in (2020) 3 SCC 311
4. *M.Jayaprakash Narayanan vs. Santhammal and others* reported in 2018 (1) CTC 701
5. *T.R.Murugesan vs. S.Balakrishnan and others* reported in 2018 (6) CTC 56.

6. Whereas, the learned senior counsel for the respondent/plaintiff submitted as follows:



WEB COPY

a. DW1 himself has admitted that the execution of the sale agreement which is a registered document. Ex.A1 has been clearly established, therefore, the plea of loan transaction has no legs to stand.

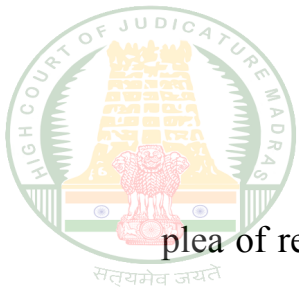
b. The plaintiff need not have ready cash with her, it is sufficient if she establishes the capacity to pay the balance sale consideration.

c. When the legal notice was sent to the defendant, the defendant has not been replied to the same, these facts clearly shows that the entire defence is falsity.

d. Entire plaint, when, read as a whole, would indicate that plaintiff is always ready and willing to fulfill his part of the obligation. The averment of readiness and willingness in the plaint need not be in a mathematical formula, the readiness and willingness has to be inferred from the entire pleadings.

e. The legal notice has been issued within a period of one year, whereas, the suit has been filed thereafter within a period of six months, such delay cannot be put against the plaintiff when the execution of the document has been clearly established. Further, PW1 to PW3, in unison, spoken about the execution of the document.

f. There was no dispute ever raised by the defendant about the readiness and willingness on the part of the plaintiff to fulfill her obligation. Therefore, when the



plea of readiness and willingness is not disputed in the entire written statement, it

has to be held that the plaintiff has proved the readiness and willingness and she is entitled to specific performance.

7. In support of his submissions, he placed reliance on the following judgments:

- 1) *Motilal Jain vs. Ramdasi Devi (Smt) and others* reported in (2000) 6 SCC 420
- 2) *Sukhbir Singh and others vs. Brij Pal Singh and others* reported in (1997) 2 SCC 200
- 3) *Pandurang Ganpattanawade vs. Ganpat Bhairu Kadam and others* reported in (1996) 10 SCC 51
- 4) *Syed Dastagir vs. T.R.Gopalakrishna Setty* reported in (1996) 6 SCC 337
- 5) *Ramakrishna Pillai and another vs. Muhammed Kunju and others* reported in (2008) 4 SCC 212
- 6) *Gurdial Kaur (Dead) through LRs vs. Piara Singh (Dead) through LRs* reported in (2008) 14 SCC 735
- 7) *A.N.Arunachalam vs. T.Sivaprakasam and another* reported in 2011 (1) MWN (Civil) 819



8) *Nanjappa Gounder and another vs. Ashok Kumar* reported in 2013 (3) CTC

WEB COPY

9) *Nanjammal (Died) and another vs. Palaniammal* reported in 1993 (1) LW 205

10) *M.Ramalingam, deceased by LRs vs. V.Subramaniam, deceased by LRs* reported in AIR 2003 Mad 305.

11) *T.G.Pongiannan vs. K.M.Natarajan* reported in 2009 (6) CTC 301

12) *K.Manoharan vs. T.Janaki Ammal* reported in 2012 (3) CTC 205.

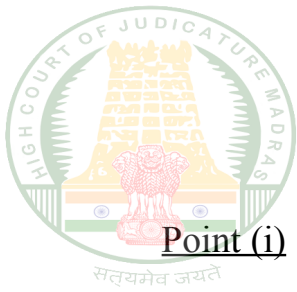
13) *M Sekar vs. P.Madeshwaran* reported in 2014 (1) CTC 165

14) *Rameshwar Prasad vs. Basanti Lal* reported in (2008) 5 SCC 676

15) *Siddamsetty Infra Projects Pvt. Ltd., vs. Katta Sujatha Reddy and others* reported in 2024 SCC OnLine SC 3214.s

8. In light of the above submissions, now, the points arises for consideration are as follows:

- (i) Whether the agreement dated 26.05.2015 is not intended for sale of property?
- (ii) Whether the plaintiff was always ready and willing to perform his part of contract?
- (iii) To what other reliefs, the parties are entitled to ?

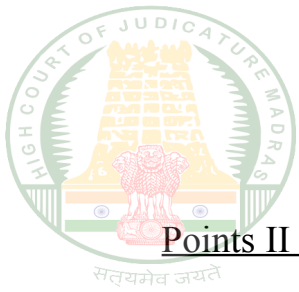


Point (i)

WEB COPY

9. Admittedly, Ex.A1 is a registered document and the execution of the document is not disputed. The only contention of the defendant is that Ex.A1 came into existence when he borrowed a sum of Rs.10 lakhs for his family necessity. Once the execution is admitted, it is for the defendant to establish that the document is not intended for sale of the property. PW1 to PW3 have clearly spoken about the execution of the document only for sale of property. DW1 in his cross examination has clearly admitted that he has consciously executed the document after understanding the contents of the documents. Therefore, once the execution of the document is admitted and in the absence of any materials on records to show that it is only a loan transaction, the contention of the defendant that Ex.A1 is executed only as a security for loan transaction has no legs to stand. Further, to prove that the defendant has paid interest towards principal, absolutely, there is no materials whatsoever available on record. Therefore, in the absence of any materials to establish that the agreement is executed only towards security for the loan transaction, the plea of defence that Ex.A1 is a result of loan transaction cannot be countenanced.

10. Accordingly, this point is answered.



Points II & III

WEB COPY

11. When the execution of the document is proved, it has to be seen, whether plaintiff proved readiness and willingness on her part to perform the contract. Though it is contended by the learned counsel for the defendant that the plaintiff has not averred the readiness and willingness in the plaint, on a careful perusal of the plaint, such contention has no force at all. In fact, the plaintiff in his pleadings has stated that he was ready and willing to pay the remaining sale consideration. Now, it has to be seen whether mere pleadings of readiness and willingness will absolve the plaintiff from proving the same before the Court of law.

12. It is well settled that readiness and willingness are distinct act. Readiness is capacity to mobilise fund and willingness is mental attitude in purchasing the property. When both the conditions are proved in the manner known to law, then, the plaintiff is certainly entitled to specific performance being an equitable relief. Similarly, when the conditions as to readiness and willingness to perform the contract are not proved as mandated under law, the plaintiff is barred from seeking relief of specific performance as per Section 16 (c) of Specific



WEB COPY

13. Section 16 of Specific Relief Act reads as follows:

"16. Personal bars to relief: Specific performance of a contract cannot be enforced in favour of a person—

(a) who would not be entitled to recover compensation for its breach; or

(b) who has become incapable of performing, or violates any essential term of, the contract that on his part remains to be performed, or acts in fraud of the contract, or wilfully acts at variance with, or in subversion of, the relation intended to be established by the contract; or

(c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.

Explanation.—For the purposes of clause (c)—

(i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court;

(ii) the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction."

14. It is relevant to note that agreement was entered on 26.05.2015. Though one year time was stipulated in the sale agreement, legal notice was issued only on 02.05.2017/last month of the limitation period. Of course, legal notice has not



A.S.No.328 of 2022

been replied by the defendant, however, the fact remains that till the legal notice is

sent, absolutely there is no evidence whatsoever available on the side of the plaintiff to show that he was continuously ready and willing to purchase the property. Readiness and willingness is a continuous process, it should be established from the date of agreement till the agreement culminates into sale. Continuous readiness and willingness on the part of the plaintiff is a condition precedent for grant of relief of specific performance. Till the legal notice was issued, i.e., 02.05.2017, absolutely there is no evidence to show that plaintiff has taken steps even to complete her obligation by tendering remaining sale consideration. Though in the pleadings, it is pleaded that she on several occasions met the defendant for paying the remaining sale consideration, however, in her evidence, there is no details whatsoever given as to when the plaintiff has met the defendant. Thus, it must be held that the plaintiff has failed to comply with the requirements of Section 16(c) of the Specific Relief Act and the plaintiff is not entitled to a decree for specific performance.

15. It is also to be noted that the defendant's admission in the cross examination clearly indicate that she has never applied for encumbrance over the



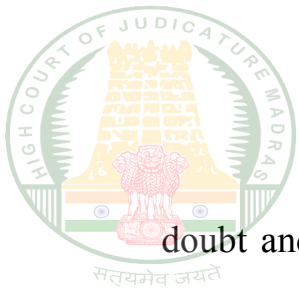
A.S.No.328 of 2022

property and further, she had stated that suit property consists of ground floor. The

suggestion put to the PW1 that the suit property consists of three floors is totally denied. Her evidence when read in conjunction with Ex.A1/Sale agreement makes it clear that the plaintiff is not even aware of the nature of the property proposed to be purchased. On perusal of Ex.A1, it would indicate that suit property consists of 7 cents comprised of 440 sq.ft., of RCC building, wherein, there are ground floor, first floor and incomplete terrace without electricity, door and window.

16. When the very agreement itself indicate that the property consists of ground floor, first floor and incomplete terrace without electricity, door and window, the plaintiff is not even aware of the nature of the property. In her evidence, she has admitted that property comprises only of ground floor alone. These facts clearly indicate that she has not even made an enquiry with regard to the nature of the property even after the agreement.

17. The learned senior counsel for the plaintiff relief on the judgment of the Hon'ble Supreme Court in the case of *Sukhbir Singh and others vs. Brij Pal Singh and others* reported in (1997) 2 SCC 200, wherein, it is held that Law in not in



A.S.No.328 of 2022

doubt and it is not a condition that the respondents should have ready cash with

WEB COPY them. It is sufficient for the respondents to establish that they had the capacity to pay the sale consideration. In the present case it is not the evidence of the plaintiff that she had capacity to mobilise the remaining amount, i.e., Rs.5 lakhs. It is relevant to note that when the plaintiff was confronted in cross examination and when a specific suggestion was put as to whether she has sufficient means at the time of agreement itself, she denied it, further, no materials whatsoever placed and no evidence available on record to show that she possessed remaining sale consideration to complete the sale. Therefore, in the absence of readiness and willingness which is continuous process, the relief of specific performance being equitable relief cannot be granted.

18. The learned senior counsel for the plaintiff relief on the judgment of the Hon'ble Supreme Court in the case of *Pandurang Ganpattanawade vs. Ganpat Bhairu Kadam and others* reported in (1996) 10 SCC 51, wherein, the case was the defendant therein in his deposition has stated that the the plaintiff was ready for sale deed, but he was not ready. Thus, the Hon'ble Supreme Court has held that plaintiff has not only averred, but also proved that he was ready and willing to



A.S.No.328 of 2022

perform his part of contract under the agreement for sale. Whereas, in the present

WEB COPY

case, though the plaintiff has averred in the plaint with regard to the readiness and willingness, however, she has not established that she was in continuous readiness and willingness to perform his part of contract. Hence, the above judgment is factually applicable to the present case.

19. The learned senior counsel for the plaintiff relied on the judgment of this Court in *K.Manoharan vs. T.Janaki Ammal* reported in 2012 (3) CTC 205, whereas, the plaintiff therein had categorically averred his readiness and willingness to pay the balance sale consideration and in evidence also, reiterated the same. However, in the case on hand, though the plaintiff has averred in the plaint that she was ready and willing to perform the contract, there is no iota of evidence and materials whatsoever to establish that she was in continuous readiness and willingness to perform his part of contract from the date of contract till the date of filing the suit. Hence, the above judgment is not factually applicable to the present case.



WEB COPY 20. Section 16(c) of Specific Relief Act lays down that specific performance of a contract cannot be enforced in favour of a person who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract.. This Court is of the view that mere pleading is not enough; plaintiff has to establish her readiness and willingness to perform her part of the contract.

21. In *N.P.Thirugnanam vs. Dr.R.Jagan Mohan Roa* reported in 1995 (5)

SCC 115, the Hon'ble Supreme Court has held as follows:

" 5. 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 a 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,



WEB COPY

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 along with 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 the contract."

22. The above judgment would make it clear that plaintiff must plead and prove his readiness and willingness in performing his part of contract.

23. Similarly, the Hon'ble Supreme Court in the case of *U.N.Krishnamurthy (Since Deceased) Through Legal Representatives vs. A.M.Krishnamurthy* reported in (2023) 11 SCC 775 has held that to aver and prove readiness and willingness to perform an obligation to pay money, in terms of a contract, plaintiff would have to make specific statements in plaint and adduce evidence to show availability of funds to make payment in terms of contract in time.

24. Further, a Division Bench of this Court in the case of *T.R.Murugesan vs.*

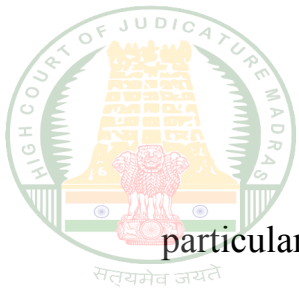


A.S.No.328 of 2022

WEB *S.Balakrishnan and others* reported in 2018 (6) CTC 56 has held that as pointed out by the Hon'ble Supreme Court in various decisions, the plaintiff must not only prove his readiness but also establish willingness

25. The learned senior counsel for the plaintiff relied on the judgment of the Hon'ble Supreme Court in the case of *Madhukar Nivrutti Jagtap and others vs. Pramila Bai Chandulal Parandekar (Dead)* reported in (2020) 15 SCC 731, wherein, the Hon'ble Supreme Court has held that the requirement of readiness and willingness of the plaintiff is not theoretical in nature but is essentially a question of fact, which needs to be determined with reference to the pleadings and evidence of parties as also to all the material circumstances having bearing on the conduct of the parties, the plaintiff in particular.

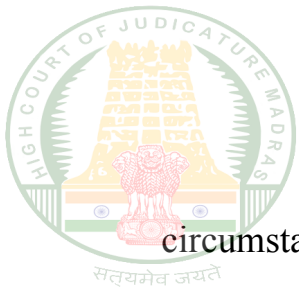
26. Similarly, the Hon'ble Supreme Court in the case of *C.S.Venkatesh vs. A.S.C.Murthy* reported in (2020) 3 SCC 280 has held that the Court while adjudging whether the plaintiff is ready and willing to perform his part of contract, the Court must take into consideration the conduct of the plaintiff prior and subsequent filing of the suit along with the other attending circumstances in a



A.S.No.328 of 2022

particular case.

WEB COPY 27. No doubt, the readiness and willingness of the plaintiff is not theoretical in nature but is essentially a mixed question of fact and needs to be determined with reference to pleadings and evidence of parties as also to all the material circumstances having bearing on the conduct of the parties. It is relevant to note that the conduct of plaintiff is very crucial in a suit for specific performance. Normally, when a prudent person really intends to purchase the property, immediate reaction is to at-least verify the encumbrance or verify the title of the property, however, no attempts whatsoever made to know the nature of the property. In fact, the plaintiff evidence indicate that she is not aware of the first floor and incomplete terrace attached with the property, wherein, she has admitted that only ground floor alone is there. When a person not even made enquiry with regard to the nature of the property, willingness to purchase the property would not be established. Therefore mere entering the agreement without verifying the title, nature of the property, further without establishing her capacity to mobilise the remaining sale consideration, it cannot be held that readiness and willingness has been established. Further, the readiness and willingness could not be treated as strait jacket formula and that had to be determined from the entirety of facts and



A.S.No.328 of 2022

circumstances relevant to the intention and conduct of the party concerned.

WEB COPY 28. It is apposite to point out that the Hon'ble Supreme Court in the case of *U.N.Krishnamurthy (Since Deceased) Through Legal Representatives vs. A.M.Krishnamurthy* reported in (2023) 11 SCC 775 with regard to framing of issues by the Court has observed as follows:

“ 32. In a suit for Specific Performance of a contract, the Court is required to pose unto itself the following questions, namely:-

32.1. Whether there is a valid agreement of sale binding on both the vendor and the vendee.

32.2 Whether the Plaintiff has all along been and still is ready and willing to perform his part of the contract as envisaged under Section 16(c) of the Specific Relief Act, 1963 ”

29. However, the fact remains that in the present case, the Trial Court without framing the issues with regard to the readiness and willingness of the plaintiff has granted the equitable relief of specific performance which in view of this Court is not maintainable. The Trial Court without any issues being framed has decreed the suit for specific performance which is not in accordance with and the same is not maintainable in the eye of law.

30. It is relevant to be noted that as far as the immovable properties is



concerned, though, the time is not an essence of the contract, the fact remains that

the time agreed between the parties to perform certain obligations cannot be

brushed aside altogether. In this regard, it is useful to refer to the judgment in the

case of *Chand Rani vs. Kamal Rani* reported in 1993 (1) SCC 519 which reads as

follows:

" 22. In *Hind Construction Contractors case* quoting *Halsbury's Laws of England*, this Court observed at pages 1154-55 as under : (SCC pp. 76- 77, paras 7 & 8) "In the latest 4th edn. of *Halsbury's Laws of England* in regard to building and engineering contracts the statement of law is to be found in Vol. 4, Para 1179, which runs thus 1179. Where time is of the essence of the contract. - The expression time is of the essence means that a breach of the condition as to the time for performance will entitle the inconstant party to consider the breach as a repudiation of the contract. Exceptionally, the completion of the work by a specified date may be a condition precedent to the contractor's right to claim payment. The parties may expressly provide that time is of the essence of the contract and where there is power to determine the contract on a failure to complete by the specified date, the stipulation as to time will be fundamental. Other provisions of the contract may, on the construction of the contract, exclude an inference that the completion of the works by a particular date is fundamental; time is not of the essence where sum is payable for each week that the work remains incomplete after the date fixed, nor where the parties contemplate a postponement of completion Where time has not been made of the essence of the contract or, by reason of waiver, the time fixed has ceased to be applicable, the employer may be notified fix a reasonable time for the completion of the work and dismiss the contractor on a failure to complete by the date so fixed.

...

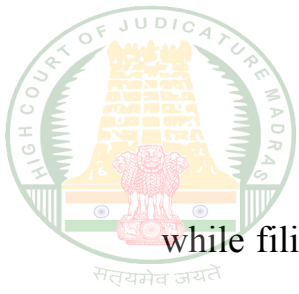
It will be clear from the aforesaid statement of law that even where



WEB COPY

the parties have expressly provided that time is the essence of the contract such a stipulation will have to be read along with other provisions of the contract and such other provisions may, on construction of the contract, exclude the inference that the completion of the work by a particular date was intended to be fundamental; for instance, if the contract were to include a clause providing for extension of time in certain contingencies or for payment of fine or penalty for every day or week the work undertaken remains unfinished on the expiry of the time provided in the contract such clause would be construed as rendering ineffective the express provision relating to the time being of the essence of contract."

31. The above judgment makes it clear that in case of sale of immovable property time is not the essence of the contract. However, if the parties agreed to a specified time in the agreement, to perform their part of the contract then time is the essence of the contract and the parties are required to adhere to the same. Similarly, the Hon'ble Supreme Court in the case of *K.S.Vidyanadam vs. Vairvan* reported in (1997) 3 SCC 1 has held that though time is not of essence to a contract relating to transfer of property, such contracts needs to be completed within a reasonable time period. Thus, the plaintiff having agreed one year time, legal notice was sent only on 02.05.2017, last month of limitation, that apart, the suit has been filed on 21.11.2017 with a delay of 6 months which clearly indicate that the plaintiff is not ready and willing to perform the contract. That apart even



A.S.No.328 of 2022

while filing the suit, though it is not necessary to deposit the amount in the Court,

the conduct of the plaintiff in not making any attempt to prove his readiness and willingness by depositing the amount in the Court cannot be ignored, whereas, only in the year 2019 after the exparte decree was passed, the plaintiff had deposited the remaining sale consideration. These facts also clearly shows that the plaintiff is not entitled to equitable relief of specific performance.

32. In this regard, it is relevant to note that the Hon'ble Supreme Court in the case of *Umabai vs. Nilkanth Dhondiba Chavan* reported in (2005) SCC 6 243 has held that deposit of amount in Court is not enough to arrive at conclusion that the plaintiff was ready and willing to perform his part of contract. When the plaintiff was confronted in the cross examination and when a suggestion was put as to whether she had sufficient means at the time of agreement itself, she denied it. This Court is of the view that making subsequent deposit of balance sale consideration in the Court that too after passing of exparte decree in the suit would not establish the plaintiff's readiness in discharging his part of obligation.

33. Accordingly, this Court is of the view that the plaintiff has not



A.S.No.328 of 2022

discharged the initial burden of proving the readiness and willingness as mandated under law for relief of specific performance, further, the plaintiff is not even aware of the nature of the suit property, she intended to purchase. Thus, these facts clearly indicate that the readiness and willingness is totally absent on the plaintiff's part in purchasing the property. Further, the Trial Court has not framed any issues with regard to the readiness and willingness of the plaintiff in performing his part of contract.

34. Considering the above, this Court is of the view that the decree and judgment of the Trial Court dated 27.04.2022 has to be necessarily interfered with. Accordingly, the decree and judgment of the Trial Court dated 27.04.2022 passed in O.S.No.21 of 2017 is set aside. Though the plaintiff has not asked for alternate relief for the return of advance sale amount, the Court is empowered to mould the relief to render complete justice.

35. It is relevant to point out that a Division Bench of this Court in *N.Sekaran and another vs. C.Rajendran* reported in *AIR 2018 Mad 67* has granted alternate relief for return of advance sale amount, even though the plaintiff has not



A.S.No.328 of 2022

asked for alternate relief in order to render complete justice.

WEB COPY

36. In view thereof, the appeal suit is partly decreed for alternate relief for return of a sum of Rs.10,00,000/- by the defendant to the plaintiff, together with simple interest @ 18% p.a., from the date of agreement, viz., 26.05.2016 till the date of realisation. The plaintiff is permitted to withdraw the remaining sale consideration deposited before the Trial Court in pursuant to the exparte decree. For the decretal amount, charge is also created over the suit property and it is made clear that until the entire amount is paid, charge shall continue. No costs. Consequently, connected miscellaneous petition stands closed.

19.02.2025

Index : Yes / No
Speaking/non speaking order
dhk

To,

1.The III Additional District Judge
III Additional District Court, Villupuram @ Kallakurichi

2. The Section Officer

Page 25 / 26



VR Section

High Court, Madras

WEB COPY



A.S.No.328 of 2022

N. SATHISH KUMAR, J.

A.S.No.328 of 2022

19.02.2025

Page 26 / 26