



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I. RSA No. 2736 of 2007 (O&M)
M/s R.C. Sood & Company Ltd. ...Appellant
Versus

Indra Sethi
 ...Respondent

II. RSA No. 2737 of 2007 (O&M)
M/s R.C. Sood & Company Ltd. ...Appellant
Versus

C. K. Anand & Anr.
 ... Respondents

Reserved on: 31.10.2025
Pronounced on : 11.12.2025

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Argued by:- Mr. Ashish Chopra, Sr. Advocate with
 Mr. Gagandeep Singh, Advocate for the appellant.

Mr. Chetan Mittal, Sr. Advocate with
 Mr. Kunal Mulwani, Advocate and
 Ms. Shifali Goyal, Advocate for the respondents.

DEEPAK GUPTA, J.

This judgment shall dispose of RSA No. 2736 of 2007, and RSA No. 2737 of 2007, which arise out of two separate civil suits but involve common questions of fact and law. The appellant–defendant, a private limited company, is common to both matters, though the plaintiffs–respondents differ in each appeal.

2.1 The subject matter of Civil Suit No. 88 of 2002, which has culminated in RSA No. 2736 of 2007, is Plot No. D-49 measuring 400 sq. yards, situated in the residential colony known as *Eros Gardens*, near Suraj Kund,

Faridabad, developed by the defendant–company. This plot was agreed to be sold by the defendant to Smt. Indira Sethi sometime in the year 1963.

2.2 The companion appeal (RSA No. 2737 of 2007) arises out of another suit bearing Civil Suit No. 89 of 2002, which is concerning Plots No. A-26 (355 sq. yards) and Plot No. B-57 (217 sq. yards) located in the same colony. These plots had similarly been agreed to be sold in 1963 to Smt. Nanki Devi, the deceased mother of the plaintiffs in that suit, namely Shri C.K. Anand and Smt. Indira Sethi.

3. Both suits were instituted for possession by way of specific performance of the respective agreements to sell. The trial Courts decreed the suits vide two separate but substantially similar judgments dated 04.05.2006. The appeals preferred by the defendant–company were dismissed on 17.05.2007, thereby affirming the findings of the trial Courts.

4. Aggrieved, the defendant–company has preferred the present second appeals. Since the questions of law involved are common to both matters, the facts are being noticed primarily from Civil Suit No. 88 of 2002, which has given rise to RSA No. 2736 of 2007.

5. This RSA No. 2736 of 2007 is directed against the concurrent judgments and decrees of the Courts below, whereby the suit for specific performance filed by Smt. Indira Sethi (now represented through her legal representatives) was decreed by the trial Court on 04.05.2006, and the defendant’s appeal was dismissed by the first Appellate Court on 17.05.2007.

6. For clarity, the parties shall be referred to by the nomenclature assigned to them before the trial Court. The entire lower Court record has been requisitioned and examined with the assistance of learned senior counsel for both sides.

7.1 ***Background facts & Plaintiff’s Case*** :The defendant–company floated a residential colony under the name and style of “Eros Gardens” near Suraj Kund, Faridabad. The plaintiff applied for allotment of a plot in the said colony. The defendant agreed to sell plot No. D-49, measuring 400 sq. yards, to

the plaintiff @ ₹25/- per sq. yard. The plaintiff deposited a sum of ₹2,000/- as 20% of the total sale consideration, in terms of the agreed conditions, and a receipt was issued in her favour. She subsequently deposited another sum of ₹2,400/- as further part payment towards the price.

7.2 In the meantime, *the Punjab Scheduled Roads and Controlled Areas (Restriction of Unregulated Development) Act, 1963* (hereinafter to be referred as the 1963 Act) came into force. The defendant-company represented to the plaintiff and other allottees that because of the said Act, it was precluded from transferring the plots until due approval was granted by the competent authority and that the plots could be transferred only after obtaining such approval. Thereafter, *the Haryana Development and Regulation of Urban Areas Act, 1975* (hereinafter to be referred as the 1975 Act) was enacted. The defendant-company pleaded that it was required to obtain licence and approval under the 1975 Act and to get its layout plan sanctioned/revised, on account of which development of the colony and delivery of possession was delayed. It is not in dispute that permission/licence was eventually granted to the defendant company in 1982, subject to certain conditions.

7.3 The plaintiff, throughout, addressed several letters to the defendant seeking information and delivery of possession of the allotted plot. The defendant admitted that possession could not be delivered because of these supervening statutory developments but consistently assured the plaintiff that, once its issues with the Government were resolved, it would revert to her and she would honour the allotment.

7.4 In 1985, the plaintiff came to know that the defendant was likely to alienate the suit plot to third parties. Apprehending such alienation, the plaintiff filed a civil suit No. 635 of 1985 seeking declaration and permanent injunction, which was decreed on 04.12.1991, and the defendant-company was restrained from transferring the suit plot to any other person. The appeal No. 71 of 1993 filed by the defendant was dismissed on 28.08.1998 and a further second appeal bearing RSA Nos. 1097 and 1098 of 1999, (*along with appeal against the plaintiff Nanki Devi of other suit*) was dismissed by this Court on 05.10.1999. In

the earlier round, this Court conclusively held inter alia that the allotment in favour of the plaintiff had not been cancelled, and the same subsisted.

8.1 After the dismissal of the first appeal on 28.08.1998 in the earlier round of litigation, the plaintiff issued a notice to the defendant calling upon it to perform its part of the contract and transfer the plot at the agreed price. The defendant, vide letter dated 05.06.1999 by referring to the pendency of RSA, responded by stating that it had filed a Regular Second Appeal before this Court. After decision of RSA on 05.10.1999, the plaintiff filed this suit asserting that she has always been ready and willing, and continues to be ready and willing, to perform her part of the contract; that she had sufficient funds to pay the balance price and all requisite charges; and that despite her repeated requests, the defendant kept deferring performance on one pretext or the other.

8.2 On these averments, the plaintiff filed the present suit seeking decree for specific performance of the contract/allotment and consequential reliefs.

9. ***Defence of the defendant company*** :The defendant-company, in its written statement, contested the suit primarily on the following grounds:

9.1 That the plaintiff had no cause of action, as she had allegedly failed to pay 20% of the value of the plot as stipulated in the agreement; that she had been called upon to pay the amount vide letter dated 03.06.1964, but she failed to do so within the stipulated time; and that, as per the terms, the allotment stood automatically cancelled after seven days of receipt of that notice and the earnest money stood forfeited, leaving the plaintiff with no subsisting right or lien on the plot.

9.2 That the suit was barred by limitation, being filed long after the alleged cause of action, and that the relief was not properly valued, attracting rejection of the plaint under Order VII Rule 11 CPC.

9.3 That the suit was barred under Order II Rule 2 CPC, because, when the plaintiff filed the earlier suit in 1985, the relief of specific performance was available to her and ought to have been claimed in that suit; and that no leave

was obtained to reserve that relief and, therefore, the subsequent suit was not maintainable.

9.4 The defendant, however, admitted that it was governed by the 1963 Act and thereafter by the 1975 Act and that licences/layout revisions were required, resulting in delay in development and delivery of possession. However, it was pleaded that there was no legal bar, even under the 1963 Act, on delivery of possession to plot-holders, since at that time, Gram Panchayat used to sanction plans; that the revised layout plan was sanctioned in 1982 and the plot-holders were informed; that the plaintiff was no longer a plot-holder because her allotment allegedly stood cancelled in 1964; that plot No. D-49 had already been allotted to one H. C. Kashyap vide agreement dated 15.02.1985, and the plaintiff was aware of this allotment and of the alleged cancellation of her own.

9.5 It was also pleaded that the earlier judgments operated as res judicata. This plea was set up to argue that the plaintiff could not maintain a subsequent suit for specific performance, having earlier only sought declaration and permanent injunction.

10. ***Findings of the Courts below*** :On the basis of the pleadings, necessary issues were framed. Both sides led evidence, oral as well as documentary.

11.1 Ld. Trial Court, after appreciating the entire evidence, returned a categorical finding that the plaintiff was entitled to a decree for specific performance. It held that the plaintiff had always been ready and willing to perform her part of the contract in terms of the original allotment; that the delay was wholly attributable to the defendant-company, which kept postponing performance for reasons relatable to statutory requirements and its own failure to complete the development of the colony; that there was no intentional delay or default on the part of the plaintiff in paying any further instalments, since the very progress of development and compliance with legal requirements rested with the defendant-Company; that the plaintiff had addressed several letters pressing for performance, whereas the defendant

repeatedly deferred the matter; that the suit was not barred under Order II Rule 2 CPC, as the cause of action for specific performance had not fully accrued, when the earlier suit was filed, and that the earlier suit for declaration and permanent injunction was held in that round to be maintainable and the plea of premature specific performance had been accepted by the Courts. It was held that in view of the earlier decisions, the suit was also not barred by limitation, as the right to sue for specific performance effectively arose only after the disputes relating to the subsistence of the contract and development obligations were resolved.

11.2 On these findings, the trial Court decreed the suit on 04.05.2006, directing specific performance and, in the peculiar facts of the case and in view of the terms of the agreement, also granting the relief of allotment of an alternative plot, if necessary.

12.1 On an appeal filed by the defendant company, the First Appellate Court re-appraised the entire evidence on record and affirmed the decree of trial Court. It referred in detail to the earlier judgments between the parties and noted that this Court (High Court) had conclusively held that the contract between the parties subsisted; that the plaintiff was a genuine allottee; that the defendant's plea of cancellation was wholly unsupported by evidence; that no development had taken place in 1964 so as to justify any demand, and that correspondence between the parties over two decades showed that the defendant itself treated the plaintiff's allotment as subsisting.

12.2 Ld. Appellate Court then observed that the plaintiff had made payments in terms of the payment schedule and that further instalments were payable only upon construction of metalled roads and installation of electric poles, regarding which the defendant had led no cogent evidence.

12.3 The Appellate Court held that a plaintiff seeking specific performance is not required to show cash-in-hand but only financial capacity; that the balance amount was small; that the plaintiff's long and costly litigation itself demonstrated her commitment and financial ability; and that her conduct consistently showed her willingness to perform.

12.4 The Appellate Court also concluded that Order II Rule 2 CPC was not applicable, because the earlier suit for injunction was based on apprehended alienation, and was an independent cause of action, and because the Courts had already held in the earlier proceedings that specific performance would have been pre-mature at that time.

12.5 As regards limitation, the First Appellate Court noticed that the defendant was not in a position to perform the agreement for nearly two decades due to the statutory Acts of 1963 and 1975, and that the plaintiff could not have sued for specific performance before the cause of action matured.

12.6 The Appellate Court also rejected the plea regarding escalation of prices, observing that the defendant could not be allowed to take advantage of its own delays and defaults.

12.7 With the aforesaid observations, the appeal was dismissed on 17.05.2007.

13. ***Submissions in second appeal: By Appellant:*** Assailing the above concurrent findings, learned senior counsel for the appellant–defendant contends, in substance, as under:

14.1 That the Courts below have mechanically relied upon the judgments in the previous litigation, without independently evaluating the validity of the original allotment in the light of the cancellation by letter dated 03.06.1964, as the allotment in favour of the plaintiff stood automatically cancelled after seven days of the said letter, her earnest money stood forfeited, and, therefore, no subsisting contract existed to be specifically enforced;

14.2 That the present suit is barred by Order II Rule 2 CPC, as the cause of action for specific performance allegedly existed even in 1985 at the time of filing the previous suit and the plaintiff, having omitted to claim that relief in the earlier suit, could not file a fresh suit. It is contended that the object of Order II Rule 2 is to prevent multiplicity of proceedings and to ensure that a party is not vexed twice for the same cause, in consonance with the maxim '*nemo debet bis vexari pro una et eadem causa*';

14.3 That the suit is hopelessly barred by limitation, as under Article 54 of the Limitation Act, 1963, the limitation period of three years commenced from the date of the alleged breach/cancellation in 1964, or at the latest by 1985, when the earlier suit was filed, and therefore, the present suit filed nearly 22 years later is ex facie time-barred;

14.4 That the trial Court has travelled beyond the pleadings by granting the relief of allotment of an alternative plot though such relief was not specifically claimed in the plaint; that since the plot in question stands allotted to one H. C. Kashyap, no decree for specific performance could be granted in favour of the plaintiff, and in the absence of a plea and prayer for alternative relief, the Court could not have mandated allotment of another plot;

14.5 That the issue of readiness and willingness has not been properly addressed. Except for a bald averment in the plaint, the plaintiff has adduced no cogent evidence to show that she possessed the financial capacity to pay the balance amount, as mandated by Section 16(c) of the Specific Relief Act, 1963; and

14.6 That escalation in land prices over decades is so steep that enforcing a 1963 bargain in the early 2000s (and thereafter) is inequitable, particularly when the Courts below themselves have noticed such escalation.

14.7 With all these contentions, learned Senior Advocate for the appellant has prayed for setting aside the judgments & decrees passed by the Courts below and to dismiss the suit of the plaintiff by allowing this appeal.

15. **By Respondent:** On the other hand, learned senior counsel for the respondent–plaintiff supports the impugned judgments and decrees and submits:

15.1 That the contract/allotment never stood lawfully cancelled, as is clear from the earlier round of litigation, in which this Court had categorically held that the allotment subsisted and that finding has attained finality between the parties;

15.2 That the defendant-company itself pleaded and relied upon statutory impediments under the 1963 and 1975 Acts and the delay in sanctioning of the layout plan/licence, and, therefore, cannot now turn around and set up an alleged cancellation against the plaintiff;

15.3 That condition No. 5 of the allotment/agreement expressly envisages the company's right to offer an alternative plot in case of unavoidable circumstances, and in such situation, the Court is fully empowered to mould the relief and direct allotment of an alternate plot, as recognised in ***Surinder Mohan Batra v. Gurbinder Pal Singh Tiwana, 2023 NCPHC 99837;***

15.4 That a suit for permanent injunction and a suit for specific performance do not necessarily arise from one and the same cause of action; their factual ingredients, the nature of relief and the limitation provisions are distinct, as clarified by the Hon'ble Supreme Court in ***Sucha Singh Sodhi (dead) through legal representatives v. Baldev Raj Walia & Anr., 2018 (6) SCC OnLine SC 373,*** and, therefore, the bar under Order II Rule 2 CPC is not attracted in the facts of the present case;

15.5 That in the earlier suit, the Courts, including this Court, had held that a suit for specific performance would be premature at that stage and that only a declaration that the contract subsisted and an injunction against alienation were then maintainable; and the cause of action for specific performance fully matured only after the defendant failed to perform even after the disputes with the Government were resolved and after the earlier litigation concluded;

15.6 That relief of specific performance has become substantially non-discretionary post the amendment of the Specific Relief Act in 2018, and Courts are now obliged to enforce specific performance, where the statutory conditions are met, as indicated in ***B. Santashamma & Anr.v. D. Sarala 2020(19) SCC 80.;***

15.7 That the plaintiff has, in fact, demonstrated continuous readiness and willingness by repeatedly addressing communications to the defendant and by promptly invoking legal remedies to protect her rights;

15.8 That escalation in market prices, by itself, is not a ground to deny specific performance, as held in several decisions including ***Ramathal v. Maruthathal & Ors. 2018(18) SCC 303;; A.R. Madana Gopal & Ors. v. Ramnath Publications Pvt. Ltd. & Anr., 2021(11) SCC 200;*** and ***P.S. Ranakrishnan Reddy v. M.K. Bhagyalakshmi & Anr., 2007 (10) SCC 231 ;*** and

15.9 That the concurrent findings of fact recorded by both Courts below, after appreciation of evidence, do not give rise to any substantial question of law warranting interference in second appeal.

15.10 With all these contentions/ submissions, learned Senior Advocate for the respondent-plaintiff prayed for dismissal of the appeal.

16. ***Analysis and Discussion by this Court:*** This Court has considered the rival submissions and has carefully gone through the pleadings, evidence and the judgments of both the Courts below, as also the earlier judgments inter se the parties.

17. As is evident from the record that it is second round of litigation between the parties. In the earlier round of litigation, matter had reached up to this Court. It is noticed that most of the pleas, which have been raised by the appellant in this case, are covered by the order dated 05.10.1999 passed by this Court in RSA No. 1097 & 1098 of 1999. Therefore, it is necessary to reproduce the entire order dated 05.10.1999. [In this order, this court has noticed similar facts of the other suit, which was filed by Nanki Devi]. The order reads as under:-

“This shall dispose of Regular Second Appeals No.1097 and 1098 of 1999 as common question of law is involved in these appeals. For facility of reference, facts are taken from R.S.A No.1097 of 1999.

This is defendant’s appeal directed against the judgment and decree of the Courts below decreeing the suit of the plaintiff that she is purchaser of Plots No. A-26 and B-57 situated near Suraj Kund Tehsil Ballabgarh District Faridabad and defendant has no right, title or competence to transfer or otherwise alienate the said plots to any other person in any manner whatsoever.

In brief, the facts are that the defendant Company namely M/s R.C. Sood and Co. (P) Ltd., sometime in the month of September/October, 1963

advertised in the Newspaper that the Company is owner of one colony called Eros Garden situated near Suraj Kund Tehsil Ballabgarh, District Faridabad and held out that the plots were free from all encumbrances and were ready for sale. Plaintiff treating the advertisement to be correct, applied for the purchase of two plots. Defendant Company agreed to sell two plots No.26-A measuring 350 Sq. Yards and Plot No. B-57 measuring 217 Sq. Yards at the rate of Rs.24/- and Rs.25/- per square yard respectively. Schedule of payment of instalments towards the price of the plots was as under:-

1. 20% at the time booking as earnest money.
2. 25% as additional earnest money within one month from the date of booking.
3. 20% on the construction of the metalled main road facing the plot.
4. 10% on the installation of the electric poles.
5. 15% on laying the water lines facing the plots.
6. 10% on the construction of storm water drains.

The payments as stipulated at Serial No.3, 4, 5 and 6 were to be made within 15 days on receipt of information from the Company regarding the respective development. It further provided that under unavoidable circumstances, the Company shall have the right to give alternate plot. It is not in dispute that the plaintiff paid 20% at the time of booking as earnest money and 25% as additional earnest money within one month from the date of booking. It is the case of the plaintiff that immediately after the booking and payment of 45% of the amount, the Act namely the *Panjab Scheduled Roads and Controller Areas (Restriction of Unregulated Development) Act, 1963* (hereinafter referred to as the 1963 Act) (Panjab Act No.41 of 1963) came into operation vide which restrictions were placed against construction of buildings without complying with the provisions of the Act and permission obtained from the Competent Authority. Under the garb of said Act, defendant company did not give possession of the plots. In the year 1976, State of Haryana enacted *Haryana Development and Regulation of Urban Areas Act, 1975* (hereinafter referred to as the 1975 Act). This Act provided for obtaining of licences by the colonisers. In order to obtain permission, defendant company submitted the works plan to the Director, Town and country planning, Haryana (for short the Director) for sanction. Plaintiff and other plot holders were told that the

development of colony shall be taken in hand immediately after the works plan is approved by the Director. Defendant Company also informed the plot holders that the delay in approving Works Plan is being caused by the Government. Plaintiff and other plot holders made a representation to the Government of Haryana and Competent Authority for granting permission to defendant Company for developing the colony because interest of a large number of persons was involved. On 20.4.1982, Government of Haryana granted permission to the defendant Company to develop the colony subject to certain conditions. The case of the plaintiff is that the defendant Company started demanding exorbitant price from the original plot holders regardless of already concluded contract regarding price. Plaintiff apprehended that the defendant Company may not sell or transfer the plots to someone else and that led to the filing of the suit.

Upon notice defendant-company appeared and contended that the plaintiff was called upon to pay 20 percent of the price for construction of metaled road facing the main road vide letters dated 18.06.1964 and 20.06.1964 but she failed to make the payment and accordingly, the plots allotted to the plaintiff stood cancelled. Defendant Company alleged that the land of plots No. A-26 has been reserved as part of Primary School and land of plot No. B-57 after cancellation was allotted to one Jagjit Singh and as such cannot be allotted to the plaintiff. Defendant Company nowhere denied that it is charging exorbitant price and development charges at the rate other than the one fixed by the Government.

Trial Court on the basis of pleadings and the evidence adduced by the parties to the suit decreed the suit to the effect that the plaintiff was held to be prospective vendee of the plots in question because of payment of 45 percent of the sale consideration and the defendant Company was restrained from alienating the plots to anyone else except the plaintiff. In appeal by the defendant-company, the first Appellate Court affirmed the judgment and decree of the trial Court. Hence, this second appeal by the defendant-company.

Learned counsel appearing on behalf defendant-company contended that the Courts below have failed to appreciate that the plots allotted to the plaintiff stood cancelled after seven days of the receipt of letters dated 18.6.1964 and 20.6.1964, as the plaintiff failed to make payment of 20 per cent towards construction of the metaled road facing the aforesaid two plots about

which information was given to the plaintiff on January 15, 1964. I, however, find no merit in this contention of learned counsel for the defendant-company.

As per the Schedule of payment, 20 per cent of the amount was to be paid at the time of booking as earnest money and 25 per cent as additional earnest money within one month from the date of booking. It is the admitted case of the parties that the plaintiff did pay this amount. The case of the defendant company is that 20 per cent amount towards construction of the metaled road facing the plots in question was asked for from the plaintiff but was not paid and therefore, the plots stood cancelled. As already noticed, plaintiff was required to pay this amount on the construction of metaled road facing the plots, but the defendant-company apart from bringing on record notices dated 18.06.1964 and 20.06.1964, has not led any evidence to prove that metaled road in front of the plots was constructed. Reading of notices allegedly sent to the plaintiff also does not indicate that as to when the metaled road facing the plots was constructed. It is also worth noticing that the 1963 Act came into operation on 20.11.1963, whereby restrictions were imposed upon the colonizers to make construction within the controlled area without the permission from the Director. The notices alleged to have been served on the plaintiff are dated 18.06.1964 and 20.06.1964, i.e. after coming into force of 1963 Act. Defendant Company has failed to explain or lead any evidence as to how the road could be constructed without taking any sanction from the competent Authority and if any sanction was obtained, as to when the same was given. It is also not the case of the defendant company that it has constructed road before coming into force of the 1963 Act. The correspondence between the plaintiff and the defendant company brought on record further negatives the claim of the defendant company that the plots allotted to the plaintiff were cancelled. Vide letter dated 17.03.1973, plaintiff brought to the notice of the defendant company that it had assured that the revised plans of the colony have been submitted to the Director, Town and Country Planning, Haryana, for their scrutiny, and approval of the colony is expected in the near future, but five years have elapsed and she has not heard anything on the issue. She also stated in the said letter that she booked the plots in the year 1963 but till date, i.e. 1973 so called approved colony, has still not been approved. Again on 28.03.1973 and 10.08.1973, she sought information as to when the colony will be approved by the Director, Town and Country Planning and when the development work at site will be taken in hand. In response to letter dated

10.08.1973, defendant company informed the plaintiff that license under the Act has been issued to it on 16.08.1973 and the works plans are already pending scrutiny before the Director, Town and Country Planning and as and when the said plans are received, the company shall undertake rest of the development work of the colony with a fast speed. Plaintiff was told that the defendant company is doing its utmost to do the needful at the earliest. Plaintiff sent another reminder on 20.08.1981 asking the company to inform her the latest position of the colony vis-à-vis her name as a plot holder, as she had been made to wait for 18 years for obtaining clearance from the concerned Authorities. She also served notice dated 19.01.1983 through Sh. Vijay Krishan Makhija, Advocate, Delhi calling upon the company to inform her in regard to the latest position. In case the plots allotted to the plaintiff already stood cancelled in 1963 or 1964, there was no occasion for the defendant company to correspond with the plaintiff. The correspondence between the plaintiff and the defendant company clearly shows that the plots had not been cancelled and the plea that the plots had not been cancelled and the plea that the payment of 20 percent towards construction of metaled road was not made, is clearly an after-thought.

Resultantly, the appeals, namely, RSA Nos. 1097 and 1098 of 1999, being without any merit shall stand dismissed.”

18. After noticing the above order of this court, which has attained finality and having considered the pleadings, evidence, and the arguments addressed by learned senior counsel for the parties, this Court now proceeds to examine the principal objections raised by the appellant with respect to

(a) the bar under Order II Rule 2 CPC,

(b) limitation,

(c) readiness and willingness under Section 16(c) of the Specific Relief Act, and

(d) the alleged inequity arising from escalation of land prices.

19. A careful appraisal of the record, particularly in light of the earlier adjudication inter se the parties culminating in the judgment of this Court dated

05.10.1999, reveals that none of these objections merit acceptance. Let us consider the contentions raised for the appellants, one by one.

20. **(A) Order II Rule 2 CPC** : In this appeal, the central plea of the appellant is that the allotment had stood cancelled in 1964. However, this issue stands conclusively negated in the earlier judgment of this Court dated 05.10.1999, as reproduced above, wherein it was held that no evidence whatsoever existed to show construction of the metalled road; that no lawful demand of the third instalment could, therefore, have been raised, and that the correspondence from 1964 to 1983 demonstrated beyond doubt that the defendant itself treated the allotment as continuing. Once that finding has attained finality, the appellant cannot be permitted to revive that plea.

21. The foundational premise of the appellant is that the plaintiff, having instituted the earlier suit in 1985 seeking declaration and injunction, was obliged to claim specific performance therein, and that failure to do so attracts the bar under Order II Rule 2 CPC. The submission is wholly misconceived.

22.1 Order II Rule 2 CPC bars a subsequent suit only where the earlier and later suits arise from the very same cause of action and the plaintiff was legally entitled to claim the omitted relief at the time of the earlier suit. Hon'ble Supreme Court in **Gurbux Singh v. Bhooralal, AIR 1964 SC 1810**, has held as under:

“In order that a plea of a bar under O. 2. r. 2(3), Civil Procedure Code should succeed the defendant who raises the plea must make out (1) that the second suit was in respect of the same cause of action as that on which the previous suit was based, (2) that in respect of that cause of action the plaintiff was entitled to more than one relief, (3) that being thus entitled to more than one relief the plaintiff, without leave obtained from the Court, omitted to sue for the relief for which the second suit had been filed. From this analysis it would be seen that the defendant would have to establish primarily and to start with, the precise cause of action upon which the previous suit was filed for unless there is identity between the cause of action on which the earlier suit was filed and that on which the claim in the latter suit is based there would be no scope for the application of the bar.”

22.2 Similar view has been taken in *Alka Gupta v. Narender Kumar Gupta, (2010) 10 SCC 141*. In *Sucha Singh Sodhi (dead) through legal representatives v. Baldev Raj Walia & Anr., 2018(6) SCC OnLine SC 373*, Hon'ble Supreme Court has clarified that a suit for injunction and a suit for specific performance are predicated on distinct causes of action; and an omission to claim one in the other does not attract the bar unless both spring from a common factual foundation capable of sustaining both reliefs at the earlier stage.

23. In the present case, the earlier suit was necessitated only because the plaintiff apprehended that the defendant might alienate the plot to third parties. The cause of action was thus founded on an anticipated violation of her rights and not on any refusal to perform the contract. More importantly, in the previous round of litigation, the Court itself had held in categorical terms that although the contract subsisted, a decree for specific performance would have been premature at that juncture, as the defendant was not in a position to perform owing to statutory impediments under the 1963 and 1975 Acts, and also due to pendency of a writ petition filed by the appellant company before this court. This finding, having attained finality up to this court, renders it legally untenable to contend that the plaintiff ought to have claimed specific performance in 1985.

24. A relief that is premature or legally unavailable at an earlier stage cannot be said to have been omitted within the meaning of Order II Rule 2 CPC. The bar, therefore, has no application.

25. **(B) Limitation** :The next contention of the appellant company is that the suit is barred by limitation under Article 54 of the Limitation Act. Here again, the argument collapses under a correct understanding of the statutory scheme and the factual backdrop.

26. Article 54 prescribes a period of three years from (i) the date fixed for performance, or (ii) in the absence of such a date, the date when the plaintiff has notice of refusal.

27. In the present case, the allotment letter did not stipulate any specific date for performance. The defendant repeatedly pleaded its incapacity to perform owing to the statutory embargoes under the 1963 Act and the 1975 Act and conceded that until licences and layout approvals were obtained, no possession or transfer could be undertaken.

28. This Court, in the earlier RSA decided on 05.10.1999, upheld the finding that specific performance up to that stage would have been premature, as the defendant had itself not been in a position to perform. Necessarily, therefore, the right to sue for specific performance did not arise in 1964, nor in 1985, nor at any point before the conclusion of the earlier proceedings. It arose only after the defendant, despite the settlement of statutory issues and despite notice dated 10.05.1999 (Ex.P26), failed to honour the subsisting contract.

29. Thus, applying the law declared in **Ahmadsahab Abdul Mulla (dead) by proposed LRs v. Bibijan & Ors., (2008) 5 SCC 361** and **K.S. Vidyadnam & Ors. v. Vairavan, (1997) 3 SCC 1**, the limitation period begins from the date of notice of refusal, and not from any earlier date when performance was legally impossible. The present suit, having been filed soon after the refusal in 1999, is well within the prescribed period.

30. **(C) Readiness and Willingness** :The appellant further contends that the plaintiff has failed to establish readiness and willingness as required under Section 16(c) of the Specific Relief Act. The record, however, demonstrates otherwise.

31. The plaintiff had deposited 45% of the total price immediately upon allotment. Her letters from 1964 to 1983 repeatedly urged the defendant to comply with its obligations and hand over possession. She instituted the earlier suit in 1985 to safeguard her rights and, immediately after conclusion of that litigation at the stage of first appellate court, issued notice calling upon the defendant to execute the conveyance. She has also consistently offered to pay the balance amount and any incidental charges. It is the defendant company, which refused to perform by citing the then pending RSA of earlier round of litigation.

32. It is well settled that a plaintiff is not required to exhibit cash-in-hand or produce bank statements to demonstrate readiness. Hon'ble Supreme Court in ***P. D'Souza v. Shondrilo Naidu, (2004) 6 SCC 649***, and ***N.P. Thirugnanam (dead) through his LRs v. Dr. R. Jagan Mohan Rao & Ors., (1995) 5 SCC 115***, has held that readiness refers to financial capacity, whereas willingness is reflected through conduct. As observed by Hon'ble Supreme Court in ***N.P. Thirugnanam (supra)***,

‘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.’

33. In present case, the plaintiff's decades-long pursuit of her rights, including prolonged and expensive litigation, coupled with the small quantum of the remaining amount, is a far more telling indicator of her readiness than any formal proof of liquid funds. Both Courts below have concurrently found that the plaintiff's conduct satisfies Section 16(c) of Specific Relief Act. There is no perversity in this conclusion warranting interference.

34. ***(D) Escalation of Prices*** : The final ground urged by the appellant company is that enforcement of a 1963 contract in the early 2000s, when the value of land has escalated manifold, would be inequitable.

35. While the rise in property prices is undeniable, the law equally recognises that escalation of prices is neither extraordinary nor unexpected and cannot, by itself, be treated as a ground to deny specific performance. Hon'ble Supreme Court in ***Ramathal v. Maruthathal & Ors. 2018(18) SCC 303, A.R. Madana Gopal & Ors. v. Ramnath Publications Private Limited & Anr., 2021 (11) SCC 200*** and ***P.S. Rana Krishnan Reddy v. M.K. Bhagyalakshmi & Anr., 2007 (10) SCC 231***, has held that appreciation in land value is a natural consequence of passage of time and does not defeat an otherwise lawful contract.

36. More importantly, the Latin legal maxim, '*nullus commodum capere potest de injuria sua propria*', which translates to - "*no man can take advantage*

of his own wrong", is squarely applicable in this case. This principle means a person cannot profit or benefit from their own unlawful acts or wrongdoing. It is rooted in principles of equity and good faith, ensuring that wrongdoers cannot benefit from their misconduct, and it protects the aggrieved party.

37. The delay in the present case is attributable entirely to the defendant – appellant. First, on account of statutory lapses in obtaining licences and approvals, then by raising untenable pleas of cancellation, and later by declining performance despite judicial findings that the contract subsisted.

38. A party that has, by its own conduct, deferred performance for decades cannot be permitted to invoke market changes as a shield to defeat the legitimate rights of the other contracting party. The plaintiff, who has vigilantly protected her rights throughout, cannot be penalised for circumstances exclusively attributable to the defendant.

39. From the above discussion, this Court is of the view that:

- Order II Rule 2 CPC does not bar the present suit, as the earlier suit arose from a distinct and premature cause of action.
- The suit is within limitation, Article 54 being triggered only after the defendant's refusal following the 1999 decision.
- The plaintiff has proved continuous readiness and willingness, supported by long-standing correspondence, payments, litigation, and immediate steps upon maturity of her cause of action.
- Escalation of land prices is no ground to deny specific performance, particularly where delay is attributable to the defendant's own defaults.

40. As such, this Court finds that both Courts below have recorded concurrent findings of fact after detailed appraisal of the evidence. No perversity or misapplication of law has been shown. No substantial question of law arises for consideration in this appeal. Consequently, the appeal is dismissed. The judgments and decrees of the trial Court and the First Appellate Court are affirmed.

41. ***Balancing of Equities and Moulding of Relief*** : Before parting with the matter, this Court considers it appropriate to deal with two ancillary aspects, which arise from the peculiar factual matrix of this long-pending dispute. The first pertains to the appellant's contention that enforcing the 1963 bargain at the original contractual rate would result in undue hardship to the defendant-company in light of the enormous rise in land prices. The second concerns the availability of Plot No. D-49, regard being had to the defendant's fluctuating stand that the plot may have been allotted to a third party during the pendency of litigation.

42. As regards the first aspect, this Court has already found that escalation of prices, by itself, is no ground to deny specific performance, particularly where the defendant's own conduct in failing to obtain statutory approvals and in raising a patently untenable plea of cancellation materially contributed to the early delay. Judicial precedents ***Ramathal v. Maruthathal***, ***A.R. Madan Gopal v. Ramnath Publications***, and ***P.S. Rana Krishnan Reddy v. M.K. Bhagyalakshmi***, as cited earlier, reiterate that appreciation in the value of immovable property cannot defeat an otherwise valid contract. Moreover, after the 2018 amendment to the Specific Relief Act, specific performance is the primary rule rather than a discretionary exception.

43. At the same time, decisions such as ***Nirmala Anand v. Advent Corporation Pvt. Ltd. & Ors.***, (2002) 8 SCC 146; ***S. Rajalakshmi v. A.V. Subramaniam***, (2016) 12 SCC 838; and ***B. Vijaya Bharathi v. P. Savitri***, (2019) 9 SCC 445, recognise that Courts are empowered to mould relief by directing a reasonable enhancement in consideration in order to balance equities, particularly where a substantial part of the delay in fruition of the contract is attributable to systemic and neutral factors such as prolonged pendency of judicial proceedings, for which neither party is directly responsible. Such equitable adjustment is permissible so long as it does not reward the defaulting party for its earlier breaches.

44. In the present matter, the initial delay between 1963 and 1982 is directly traceable to the defendant's inability to secure statutory permissions and its untenable plea of cancellation, the issues conclusively settled in the

earlier round of litigation by this Court in its judgment dated 05.10.1999. The plaintiff cannot be faulted or burdened for that period. Nonetheless, the fact remains that a significant part of the subsequent delay was occasioned by the pendency of litigation before various judicial fora. Such delay is institutional, systemic, and neither party can be held directly responsible for the time consumed in the appellate process. This Court cannot be oblivious to that reality.

45. Accordingly, while affirming the decree for specific performance, it is directed that the plaintiff–respondent shall, in addition to the balance sale consideration originally payable under the allotment, deposit an additional amount equivalent to 25% of the original total consideration as an equitable adjustment. This enhanced amount shall be paid to the defendant–company within three months from today. In the event of failure to deposit the said amount within the stipulated time, the decree for specific performance shall not be executable at the instance of the plaintiff.

46. Turning to the other ancillary aspect, the defendant–company has, from time to time, attempted to suggest that Plot No. D-49 may have been allotted to a third party during the pendency of litigation. While such a plea has been found untenable on merits, the Court must ensure that the decree remains implementable in all contingencies. Condition No. 5 of the original allotment expressly reserves to the defendant the right to offer an alternative plot in the event of unavoidable circumstances. This stipulation is contractual in nature and empowers the Court to mould the relief where the precise plot identified in the original bargain is not available. The authority of the Court to adapt the relief in such manner is well recognised, including in ***Surinder Mohan Batra & Ors. v. Gurbinder Singh Tiwana & Anr., 2023 NCPHC 99837.***

47. Accordingly, it is clarified that if upon verification, Plot No. D-49 is found to have been lawfully transferred to any third party prior to filing of the present suit, the defendant–company shall allot to the plaintiff–respondent another plot of the same size, dimensions and category, situated as nearly as possible in the same Eros Garden residential project. Such allotment shall be made within three months of such determination and shall be treated as full

compliance with the defendant’s obligations under the original contract, subject to the plaintiff having duly deposited the enhanced amount in terms of this judgment.

48. These directions, taken together, balance the equities arising from the long passage of time, maintain the sanctity of the contractual bargain, and ensure that the decree remains fair, workable, and legally enforceable without permitting either party to suffer unfair prejudice or derive undue advantage from circumstances beyond their control.

49. Since the present judgment disposes of RSA No. 2736 of 2007 as well as RSA No. 2737 of 2007, both of which arise out of two separate civil suits involving different plots but rest upon common factual foundations, identical contractual stipulations, and overlapping legal issues, it is clarified that the findings, conclusions and directions issued herein shall apply *mutatis mutandis* to both matters. Accordingly, all determinations relating to enforceability of the allotments, the subsistence of the contractual obligations, the decree for specific performance, the equitable adjustment directed in paragraph 45, and the modality for allotment of an alternative plot as set out in paragraph 47, shall be construed as uniformly applicable to the plots involved in Civil Suit No. 88 of 2002 as well as Civil Suit No. 89 of 2002. This clarification is issued in order to obviate any ambiguity at the stage of execution and to ensure uniform implementation of the relief across both connected appeals.

50. Both these appeals are accordingly disposed of in terms of the above directions.

December 11, 2025
Jiten

(DEEPAK GUPTA)
JUDGE

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No

Uploaded on : December 11 , 2025