



RSA-1929-2024 (O&M)

**144 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****RSA-1929-2024 (O&M)
Date of decision : 22.04.2025**

Om Parkash

..... Appellant

Versus

Bijender Singh

..... Respondent

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. R.S.Malik, Advocate for the appellant.

PANKAJ JAIN, J. (ORAL)

1 Appellant-defendant is in second appeal. For convenience parties hereinafter are referred to by their original position in the suit i.e. the appellant as defendant and the respondent as plaintiff.

2 Plaintiff filed suit for symbolic possession by way of specific performance.

3 As per plaintiff, defendant agreed to sell suit land in his favour and executed agreement to sell dated 27.08.2014. Out of total sale consideration of Rs.42,52,000/- an amount of Rs.35,70,000/- was paid by the plaintiff to defendant vide receipt dated 27.08.2014 in presence of witnesses. The parties agreed to get the sale deed executed on or before 27.07.2015. Plaintiff claims that the date to execute the sale deed was further extended to 28.09.2015. Plaintiff paid further amount of Rs.6,72,000/- to defendant on 15.06.2015. The total consideration of Rs.42,42,000/- was thus paid to defendant by 15.06.2015 and remaining consideration of Rs.10,000/- was to



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be paid on the date fixed for execution and registration of sale deed. Plaintiff pleaded that he always and is still ready and willing to perform his part of the contract. Plaintiff served legal notice dated 17.05.2018 upon defendant to execute the sale deed. Defendant having failed to perform his part, he was entitled to decree of specific performance.

4 Suit was contested by the defendant. Execution of agreement to sell was denied. Receipt of earnest money was denied. Defendant claimed that he availed loan of Rs.6,72,000/- from plaintiff. Plaintiff obtained thumb impressions on blank stamp papers and misused the same to prepare agreement to sell and receipt of Rs.3,57,000/-

5 Suit filed by the plaintiff was put to trial framing following issues :-

- “1. Whether the defendant executed the impugned agreement to sell dated 27.08.2019 in favour of the plaintiff in respect of the suit property for valuable consideration, as alleged? OPP*
- 2. Whether the plaintiff was and is willing and ready to perform his part of the aforesaid agreement, as alleged? OPP*
- 3. If issues No.1 & 2 are proved, whether the plaintiff is entitled to decree for specific performance of the aforesaid agreement against the defendant as prayed for, on the grounds as alleged in the plaint? OPP*
- 4. If issues No.1, 2 & 3 are proved, whether the plaintiff is entitled to the relief of permanent injunction against the defendant, as prayed for? OPP*
- 5. Whether the suit of the plaintiff is not maintainable in its present form? OPD*
- 6. Whether the plaintiff has no locus standi to file the present suit? OPD*



7. Whether the plaintiff has no cause of action to file the present suit? OPD

8. Whether the plaintiff has concealed the true and material facts from this court and if so, its effect? OPD

9. Relief.”

6 Attesting witness Naresh Kumar, appeared as PW-2 and proved execution of agreement to sell and payment of earnest money as well as further consideration of Rs.6,72,000/- on 15.06.2015 regarding extension of the target date. Rajesh Singh, Notary Public who attested agreement to sell Ex. P1 was examined as PW-3 and proved thumb impressions and signatures on the agreement to sell. He also proved entry in his register at Serial No.1057 dated 27.08.2014. Defendant as well as his son appeared as DW-1 and DW-2 in defense.

7 The Courts below found that the plaintiff successfully proved execution of agreement to sell. Defendant failed to prove his defense of having thumb marked blank stamp papers. Surprisingly son of the defendant Ravinder is one of the attesting witnesses to agreement to sell as well as receipt. He appeared as DW-2 and admitted in his cross-examination receipt of money by his father on 27.08.2014. The Court of the First Instance thus decreed the suit filed by the plaintiff holding him entitled to the relief of specific performance.

8 Dissatisfied defendant filed appeal. The same stands dismissed by the Lower Appellate Court affirming findings recorded by the Courts below.

9 I have heard learned counsel for the defendant and have gone through the records of the case.



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10 Plaintiff examined attesting witness to prove execution of agreement to sell. The agreement to sell was notarized. Public Notary was examined who also proved thumb impressions of the plaintiff in his register. The defense pleaded by the defendant is of thumb marked blank papers having been misused. Apart from bald statement made by defendant while appearing as DW-1 there is no other evidence to prove the same. His son Ravinder who is one of the attesting witnesses to agreement to sell though claimed that thumb impressions of his father were obtained on blank papers but could not answer as to how his signatures came on the agreement to sell. Defendant while appearing as DW-1 admitted receipt of Rs.6,72,000/- on 15.06.2015. His son Ravinder admitted receipt of Rs.35,70,000/- by defendant on 27.08.2014. The Courts below thus rightly found plaintiff to be ready and willing to perform his part of contract.

11 Mr. R.S.Malik, Advocate for the defendant has raised plea with respect to delay in filing of the suit. As per the plaint set up by the plaintiff parties agreed to get the sale deed executed upto 28.09.2015. Present suit was instituted on 17.08.20018. The issue regarding delay in filing suit for specific performance has been dealt by this Court in ***Pushap Lata Vs. Varun Singla*** bearing ***RSA No.5382 of 2019*** decided on 17.12.2024 observing as under :-

14. There can't be any quarrel with the proposition that plaintiff seeking decree of specific performance need not wait for the last date of limitation. Delayed filing of the suit is also one of the considerations while assessing readiness of the plaintiff. However, the same alone cannot be a ground to non-suit the plaintiff. Law on the issue is well settled. Supreme

Court in the case of ‘*Mademsetty Satyanarayana v. G. Yelloji Rao*’, 1964 SCC OnLine SC 33 observed as under :

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

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

Illustrations

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

Illustrations

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

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

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

Under Section 22 of the Specific Relief Act, relief of specific performance is discretionary but not arbitrary : discretion must be exercised in accordance with sound and reasonable judicial principles. The cases providing for a guide to courts to exercise discretion one way or other are only illustrative; they are not intended to be exhaustive. As Article 113 of the Limitation Act prescribes a period of 3 years from the date fixed thereunder for specific



performance of a contract, it follows that mere delay without more extending up to the said period cannot possibly be a reason for a court to exercise its discretion against giving a relief of specific performance. Nor can the scope of the discretion, after excluding the cases mentioned in Section 22 of the Specific Relief Act, be confined to waiver, abandonment or estoppel. If one of these three circumstances is established, no question of discretion arises, for either there will be no subsisting right or there will be a bar against its assertion. So, there must be some discretionary field unoccupied by the three cases, otherwise the substantive section becomes otiose. It is really difficult to define that field. Diverse situations may arise which may induce a court not to exercise the discretion in favour of the plaintiff. It may better be left undefined except to state what the section says, namely, discretion of the court is not arbitrary, but sound and reasonable guided by judicial principles and capable of correction by a court of appeal.

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

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



“Where time is not originally of the essence of the contract, and has not been made so by due notice, delay by a party in performing his part of the contract, or in commencing or prosecuting the enforcement of his rights, may constitute such laches or acquiescence as will debar him from obtaining specific performance. The extent of delay which has this effect varies with circumstances, but as a rule must be capable of being construed as amounting to an abandonment of the contract. A much shorter period of delay, however, suffices if it is delay in declaring an option or exercising any other unilateral right; and if the other party has already given notice that he does not intend to perform the contract, the party aggrieved must take proceedings promptly if he desires to obtain specific performance.”

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

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

Learned counsel cited many English decisions in support of his argument that there shall be promptitude and diligence in enforcing a claim for specific performance after a repudiation of the contract by the other party and that mere continual claim without any active steps will not keep alive the right which would otherwise be defeated by laches : see Clegg v. Edmondson [(1857) 114 RR 336] , Eads v. Williams [(1854) 43 ER Chan 671] , Lehmann v. McArthur



[(1968) LR 3 Ch AC 496] , Watson v. Reid [(1830) 39 ER Chan 91] , and Emile Erlanger v. New Sombrero Phosphate Company [(1878) LR 3 AC 1218] . But as stated earlier, the English principles based upon mere delay can have no application in India where the statute prescribes the time for enforcing the claim for specific performance. But another class of cases which dealt with the doctrine of laches have some bearing in the Indian context. In Lindsay Petroleum Company v. Prosper Armstrong Hurd, Abram Farewell, and John Kemp [(1874) LR 5 PCA 221, 239-240] Sir Barnes Peacock defined the doctrine thus:

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

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

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

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



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

11. Now we shall consider some of the Indian decisions cited at the Bar. A Division Bench of the Allahabad High Court held in Nawab Begum v. A.H. Creet [(1905) ILR 27 All 678] that great delay on the part of the plaintiff in applying to the court for specific performance of a contract of which he claimed the benefit was of itself a sufficient reason for the Court in the exercise of its discretion to refuse relief. But it will be seen from the facts of that case that apart from the delay the conduct of the plaintiff was such that it induced the other party to change his position to his detriment. A Division Bench of the Patna High Court in Rameshwar Prasad Sahi v. Mt. Anandi Devi [(1960) ILR 39 Pat 79] held on the facts of that case that the delay in bringing the suit for specific performance was always fatal to a suit, and that it amounted to an abandonment of the contract and waiver of his rights to sue for specific performance. If the learned Judges meant to lay down that mere delay would amount to abandonment of a right, we find it difficult to agree with them. The decision of the Calcutta High Court in Gosthe Behari v. Omiyo Prosad [AIR 1960 Cal 361] recognized that mere delay was not sufficient to deny the relief of specific performance, but pointed out that though it was not necessary to establish that the plaintiff had abandoned his right, the Court may, in view of the conduct of the plaintiff coupled with his delay that had prejudiced the defendant, refuse to give the equitable relief. In Chamarti Suryaprakasarayudu v. Arardhi Lakshminarasimha [(1914) 26 MLJ 518, 521, 523], a Division Bench of the Madras High Court rightly pointed out that delay by itself was not a ground for refusing to give a decree in a suit for specific performance. Sadasiva Aiyar, J., observed:



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

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

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

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



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

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

*“15. It cannot be gainsaid that even though time is not considered as the essence of the contract in case of immovable property and that the suit could be filed within three years as provided in Article 54 of the Limitation Act, the respondent-plaintiff had to perform his part of the contract within the reasonable time having regard to the term of the agreement prescribing the time-limit. **The time-limit prescribed in the agreement cannot be ignored on the ground that time was not made the essence of the agreement or that the suit could be filed within three years from the date fixed for performance or from the***



date when the performance is refused by the vendor. Nonetheless, as discussed above, the suit having been filed by the respondent well within the prescribed time-limit under Article 54 of the Limitation Act, the respondent could not have been non-suited on the ground of the suit being barred by limitation as sought to be submitted by the learned counsel for the appellant.

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

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

17. The aforesaid ratio has also been followed recently by this Court in *R. Lakshmikantham v. Devaraji* [*R. Lakshmikantham v. Devaraji*, (2019) 8 SCC 62] . **We, therefore, have no hesitation in holding that mere delay**



alone in filing the suit for specific performance, without reference to the conduct of the plaintiff, could not be a ground for refusing the said relief, when the suit was filed within the statutory time-limit by the respondent-plaintiff.

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

33. *Though much reliance was placed by the learned counsel for the appellant on the decisions of this Court in Ritu Saxena v. J.S. Grover [Ritu Saxena v. J.S. Grover, (2019) 9 SCC 132 : (2019) 4 SCC (Civ) 302] , in Abdullakoya Haji v. Rubis Tharayil [Abdullakoya Haji v. Rubis Tharayil, (2019) 17 SCC 216 : (2020) 3 SCC (Civ) 399] , and other cases, to submit that the respondent had failed to establish his financial capacity to pay the balance amount of consideration at the relevant time and had also failed to deposit the said amount in the court at the time of filing of the suit, he was not entitled to the discretionary relief of specific performance as granted by the Court, we do not find any substance in any of the said submissions. As per the ratio of judgment laid down by the three-Judge Bench in Syed Dastagir [Syed Dastagir v. T.R. Gopalakrishna Setty, (1999) 6 SCC 337] , the compliance of “readiness and willingness” has to be in spirit and substance and not in letter and form, while making averments in the plaint. As per Explanation (i) to Section 16(c), he need not tender to the defendant or deposit the amount in the court, but he must aver performance of, or readiness and willingness to perform the contract according to its true construction.*



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

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

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

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

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

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

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

Here none of the above-mentioned aspects applies. That apart factually also, the High Court proceeded on an



incorrect assumption with regard to cause of action. Ext. 2 was executed on 20-2-1977 and under it the sale deed was to be executed on or before 19-7-1977. The last notice was issued on 26-11-1978 and from that date the suit was filed only after nine months and not after more than a year as noted by the High Court. Therefore on the facts of this case the ground of delay cannot be invoked to deny relief to the plaintiff.

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

“Unless a statute specifically requires a plea to be in any particular form, it can be in any form. No specific phraseology or language is required to take such a plea. The language in Section 16(c) of the Specific Relief Act, 1963 does not require any specific phraseology but only that the plaintiff must aver that he has performed or has always been and is willing to perform his part of the contract. So the compliance of ‘readiness and willingness’ has to be in spirit and substance and not in letter and form.”

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



plaintiff in a suit for specific performance of contract for sale.

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

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

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

“10. It has been consistently held by the courts in India, following certain early English decisions, that in the case of agreement of sale relating to immovable property, time is not of the essence of the contract unless specifically provided to that effect. ... in the case of urban properties in India, it is well-known that their prices have been going up sharply over the last few decades—particularly after 1973. ...

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



(emphasis supplied)

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

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

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

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

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

the vendor and possession has been delivered in part-performance, where equity shifts in favour of the purchaser.”

12 Thus the test is whether major part of sale consideration was paid or not?

13 In view of above, this Court finds that plaintiff having proved that an amount of Rs.42,42,000/- stood paid to the defendant and only Rs.10,000/- remaining, the suit being within limitation, delay projected by the defendant cannot be held to be fatal to the right of the plaintiff to seek relief of specific performance.

14 Finding no merits in the present appeal, the same is ordered to be dismissed.

22.04.2025
Pooja Sharma-I

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No