



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I. RSA-2320-2012 (O&M)

VIJAY MEHTA (SINCE DECEASED) THROUGH LRS

.... APPELLANT

Vs.

BHAWANI DASS AND ANOTHER

.... RESPONDENTS

II. RSA-2177-2012 (O&M)

M/S ARLINGTON SPINNING & WEAVING MILLS LIMITED

.... APPELLANT

Vs.

BHAWANI DASS AND ANOTHER

.... RESPONDENTS

RESERVED ON: 02.12.2025
PRONOUNCED ON: 15.12.2025

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. Shalendra Jain, Sr. Advocate with
Mr. Munish Kumar and Mr. Rahul, Advocates,
for the appellant in RSA-2320-2012.

Mr. Sudhanshu Makkar, Advocate,
for the respondents in RSA-2320-2012

Mr. Amit Jhanji, Sr. Advocate, with
Mr. Mayank Mathur and Ms. Priyanka Kansal, Advocates,
for the appellant in RSA-2177-2012.

Mr. M.L. Sarin, Sr. Advocate, with
Mr. Ritesh Aggarwal, Advocate,
for the respondents in RSA-2177-2012

DEEPAK GUPTA, J.

These Regular Second Appeals have been filed by the defendants against the judgment of reversal. The suit for specific performance, relating to the property in dispute, instituted by the plaintiff, Bhawani Dass (*respondent No. 1 herein in both the appeals*), against defendant N: 1 M/s Arlington Spinning & Weaving Mills Limited through its

Director Shri Kamal Kishore Mehta (*appellant in RSA No. 2177 of 2012*), and another director - defendant No. 2 Vijay Mehta (*appellant in RSA No. 2320 of 2012*) was dismissed by the learned trial Court on 31.03.2011. However, plaintiff's appeal was allowed by the learned Additional District Judge, Palwal, vide judgment dated 25.02.2012, thereby decreeing the suit for specific performance of the agreement to sell. Aggrieved thereby, the two defendants (*Company and one its Director*) have approached this Court by filing two separate appeals.

2. The trial Court record has been summoned and examined. For convenience and to avoid confusion, the parties are referred to in the manner they were arrayed before the trial Court.

3. Defendant No.1, M/s Arlington Spinning & Weaving Mills Limited (hereinafter "Arlington"), was admittedly the owner of land measuring 183 kanals 17 marlas situated in the revenue estate of Village Gudhrana, Tehsil Hodal, District Faridabad, detailed in Para N: 1 of the plaint.

4.1 ***Plaintiff's Version*** : According to the plaintiff, the defendant Arlington, acting through its Director Sh. Kamal Kishore Mehta, entered into negotiations to sell the said land for a total sale consideration of ₹1,25,00,000/-. On 10.02.2005, the plaintiff paid an initial amount of ₹2,00,000/- as earnest money, and a writing (*Yadasht*) [Ex.P-1] to this effect was executed. It was agreed that a formal agreement to sell would be executed on or before 15.02.2005.

4.2 Thereafter, on 14.02.2005, a formal Agreement to Sell [Ex.P-2] was executed between the parties. On that day, Arlington received a further sum of ₹10,50,000/- vide a separate receipt. As per the agreed terms, an amount of ₹15,00,000/- was payable by the plaintiff on or before 15.03.2005, and the remaining balance was to be paid at the time of execution and registration of the sale deed.

4.3 The plaintiff asserts that in compliance with the Agreement, he paid another amount of ₹15,00,000/- to the defendants on 11.03.2005, for which a receipt [Ex.P-5] was issued by Sh. Kamal Kishore Mehta. Thus, up to 11.03.2005, an amount of ₹27,50,000/- had been paid by the paid as earnest money and also part of sale consideration. The parties mutually fixed 30.11.2005 as the tentative date for execution and registration of the sale deed.

4.4 It is the plaintiff's specific case that time was not the essence of the contract. As per the terms of the agreement to sell, Arlington was obliged to execute the sale deed only after the decision of four pending civil cases relating to the suit land, and after getting the land vacated from the tenants, who were in possession of a portion of the land. As per plaintiff, he was told by Shri Kamal Kishore Mehta, the Director of the Company about pendency of four civil suits, in which stay against alienation were operating and assured to execute the sale deed in favour of the plaintiff after vacation of the stay orders by the Courts.

4.5 The plaintiff pleaded further that stay orders in the four civil suits were vacated on 10.04.2006, although the suits were still pending. Meanwhile, upon the asking of the defendants, the plaintiff paid yet another sum of ₹5,00,000/- on 13.07.2005 through cheque, regarding which defendant executed separate receipt [Ex.P-4]. Thus, in all, the plaintiff claims to have paid ₹32,50,000/- towards the sale consideration.

4.6 The plaintiff further asserted that though the tentative date for execution of the sale deed as 30.11.2005 was not the essence of the contract, he nonetheless remained ready and willing to perform his part of the contract and so, reached the office of the Sub-Registrar, Hodal on that date along with the balance sale consideration and the requisite amount for purchase of stamp papers and registration charges. As the defendants failed to appear, the plaintiff marked his presence by executing an affidavit [Ex.P-6] before the Sub-Registrar.

4.7 According to the plaintiff, after vacation of the stay order on 10.04.2006, he again approached the defendants to complete the transaction. Defendant Shri Kamal Kishore Mehta assured him that he would appear before the Sub-Registrar on 17.04.2006 for execution of the sale deed and asked him (plaintiff) to purchase necessary stamp papers and get prepared the draft sale deed. Acting on this assurance of Shri Kamal Kishore Mehta, the plaintiff purchased the necessary stamp papers, prepared demand drafts towards the balance sale consideration, and reached the office of the Sub-Registrar on the appointed day, ready with other necessary amount for incurring registration charges. Despite waiting the entire day, the defendants did not turn up. As per plaintiff, he being always ready and willing to perform his part of contract, approached the defendant to execute the sale deed but in vain.

4.8 The plaintiff alleges that during this period, he came to know that the defendants were negotiating to sell the property to third parties or to create a charge upon the suit land. On these premises, the suit for specific performance of the Agreement and for injunction restraining alienation of the property was filed against Defendant No.1 Arlington, through its Director, Sh. Kamal Kishore Mehta; and Defendant No.2: Sh. Vijay Mehta, another Director of the company, both alleged to be jointly responsible for contractual obligations and performance.

5.1 ***Stand of Defendant No.1*** : Defendant No.1 filed a written statement raising several preliminary objections, mainly disputing the readiness and willingness of the plaintiff to perform his part of the contract. Execution of the agreement and receipt of earnest money & part sale consideration of ₹32,50,000/- have not been disputed.

5.2 It was pleaded that the Agreement did not confer any enforceable right, title, or interest upon the plaintiff. The defendant contended that the terms of the Agreement were mutually contradictory, rendering the document void and unenforceable. While Clause 2 fixed the date of execution of the sale deed as 30.11.2005, Clause 9 stipulated that

if any litigation concerning the land was pending, the defendant was required to get the same finally decided before executing the sale deed. According to the defendants, these contradictory stipulations made the Agreement inherently uncertain.

5.3 It was further pleaded that the suit was barred under Section 29 of the Indian Contract Act, being founded upon an uncertain agreement, and was also hit by Sections 32 and 35, since, before the happening of the contingency i.e., final adjudication of pending civil suits, the plaintiff had no locus standi to enforce the Agreement.

5.4 Disputing the plaintiff's readiness and willingness, the defendant pleaded that the plaintiff did not possess the funds necessary to pay the balance sale consideration or to purchase stamp papers on 30.11.2005; that no legal notice was ever served by the plaintiff calling upon the defendants to execute the sale deed; that the alleged demand drafts prepared by the plaintiff did not cover the entire balance consideration; and that due to the plaintiff's own conduct, the Agreement stood terminated and the earnest money stood forfeited. It was further denied that 17.04.2006 was ever fixed as the next agreed date for execution of the sale deed, or that any assurance was given by the defendants after vacation of the stay order. Prayer was accordingly made for dismissal of the suit.

6. ***Written Statement of Defendant No.2*** : In separate written statement, Defendant No.2, Vijay Mehta substantially reiterated the stand taken by Defendant No.1 and prayed for dismissal of the suit.

7. After completion of the pleadings, the learned trial Court framed issues concerning the enforceability of the agreement to sell dated 14.02.2005, the plaintiff's entitlement to specific performance and possession, the maintainability of the suit, and whether the plaintiff had suppressed material facts. Evidence led by both parties was taken on record.

8.1 ***Trial Court Findings*** : The trial Court held that the Agreement to Sell (Ex.P2) was not legally enforceable, and consequently the plaintiff was not entitled to the relief of specific performance. The suit was held to be not maintainable. On the basis of these findings, the suit came to be dismissed on 31.03.2011.

8.2 In its detailed reasoning, the trial Court noted that the assertions made by the plaintiff were insufficient to establish genuine readiness and willingness. It held that although the plaintiff marked his presence on 30.11.2005, but there was no evidence that he had brought the balance sale consideration, or the requisite stamp papers in accordance with the terms of the agreement. The Court held that his presence was a mere formality and not an act in furtherance of performance.

8.3 As regards 17.04.2006, the Trial Court observed that the alleged assurance by the defendant was wholly unsubstantiated by any documentary evidence and rested solely on the plaintiff's oral testimony. Furthermore, unlike the earlier occasion, the plaintiff did not mark his presence before the Sub-Registrar on 17.04.2006, which the Court found significant. Adverse inference was drawn from the fact that the stamp papers purchased by the plaintiff were not according to the agreed sale consideration but only at the prevailing collector-rates. The trial Court found that this suggested an intention merely to create evidence rather than to genuinely perform the contract, and even viewed it as an attempt to cause loss of revenue to the State. This conduct, in its view, was inconsistent with bona fide readiness and willingness.

8.4 More importantly, the trial Court scrutinised the conditions of agreement to sell Ex.P2 and concluded that the agreement itself was speculative and contingent in nature. It noted that under the terms of the agreement, the defendant was required, first, to secure disposal of the civil suits pertaining to the land before the date of execution of the sale deed, and second, to have the land vacated from tenants prior to registry.

According to the trial Court, both these conditions were beyond the control of the defendant, particularly the disposal of civil suits in which the defendant was only a party at the receiving end. The Court held that the transaction was thus dependent on contingencies, which might or might not materialise, rendering the agreement uncertain and falling within the mischief of Sections 29, 32 and 35 of the Indian Contract Act, 1872.

8.5 In view of the above findings, the trial Court held that the Agreement to Sell (Ex.P2) was not legally enforceable and that the plaintiff had failed to establish readiness and willingness as required for grant of specific performance. Consequently, the suit was dismissed.

9.1 ***Findings by Appellate Court :*** The plaintiff carried the matter in appeal before the Appellate Court. Learned Additional District Judge, Palwal, undertook a fresh and comprehensive appraisal of the entire record and observed at the outset that the execution of the Agreement to Sell dated 14.02.2005 (Ex.P2) and the various receipts evidencing payment of ₹32,50,000/- were not in dispute. The defendant-company did not deny ownership of the land, or the fact that its Director, Sh. Kamal Kishore Mehta, had negotiated and entered into the agreement with the plaintiff. The Appellate Court also noted, upon examining the resolution and supporting material, that the Director was duly authorised to execute the agreement on behalf of M/s Arlington Spinning and Weaving Mills Ltd., and therefore, there was no defect in the authority or competence of the person executing Ex.P2.

9.2 The Appellate Court disagreed with the trial Court's view that the agreement was speculative or uncertain. It held that the contract, read as a whole, indicated a concluded and enforceable bargain. The total sale consideration was fixed; the instalments paid were specifically acknowledged; the date of registration was mentioned; and the obligations of the vendor - such as demarcation, dealing with tenants, and clearance of pending litigation, were all affirmative undertakings and not conditions precedent of such a nature as to make the agreement void for

uncertainty. The Appellate Court held that the clauses relied on by the trial Court, particularly those relating to pending litigation and eviction of tenants, were protective terms allocating responsibility and procedure, and not contingencies that rendered the contract unenforceable under Sections 29, 32 or 35 of the Contract Act.

9.3 On the question of time being the essence, the Appellate Court found that the trial Court erred in treating the date 30.11.2005 as a rigid and mandatory cut-off. It noted that Ex.P2 itself contained clauses, which clearly indicated that the sale deed was to be executed only after the vendor had taken steps to get the land vacated from tenants and after the pending suits were resolved or enabling circumstances emerged for registration. The Agreement contemplated that certain khasra numbers could even be left out, if vacant possession was not possible, demonstrating flexibility rather than finality. The Appellate Court held that in such circumstances, the date of 30.11.2005 was only a tentative date, and the parties never intended time to be treated as the essence of the contract.

9.4 Turning to the aspect of readiness and willingness, the Appellate Court recorded that the plaintiff had produced an affidavit of presence at the Sub-Registrar's office on 30.11.2005 [Ex.P6]. Although on that date injunctions relating to the land were subsisting, the plaintiff still appeared and offered to proceed. The Appellate Court further held that upon vacation of the stay on 10.04.2006, the plaintiff again approached the defendants, and pursuant to their assurance, purchased the necessary stamp papers and prepared demand drafts for the balance sale consideration. The plaintiff's presence at the Sub-Registrar's office on 17.04.2006, duly supported by documentary evidence including the various bank drafts (Ex.PW7/1 to 5, Ex.PW8/A & B, Ex.PW9/1 and Ex.PW10/1), demonstrated genuine readiness and financial capacity.

9.5 The Appellate Court also examined the trial Court's adverse inference drawn from the stamp papers being purchased at collector rates,

rather than at the full agreement value. It held that this reasoning was misconceived. The plaintiff, it noted, had purchased the stamp papers on the specific assurance of the defendant, and in the normal course, stamp papers are purchased according to the circle rate applicable on the date of registration. There was nothing in agreement to sell Ex.P2 obliging the purchaser to pre-purchase stamps at the full sale consideration. The Appellate Court held that this circumstance could not be elevated to evidence of mala fides or lack of readiness.

9.6 The Appellate Court also scrutinised the defendant's conduct. It found that despite having received substantial part of sale consideration, the defendant neither appeared before the Sub-Registrar on 30.11.2005 nor subsequently, even after the stay was vacated. No notice of cancellation of the agreement was ever issued, nor was any step taken to refund the amount received. The Appellate Court observed that the defendant's conduct was inconsistent with an honest intention to perform and was more indicative of an attempt to evade contractual obligations, possibly in order to negotiate with third parties.

9.7 On the cumulative assessment of the evidence, the Appellate Court held that the plaintiff had successfully established continuous readiness and willingness, whereas the defendant had failed to perform obligations, which were squarely theirs under the agreement.

9.8 Consequently, the Appellate Court held that the trial Court's finding that the agreement was speculative or uncertain was contrary to the record, and that the dismissal of the suit was unsustainable. The appeal was accordingly allowed; the judgment and decree of the trial Court were set aside, and the suit was decreed for specific performance on payment of the balance sale consideration, i.e., ₹92,50,000/-.

10.1 ***Contentions of the Appellants – Defendants*** : Assailing the abovesaid reversal, it is contended by Ld. Senior Advocate for the appellants – defendants that the Appellate Court committed error in

reversing the finding of the trial Court to the effect that time is the essence of the contract. By drawing attention towards the various clauses of the agreement to sell (Ex. P2), it is argued that there is no clause in the said agreement for extension of time, once 30.11.2005 was agreed to be the target date for execution of the sale deed. It is further urged that there is no clause in the agreement that sale could be executed after vacation of the stay in the pending litigation. Attention is also drawn towards clause 10 of the agreement to contend that in case litigation did not come to an end or other conditions not fulfilled, the plaintiff had the option to purchase the company. Attention is also drawn towards the testimony of DW2 Sham Lal (attesting witness); and PW5 Mohinder Kalra (attesting witness and mediator) to contend that parties wanted 30.11.2005 to be the final date for execution of sale deed and that in case by that time, pending cases were not decided, then the vendee had the option to purchase the company. PW5 Mohinder Kalra also stated that he was not aware as to whether the plaintiff had purchased the stamp papers for the registry on 30.11.2005 or not. It is argued that these circumstances establish that the time was the essence of the contract and so, finding of the trial Court deserved to be upheld.

10.2 The next submission made by learned Senior Advocate for the appellants-defendants is that though the plaintiff produced affidavit (Ex.P6) to prove that he appeared in the office of Sub-Registrar on 30.11.2005 i.e. the date mentioned in the agreement for execution of sale deed but the said affidavit does not specify the form of consideration - cash or cheque/draft for the balance sale consideration. There was no averment in the affidavit that sale deed could be executed despite pending civil suits. Neither there is any evidence that any stamp papers were purchased by the plaintiff nor there is any evidence that any draft sale deed was got prepared, or any draft in respect to the balance sale consideration was got prepared. Attention is also drawn to the testimony of PW11-Bhawani Dass i.e. plaintiff, as per which neither he had purchased any stamp papers nor got prepared any drafts or cheques on 30.11.2005.

He also admitted that neither he was ready to purchase the company nor he was ready to purchase it now.

10.3 It is urged further that there is no documentary proof regarding extension of date for execution of sale deed to be 17.04.2006. He further pointed out that though plaintiff got attested an affidavit on 30.11.2005 to prove his appearance on that day before the Sub Registrar, but no such affidavit was got attested by him on 17.04.2006 for getting his presence marked. Besides, no notice was sent to the defendant-vendor to appear on 17.04.2006 for executing the sale deed.

10.4 Attention is further drawn regarding the insufficient amounts for the balance sale consideration, as the demand drafts produced and proved on record by the plaintiff, are for an amount of ₹66,71,000/- and not for the total balance sale consideration of ₹92,50,000/- and thus, there is deficiency of ₹25,79,000/- and that there is no proof that plaintiff had sufficient funds to pay the said balance amount. Even the stamp papers purchased by the plaintiff were insufficient and have not been proved on record. It is contended that in these circumstances, the trial Court was right in coming to the conclusion that plaintiff was not ready and willing to perform his part of contract and that Appellate Court has wrongly reversed this finding.

10.5 The last contention raised by Ld. Senior counsel for the appellant is that in view of Clauses No.7 and 11 of the agreement (Ex.P2), it is apparent that the agreement was speculative/contingent and so, the same was rightly held by the trial Court to be unenforceable in view of Section 35 of the Indian Contract Act. As neither the date was extended for execution of sale deed nor any date was mutually agreed upon, therefore, the agreement itself stood automatically terminated, as the plaintiff failed to perform his part of contract.

10.6 With all these submissions, Ld. Senior Advocate has prayed for setting aside the judgment and decree passed by the First Appellate Court

and to restore the judgment & decree of the trial Court to dismiss the suit of the plaintiff-respondent.

11.1 **Contentions of Respondents** : Responding to the aforesaid contentions, it is argued by learned Senior Advocate for the respondent-plaintiff that the different terms of the agreement (Ex. P2) cannot be read in isolation and that all the terms are to be read together. It is urged that though 30.11.2005 was of course agreed to be the target date for execution of sale deed, but as per Clauses No. 7 and 11 of the agreement, it was the obligation of the defendant-vendor to get the part of the suit land vacated which was in possession of the tenants; and it was his duty to get the pending litigations adjudicated prior to the execution of the sale deed, thereby making it clear that time was not the essence of the contract. Learned Senior Advocate argued that as per the admitted position, as on 30.11.2005, multiple litigations were pending before the Courts at Palwal, wherein injunctory reliefs were operating, restraining the alienation of the subject property. Notwithstanding such impediments, the plaintiff showing his *bona fides* remained present before the office of Sub-Registrar, Hodal with balance sale consideration, ready and willing to perform his reciprocal promises, but the vendor-defendant failed to attend, thereby defaulting on his obligations.

11.2 It is argued further that upon vacation of the stay order on 10.04.2006, the plaintiff again approached the defendant and on his assurance, procured the stamp papers worth ₹3,56,050/- dated 17.04.2006, arranged the demand drafts for ₹66,71,000/- and was prepared to pay the balance amount in cash. Despite such manifestation of preparedness, the defendant again defaulted, willfully abstaining from execution of the conveyance deed.

11.3 Though it is conceded that there is no written agreement regarding extension of the date as 17.04.2006, but learned Senior Advocate argues that had the defendant not assured the plaintiff to appear in the office of Sub-Registrar along with the balance sale

consideration, to get prepared the draft sale deed and purchase the stamp papers, why the plaintiff would have appeared in the office of Sub-Registrar on 17.04.2006 with demand draft of huge amount of ₹66,71,000/- and purchased the stamp papers worth ₹3,56,050/-. Attention is further drawn towards the testimony of defendant to the effect that he did not turn up on 30.11.2005 and 17.04.2006 in the office of Sub-Registrar, manifesting that it is defendant, who failed to perform his part of contract and so, said defendants are estopped from challenging the readiness and willingness of the plaintiff to perform his part of contract.

11.4 Regarding non-serving of the legal notice, after the defendant failed to appear on 17.04.2006, it is contended by learned Senior Advocate that as the plaintiff apprehended that defendants were negotiating to sell the suit land to others, the plaintiff immediately approached the Court and filed the suit seeking injunction on 27.04.2006, which was later on got amended for seeking specific performance.

11.5 It is argued that defence of the defendant, alleging lack of readiness and willingness on the part of the plaintiff, is wholly misconceived for the actions taken by the defendant i.e. purchasing stamp papers, procuring the demand draft and his physical presence in the office of Sub-Registrar, unequivocally indicates his intention, financial capacity and *bona fides*.

11.6 Learned Senior Advocate contends further that the plea of the appellants to the effect that agreement to sell was a contingent contract or that time was the essence, is belied by the admitted clauses of the agreement itself namely Clauses No.7 and 11, wherein pendency of litigation was a known impediment to both the parties and no outer limit was fixed for completion post adjudication of the disputes.

11.7 Learned Senior Advocate argued further that contention of the appellants to the fact that plaintiff could have exercised the option of purchasing the defendant's company, is also misconceived because as per clause No.10 of the agreement, the purchaser was given an alternative

option either to purchase the suit land or to purchase the company of the defendant. Learned Counsel argued that said clause merely provided an alternative option and could not be unilaterally exercised by the plaintiff in the absence of the defendant's consent and participation. In this case, it is the defendant, who himself was unwilling to perform his part of contract and deliberately avoided execution of the sale deed and hence the question of the plaintiff independently opting to purchase the company does not arise. Besides, this contention was neither raised before the Courts below nor any issue was framed on this controversy. It is argued that in these circumstances, appellants cannot be now permitted to set up a new case for the first time in the Regular Second Appeal. So much so, no notice was ever sent by the defendants so as to sell/transfer the company. The said plea is an afterthought and so deserves outright rejection.

11.8 Learned Senior Advocate argued further that conduct of the vendor-defendant is riddled with calculated defaults and delaying tactics amounting to deliberate attempt to frustrate the contract. On the contrary, the plaintiff's conduct throughout has been consistent, *bona fide* in consonance with the principles of readiness and willingness under Section 16 (C) of the Specific Relief Act.

11.9 With all the aforesaid submissions, it is argued by learned Senior Advocate that there is no scope for interference in the Second Appeal in the findings returned by the First Appellate Court, which has gone in depth in re-appreciating the entire evidence on record and came to the right conclusion. Prayed is accordingly made for dismissal of both the appeals.

12. I have considered submissions of learned Sr. Advocates for both the parties, perused the record, the judgments under challenge and the material on file.

13. **Analysis by this Court :** Execution of the agreement dated 14.02.2005 [Ex.P-2] between the plaintiff and defendant -Arlington through its Director Kamal Kishore Mehta is not in dispute.

14. Perusal of the said agreement (Ex.P2) would reveal that Arlington through its director agreed to sell the suit land detailed and described in the said agreement for total consideration of ₹1,25,00,000/- to plaintiff-Bhawani Dass on various terms and conditions. It is not in dispute that out of total sale consideration of ₹ 1,25,00,000/- as agreed in the agreement to sell dated 14.02.2005, an amount of ₹ 32,50,000/- had already been received by the vendor on different dates.

15. Since the interpretation of some of the terms of the agreement (particularly terms N: 2, 7, 10 & 11) is a matter of dispute, it will be apt to reproduce all the terms of this agreement. The agreement being in Hindi, the English translation of the conditions agreed between the parties are as under: -

- i. Out of total sale consideration, an amount of ₹12,50,000/- has been received by the vendor from the vendee in the presence of witnesses and an amount of ₹15,00,000/- is to be paid up to 15.03.2005, whereas balance consideration has been agreed to be paid out of registration of the sale deed.
- ii. **Target date for execution of the sale deed is agreed to be 30.11.2005.**
- iii. Liability to pay expenses for stamp duty and registration fee etc. shall be that of the purchaser.
- iv. In case vendor, if receiving balance sale consideration from the purchaser fails to get the sale deed registered within target date in favour of the purchaser, then the purchaser will have the right to get the sale deed registered through the Court and in the said eventuality all the cost of litigation shall be liable to be borne by the vendor/company.
- v. In case purchaser fails to pay the balance sale consideration and does not get the sale deed registered in his favour than the earnest money paid by

the purchaser shall be liable to be forfeited and agreement shall stand cancelled.

- vi. Purchaser may get the registry in his name or in favour of any other person for which the vendor/company will have no objection.
- vii. **Out of the total land agreed to be sold, the area (6 numbers) are under cultivation of non-occupancy tenants. Prior to getting the sale deed registered the responsibility to get the Girdawari corrected in the name of the company will be that of the vendor and in case, for any reason, Girdawari is not corrected, then purchaser shall be bound to get the sale deed executed and registered in his favour by living those 6 numbers and the vendor will be liable to get the sale deed registered regarding those 6 numbers later on.**
- viii. In case any fault is found in the possession of title over the vendor, the vendor-company will be responsible for the same and shall be liable to compensate the purchaser for all the cost of litigation.
- ix. Vendor shall get the land agreed to be sold demarcated before registration of the sale deed and purchaser will be entitled to get the fencing done at his expenses.
- x. **Purchaser will have the right to get the sale deed registered in respect of the area agreed to be sold or he can purchase the entire company.**
- xi. **In case, any litigation is pending regarding the land agreed to be sold before any Court, then vendor will be liable to get the same finished prior to registration of the sale deed. In other words the land shall be sold with clean title before registration."**

16. ***Points for Determination*** : From the rival submissions and the record, the following substantial questions/issues arise for determination:

- I. Whether the Agreement to Sell dated 14.02.2005 (Ex.P2) was a concluded and enforceable contract, or whether it was contingent/speculative and hit by Sections 29, 32 or 35 of the Indian Contract Act, 1872?

- II. Whether time was the essence of the contract, particularly with reference to the date fixed as 30.11.2005 for execution and registration of the sale deed?
- III. Whether the plaintiff–respondent proved continuous readiness and willingness to perform his part of the contract, as mandated under Section 16(c) of the Specific Relief Act, 1963?
- IV. Whether the findings recorded by the First Appellate Court reversing the judgment of the trial Court suffer from perversity, misreading of evidence, or error of law warranting interference in second appeal?

16. The law governing specific performance requires two essential elements from a plaintiff: (i) a valid, certain and enforceable contract; and (ii) that the plaintiff is ready and willing, and has performed such acts on his part as he is obliged to perform, so as to render his claim for specific performance equitable. The court must read the contract as a whole and in the light of attending circumstances. The time will be of the essence, only where the contract so provides, or where circumstances show parties intended strict enforcement of the timeline. A contract is unenforceable as speculative, when material terms are left uncertain, or when the purported obligations depend on contingencies beyond the control of the parties so as to create mere rights in expectation. At the same time, for fairness, the court must also consider the conduct of the vendor once part consideration has been accepted, as equity disfavours a vendor, who intentionally frustrates the purchaser after acceptance of substantial part payment. These are well established principles.

17. ***Enforceability and Uncertainty*** : Foremost question to be resolved is that whether the Agreement was enforceable or speculative? A careful reading of the Agreement (Ex.P2) shows that the parties expressly recorded the consideration, the instalments paid and to be paid, a target date (30.11.2005) for registry as per clause 2; the purchaser’s obligation to bear stamp/ registration charges (clause 3), and a number of conditional clauses, which were primarily protective and allocative in nature. For example, the vendor’s undertaking to demarcate the land and to get

Girdawari corrected before registry and clauses dealing with the position of six khasra numbers, which were under cultivation by tenants (clause 7), as well as the undertaking to get any pending litigation decided prior to registry (clause 11).

18. Hon'ble Supreme Court in ***Aloka Bose v. Parmatma Devi and others, (2009) 2 SCC 582***, has held that once the essential terms of the contract, namely parties, property, and consideration, are clearly defined, the agreement cannot be invalidated merely because certain obligations are required to be fulfilled before execution of the sale deed. Similarly, in ***Satish Kumar v. Karan Singh and another, (2016) 4 SCC 352***, the Supreme Court held that clauses requiring the vendor to clear encumbrances or litigation are not contingencies rendering the contract unenforceable, but are obligations undertaken by the vendor.

19. In the present case, reading the Agreement as a whole, the different clauses do not leave the essential obligations as vague, because the substance of the bargain was a definite sale at a fixed price with defined payment milestones. What the vendor undertook under clause 7 and 11 was an obligation to take steps to handover the property with clear title or to allow registry excluding six khasra numbers, if those remained occupied. The Agreement also contains an express provision entitling the purchaser to institute proceedings to get the sale deed registered through court, if the vendor defaults as per clause 4. These features point to a concluded bargain with enforceable obligations, rather than a mere tentative understanding.

20. The clauses relating to eviction of tenants and disposal of pending litigations merely cast affirmative obligations upon the defendants. These stipulations were known to both parties at the time of execution and were incorporated to protect the purchaser. Therefore, the agreement does not fall within the mischief of Sections 29, 32, or 35 of the Indian Contract Act.

21. The trial Court placed weight on the fact that disposal of pending litigation and removal of tenants were matters not fully within the vendor's control, and on that basis held the Agreement as speculative. That approach overlooks two salient facts on the record. Firstly, by express terms, the vendor undertook the responsibility for the suits and the Girdawari correction and, where such correction could not be immediately achieved, the contract envisaged registry leaving the specifically occupied Khasras to be dealt with later. Secondly, the vendor accepted substantial part payment of ₹32,50,000/- from time to time and did not, either by notice or other documentary act, treat the Agreement as at an end or forfeit the earnest money. The vendor's own evidence, when subjected to cross-examination, did not present a consistent case that the Agreement had been rescinded or rendered inoperative by operation of the contingencies. These facts are relevant in construing whether the parties intended the Agreement to be a concluded bargain or a mere contingency. On the whole, therefore, the Appellate Court's conclusion that the Agreement was a concluded and enforceable contract, and not a speculative arrangement, reasonably flows from the evidence on record and the conduct of the parties.

22. This court agrees with the approach taken by the Appellate Court to read the contract as a whole and to treat clause-based qualifications as protective/ operational, rather than fatally conditional. Accordingly, the Agreement cannot be held void for uncertainty. Said finding of the Appellate Court is affirmed in the absence of illegality or perversity.

23. ***Whether Time was the essence of contract*** : It is a settled principle of law that time is ordinarily not the essence of contracts relating to immovable property, unless expressly stipulated or necessarily implied. The Constitution Bench judgment of the Hon'ble Supreme Court in ***Chand Rani v. Kamal Rani, (1993) 1 SCC 519***, authoritatively holds that fixation of a date by itself does not make time the essence of the contract, particularly in transactions concerning immovable property.

24.1 This principle was reiterated in ***Saradamani Kandappan v. S. Rajalakshmi and others, (2011) 12 SCC 18***, where Hon'ble Supreme Court clarified that even where time is specified, surrounding circumstances and conduct of parties must indicate intention to treat time as essential. Though, Hon'ble Supreme Court observed that the law that time was not the essence of the contract was evolved long years back when prices were stable and inflation was unknown. However, in these days, there is a galloping increase in prices of immoveable properties and market value of the properties are no longer stable or steady and so, there was an urgent need to revisit the principle that time is not the essence of the contract relating to the immovable property, but this issue was left to be considered in an appropriate case.

24.2 Referring to Section 55 of the Contract Act, Hon'ble Supreme Court further as under:

“17.....The above section deals with the effect of failure to perform at a fixed time, in contracts in which time is essential. The question whether time is the essence of the contract, with reference to the performance of a contract, what generally may arise for consideration either with reference to the contract as a whole or with reference to a particular term or condition of the contract which is breached. In a contract relating to sale of immovable property if time is specified for payment of the sale price but not in regard to the execution of the sale deed, time will become the essence only with reference to payment of sale price but not in regard to execution of the sale deed. Normally in regard to contracts relating to sale of immovable properties, time is not considered to be the essence of the contract unless such an intention can be gathered either from the express terms of the contract or impliedly from the intention of the parties as expressed by the terms of the contract.”

24.3 In the fact situation before the Supreme Court, the agreement to sell provided that the purchaser will make payment by installments. Dates for payment of installments were stipulated in the agreement. There was clear intention that payment should be made on

the stipulated dates and even a day's delay was not acceptable unless the due date was declared to be a holiday. It was also stipulated that payment on the due dates was the essence of the contract and in case of failure on the part of the purchaser, the vendors shall cancel the agreement.

24.4 It was in the above circumstances that payment of balance price was held to be of the essence of the contract and cancellation of the contract on account of non-payment by due dates was held to be justified. Facts of the present case are entirely distinguishable.

25. In the present case, the clause 2 of Agreement fixed 30.11.2005 as a target date, and clause 4 linked payment of balance to registry. However, clause 7 and clause 11 qualify the operation of the target date by providing that registry would follow after completion of demarcation & removal of tenants, and disposal of any pending litigations. These Clauses 7 and 11 of the agreement acknowledge pending litigation and tenants in possession, without prescribing any outer limit for execution post-clearance. The agreement even contemplated exclusion of certain khasra numbers, if vacant possession was not possible. Such flexibility is wholly inconsistent with the notion of time being the essence. Besides, there is no express provision stating that failure to complete registry on 30.11.2005 would *ipso facto* terminate the Agreement, or result in forfeiture of earnest money unless the purchaser failed to pay. Further, the defendants did not issue any notice terminating the agreement after 30.11.2005 nor refunded the earnest money. As held in ***Behari Lal v. Ram Gopal, (1989) 2 SCC 330***, conduct of parties is a decisive factor in determining whether time was intended to be of the essence.

26. Besides, the purchaser's obligation to pay the balance was to be at the time of registry. The Agreement did not require the purchaser to make the full balance payment on or before the target date of 30.11.2005 as a pre-condition to keep the Agreement alive.

27. In view of all the above circumstances and having regard to the commercial background and the vendor's acceptance of substantial part payment, it is reasonable to construe 30.11.2005 as a target, rather than an essential term, whose breach entitles the vendor automatically to refuse performance. The Appellate Court's approach in this regard to test 'essence' of time by reading the whole contract and the conduct of parties is found to be correct in view of the legal position explained by Hon'ble Supreme Court from time to time. Accordingly, the First Appellate Court rightly reversed the trial Court on this issue.

28. ***The issue of readiness and willingness*** : The requirement of readiness and willingness is to be assessed on the totality of conduct, and not by insisting upon rigid or hyper-technical compliance. In ***Man Kaur (Dead) by LRs v. Hartar Singh Sangha, (2010) 10 SCC 512***, Hon'ble Supreme Court held that Section 16(c) of the Specific Relief Act mandates a plaintiff seeking specific performance to both plead and prove continuous readiness and willingness to perform the essential terms of the contract in accordance with its true construction. Readiness and willingness must be established from the date of execution of the agreement till the date of decree. The Court emphasised that such readiness is to be adjudged from the conduct of the plaintiff before and after filing of the suit, and the availability of the balance consideration must be proved. Failure to either aver or prove readiness and willingness is fatal to the suit.

29. In ***N.P. Thirugnanam (Dead) by LRs v. Dr. R. Jagan Mohan Rao, (1995) 5 SCC 115***, it was held that specific performance is an equitable and discretionary relief, and continuous readiness and willingness is a condition precedent for its grant. The plaintiff must demonstrate financial capacity to pay the balance consideration and consistent conduct evincing intention to perform the contract. Courts must assess readiness and willingness with reference to the plaintiff's conduct and surrounding circumstances, and not merely on assertions. In ***M/s J.P. Builders & Anr. v. A. Ramadas Rao & Anr., (2011) 1 SCC 429***, Hon'ble

Supreme Court clarified the conceptual distinction between *readiness* and *willingness*. 'Readiness' refers to the financial capacity of the plaintiff, whereas 'willingness' relates to his conduct and intention to perform the contract. Both must coexist and be proved. Generally, readiness is supported by willingness, but absence of either disentitles the plaintiff to relief.

30. Same principles were reiterated in ***Ritu Saxena v. J.S. Grover & Anr., (2019) 9 SCC 132*** and it was also held that Courts must scrutinise pleadings and evidence carefully before granting the equitable relief of specific performance. In ***Sukhwinder Singh v. Jagroop Singh, 2020 AIR (SC) 4865***, the Supreme Court held that mere oral assertions are insufficient to establish readiness and willingness. In the absence of documentary evidence showing availability of balance sale consideration, the plaintiff cannot succeed. The Court cautioned that readiness must be supported by tangible evidence, especially where the defendant disputes financial capacity.

31. The principles laid down in supra-authorities - ***Man Kaur, N.P. Thirugnanam, J.P. Builders, Ritu Saxena and Sukhwinder Singh*** are well settled and admit of no quarrel. However, the application of these principles depends entirely upon the facts of each case. On a careful examination, the present case does not fall within the mischief of any of the said decisions.

32. In present case, two dates assume significance, namely 30.11.2005, the date fixed in the agreement for execution of the sale deed; and 17.04.2006, which, according to the plaintiff, was mutually agreed upon after the stay orders were vacated on 10.04.2006.

33. With respect to 30.11.2005, the plaintiff produced his affidavit of presence before the Sub-Registrar as Ex.P-6 and categorically deposed that no one appeared on behalf of the defendants. It is true that the plaintiff admitted during cross-examination that he did not produce

documentary proof regarding availability of the balance sale consideration on that date. However, this omission cannot be viewed in isolation, or to the plaintiff's detriment. It is an admitted position between the parties that four civil litigations concerning the suit property were pending and that stay orders passed therein were operating on the said date. Even the defendant-vendor did not appear before the Sub-Registrar on 30.11.2005. The plaintiff's presence on that date, despite the subsistence of stay orders, clearly reflects abundant caution and cannot be used to confer any advantage upon the defendants.

34. Turning to 17.04.2006, the principal contention of the appellants is that there is no documentary evidence to show that this date was ever fixed between the parties for performance of the agreement. Though it is correct that no written document evidencing fixation of this date has been produced, the surrounding circumstances on record fully corroborate the plaintiff's version. It is undisputed that the stay orders in respect of the suit property were vacated on 10.04.2006, removing all legal impediments for execution of the sale deed. The plaintiff's testimony that, immediately thereafter, the defendant assured him of execution and registration of the sale deed on 17.04.2006; and instructed him to purchase stamp papers & prepare demand drafts for the balance consideration, has gone unshaken.

35. Significantly, the plaintiff produced documentary evidence to show that on 17.04.2006, he purchased stamp papers worth ₹3,56,050/- and also got prepared demand drafts aggregating to ₹66,71,000/-. These acts are wholly inconsistent with any suggestion of lack of readiness or willingness. Had there been no assurance from the defendant to appear before the Sub-Registrar on that date, there was no occasion for the plaintiff to incur substantial expenditure towards stamp duty and preparation of demand drafts. These circumstances also establish the plaintiff's presence in the office of the Sub-Registrar on that date. Merely because he did not get his presence attested by way of an affidavit cannot be a ground to disbelieve the otherwise cogent evidence on record.

36. The conduct of the plaintiff, particularly his immediate steps taken after vacation of the stay orders, clearly demonstrates continuous willingness to perform his part of the contract. The trial Court's reliance on the technicality that stamp papers were purchased as per the collector rate was misplaced. It is not disputed by the defendants that the demand drafts prepared by the plaintiff for ₹66,71,000/- were as per Collector rate. The plaintiff had already paid ₹32,50,000/- as part sale consideration prior to filing of the suit. In such circumstances, it would be wholly unreasonable to infer that he lacked the financial capacity to pay the remaining amount in cash. A person lacking financial capacity would not have prepared demand drafts of such a substantial amount. The First Appellate Court, therefore, rightly rejected the contention that the plaintiff was not financially capable of performing the contract.

37. Additionally, the argument advanced on behalf of the respondent's counsel that the plaintiff paid substantial court fees twice—first before the trial Court and thereafter, before the Appellate Court, further fortifies the inference of bona fide readiness and willingness. Such conduct is wholly inconsistent with an intention to abandon or avoid performance of the contract.

38. The vendor's conduct is also material. Once substantial part payment is accepted and the vendor thereafter unreasonably avoids attendance at the registrar office despite conditions being met or being in a position to perform, or despite undertaking to get encumbrances removed, equity weighs against the vendor. The record contains admissions by the vendor's director that injunctions were in force on 30.11.2005 and were vacated on 10.04.2006, and his further statement that he did not appear for registry on the pretext that the Agreement had come to an end on 30.11.2005. Such a stance, which is contradictory and unsupported by documentary action, such as notice of forfeiture or rescission, does not commend itself to acceptance as a defence to a claim for specific relief. In these circumstances the Appellate Court was justified to consider the vendor's conduct unfavourably.

39. The trial Court's emphasis on technicalities i.e., the purchase of stamp papers at collector rates and the absence of a single demand draft on 30.11.2005, must be seen in context. Readiness and willingness is a question of fact and degree to be tested by all relevant circumstances. It need not be established by a single document if the cumulative evidence e.g., part payments, affidavit of attendance, bank drafts prepared shortly after vacation of stay orders, and consistent testimony, strongly points to readiness and willingness. On the record, and on the standard of preponderance of probabilities applicable in civil matters, the Appellate Court's acceptance of the plaintiff's evidence is not at all perverse.

40. Thus, while the legal propositions relied upon by Ld. Counsel for the appellants are not in dispute, but their application to the facts of the present case does not advance the appellants' cause. On the contrary, the evidence on record satisfies the statutory mandate of Section 16(c) of the Specific Relief Act, as correctly held by the First Appellate Court.

41. Accordingly, the finding recorded by the First Appellate Court on the issue of readiness and willingness calls for no interference.

42. **Conclusion and Order :** For all the reasons as recorded above, namely (i) that the Agreement on its true construction is definite and enforceable rather than speculative; (ii) that the vendor accepted substantial part consideration and undertook obligations like complete demarcation, to get Girdawari corrected and to remove tenants or permit registry excluding certain Khasras, which made registry a matter of completing vendor's obligations rather than rendering the Agreement void; (iii) that the plaintiff proved readiness and willingness on a balance of probabilities by contemporaneous affidavit of attendance, bank drafts and the conduct of attending the registrar, this court finds no reason to interfere with the Appellate Court's judgment, which reversed the trial Court and decreed specific performance.

43. These appeals therefore fail and stand dismissed. The judgment & decree of the Appellate Court dated 25.02.2012 are affirmed. The suit stands decreed in favour of the plaintiff/respondent and against the defendants/appellants for specific performance of the Agreement dated 14.02.2005 on the terms recorded in the Agreement and subject to payment by the plaintiff of the balance sale consideration of ₹92,50,000/- as ordered by the Appellate Court. Costs of these appeals are awarded to the respondent/plaintiff. Parties shall carry out the decree in accordance with the terms of the Agreement and subject to any payments and adjustments, which were directed by the Appellate Court.

44. The parties may approach the trial Court for such incidental and consequential directions as are necessary to implement this decree, including directions to facilitate registry.

(DEEPAK GUPTA)
JUDGE

15.12.2025
Vivek Pahwa

Whether speaking/reasoned?	Yes
Whether reportable?	Yes

Uploaded on.: 16.12.2025