



2025:DHC:12033



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 13th August, 2025

Date of Decision: 24th December, 2025

Date of uploading: 27th December, 2025

+ CS(OS) 871/2024 & I.A. 43809/2024

PRADEEP BATRA

.....Plaintiff

Through: Mr. Viraj Datar, Sr. Adv. with Mr. Samar Singh Kachwaha, Mr. Rajiv Bajaj, Ms. Shivangi Nanda, Mr. Harsh Azad and Ms. Shivani Bardia, Advs.

versus

KULDIP SINGH VERMA

.....Defendant

Through: Mr. Manish Kaushik, Mr. Mishal Johari, Mr. Mainak Sarkar and Mr. Yashpriya Sahran, Advocates along with Defendant in person

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J:

1. The present suit has been filed by the Plaintiff under Section 10 and Section 38 of the Specific Relief Act, 1963 ['Act of 1963'] read with Section 151 of the Code of Civil Procedure, 1908 ['CPC'], seeking inter alia decree of specific performance of the oral Agreement to Sell dated 29.10.2023 ['oral ATS'] executed between the Plaintiff/purchaser and the Defendant/seller, for sale of the immovable property situated at Second



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Floor, B-1/17, Vasant Vihar, New Delhi- 110057, with 50% of the front terrace, and proportionate interest in the land [‘suit property’].

Facts stated in the plaint

2. The Plaintiff is a tenant residing on the first floor of the same building where the suit property is located; and the first floor is owned by the brother, Mr. Ravi Shankar Dabas, of the defendant. In October 2023, the Defendant approached the Plaintiff with an offer to sell the suit property, which is located directly above the Plaintiff’s current residence.

3. It is stated that at the time of negotiations, the Defendant disclosed that the suit property was currently leased to M/S ACME Solar Holdings Pvt. Ltd., serving as the residence of its Vice-President since November 2021. It is stated that Plaintiff raised concerns regarding the timeline for obtaining vacant possession, given the ongoing tenancy, to which Defendant assured the Plaintiff that the suit property would be vacated by the tenant by 30.11.2023, following which a formal sale deed could be executed.

4. Based on their mutual understanding, on 29.10.2023, the Plaintiff and Defendant entered into an oral ATS concerning the suit property, for a total sale consideration of Rs. 12.40 crores. The Plaintiff agreed to pay Rs. 51 lakhs as earnest money at the time of the said oral ATS, while the remaining balance of Rs. 11.89 crores was agreed to be paid, upon the Defendant delivering vacant and peaceful possession of the suit property as well as executing the sale deed simultaneously on or before 30.12.2023.

5. It is stated that in accordance with the oral ATS, the Plaintiff paid the earnest money of Rs. 51 lakhs on the same day (29.10.2023), comprising Rs. 1 lakh in cash and Rs. 50 lakhs via cheque no. 607826 dated 29.10.2023. The Defendant acknowledged receipt of this amount on the same day



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through a written acknowledgment made on stamp paper dated 29.10.2023, which included the property details and total sale consideration of Rs. 12.40 crores.

6. On 30.10.2023, the Defendant informed the Plaintiff that he had initiated the eviction process by issuing a notice to vacate, to the tenant via email dated 30.10.2023. A copy of the notice dated 30.10.2023 was shared with the Plaintiff.

7. It is stated that however the tenant failed to vacate the premises and therefore the Defendant sent a 2nd notice to the tenant vide email dated 17.12.2023 calling upon the tenant to vacate the suit property by 31.12.2023. The said 2nd notice was shared by the Defendant with the Plaintiff. However, the tenant failed to vacate the suit property and therefore the original timeline for execution of the sale deed could not be adhered to.

8. It is stated that the Plaintiff granted final extension, allowing the Defendant until 29.02.2024 to secure vacant possession of the suit property from the tenant and to execute the sale deed by 29.03.2024, without any further delay. It is stated that this extension effectively novated the original timeline stipulated in the oral ATS for execution of the sale deed.

9. It is stated that throughout this extended period, the Plaintiff remained ready and willing to perform his part of the oral ATS and never sought to cancel it, despite the Defendant's failures to meet the original timelines.

10. It is stated that the Plaintiff, through his representative, coordinated with the Defendant to complete the necessary paperwork for executing the sale deed. This was facilitated via a WhatsApp group, where purportedly the



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Plaintiff's representative would share lists of required documents, and the Defendant would provide them as and when available.

11. On 16.03.2024, the Defendant sought to terminate the oral ATS and cancel the proposed transaction. The Defendant transferred the earnest money of Rs. 51 lakhs back to the Plaintiff through bank transfer on 15.03.2024 and issued a letter dated 16.03.2024, claiming that the Plaintiff had agreed to cancel the deal and accept a refund of the earnest money.

12. The Plaintiff refuted these false allegations in a reply dated 08.04.2024, restating he is ready and willing to perform the oral ATS. In the reply, the Plaintiff offered the Defendant a 30-day window to execute the sale deed and hand over possession of the suit property. However, the Defendant neither responded to this reply nor took any further action. The said letter dated 08.04.2024 was received by the Defendant however, he did not respond to the same.

13. In May 2024, the Plaintiff learned through his sources that the Defendant intended to sell the suit property to a third party. To protect his rights, the Plaintiff published public notices in leading newspapers on 02.05.2024, with a caveat to the potential buyers to not to enter into any transaction regarding the suit property.

14. It is stated¹ that in the period following 08.04.2024, Plaintiff reached out to the Defendant to abide by the oral ATS and informed the defendant that it was willing to purchase the suit property on as-is-where-is basis, even if the Defendant was not able to evict his tenant, and the Defendant could

¹Paragraph 29 of the plaint.



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appropriately compensate for the same. However, Defendant failed to respond to this offer.

15. It is stated that Plaintiff intends to buy the suit property as his permanent accommodation, post his retirement. The Plaintiff relied upon the Defendant's assurances and kept waiting for Defendant to handover possession of the suit property and did not search for another property. However, since the property prices have significantly increased in the last one year, the Plaintiff is no longer in a position to find a similar deal for any other property in the same area.

16. It is stated that given the Defendant's intent to unlawfully create third-party rights in the property, the Plaintiff has filed the present suit on 23.10.2024 and seeks a decree of specific performance directing the Defendant to execute the sale deed and hand over peaceful and vacant possession of the suit property.

Submissions on behalf of the Plaintiff

17. Mr. Viraj Datar, learned senior counsel for the Plaintiff, submitted that in view of the post-2018 amendment to the Act of 1963, discretion which was previously vested has been taken away, and the statute now provides that specific performance of a contract shall be enforced subject to the provisions of Sections 11, 14 and 16.

17.1 He states that Section 16 of Act of 1963 since its amendment in 2018 mandates that a party seeking specific performance must prove its readiness and willingness, which is a matter of evidence and cannot be examined under Order VII Rule 11 (a) of CPC. In support of this proposition, he



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placed reliance on **Asha Joseph v. Babu C. George**² and **V.S. Ramakrishnan v. P.M. Muhammed Ali**³. He stated that the Plaintiff has consistently demonstrated readiness and willingness to perform the oral ATS, evidenced by timely payment of earnest money, acknowledged by the Defendant, and continuous follow-ups with the Defendant. He stated that even after the Defendant's unilateral termination letter dated 16.03.2024, the Plaintiff reaffirmed his commitment in his detailed reply dated 08.04.2024 and never sought to withdraw from the said oral ATS. He relied upon correspondence dated 20.11.2023, 29.06.2024 and 04.11.2024 between the Plaintiff and Punjab and Sindh Bank ['the Bank'] to demonstrate the financial capacity of the Plaintiff to pay the balance consideration.

17.2 He stated that in contrast, the Defendant repeatedly delayed performance, failed to execute the sale deed or deliver possession, and attempted to terminate the oral ATS on unfounded grounds without legal notice.

17.3 He stated that the summons in the present suit ought to be issued once a suit has been duly instituted and that it is not struck by the bar under Order VII Rule 10 and/or Rule 11 of CPC and he relied on the judgment **Bright Enterprises Private Ltd. v. MJ Bizcraft LLP**⁴.

17.4 He stated that the Defendant has admitted the terms of the oral ATS. He stated that relying on the judgment of the Supreme Court in **B. Santoshamma v. D. Sarala**⁵, grant of specific performance is no longer

² 2022 SCC OnLine Ker 1822, at para nos. 13, 17, and 26.

³ 2022 SCC OnLine SC 1545, at para no. 8.

⁴ 2017 SCC OnLine Del 6394, at para no. 18.

⁵ (2020) 19 SCC 80, at para no. 70.



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discretionary and therefore, the summons is ought to be issued in the present suit.

17.5 He stated that unilateral cancellation of a non-determinable agreement is barred by Section 14 of Act of 1963, and that a Court can ignore any such defence in a suit for specific performance. He relied upon the judgment of a coordinate Bench of this Court in **Rajesh Sethi S.C. v. P.C. Sethi**⁶.

17.6 He stated that therefore, no case for a threshold dismissal of the present suit exists, either in facts or in law.

17.7 He stated that despite the Defendant's repeated delays in executing the sale deed and handing over possession of the suit property, the Plaintiff, acting in good faith, continued to grant extensions based on the Defendant's assurances and visible steps toward eviction of the tenant through eviction notices.

17.8 He stated that relying on the Defendant's commitments, the Plaintiff refrained from seeking alternative housing options and now suffers significant hardship and potential irreparable loss, particularly as the suit property formed a key part of his post-retirement housing plan.

Submissions on behalf of the Defendant

18. Mr. Manish Kaushik, learned counsel for the Defendant contended that the suit filed by the Plaintiff is devoid of any valid cause of action, and stated that even by the Plaintiff's own admission in the plaint (at paragraph 26), the intended execution of the sale deed was to take place on 09.05.2024, however, the Plaintiff has failed to submit any documentary proof showing readiness with the balance sale consideration on that date.

⁶ 2023 SCC OnLine Del 7010, at para no. 147.



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18.1 He stated that, as of 29.06.2024, on Plaintiff's own showing⁷, the Plaintiff's housing loan was still under process, with the bank demanding additional documents, clearly indicating that the Plaintiff was not financially ready to complete the sale transaction.

18.2 He stated that furthermore, the advance amount of Rs. 51 lakhs had been refunded to the Plaintiff on 15.03.2024 with his consent, without any protest, and thus, the oral ATS stood extinguished even before the suit was filed on 23.10.2024.

18.3 He stated that, vide order dated 08.07.2025, the Plaintiff disclosed that he was also under an agreement to sell arrangement with the brother of the Plaintiff for purchasing the first floor of the same property for Rs. 15 crores, therefore, the Plaintiff must also show financial capacity to purchase the suit property in addition to this Rs. 15 crore deal, which he has failed to do.

18.4 He stated that this exposes the Plaintiff's lack of readiness and willingness, and that the present suit is frivolous and malicious, intended solely to entangle the Defendant's property in litigation.

18.5 He stated that the Plaintiff's signatures on the alleged written acknowledgment document appear inconsistent with his signature on page 39 of the plaint, raising a serious allegation of forgery.

18.6 He relied on various judgments⁸ passed by the Supreme Court and coordinate Benches of this Court to contend that prima facie the present suit can be rejected under Order VII Rule 11 CPC, being devoid of any cause of action.

⁷ Refer to page no. 2 of the additional documents filed along with the plaint.

⁸ Defendant has filed the notes on judgments relied upon by him under the cover Index dated 26.07.2025.



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Findings and Analysis

19. This Court has heard the learned counsel for the parties and has perused the record.

20. The admitted facts on record are as under:

- (i) The Defendant is the recorded owner of the suit property, being a residential flat on the second floor of the building.
- (ii) The Plaintiff is a tenant in the first-floor flat of the same building, which is owned by the Defendant's brother, Mr. Ravi Shankar Dabas. The Plaintiff has also entered into a separate agreement to sell with Mr. Ravi Shankar Dabas for the first-floor flat, which transaction has also not been completed.
- (iii) The Plaintiff and Defendant entered into an oral ATS dated 29.10.2023 for sale of the suit property at a total consideration of Rs. 12.40 crores. The Plaintiff paid a sum of Rs. 51 lakhs as earnest money, receipt of which was acknowledged by the Defendant in writing on 29.10.2023.
- (iv) No written agreement to sell was executed between the parties.
- (v) The suit property was admittedly let out to a tenant as on 29.10.2023 and the tenancy is governed by the Transfer of Property Act, 1882. The Defendant issued notices dated 30.10.2023 and 17.12.2023 to the tenant terminating the tenancy and seeking vacant possession; however, the tenant did not vacate.
- (vi) Documents pertaining to the Defendant's title and other documents of the suit property were exchanged between the parties through a WhatsApp group between 03.11.2023 and 10.03.2024. Defendant,



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Mr. Ravi Shankar Dabas, Plaintiff and the Plaintiff's authorised representative are members of this group.

- (vii) On 15.03.2024, the Defendant **refunded** the entire earnest money of Rs. 51 lakhs to the Plaintiff through bank transfer, followed by a notice dated 16.03.2024 recording termination of the oral ATS dated 29.10.2023. In its letter, Defendant recorded that it is withdrawing from the agreement due to the **reluctant conduct of the Plaintiff in performing its obligations.**
- (viii) The Defendant admits receipt of the refund of Rs. 51 lakhs and the notice of termination dated 16.03.2024.
- (ix) The Plaintiff, by legal notice dated 08.04.2024, disputed termination and called upon the Defendant to execute the sale deed within 30 days, i.e., by 09.05.2024.
- (x) The Plaintiff issued a public notice in newspapers on 02.05.2024 cautioning third parties against transacting in the suit property.
- (xi) However, the Plaintiff instituted the present suit seeking specific performance only on 23.10.2024 (7 months after termination by the Defendant), in which, it is pleaded (at para 39) that the suit property's prices have increased significantly and no other similar property for the same price of Rs. 12.40 crores would now be available to the Plaintiff.
- (xii) This suit was first listed before the Court on 29.10.2024. However, no documents evidencing the financial capacity of the Plaintiff to pay Rs. 12.40 crores was filed with the plaint.



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(xiii) The Plaintiff filed additional documents vide I.A. No. 45387/2024 on 13.11.2024 to show its financial capacity. These additional documents are letters issued by the Bank in response to an application for housing loan by the Plaintiff; however, these letters do not record any sanction of loan in favour of the Plaintiff.

(xiv) In pursuance of the notice issued by the Court, Defendant entered appearance on 19.12.2024 and submitted that Plaintiff has never been ready and willing to purchase the property which led to the termination of the oral ATS by the notice dated 16.03.2024.

21. On 19.12.2024, when the Defendant appeared pursuant to Court notice, Defendant stated that the tenant has still not vacated the suit property and continued to remain in possession, as on date. The Plaintiff admitted that he was aware of the tenant's occupation even at the time of negotiations on 29.10.2023, and he also expressed his willingness to purchase the suit property on as-is-where-is basis. The Defendant declined to sell the property at the originally agreed price of Rs. 12.40 crores due to the price escalation acknowledged in the plaint itself. The matter was referred to mediation at the Plaintiff's request, without prejudice to the rights of the parties. The relevant part of the order dated 19.12.2024 reads as under:

“1. The defendant is present in person along with his counsel. Defendant states that the property situated at Second Floor, B-1/17, Vasant Vihar, New Delhi - 110057 ('suit property') is currently rented out. He states that the plaintiff had due notice of the occupation of the said premises by the tenant, when the agreement was negotiated.

2. Learned counsel for the plaintiff states that the plaintiff was/is conscious of the fact that the suit property is tenanted and the offer to purchase the suit property was made on the said assumption of fact. He states that parties may be referred to mediation.

3. In reply, learned counsel for the defendant states that the plaintiff was



not/never ready and willing to purchase the suit property and in view of these facts that the defendant has terminated the oral Agreement to Sell ('ATS') dated 29.10.2023. He states that without prejudice to the rights and contentions of the defendant, the defendant is willing to accept the suggestion of the plaintiff to consider an out of Court settlement, subject to the plaintiff making deposit of the entire agreed consideration with the Registry of this Court. He states that the defendant is not ready and willing to sell the suit property at the earlier sale price of Rs. 12.40 crores. He states, that the circumstances of the defendant have changed and the price of the immovable property has escalated.

4. In response, learned counsel for the plaintiff states that he will take instructions from the plaintiff if the plaintiff is willing to offer a higher purchase price for the suit property.

5. Without expressing any opinion on the merits of the case of the plaintiff, the following directions are passed in this regard with the consent of the parties:

5.1. The parties are referred to the Delhi High Court Mediation and Conciliation Centre (Mediation Centre).

5.2. Mr. Rajeev Virmani learned Senior Counsel is requested to appointed as Senior Mediator.

5.3. The parties are directed to remain personally present at the Mediation Centre failing which, the Senior Mediator is requested to not proceed with the mediation proceedings.

5.4. The parties are instructed to appear before the Mediation Centre on 07.01.2025 at 3.00 P.M.

6. All rights and contentions of the parties shall remain open in the event of the mediation not being successful and the suit being revived.

7. List before the Court for reporting the outcome of mediations proceedings on 04.02.2025.

8. The counsel for the defendant is directed to file his vakalatnama within one (1) week.

9. It is made clear that no summons has been issued in this suit to the defendant.”

(Emphasis Supplied)

22. On 04.07.2025, after mediation proceedings failed, when the matter was listed before the Court, the Plaintiff offered to purchase the suit property at an enhanced sale consideration of Rs. 15 crores and sought time to give a



time frame for deposit of the sale consideration. The Plaintiff stated that he was willing to purchase the suit property on as-is-where-is basis and acknowledged that the suit property is in occupation of the tenant, as on date. The Defendant once again expressed apprehension regarding the Plaintiff's lack of readiness and willingness and agreed to sell the suit property at Rs. 15 crores, subject to deposit of the entire consideration by the Plaintiff being made in Court, within a period of four (4) weeks. The said order reads as follows:

“Order dated 04.07.2025

1. Learned counsels for the parties state that settlement talks in the mediation have failed as parties could not agreed on the revised sale consideration.
2. Learned senior counsel for the plaintiff states that plaintiff is ready and willing to purchase the property situated at Second Floor, B-1/17, Vasant Vihar, New Delhi – 110057 [‘suit property’] at an enhanced consideration of Rs. 15 crores.
3. Learned senior counsel for the plaintiff states on instructions that during the mediation the plaintiff had offered an enhanced consideration of Rs. 15 crores to the defendant. He states, however, since the defendant was demanding an enhanced consideration of Rs. 17 crores, therefore, the mediation talks failed.
4. In response, learned counsel for the defendant states on instructions from defendant that defendant has a genuine apprehension that plaintiff is not ready and willing to purchase the suit property.
 - 4.1. He states that the plaintiff did not have requisite funds even in 2023-2024 and due to this reason, the defendant had issued termination letter dated 16.03.2024 to the plaintiff and refunded the advance amount.
 - 4.2. He states that without prejudice to defendant's rights and contentions if the plaintiff deposits the amount of Rs. 15 crores with this Court within the time granted by this Court, the defendant will be willing to sell the suit property so long as the transaction is concluded, within a period of four (4) weeks from today.
 - 4.3. He states that defendant's rights should be protected and in case the plaintiff resiles from the offer of 15 crores made today, a reasonable amount



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should be forfeited.

4.4. Lastly, he states that plaintiff is aware that the suit property is occupied by a tenant and no objection should be raised on this ground.

4.5. The defendant is present in Court.

5. In response, learned senior counsel for the plaintiff states that the plaintiff has agreed to purchase the suit property on as is where is basis.

6. This Court has considered the submission of the parties and finds that defendant's apprehension regarding plaintiff's readiness and willingness is well founded in the facts of this case. Time bound directions to the plaintiff for making payment of Rs. 15 crores can be passed by this Court to secure the interests of the defendant.

7. At this stage learned senior counsel for the plaintiff states that he seeks an adjournment to take instructions from the plaintiff with respect to the time period in which the amount of Rs. 15 crores can be deposited in this Court.

8. At request of the plaintiff list on 08.07.2025.”

(Emphasis Supplied)

23. However, the Plaintiff withdrew the offer of Rs. 15 crores and sought to clarify that it was willing to pay enhanced consideration of Rs. 13.50 crores for the suit property, attributing the earlier offer of Rs. 15 crores to a “mix-up” with the mediation offer for the first-floor transaction with Mr. Ravi Shankar Dabas. This stand of the Plaintiff is recorded in the order dated 08.07.2025. The order reads as under:

“1. Mr. Viraj Datar, learned senior counsel for the plaintiff states that the order dated 04.07.2025 was passed in the pre-lunch session on instructions of Mr. Harsha Azad, the counsel representing the plaintiff.

1.1 He states that, however, during the lunch session, plaintiff had contacted Mr. Harsha Azad for seeking clarification w.r.t the enhance amount of sale consideration. And informed him that during the mediation, the plaintiff had offered to purchase the first floor flat at Rs. 15 crores and the second floor flat, which is the subject matter of the captioned suit at Rs. 13.5 crores.

1.2 He states that the first-floor flat is owned by Mr. Ravi Shankar Dabas, the brother of the defendant herein.

1.3 He states that due to the mediation proceedings being conducted



separately with Mr. Ravi Shankar Dabas regarding the first-floor flat and with the defendant herein concerning the second-floor flat, there was a mixup in the figures presented to the Court in pre-lunch session.

1.4 He states that the differential value of Rs. 13.5 crores for the second floor flat and Rs. 15 crores for the first-floor flat, located in the same building is because the second-floor flat is in possession of a tenant.

1.5 He states that these facts were submitted before this Court on 04.07.2025 in the post lunch session; however, since the counsel for the defendant was not present, it was not recorded in the order-sheet.

1.6 He states that the plaintiff is personally present today and therefore, these facts may be taken on record.

1.7 He states that defendant is willing to purchase the second-floor flat at enhanced consideration of Rs. 13.5 crores and not Rs. 15 crores.

2. In reply, learned counsel for the defendant states that the defendant is unwilling to sell the flat at Rs. 13.5 crores as the current market value of his flat is Rs. 17.5 crores; however, during the mediation, the defendant had agreed to sell the flat at Rs. 15 crores.

2.1 He states that the rental being fetched by the second-floor flat from the existing tenant is Rs. 1.9 lakhs per month.

2.2 He states that the plaintiff is not a bona fide purchaser and his intention to entangle the suit property in litigation.

3. In these proceedings, in the facts of this case the Court has called upon the plaintiff to address arguments on the maintainability of the suit.

4. Learned senior counsel for the plaintiff has concluded his submissions.

5. Defendant is at liberty to file written submissions not exceeding three (3) pages along with the compilation of judgments on which they wish to rely upon before the next date of hearing.

6. To come up for response of the defendant on 01.08.2025.”

(Emphasis Supplied)

24. However, Defendant declined the said revised offer of Rs. 13.50 crores and asserted that the Plaintiff has never been ready and willing to purchase the suit property since 29.10.2023 as Plaintiff does not have the requisite funds.



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I. BAR UNDER ORDER 7 RULE 11 CPC

25. In the aforementioned facts the matter was heard on merits and the issue that has arisen for consideration in this matter is whether or not the Plaintiff has always been ready and willing to perform the essential terms of the oral ATS dated 29.10.2023, which were to be performed by him or whether the Plaintiff's relief for specific performance is barred under Section 16 (b) and (c) of the Act of 1963.

26. Order 7 Rule 11(a) of CPC states that the plaint shall be rejected where it does not disclose a cause of action and Order VII Rule 11(d) states that a plaint shall be rejected where the suit appears from the statement in plaint to be barred by any law.

27. The Supreme Court in **Dahiben v. Arvindbhai Kalyanji Bhanusali (Gajra)**⁹ has held that powers under Order VII Rule 11 CPC may be exercised by the Court at any stage of the suit which includes even before registering the plaint. The Court emphasized that this provision is mandatory in nature and the Court has no option but to reject the plaint if it holds that the plaint does not disclose a cause of action or is barred in any law. The relevant paragraphs of the said judgment read as under:-

“**23.13.** If on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power under Order 7 Rule 11 CPC.

23.14. The power under Order 7 Rule 11 CPC may be exercised by the court at any stage of the suit, either before registering the plaint, or after issuing summons to the defendant, or before conclusion of the trial, as held by this Court in the judgment of *Saleem Bhai v. State of Maharashtra* [*Saleem Bhai v. State of Maharashtra*, (2003) 1 SCC 557]. The plea that once issues are framed, the matter must necessarily go to trial was repelled by this Court in *Azhar Hussain case* [*Azhar Hussain v. Rajiv Gandhi*, 1986 Supp SCC 315. Followed

⁹ (2020) 7 SCC 366



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in *Manvendrasinhji Ranjitsinhji Jadeja v. Vijaykunverba*, 1998 SCC OnLine Guj 281 : (1998) 2 GLH 823].

23.15. The provision of Order 7 Rule 11 is mandatory in nature. It states that the plaint “shall” be rejected if any of the grounds specified in clauses (a) to (e) are made out. If the court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the court has no option, but to reject the plaint.”

(Emphasis Supplied)

28. In the facts of this case, the Defendant terminated the agreement on 16.03.2024 on the specific plea that the Plaintiff has been reluctant to perform its obligations to purchase the suit property as per the oral ATS dated 29.10.2023, which in legal parlance would mean that the Plaintiff was not ready and willing to perform the agreement. The Plaintiff, therefore, when approaching this Court was aware about the reasons for the Defendant’s termination of the agreement and was, therefore, obliged to set out in its plaint, the facts and documents which would show its readiness and willingness to complete the transaction at the stipulated initial date of 30.12.2023 and on all subsequent dates averred in the plaint.

29. Section 16(c) of the Act of 1963 contemplates that the specific performance of the contract *cannot* be enforced in favour of a person/plaintiff who fails to prove that he/she has been ready and willing to perform the essential terms of the contract. The relevant portion of the section reads as follows:

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

.....

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

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



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- (i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court;
- (ii) the plaintiff 4[must prove] performance of, or readiness and willingness to perform, the contract according to its true construction.

30. It is trite law that *readiness* and *willingness* are two distinct requirements of this section.

31. The Supreme Court in **R. Shama Naik v. G. Srinivasiah**¹⁰ has explained that *readiness* means the capacity of the Plaintiff to perform the contract which would include his financial position, *willingness* relates to the conduct of the Plaintiff. It is settled law that readiness and willingness are distinct component. The relevant paragraph of the judgment reads as under:

“12. While readiness means the capacity of the plaintiff to perform the contract which would include his financial position, willingness relates to the conduct of the plaintiff.”

32. While readiness is the proof of financial capacity of the purchaser to perform the contract, willingness is the conduct of the purchaser which would show that he/she is willing to actually part with the finances and complete the transaction. Proof of both the ingredients are necessary for securing the relief of specific performance and form the fundamental basis of a cause of action in a suit seeking specific performance of an agreement to sell.

If on a perusal of the averments in the plaint and the documents filed therewith, the Court finds that the Plaintiff has failed to even, *prima facie*, show its readiness and willingness to perform the agreement, the plaint

¹⁰2024 SCC OnLine SC3586, at paragraph nos. 6, 8, and 12.



would have to be rejected for being barred in law and failed to disclose any cause of action.

33. The issuance of summons in a suit for specific performance, even in the absence of an interim injunction, attracts the rigour of Section 52 of the Transfer of Property Act, 1882 [‘TP Act’], thereby casting a cloud on the marketability of the suit property and causing prejudice to the Defendant. This position has been expressly acknowledged by the Supreme Court in **Vinod Seth v. Devinder Bajaj**¹¹. The relevant paragraph 19 thereof reads as under: -

“19. We also agree with the High Court that having regard to the doctrine of lis pendens embodied in Section 52 of the Transfer of Property Act, 1882 (“the TP Act”, for short), the pendency of the suit by the appellant shackled the suit property, affected the valuable right of the second defendant to deal with the property in the manner she deems fit, and restricted her freedom to sell the property and secure a fair market price from a buyer of her choice. When a suit for specific performance is filed alleging an oral agreement without seeking any interim relief, the defendant will not even have an opportunity to seek a prima facie finding on the validity of the claim. Filing such a suit is an ingenious way of creating a cloud over the title to the suit property. Such a suit, filed in the Delhi High Court, is likely to be pending for a decade or more.”

(Emphasis Supplied)

34. Therefore, before issuing summons in the suit, the Court should satisfy itself that whether the plaint and the documents filed with it even, prima facie, show that the Plaintiff has been ready and willing to perform the oral ATS from the date of execution of the agreement till the filing of the suit.

35. In this background, this Court will now proceed to examine whether the Plaintiff herein has even prima facie shown in the plaint and the documents filed therewith, that he was ready and willing to perform the oral

¹¹ (2010) 8 SCC 1



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ATS dated 29.10.2023 from the date of its execution and on each of the dates of performance, as averred in the plaint.

II. EXAMINATION OF THE PLAINT AND THE DOCUMENTS TO SEE IF THE PLAINTIFF WAS READY TO PERFORM THE AGREEMENT

36. It is settled law that the Plaintiff has to prove its financial capacity from the date of the agreement till the disposal of the suit. In the facts of the case the Plaintiff at paragraph 9(c) of the plaint has referenced to the date of 30.12.2023 as the date of the scheduled performance of the oral ATS; and subsequent dates of 29.03.2024 and 09.05.2024 as the extended dates of performance. This Court will, therefore, examine if the Plaintiff has placed on record any documents which evidence that he had available with him the requisite funds.

30.12.2023

37. The Plaintiff has averred in the plaint that he agreed to purchase the suit property on 29.10.2023 for a sum of rupees 12.40 crores and that he was agreed that the sale deed will be executed on or before 30.12.2023. The relevant paragraph 9(c) of the plaint reads as under: -

“c. It was agreed that the Defendant shall evict the tenant and secure possession of the Suit Property from the tenant by 30.11.2023. The Sale Deed for the Suit Property was agreed to be executed between parties within a period of one month thereafter, i.e. on or before 30.12.2023, and vacant, peaceful, physical possession of the Suit Property was to be handed over on the same day to the Plaintiff.”

(Emphasis Supplied)

38. The Plaintiff has annexed with the plaint the legal notice dated 08.04.2024 issued to the Defendant, calling upon the Defendant to execute the sale deed, and in this notice at paragraph 7, once again the Plaintiff has specifically averred that he had necessary funds available with him for



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payment of balance sale consideration in expectation that the sale deed will be executed on 30.12.2023.

“7. It was expressly assured to Our Client that the said tenant would be evicted by 30.11.2023 and thus based on your assurances and steps taken to evict the said tenant, Our Client arranged for the necessary funds to make the payment of the balance sale consideration. Further, it was orally agreed between Our Client and you that the Sale Deed would be executed within a period of one month after the said tenant was evicted and vacant possession of the Said Property was obtained by you. It was agreed that vacant peaceful possession of the Said Property would then be handed over to Our Client and the balance sale consideration would be paid to you simultaneously upon execution of the Sale Deed, within the said period of one month.”

(Emphasis supplied)

39. Thus, it is the categorical stand of the Plaintiff in this legal notice that he had readily available with him the balance amount of Rs. 11.89 crores as on 30.12.2023 to pay to the Defendant.

29.03.2024

40. The Plaintiff has averred at paragraph 17 in the plaint that the time for execution of the sale deed was mutually extended lastly until 29.03.2024 due to the non-vacation of the premises by the tenant.

09.05.2024

41. Next, the Plaintiff, by its legal notice dated 08.04.2024, had called upon the Defendant to execute the sale deed within 30 days, i.e., 09.05.2024, and offered to pay the sale consideration of Rs. 12.40 crores.

42. However, as per the documents filed on record with the plaint, there is no, prima facie, evidence that requisite funds were available with the Plaintiff as on 29.10.2023 or 30.12.2023 or 29.03.2024 or 09.05.2024.



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29.10.2024

43. The present suit was filed on 23.10.2024 and was first listed before this Court on 29.10.2024. In this plaint, the Plaintiff once again reiterated that he is ready and willing to perform the oral ATS dated 29.10.2023 and reiterated that the Plaintiff has the financial ability and capability to fulfil his obligations under the agreement. The relevant paragraph 26 of the plaint reads as under: -

“26. The aforesaid shows that it was the Defendant who unilaterally, without any basis, sought to resile from the Agreement whereas the Plaintiff, till date has been ready and willing to perform the Agreement. The Plaintiff has always had, and continues to have the financial ability and capacity to fulfil his obligations under the Agreement. The same can also be discerned from the aforesaid Reply dated 08.04.2024, wherein the Plaintiff once again called upon the Defendant to execute the Sale Deed and sell the Suit Property to him within 30 days.”

44. The plaint was filed accompanied with seven (7) documents and none of these documents evidenced availability of funds of Rs. 12.40 crores with the Plaintiff as on 23.10.2024. In fact, none of these documents pertain to financial capacity at all. As noted above, the Plaintiff had due notice that the Defendant in its termination letter dated 16.03.2024 has specifically stated that the Plaintiff was reluctant to perform its obligations and therefore, it was imperative for the Plaintiff to file relevant documents with the plaint prima facie evidencing his financial capacity.

45. The matter was adjourned to 19.11.2024.

Additional documents filed by the Plaintiff on 13.11.2024 and taken on record on 19.11.2024

46. To substantiate its plea of readiness i.e., availability of funds to purchase the suit property, the Plaintiff filed three (3) additional documents under cover of the index dated 13.11.2024 through I.A. No. 45387/2024. All



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the three documents were letters issued by Punjab and Sind Bank ['Bank'] to the Plaintiff. These letters are dated 20.11.2023, 29.06.2024 and 04.11.2024. These are the only documents placed on record by the Plaintiff to show its financial capacity to buy the suit property.

47. This Court is, therefore, proceeding to examine these additional documents to see if these three documents, prima facie, show the financial capacity of the Plaintiff to pay the balance consideration of Rs. 11.89 crores on 30.12.2023 and entire sale consideration of Rs. 12.40 crores on 29.03.2024, 09.05.2024 and 29.10.2024.

48. Since the Defendant had refunded the earnest money of Rs. 51 lakhs to the Plaintiff on 15.03.2024, the Plaintiff had to show availability of Rs. 12.40 crores on the dates falling on 29.03.2024, 09.05.2024 and 29.10.2024.

Examination of the letters dated 20.11.2023, 29.06.2024 and 04.11.2024 issued by the Bank

49. In these additional documents, the first document is dated 20.11.2023, which is a letter issued by the Bank to the Plaintiff and reads as under:

“November 20, 2023

Shri Pradeep Batra,
B-1/17, 1st Floor,
Vasant Vihar,
Delhi-110057

Dear Sir,

With reference to your letter dated 10.11.2023 and subsequent verbal discussions Bank can finance Rs. 10-12 Crore approximately towards the sale consideration for the property of IInd floor+ 50% Front Terrace over and above the Second floor, Vasant Vihar, New Delhi - 110057 on a plot of land measuring 610 Sq yds (Approx.) {Seller's Name Mr. Kuldeep Verma}. **Kindly provide the tentative documents as attached in the list to initiate the Loan transaction.**



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Regards,
Branch Manager

List of Documents

1. Title Documents of the Property (Perpetual Deed, Conveyance deed, Sale Deed, Transfer Deed, Gift Deed etc and all other relevant documents of the Property).
2. Property tax Receipts of the last 3 years concerning the property.
3. Electricity Bill of the last 6 months.
4. Water Bill of the last 6 months.
5. Gas Bills of the last 6 months.
6. Mutation of the Property.
7. ITR of last 3 years.
8. KYC Documents {PAN Card, ADHAR Card etc.}”

(Emphasis supplied)

50. In this letter, the Bank sought from the Plaintiff its personal documents as well as documents pertaining to the suit property for *initiating* the loan transaction.

51. This letter was followed up by the Bank to the Plaintiff with a reminder dated 29.06.2024. The said letter reads as under:

“Dated: 29.06.2024

Shri Pradeep Batra,
B-1/17, 1st Floor,
Vasant Vihar,
Delhi -110057

Dear Sir,

Refer our earlier letter dated 20.11.2023, wherein we have requested certain documents **however same are still awaited** to further process in the said Housing loan of Rs 10-12 crore (Approx.).”

(Emphasis supplied)

52. The letter dated 20.11.2023 read with letter dated 29.06.2024, shows that the Plaintiff failed to follow up with the Bank for sanction of loan after 20.11.2023 and did not provide the Bank with either his personal documents



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or the suit property documents sought for by the Bank. As per the WhatsApp chats filed by the Plaintiff with the suit paper-book, the Defendant, between 03.11.2023 and 10.03.2024, had duly provided the documents pertaining to the suit property available with him to the Plaintiff and his representatives, however, the Plaintiff himself did not furnish the said documents to the Bank, as is evident from the letter dated 29.06.2024. In fact, the Plaintiff fairly admits at paragraph '6' of I.A. 45387/2024 that he did not follow up with the bank after 20.11.2023. In these circumstances, the Bank till as late as 29.06.2024 had not even *initiated* the loan transaction.

53. In the considered opinion of this Court, the aforesaid letters dated 20.11.2023 and 29.06.2024 relied upon by the Plaintiff do not show the availability of funds amounting to Rs. 12.40 crores with the Plaintiff.

54. After the suit was filed and listed before this Court on 29.10.2024, the Plaintiff has thereafter obtained another letter dated 04.11.2024 from the Bank. This letter appears to be in continuation of the letters dated 20.11.2023 and 29.06.2024. The letter reads as under: -

“Date: 04.11.2024

Sh. Pradeep Batra and Sh. Hitansh Batra
B-1/17, 1st Floor,
Vasant Vihar
New Delhi -110057

Dear Sir

Reg: Your Application of Housing Loan

You are presently availing Credit Facilities of Rs. 22.00 Crores (approximately) in M/s Grandlay Electricals (India) as partners from our bank against the property valued at Rs. 73.00 Crores. We have scrutinized your financials and networth and has concluded that you have sufficient stability for availing further credit facility.

Now as per your letter dated 20.11.2023 and 01.11.2024 you have requested



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a Housing loan for purchase of a Residential Property i.e. 2nd Floor + 50% Front Terrace over and above the second floor, Vasant Vihar, New Delhi - 110057.

Therefore, the bank may sanction you the maximum loan amount as per the Bank Norms against the above said housing loan subject to the assessment based on the documents **to be provided by you** i.e. proper legal and valuation of the said property, etc.”

(Emphasis supplied)

55. Notwithstanding the fact that this letter is dated post filing of the suit, in the considered opinion of this Court, the said letter also does not show approval of the housing loan of Rs. 12.40 crores by the bank even as on 04.11.2024. The said letter of the bank only records that bank *may be* willing to consider sanction of the housing loan after making assessment of the documents provided by the Plaintiff. In fact, this letter shows that the documents sought by the Bank in its letter dated 20.11.2023 were still not furnished to the Bank even as on 04.11.2024.

56. The aforesaid letters dated 20.11.2023, 29.06.2024 and 04.11.2024 issued by the Bank are the only three documents filed by the Plaintiff on record to show its financial capacity to purchase the suit property for Rs. 12.40 crores. However, in the considered opinion of this Court the said documents do not even prima facie show availability of Rs. 12.40 crores with the Plaintiff for purchasing the suit property.

57. A perusal of the contents of the letters dated 20.11.2023, 29.06.2024, and 04.11.2024 shows that the Plaintiff did not have its own/personal funds to purchase the suit property and was intending to avail a housing loan to purchase the suit property. In fact, as per the letter, the Bank has not even *initiated* the process of the housing loan in the absence of the requisite



documents from the Plaintiff and this housing loan had not been sanctioned by the bank till date.

58. The Supreme Court in **N.P. Thirugnanam (D) by LRs Vs. Dr. R. Jagan Mohan Rao & Ors.**¹² has held that the Plaintiff must prove its financial capacity from the ‘date of agreement’ till ‘disposal of the suit’ and mere assertions are insufficient. Relevant part of the judgment reads as under: -

“5. It is settled law that remedy for specific Patna High Court FA No.15 of 2008 dt.21-10-2024 performance is an equitable remedy and is in the discretion of the Court, which discretion requires to be exercised according to settled principles of law and not arbitrarily as adumbrated under Section 20 of the Specific Relief Act, 1963. Under Section 20 of the Specific Relief Act, the Court is not bound to grant the relief just because there was valid agreement of sale. Section 16 (c) of the Act envisages that plaintiff must plead and prove that he had performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than those terms the performance of which has been prevented or waived by the defendant. The continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of specific performance. The amount of consideration which he has to pay to the defendant must necessarily be proved to be available. Right from the date of execution till date of decree, he must prove that he is ready and has always been willing to perform his part of contract.”

(Emphasis Supplied)

59. The Supreme Court in **U.N. Krishnamurthy (since deceased) thr. LR. Vs. A.M. Krishnamurthy**¹³ observed as under:

“45. It is settled law that for relief of specific performance, the plaintiff has to prove that all along and till the final decision of the suit, he was ready and willing to perform his part of the contract. It is the bounden duty of the plaintiff to prove his readiness and willingness by adducing evidence. This crucial facet has to be determined by considering all circumstances including availability of funds and mere statement or averment in plaint of readiness and willingness, would not suffice.”

¹² (1995) 5 SCC 115

¹³ 2022 SCC OnLine SC 840



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(Emphasis Supplied)

60. In the considered opinion of this Court, in these facts, the Plaintiff has failed to establish on record that he had the financial capacity to purchase the suit property on 29.10.2023, on 30.12.2023, on 29.03.2024, on 09.05.2024 or in October 2024 when he finally approached the Court and even thereafter on November 2024.

61. Before examining the next issue, this Court would like to note that in the facts of this case, the Plaintiff has merely relied upon its application to the Bank for a housing loan to prove that it has the financial capacity to purchase this suit property. As noted above, the Bank has even as on 04.11.2024 (the last document issued by the bank) not sanctioned the housing loan. The Bank has called upon the Plaintiff to produce several documents for scrutiny/consideration before even *initiating* the loan application. The sale transaction had to be concluded on 30.12.2023 and the Plaintiff did not have available with it, sanctioned loan on the said date. In the considered opinion of the Court, mere filing of an application for housing loan to a Bank by a proposed purchaser cannot satisfy the test of his/her readiness and the same is not a proof of financial capacity. Though it is permissible for a proposed purchaser to apply for housing loan with the consent of the seller, the non-sanction or the delay in sanction of the loan cannot form basis for extension of time in performance of the ATS, as the seller has not consented to any such extension to await the approval of the Bank loans.

62. While availing of a housing loan is a normal commercial practice in property transactions, proof of readiness and willingness under Section 16(c) of the Act of 1963, in a suit for specific performance cannot be made



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contingent upon future and uncertain events, such as the possible sanction of a housing loan by a financial institution or bank to the purchaser on the basis of the title documents of the immovable property forming the subject matter of the sale. This is particularly so when the transaction has been terminated by the seller on the specific assertion of the purchaser's lack of funds and has culminated in litigation. Upon approaching the Court, the Plaintiff is required, along with supporting documents, to demonstrate an independent and continuous financial capacity to pay the entire sale consideration of Rs. 12.40 crores, which the Plaintiff has failed to establish.

63. Pertinently, at the hearing dated 08.07.2025, the Plaintiff handed over to this Court a list of further eight (8) documents which he requires from the Defendant prior to the execution of the sale deed. This is in addition to the documents which have already been provided by the Defendant to the Plaintiff during the subsistence of the oral ATS. No such documents were sought from the Defendant in the legal notice dated 08.04.2024. Even the plaint does not refer to demand for any such documents. On 08.07.2025, the matter had been listed before the Court for recording a settlement between the parties in pursuance to order dated 04.07.2025. This stand of the plaintiff on 08.07.2025 seeking further documents also gives a distinct impression to the Court that the Plaintiff is not ready and willing and is merely seeking to keep the litigation pending.

64. In these facts, this Court is of the considered opinion that the Plaintiff has been unable to prima facie demonstrate that he had the financial capacity of Rs. 12.40 crores to purchase the suit property on 30.12.2023 or



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29.03.2024 or 09.05.2024 the stipulated dates of performance and therefore was not *ready* to perform the oral ATS.

III. DELAY BY THE PLAINTIFF IN APPROACHING THE COURT VIS-À-VIS ESCALATION OF PRICES OF THE SUIT PROPERTY EVIDENCING LACK OF WILLINGNESS

65. It is the categorical stand of the Defendant in his letter dated 16.03.2024, which has been filed with the plaint, that the Defendant has been constrained to terminate the oral ATS dated 29.10.2023 in view of the delay and reluctant behaviour exhibited by the Plaintiff in completing the transaction. The relevant portion of the letter reads as under:

“.....

6. That due to delay on your side and continuous reluctant behavior, to perform your obligations, have left me jeopardized and have forced me to withdraw my decision to continue.

7. That when I, verbally, raised my concern and expressed my desire to not to continue the sale, you verbally agreed to cancel the proposal and requested to refund the amount.

8. That now as we have decided not to continue with sale procedure, I have returned the said advance on 15th March 2024, vide UTR No MAHBR52024031516777311 into your account no 04801000050731, operational at Punjab & Sindh Bank, Branch- Connaught Circus, New Delhi, against which you have issued the above-mentioned cheque for the advance amount.”

(Emphasis supplied)

66. The Defendant when he appeared before this court on 19.12.2024, and 04.07.2025 has consistently stated that Plaintiff has never been ready and willing to perform the oral ATS and has only sought to entangle the proceedings.

67. The Defendant in this case refunded the earnest money to the Plaintiff on 15.03.2024 and issued a legal notice recording the termination on



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16.03.2024 due to lack of performance by the Plaintiff; but the Plaintiff waited until 23.10.2024 (for 7 months) to institute the suit.

68. Pertinently, in the plaint itself, the Plaintiff admits at paragraph number 39, that in the intervening period between 29.10.2023 and 23.10.2024 the prices of the suit property have increased exponentially.

“39. The Plaintiff has been gravely suffering on account of the Defendant’s actions, in as much as it has indefinitely stalled and delayed the Plaintiff’s future plans and desires for his and his family’s permanent accommodation, post his retirement. Following the Agreement with the Defendant, the Plaintiff had begun to plan everything in accordance with the eventuality of shifting into the Suit Property, since it was the most commercially prudent and convenient choice for him. Relying on the Defendant’s assurances in good faith, the Plaintiff kept waiting for the Defendant to hand over possession of the Suit Property, and for this reason, never searched for any alternative property options to purchase, till date. **However, since property prices have significantly increased in the last one year, the Plaintiff is no longer in a position to find a similar deal for any other property in the same area.** Moreover, moving into the Suit Property would have been the most convenient and hassle-free shift for the Plaintiff and his family, as the Suit Property is situated just one floor above the floor where the Plaintiff is currently residing with his family. Thus, the Plaintiff is now unfairly stuck in a situation where he is neither able to purchase the Suit Property from the Defendant, nor able to find an equally lucrative alternative, especially in the same locality, which was one of the biggest considerations for the Plaintiff while deciding to agree to purchase the Suit Property”

(Emphasis Supplied)

69. The Supreme Court in **Saradamani Kandappan v. S. Rajalakshmi**¹⁴ has held that in modern times in urban areas, where properties prices increased exponentially, the court would have to consider the delay by a Plaintiff/buyer in approaching the Court as evidence of its lack of readiness and willingness.

¹⁴(2011) 12 SCC 18



“36. The principle that time is not of the essence of contracts relating to immovable properties took shape in an era when market values of immovable properties were stable and did not undergo any marked change even over a few years (followed mechanically, even when value ceased to be stable). As a consequence, time for performance, stipulated in the agreement was assumed to be not material, or at all events considered as merely indicating the reasonable period within which contract should be performed. The assumption was that grant of specific performance would not prejudice the vendor defendant financially as there would not be much difference in the market value of the property even if the contract was performed after a few months. This principle made sense during the first half of the twentieth century, when there was comparatively very little inflation, in India. The third quarter of the twentieth century saw a very slow but steady increase in prices. **But a drastic change occurred from the beginning of the last quarter of the twentieth century. There has been a galloping inflation and prices of immovable properties have increased steeply, by leaps and bounds. Market values of properties are no longer stable or steady.** We can take judicial notice of the comparative purchase power of a rupee in the year 1975 and now, as also the steep increase in the value of the immovable properties between then and now. It is no exaggeration to say that properties in cities, worth a lakh or so in or about 1975 to 1980, may cost a crore or more now.

37. The reality arising from this economic change cannot continue to be ignored in deciding cases relating to specific performance. The steep increase in prices is a circumstance which makes it inequitable to grant the relief of specific performance where the purchaser does not take steps to complete the sale within the agreed period, and the vendor has not been responsible for any delay or non-performance. A purchaser can no longer take shelter under the principle that time is not of essence in performance of contracts relating to immovable property, to cover his delays, laches, breaches and “non-readiness”. The precedents from an era, when high inflation was unknown, holding that time is not of the essence of the contract in regard to immovable properties, may no longer apply, not because the principle laid down therein is unsound or erroneous, but the circumstances that existed when the said principle was evolved, no longer exist. **In these days of galloping increases in prices of immovable properties, to hold that a vendor who took an earnest money of say about 10% of the sale price and agreed for three months or four months as the period for performance, did not intend that time should be the essence, will be a cruel joke on him, and will result in injustice.** Adding to the misery is the delay in disposal of cases relating to specific performance, as suits and appeals therefrom routinely take two to three decades to attain finality. As a result, an owner



agreeing to sell a property for rupees one lakh and received rupees ten thousand as advance may be required to execute a sale deed a quarter century later by receiving the remaining rupees ninety thousand, when the property value has risen to a crore of rupees.

...

.....

43. Till the issue is considered in an appropriate case, we can only reiterate what has been suggested in K.S. Vidyadnam [(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.”

(Emphasis Supplied)

70. In the considered opinion of this Court, the aforementioned dicta of the Supreme Court is squarely applicable to the admitted facts of this case, where the Plaintiff itself acknowledges that between 29.10.2023 and 23.10.2024 (a period of one year), the property prices have increased.

71. The Plaintiff’s inaction in approaching the Court immediately after receiving the termination notice dated 16.03.2024 and waiting for seven (7) months until 29.10.2024, which lead to significant increase in the property prices, is evidence of Plaintiff’s lack of *willingness* to perform the



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agreement and substantiates the assertions made by the Defendant in its letter of termination dated 16.03.2024.

72. The Plaintiff has approached the Court belatedly to take advantage of the increase of the property prices and this is not permissible in view of the aforesaid settled law as it is evidence of the Plaintiff's unwillingness making the relief of specific performance barred under Section 16(c) of the Act of 1963.

IV. RENEGOTIATION FOR REDUCTION OF SALE PRICE OF RS. 12.40 CRORES BY THE PLAINTIFF AND ACTING IN VARIANCE TO THE ORAL ATTS DISENTITLES THE PLAINTIFF FROM SEEKING SPECIFIC PERFORMANCE AS PER SECTION 16 (B) OF THE ACT OF 1963

73. In this case, as recorded in the orders dated 04.07.2025 and 08.07.2025, Plaintiff had offered to purchase the suit property for enhanced sale consideration of Rs. 15 crores and Defendant agreed to the said offer. However, Plaintiff withdrew this offer immediately and said that the same was made mistakenly.

74. The Plaintiff explained that offer of Rs. 15 crores was actually made for the first floor flat of the building, to the brother of the Defendant, Mr. Ravi Shankar Dabas. The Plaintiff submitted that he is willing to pay higher value of 15 crores for the first floor flat in the same building as it is under his occupation. He stated that he is offering a lesser value of Rs. 13.5 crores for the suit property, because it is occupied by a tenant.

75. This Court notes that this conduct of the Plaintiff, in seeking to not to offer the full market price of Rs. 15 crores to the Defendant due to the occupancy of the tenant, is also reflected in the plaint at paragraph 29 of the plaint.



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76. The Plaintiff, on 29.10.2023, agreed to purchase a property for Rs. 12.40 crores with full notice that the property was in occupation of tenant, and thereafter, since the property was not vacated by the tenant, the Plaintiff itself has pleaded at paragraph 29 of the plaint that he sought to renegotiate the sale price with the Defendant and offered to purchase the property on an as-is-where-is basis. The relevant paragraph 29 of the plaint reads as under: -

“29. In the period following his last notice to the Defendant dated 08.04.2024, the Plaintiff continued to reach out to the Defendant through phone calls and text messages (since the Defendant had travelled to USA at that point in time and was not available to meet in person), requesting him to abide by the terms of the oral Agreement. Pertinently, during these oral discussions, the Plaintiff had also informed the Defendant that he was willing to purchase the Suit Property on an as is-where is basis, even if the Defendant was not being able to evict his tenant, and that the Defendant could appropriately compensate the Plaintiff for the same. However, the Defendant, with mala fide intent, declined all possible offers extended by the Plaintiff, and continued to evade and backtrack from the terms of the Agreement, due to ulterior motives, thus committing a serious breach of the oral Agreement to Sell dated 29.10.2023.”

(Emphasis Supplied)

77. The aforesaid pleading at paragraph ‘29’ in the plaint shows that the Plaintiff sought to renegotiate the sale price of Rs. 12.40 crores with the Defendant by seeking a reduction in the sale price due to the non-vacation of the suit property by the tenant; however, the Defendant did not accede to the said reduction. The conduct of the Plaintiff in seeking to re-negotiate the sale price on its own admission shows that the Plaintiff violated the essential term of the agreement where the parties had agreed to a sale price of Rs. 12.40 crores.



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78. The submission of the Plaintiff at paragraph 29 in the plaint that he sought to renegotiate the sale price of Rs. 12.40 crores due to the non-vacation of the premises by the tenant shows that Plaintiff itself offered to act in variance with the agreed sale consideration amount.

79. The fact that the Plaintiff was reluctant to complete the transaction due to the non-vacation of the suit property by the tenant is also admitted at paragraph '6' of I.A. 45387/2024, which reads as under: -

“However, the Plaintiff was unable to pursue the said loan transaction with his banker, since the Defendant failed to perform his obligations under the Agreement, i.e. to timely vacate the Suit property, and hand over peaceful possession of the same to the Defendant.”

80. Section 16(b) of the Act of 1963 stipulates that a specific performance of a contract cannot be enforce in favour of the person who violates any essential term or wilfully acts in variance. Section 16(b) reads as under:

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

.....

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

.....”

81. The Plaintiff’s endeavour to seek a reduction in the sale consideration of Rs. 12.40 crores bars him in law from seeking specific performance of the oral ATS dated 29.10.2023. Section 16(b) of the Act of 1963, stipulates that the performance can only be granted when the Plaintiff/purchaser has not violated the essential term of the agreement. This conduct of the Plaintiff disentitling him under Section 16(b) of the Act of 1963 is evident from the



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statements in the plaint, accompanying application and therefore, the suit is barred under Order VII Rule 11(d) of CPC.

V. NO READINESS AND WILLINGNESS LEADS TO NO CAUSE OF ACTION

82. The Supreme Court in **Dahiben** (Supra) reiterated that a plaint which fails to disclose the cause of action ought to be rejected by the Court in exercise of its jurisdiction under Order VII Rule 11(a) CPC. It reiterated that cause of action means every fact which would be necessary for the Plaintiff to prove, if traversed in order to support his/her right to judgment.

83. In a suit for specific performance, it is imperative for a plaintiff to prove that he is ready and willing to perform the agreement, and this forms an essential part of the cause of action. The Court before issuing summons must be prima facie satisfied that the plaintiff is ready and willing to perform the agreement and if the Court on a perusal of the plaint and the document, prima facie, opines that the Plaintiff was not ready and willing on the basis of the statement made in the plaint, it would be obliged to reject such a plaint.

84. The conduct of the Plaintiff in seeking reduction of the sale price due to the occupation by the tenant is also evident from the proceedings recorded on 04.07.2025 and 08.07.2025. This Court finds no merit in the explanation offered by Plaintiff on 08.07.2025 for seeking reduction in the sale price due to occupation of the premises by a tenant. The tenancy is non-statutory and does not create any cloud on the title of the Defendant so as to compel him to accept sale consideration which is lower than the market price. If the Plaintiff itself admits that the market value of the first floor is Rs. 15 crores



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then he has no reasonable basis for offering Rs. 13.50 crores to the Defendant for the 2nd floor of the same building.

85. The Plaintiff was aware about the occupation of the suit property by the tenant on 29.10.2023 itself. It is pleaded in the plaint that time for executing the sale deed was extended from initial date 30.12.2023 until 29.03.2024 to await vacation of the suit property by the tenant. The unwillingness of the Plaintiff to complete the sale transaction until the vacation of the suit premises by the tenant after 30.11.2023 is pleaded in the plaint and I.A. 45387/2024. If non-vacation of the suit property by the tenant prior to the execution of the sale deed was unacceptable to the Plaintiff until March 2024, then the situation has remained unchanged as on date. The Plaintiff cannot a year later in October, 2024 change its stand to state that he is now willing to purchase the property on as-is-where-is basis (with the tenant) and seek performance of the agreement on the sale price of Rs. 12.40 crores, which was fixed on 29.10.2023 as it would be contrary to the oral ATS which stipulated that the sale deed would be executed on or before 30.12.2023 and the amount of Rs. 12.40 crores was the value of the property to be received by the Defendant on or before 30.12.2023.

86. It is apparent from reading of the plaint that the Plaintiff was unwilling to execute the sale deed on 30.12.2023 or any subsequent date and pay the entire sale consideration until the tenant vacates the suit property and this led to the termination of the agreement on 16.03.2024. The Plaintiff was, therefore, not willing to perform this oral ATS on 30.12.2023 or 29.03.2024 due to the occupation of the tenant. The Plaintiffs decision to purchase the property on as is where is basis in October, 2024 by filing the



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suit does not cure its unwillingness at the stipulated time under the agreement.

87. In the considered opinion of this court, the Plaintiff has been an unwilling buyer. The facts also show that the Plaintiff is taking advantage of the fact that the tenant is not vacating the suit property and has been seeking to re-negotiate the price with the Defendant for a reduction in its favour, which Defendant is not acceding to. The Plaintiff is therefore also not a 'willing' buyer. The conduct of the Plaintiff, as reflected in the orders dated 19.12.2024, 04.07.2025, and 08.07.2025, clearly demonstrates that the Plaintiff is attempting to short-change the Defendant by seeking to compel a sale of the property at a depressed price.

88. On a perusal of the statements in the plaint, it is apparent that the Plaintiff is not ready and willing and therefore, this plaint is liable to be rejected for lack of cause of action under Order VII Rule 11(a).

CONCLUSION

89. The facts, as they stood on 29.10.2024 when the present suit was filed, is that the Defendant had received back the entire earnest amount of Rs. 51 lakhs on 15.03.2024 and was not out of pocket for a single penny. The oral ATS dated 29.10.2023 stood terminated by the Defendant vide letter dated 16.03.2024. The Plaintiff in March, 2024 was not interested in buying the suit property since the tenant was not vacating the suit property, and was seeking to re-negotiate for a reduction the sale price as is evident from the averments at paragraph 29 of the plaint. The Plaintiff has approached this Court belatedly, after one year, in October, 2024 when as per his own showing at paragraph 39 of the plaint, the prices of the suit property have increased significantly. These facts show that Plaintiff was an



unwilling purchaser and by negotiating the sale price was wilfully acting in variance with the essential term of the agreement.

90. The Supreme Court in its judgment in **P. Ravindranath &Anr. Vs. Sasikala**¹⁵ observed as under:

“22. Having considered the submissions, our analysis is as follows:(i) Relief of specific performance of contract is a discretionary relief. As such, the Courts while exercising power to grant specific performance of contract, need to be extra careful and cautious in dealing with the pleadings and the evidence in particular led by the plaintiffs. The plaintiffs have to stand on their own legs to establish that they have made out case for grant of relief of specific performance of contract. The Act, 1963 provides certain checks and balances which must be fulfilled and established by the plaintiffs before they can become entitled for such a relief. The pleadings in a suit for specific performance have to be very direct, specific and accurate. **A suit for specific performance based on bald and vague pleadings must necessarily be rejected.** Section 16(C) of the 1963 Act requires readiness and willingness to be pleaded and proved by the plaintiff in a suit for specific performance of contract.”

(Emphasis Supplied)

91. The aforesaid observations of the Supreme Court continue to remain relevant even after the amendment of the Act of 1963 in 2018, as the essential condition of the readiness and willingness stipulated in Section 16 (c) of the Act of 1963 remains constant. A plaintiff who cannot even prima facie show to the Court that he/she is ready and willing to perform the essential terms of contract cannot set the legal proceedings in motion to the prejudice of the defendant whose suit property will get shackled by the rigours of Section 52 of the TP Act and it would be the duty of the Court to reject such a plaint for being barred in law.

¹⁵2024 SCC OnLine SC 1749



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92. The Supreme Court in **Vinod Seth** (Supra), if the High Court is of the opinion, after perusing the plaint, that the cause of action therein is vexatious, it can consider rejecting the plaint under Order 7 Rule 11 CPC. Relevant paragraph of the judgment reads as under:

“40. If the High Court felt that the prayer in the suit was vexatious or not maintainable, it could have considered whether it could reject the suit under Order 7 Rule 11 of the Code holding that the plaint did not disclose the cause of action for grant of the relief sought or that the prayer was barred by Sections 14(1)(b) and (d) of the Specific Relief Act. Alternatively, the court could have framed issues and heard the issue relating to maintainability as a preliminary issue and dismiss the suit if it was of the view that it had no jurisdiction to grant specific performance as sought, in view of the bar contained in Sections 14(1)(b) and (d) of the Specific Relief Act. If it was of the prima facie view that the suit was a vexatious one, it could have expedited the trial and dismissed the suit by awarding appropriate costs under Section 35 of the Code and compensatory costs under Section 35-A of the Code. Be that as it may.”

(Emphasis Supplied)

93. In the considered opinion of this Court, the Plaintiff herein is neither ready nor willing to perform the oral ATS, has acted in variance with the essential term of the contract by negotiating a reduction in the sale price, and is using the legal process merely to entangle the suit property to the detriment of the Defendant.

94. In the facts of this case, as noted above having examined the documents filed with the plaint and the additional document, this Court is satisfied that the Plaintiff had no financial capacity either on the date of agreement or on 30.12.2023, the date on which the sale deed had to be executed, or any point thereafter till date. Notwithstanding, the issue of unavailability of ready funds, the Plaintiff was even otherwise not willing to complete the transaction with the Defendant on the stipulated date of



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30.12.2023 or anytime thereafter, due to the non-vacation of the premises by tenant.

95. In view of the aforesaid, the plaint stands rejected for failing to disclose cause of action and for being barred in law.

96. All applications stand disposed of.

97. Future dates, if any, stand cancelled.

**MANMEET PRITAM SINGH ARORA
(JUDGE)**

DECEMBER 24, 2025/hp/AM