

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Chaitali Chatterjee(Das)

FMAT 27 of 2025

With

IA No. CAN 1 of 2025

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CAN 2 of 2025

S. C. Ghosh Realtors(P) Ltd.

Vs.

Sri Saibal Ghosh.

For the Appellant : Mr. Navin Barik
Ms. Esha Acharya,
Mr. Rimik Chakraborty,

For the opposite party : Mr. Subham Ghosh,
Mr. Mayank Roy,

Heard & Judgment on : January 07, 2026

DEBANGSU BASAK, J.:-

1. Appeal is at the behest of the plaintiff of the suit seeking specific performance of a contract.

2. The appeal is directed against an order no. 9 dated November 13, 2025 by which, learned Trial Judge was pleased to dismiss the injunction application of the plaintiff on contest.
3. Learned counsel appearing for the appellant submits that, parties entered into an agreement for sale dated May 23, 2017. He submits that, the agreement for sale contains reciprocal obligations to be performed by both the parties to the agreement. He contends that, the defendant of the suit, did not perform his part of the obligations under the agreement for sale.
4. Learned counsel appearing for the appellant refers to Section 51 of the Indian Contract Act, 1872. He submits that, since, the defendant to the suit did not perform his part of the obligations under the agreement for sale, the question of performance of the contract by the plaintiff does not arise.
5. Learned counsel appearing for the appellant submits that, in response to a query of the Court as to when, the appellant would deposit the agreed consideration money with the Registrar General, in order to establish the readiness and willingness of the appellant/plaintiff to perform the contract, learned advocate appearing for the appellant initially on instructions submitted three months time would be required. Then time was taken in order to take appropriate instructions. After taking appropriate instructions, today it is submitted that, one month time is required.

6. Respondents are represented.
7. We find from the records that, the appellant as the plaintiff's suit filed the suit seeking specific performance of an agreement dated July 22, 2017,
8. It is trite law that, in order to succeed in suit for specific performance of a contract, the plaintiff, cannot question the title of the defendant to the suit property. Moreover, the plaintiff is required to establish its readiness and willingness to perform the contract.
9. In the facts and circumstances of the case, it is contended on behalf of the appellant/plaintiff, that there are failures on the part of the defendant in performing part of the obligations under the agreement for sale. According to the appellant/plaintiff, the agreement for sale contains reciprocal obligations, and that the defendant refused to perform its obligations.
10. As noted above, plaintiff, therefore, is not clear with regard to the title of the defendant as, the plaintiff is still insisting on performance of the reciprocal obligations of the defendant.
11. So far as the readiness and willingness of the plaintiff is concerned, in a suit for specific performance, the plaintiff is required to establish its readiness and willingness on the date of filing of the suit itself. The suit was instituted in the year 2024. Plaintiff/appellant require further time- initially three months and subsequently one month as on date to deposit the balance consideration money in order to establish its readiness and willingness to perform its part of the obligation agreement for sale.

12. Plausible inference of such stand of the appellant/plaintiff is that it was and still is not ready and willing to perform its part of the obligations under the contract, specific performance of which is sought for by the appellant.
13. In our view, such stand of the appellant does not permit us to hold that, that the appellant as the plaintiff is either ready or willing to perform the agreement for sale dated July 23, 2017. Question of grant of injunction therefore does not arise, as no prima facie case stands made out.
14. In such circumstances, we find no ground to interfere with impugned order.
15. FMAT 27 of 2025 is dismissed without any order as to costs.

(Debangsu Basak, J.)

16. I agree.

[Chaitali Chatterjee(Das), J]