Reserved On : 01/04/2026
Pronounced On : 12/06/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 1685 of 2011

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BHARGAV D. KARIA

and
HONOURABLE MR.JUSTICE L. S. PIRZADA

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Approved for Reporting	Yes	No
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JINABHAI LIMABHAI KAPADIA & ANR.
Versus
HIRJIBHAI MAHIRAJBHAI HINGRAJIYA (SINCE DECEASED) & ORS.

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Appearance:
MR MEHUL SURESH SHAH, SENIOR ADVOCATE WITH MR. ZALAK B PIPALIA(6161) for the Appellant(s) No. 1,2
MR ANSHIN H DESAI(1020) for the Appellant(s) No. 2
MR DEVEN PARIKH, SENIOR ADVOCATE WITH MR.BHANUKUMAR B AGRAWAL(10031) for the Defendant(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE BHARGAV D. KARIA**
and
HONOURABLE MR.JUSTICE L. S. PIRZADA

CAV JUDGMENT

(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)

1. Heard learned Senior Advocate Mr. Mehul Shah

assisted by learned advocate Mr. Zalak B. Pipalia for the appellants original plaintiffs and learned Senior Advocate Mr. Deven Parikh assisted by learned advocate Mr. Bhanukumar B. Agrawal for the respondents original defendants.

2. This appeal under section 96 of the Code of Civil Procedure, 1908 (For short “the Code”) is preferred challenging the Judgment and Decree dated 11.05.2011 passed by learned 9th Additional Senior Civil Judge, Junagadh in Special Civil Suit No.64 of 1999 whereby the suit filed by the appellants original plaintiffs is ordered to be rejected.

3. The appeal is admitted by order dated 15.06.2011 (Coram : Hon’ble Mr. Justice Jayant Patel and Hon’ble Mr. Justice J.C. Upadhyaya, As Their Lordships were then).

4. In Civil Application - For Interim Relief No.6225 of 2011, by order dated 15.06.2011, it was directed that the respondents shall maintain status-quo qua the title and possession in respect of property in question, until final disposal of the appeal and application was disposed of accordingly.

5. For the sake of convenience, appellants and respondents are here-in-after referred to as the plaintiffs and the defendant respectively.

Facts:

6. Brief facts of the case are that the plaintiffs filed Special Civil Suit No.64 of 1999 seeking specific performance of Agreement to Sale dated 26.09.1990 (Exh.108) and for declaration and permanent injunction in respect of land bearing Revenue Survey No.25 and Revenue Survey No.26/1 situated at

Village Timbawadi, Taluka and District Junagadh.

7. The averments made in the plaint discloses that the plaintiffs were agriculturists residing at Morvada in Timbawadi village and the defendant was residing at Timbawadi and holding land bearing Revenue Survey No.25 admeasuring 5 acres and 13 gunthas and Survey No.26/1 admeasuring 14 gunthas in Sim of Village Timbawadi, Taluka and District Junagadh.

8. Father of the defendant Mahidas Arjan was farmer of old State of Junagadh and possession rights were given to him under Bombay Land Revenue Code,1879 in 1950. The permanent rights were entered into revenue records for Revenue Survey No.8, 25, 26/1 and 27 of Timbawadi by Promulgation Entry No.31. Thereafter Mahidas Arjan has entered the land

bearing Revenue Survey No.25 in the name of the defendant and land bearing Revenue Survey No.27 in the name of his second son Kantilal. By application dated 18.04.1990 made by Mahidas Arjan, Entry No.307 was mutated in property record regarding land bearing Revenue Survey No.26/1 adjacent to Revenue Survey No.25 in the name of his four sons defendant-Hirjibhai and other three sons, Hasmukh, Kantilal and Himmatlal.

9. It also appears that Mahidas Arjan borrowed a loan from State Bank of Saurashtra, Juangadh mortgaging land bearing Revenue Survey No.27 and 26/1 and Revenue Entries were mutated regarding the same.

10. It is the case of the plaintiffs that the defendant Hirjibhai Mahidas agreed to sell the parcels of land situated at Revenue Survey No.25 and Revenue Survey No.26/1

stating that Revenue Survey No.25 was of his share and his brothers and father had taken away their rights from that land and he would make necessary entry pertaining to the same in the revenue record for land situated at Revenue Survey No. 26/1 and he was empowered to sell the land of Revenue Survey No.26/1.

11. It is the case of the plaintiffs that an acknowledgement receipt accepting the consideration of Rs. 1,90,000/- (Exh.107) was executed by the defendant issuing a receipt of the same to the plaintiffs and thereafter agreement to sale dated 26.09.1990 (Exh.108) was executed for Revenue Survey Nos. 25 and 26/1 in favour of the plaintiffs for an agreed consideration of Rs.1,45,000/- per Vigha. The plaintiffs also paid Rs. 2,00,000/- as consideration at the time of execution of agreement to sale.

12. As per the terms of agreement to sale, it was agreed that remaining consideration was to be paid within 15 months from the date of agreement to sale and thereafter sale deed was to be executed and before that defendant was to clear the title so as to empower him to sell the land bearing Revenue Survey No.26/1 striking out the name of his remaining three brothers from the revenue record and clearing the other charges and dues of the Government and cooperative society.

13. It appears that defendant was unable to clear the charges on the land and was also unable to strike off the names of his brothers from Revenue Survey No.26/1 within 15 months time limit.

14. It is the case of the plaintiffs that the plaintiffs were ready and willing to pay

the remaining amount of consideration but in spite of repeated requests, defendant did not clear his title and act as per the agreed condition and instead of utilising the amount of consideration paid for clearing the title, it was utilised for other purposes and the defendant further demanded remaining amount of consideration from the plaintiffs which was refused by the plaintiffs and further showed their readiness to pay the remaining amount of consideration at the time of execution of the sale deed. Therefore, the defendant prayed for more time for title clearance and also agreed to execute writing for the same. It is the case of the plaintiffs that as the plaintiffs were willing to buy the land in that area, additional amount of Rs. 5,00,000/- was paid to the defendants on 21.04.1991 and writing was executed on the stamp paper on the same day (Exh.109)extending the time limit to 6

years for execution of the sale deed instead of 15 months as agreed in the agreement to sale dated 26.09.1990. Thus, according to the plaintiffs amount of Rs.8,90,000/- was paid towards consideration to the defendant in the year 1990-1991 extending the time limit to 6 years for execution of the sale deed.

15. It is the case of the plaintiffs that as the time limit of six years was completing on 21.04.1997, the plaintiffs repeatedly asked the defendant to execute the sale deed either individually or through third party, but the defendant failed to comply with such request. The plaintiffs, therefore, published a public notice in “Sandesh” Daily Newspaper, Rajkot Edition on 27.11.1997 (Exh.104) that nobody should purchase the land bearing Revenue Survey Nos. 25 and 26/1.

16. The defendant instead of giving reply to

the public notice filed caveat application on 21.02.1998 (Exh.106) wherein it was admitted that agreement to sale dated 29.09.1990 was executed for sale of the land at Revenue Survey Nos. 25 and 26/1 by the defendants. It is also averred in the caveat that an agreement to sale dated 05.02.1991 was also executed for resale of the land.

17. The plaintiffs thereafter preferred Special Civil Suit No.64 of 1999 on 17.05.1999 for specific performance, declaration and permanent injunction as well as damages in lieu of specific performance.

18. On service of summons and notice, the defendants filed written statement at Exh.12 denying the averments made in the plaint contending inter-alia that so far as land situated in Survey No.26/1 is a fragment land under Gujarat Prevention of Fragmentation and

Consolidation of Holdings Act,1947 and sale or agreement of fragment land is void under the said Act and part of Revenue Survey No.25 was acquired for by-pass road of Junagadh and name of the defendant was entered into revenue record for compensation proceedings. It was also contended that the plaintiffs were doing the money lending business in village without any license and as the defendant needed amount of Rs. 1,00,000/-, it was agreed by the defendants to borrow the amount from the plaintiffs on interest at the rate of 10% per month and as a security, the agreement to sale was executed and signature of the defendant was taken on stamp paper of Rs. 5/-. It was also contended that writing for payment of Rs. 1,90,000/- alleged to have been executed on 24.09.1990(Exh. 107) is concocted and defendant did no sign any such writing nor accepted any amount. It was therefore, submitted that the suit is

required to be dismissed as the same is filed after nine years and hence barred by limitation.

19. Learned Judge framed the following issues after granting temporary injunction below Exh.5 to maintain the status-quo till disposal of the suit:

SR. NO.	**ISSUES**	**FINDINGS**
1.	Whether the Plaintiff proves that Defendant has executed agreement to sell 14 vigha of suit property to plaintiff on Dt: 24.09.1990 and accepted an amount of Rs. 1,90,000/- (Rupees One Lakh Niney Thousand only) by way of consideration?	In Negative
2.	Whether the plaintiff proves that the defendant executed agreement to sell 14 vigha of suit property to the plaintiff on dt:26.09.1990 and agreed to sell each vigha for an amount of Rs.1,45,000/- and accepted an amount of Rs.2,00,000/- by way of consideration from the Plaintiff's?	Partly in affirmative

3.	Whether the plaintiff proves that as per agreement the sale deed was to be executed within 15 months from date of agreement to sell?	In affirmative
4.	Whether the plaintiff proves that the defendant has executed additional document in original agreement to sell dt.25-9-90 dt.21-4-91 on and further accepted Rs.5,00,000/- by way of consideration from the plaintiff and further extended the time limit to six years?	In negative
5.	Whether the plaintiff is ready and willing to perform his part of agreement to sell dtd.25/9/90?	In negative
6.	Whether the plaintiff proves that the defendant has refused to perform his part of agreement dt.25-9-90? (6A) Whether the defendant proves that he has no right, title or interest over the suit property?	In negative Partly in affirmative
7.	Whether the defendant proves that plaintiff has made bogus and forged agreement to sell?	In affirmative
8.	Whether the plaintiff's entitled to get relief as prayed for?	In negative
9.	Whether the plaintiff's is entitled to get injunction as prayed for?	In negative
10.	What order and decree?	As per final order

20. It appears that prior to filing of Special Civil Suit No.64 of 1999, defendant had entered into agreement to sale dated 09.07.1998 in respect of the suit land and possession thereof was handed over for part consideration of Rs.15,51,000/- in favour of one Mr. Parbatbhai Jethabhai Bhatia. An application was preferred by the said third party to be joined as party defendant in the suit which was rejected by the trial Court on 05.09.2007 by order passed below Exh.32 which was challenged before this Court in writ petition being Special Civil Application No.27463 of 2007 which was also rejected vide order dated 21.07.2008 on the ground that there is no privity of contract between the third party and the plaintiffs of the present suit.

21. It also appears that said third party

has filed Special Civil Suit No.108 of 2010 seeking specific performance of agreement to sale dated 09.07.1998 for the suit land which is pending in the Court of Additional Senior Civil Judge, Junagadh wherein the plaintiffs of the present suit made an application to be joined as party. However, such application was also rejected and therefore, Special Civil Application No.9018 of 2011 was preferred and by order dated 20.06.2012, the writ petition is allowed and plaintiffs of the present suit have been ordered to be impleaded as party defendant in Special Civil Suit No.108 of 2010. It appears that the third party also filed Civil Application No.2/2011 in this appeal which is rejected by order dated 17.07.2025 on the ground of *"Res judicata".*

22. Both the sides adduced oral and documentary evidence which have been

considered by the learned Judge in detail in the impugned Judgment and Order and has decided the issues as per the findings stated against each issue here-in-above while dismissing the suit.

Submissions of the appellants-plaintiffs

23. Learned Senior Counsel Mr. Mehul Shah for the appellants-plaintiffs submitted that the learned Trial Court has failed to consider the most relevant aspect that the defendant did not deny his signature on the Agreement to Sale dated 26.09.1990 at Exh.108 but in fact it is admitted and therefore, learned Trial Court ought to have held that agreement to sale at Exh.108 is proved.

24. It was submitted that as per the agreement to sale, the condition was to pay the remaining balance amount of consideration within 15 months from the date of agreement

and on payment of consideration, final sale deed was to be executed, however before that defendant was required to clear the title in respect of the suit land and more particularly, to remove the names of his brothers from the revenue record qua Survey No. 26/1 or to take their consent to execute the sale deed as well as to clear the dues of the Government and co-operative society and to make the land free from all encumbrances. It was pointed out that during the period of 15 months, the defendant could not fulfill his obligation to clear the title of the suit land so as to enable the plaintiffs to pay the remaining consideration and to execute the sale deed. It was submitted that the plaintiffs have paid additional amount of Rs. 5,00,000/- towards sale consideration on 21.04.1991 so as to enable the defendant to clear the title and in exchange written acknowledgment (Exh.109) for receipt of Rs.

5,00,000/- was executed by the defendant extending the time limit for execution of the sale deed by 6 years so as to enable the defendant to pay the outstanding dues of the bank and the co-operative society and to remove the names of his brothers from revenue record of Survey No. 26/1.

25. It was submitted that the trial Court has exceeded its jurisdiction by comparing the signature of the defendant on documents at Exhs. 107, 108 and 109 on its own to arrive at the conclusion that the signature of the defendant varies in these documents. It was pointed out that the trial Court could not have exercised such power of comparing the signature on its own to decide the case against the plaintiffs and even if the trial Court chooses to do so it was bound to record specific reasons in detail. However, in facts of the case, no such reasons are recorded to

compare the signature to conclude that plaintiffs failed to prove document extending time at Exh. 109.

26. It was submitted that signatures on Exh. 108 is not disputed by the defendant whereas trial Court discarded Exh.109 whereby the time period of contract was extended by six years on the ground of difference in signature without assigning any cogent reason. It was pointed out that Exh.109 is a vital piece of evidence to prove the case of the plaintiffs which has been discarded by the trial Court to conclude that the plaintiffs have failed to prove what exact amount is paid to the defendants. It was submitted that plaintiffs were always ready and willing to pay the balance amount of sale consideration but the defendant failed to execute the final sale deed by not getting the title clearance of the suit land and

therefore, the plaintiffs were compelled to issue public notice on 27.11.1997 on completion of 6 years in daily newspaper “Sandesh”, Rajkot edition. However, defendant instead of executing the sale deed or replying to the notice published in the newspaper filed a caveat application in the Court. It was therefore, submitted that conduct of the defendant would demonstrate that the defendant was never ready to perform his part of the agreement to sale to execute the sale deed by accepting the balance amount of sale consideration from the plaintiffs.

27. It was pointed out from the caveat application filed by the defendant that the defendant has not denied execution of the agreement to sale and therefore, learned trial Court has erred in not considering such admission on behalf of the defendant.

28. It was further submitted that the trial court ought to have held that documents at Exh. 108 and Exh. 109 are proved by the plaintiffs because on combined reading of both the documents, it emerges that there is no variance between the same and both the documents demonstrate the readiness and willingness of the plaintiffs to fulfill their part of obligation to pay the consideration which is corroborated by public notice issued by the plaintiffs.

29. It was submitted that as the document at Exh.108 agreement to sale is admitted by the defendant, same is required to be considered as held by Hon'ble Apex Court in case of **P. Ramasubbamma v. Vijayalakshmi** reported in 2022 (7) SCC 384, wherein it is held that once execution of agreement to sell and payment/receipt of advance substantial sale consideration was admitted by the vendor,

thereafter nothing further is required to be proved by the plaintiff-vendee. It was therefore, submitted that the Trial Court was not justified in dismissing the suit for specific performance of agreement to sell as agreement to sale (Exh.108) and part payment made by the plaintiffs are not in dispute.

30. It was submitted that in similar facts the Hon'ble Apex Court in case of **K. Prakash v. B.R. Sampath Kumar** reported in (2015) 1 Supreme Court Cases 597 has held that once an agreement to sell is legal and validly proved and further requirements for getting a decree of specific performance is established then the Court has to exercise its discretion in favour of parties seeking relief for specific performance. Reliance was placed on para nos. 13 to 16 of the said decision which read as under:

> **"13.** Indisputably, remedy for

specific performance is an equitable remedy. The Court while granting relief for specific performance exercise discretionary jurisdiction. Section 20 of the Act specifically provides that the court's jurisdiction to grant decree of specific performance is discretionary but not arbitrary. Discretion must be exercised in accordance with the sound and reasonable judicial principles.

14. The King's Bench in Rookey's Case [77 ER 209; (1597) 5 Co.Rep.99] it is said :

> "Discretion is a science, not to act arbitrarily according to men's will and private affection: so the discretion which is exercised here, is to be governed by rules of law and equity, which are to oppose, but each, in its turn, to be subservient to the other. This discretion, in some cases follows the law implicitly, in others or allays the rigour of it, but in no case does it contradict or overturn the grounds or principles thereof, as has been sometimes ignorantly imputed to this Court. That is a discretionary power, which neither this nor any other Court, not even the highest, acting in a judicial capacity is by the constitution entrusted with"

15. The Court of Chancery in Attorney General V/s. Wheat [(1759)

1 Eden 177; 28 ER 652] followed the Rooke's case and observed :

> "the law is clear and courts of equity ought to follow it in their judgments concerning titles to equitable estates; otherwise great uncertainty and confusion would ensue. And though proceedings in equity are said to be *secundum discretionem boni vin*, yet when it is asked, vir bonus est quis- The answer is, qui consulta partum, qui leges juraq servat. And as it is said in Rooke's case, 5 Rep. 99 b, that discretion is a science not to act arbitrarily according to men's will and private affection: so the discretion which is exercised here, is to be governed by rules of law and equity, which are to oppose, but each, in its turn, to be subservient to the other. This discretion, in some cases follows the law implicitly, in others or allays the rigour of it, but in no case does it contradict or overturn the grounds or principles thereof, as has been sometimes ignorantly imputed to this Court. That is a discretionary power, which neither this nor any other Court, not even the highest, acting in a judicial capacity is by the constitution entrusted with. This description is full and judicious, and what ought to be imprinted on the mind of every judge."

> **16.** The principles which can be enunciated is that where the plaintiff brings a suit for specific performance of contract for sale, the law insists a condition precedent to the grant of decree for specific performance that the plaintiff must show his continued readiness and willingness to perform his part of the contract in accordance with its terms from the date of contract to the date of hearing. Normally, when the trial court exercises its discretion in one way or other after appreciation of entire evidence and materials on record, the appellate court should not interfere unless it is established that the discretion has been exercised perversely, arbitrarily or against judicial principles. The appellate court should also not exercise its discretion against the grant of specific performance on extraneous considerations or sympathetic considerations. It is true, as contemplated under Section 20 of the Specific Relief Act, that a party is not entitled to get a decree for specific performance merely because it is lawful to do so. Nevertheless once an agreement to sell is legal and validly proved and further requirements for getting such a decree is established then the Court has to exercise its discretion in favour of granting relief for specific performance."

31. It was also pointed out that the Apex

Court considering the period in litigation has also increased the sale consideration keeping in mind the factual position of increase in the price of the property in area where it was situated.

32. In support of his submission that the plaintiffs were ready and willing to perform their part of contract of agreement to sale, reliance was placed on the decision of the Hon'ble Apex Court in case of **A Kanthamani v. Nasreen Ahmed** reported in 2017(4) SCC 654 wherein Hon'ble Apex Court in para nos. 28 to 30 has considered interpretation of expression "readiness and willingness" which reads as under:

> "**28.** The expression "readiness and willingness" has been the subject matter of interpretation in many cases even prior to its insertion in Section 16 (c) of the Specific Relief Act, 1963 . While examining the question as to how and in what manner, the plaintiff is required to prove his financial readiness so as to enable him to claim specific

performance of the contract/agreement, the Privy Council in a leading case which arose from the Indian Courts (Bombay) in Bank of India Limited & Ors. v. Jamsetji A.H. Chinoy and Chinoy and Company, AIR 1950 PC 90, approved the view taken by Chagla A.C.J., and held inter alia that " it is not necessary for the plaintiff to produce the money or vouch a concluded scheme for financing the transaction to prove his readiness and willingness."

29. The following observations of the Privy Council are apposite:

> "21.....Their Lordships agree with this conclusion and the grounds on which it was based. It is true that the plaintiff 1 stated that he was buying for himself, that he had not sufficient ready money to meet the price and that no definite arrangements had been made for finding it at the time of repudiation. But in order to prove himself ready and willing a purchaser has not necessarily to produce the money or to vouch a concluded scheme for financing the transaction. The question is one of fact, and in the present case the Appellate Court had ample material on which to found the view it reached. Their Lordships would only add in this connection that they fully concur with Chagla A.C.J. when he says:

> "In my opinion, on the evidence already on record it was sufficient for the court to come to the conclusion ' that plaintiff 1 was ready and willing to perform his part of the contract. It was not necessary for him to ' work out actual figures and satisfy the court what specific amount a bank would have advanced on the mortgage of his property and the pledge of these shares. I do not think that any jury--if the matter was left to the jury in England--would have come to the conclusion that a man, " in the position in which the plaintiff was, was not ready and willing to pay the purchase price of the shares which he had bought from defendants 1 and 2."
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> For the foregoing reasons, their Lordships answer question(4) in the affirmative."(Emphasis supplied)

30. This Court in Sukhbir Singh & Ors. v. Brij Pal Singh & Ors., AIR 1996 SC 2510=(1997) 2 SCC 200 followed the aforesaid principle with these words:

> "5. Law is not in doubt and it is not a condition that the respondents should have ready cash with them. The fact that they attended the Sub-Registrar's office to have the sale deed executed and waited for the petitioners to attend the office of the Sub-Registrar

> is a positive fact to prove that they had necessary funds to pass on consideration and had with them the needed money with them for payment at the time of registration. It is sufficient for the respondents to establish that they had the capacity to pay the sale consideration. It is not necessary that they should always carry the money with them from the date of the suit till the date of the decree. It would, therefore, be clear that the courts below have appropriately exercised their discretion for granting the relief of specific performance to the respondents on sound principles of law."

33. Reliance was also placed on the decision of Hon'ble Supreme Court in case of **Gaddipati Divija v. Pathuri Samrajyam** reported in 2023 (6) Scale 331 wherein the Hon'ble Apex Court considered the provision of section 16(c) of the Specific Relief Act, 1963 and more particularly, Explanation (ii) below clause(c) prior to 2018 amendment to submit that the plaintiff was entitled for specific performance of contract if he avers and

proves that he has performed or has always been ready and willing to perform his obligation under the contract. The explanation attached to clause (c) clarifies that in a contract involving the payment of money, the plaintiff need not actually deposit the money to the defendant, and that he must aver that he has performed, or is ready and willing to perform the contract according to its true construction. Reliance was placed on para nos. 22 to 24 and 30 which read as under:

> "**22.** We have carefully considered the rival contentions of the learned Senior Counsel appearing for the parties and perused the entire records. The only issue involved in the instant appeal before us is:- Whether the High Court was justified in allowing Respondent No. 1's appeal and decreeing the suit for specific performance, by holding that the deceased G. Venugopala Rao and his legal heirs (including the Appellants herein) failed to perform their obligation with regard to getting the property measured and demarcated, while Respondent No. 1 herein was always ready and willing

to perform her part of contract by paying the balance sale consideration-

23. At the outset, we would like to mention that Section 16 (c) of the Specific Relief Act, 1963 (along with its explanation) is the relevant provision of law which is attracted in the present case, and as has also been held by the High Court. The 2018 Amendment to the Specific Relief Act made certain amendments to Section 16 as well. However, it has been clarified in the recent 3-Judge Bench judgment of this Court in Katta Sujatha Reddy v. Siddamsetty Infra Projects (P) Ltd. & Ors., (2023) 1 SCC 355 that the 2018 Amendment was not a mere procedural enactment, but it had substantive principles built into its working, and, as such, the said Amendment is prospective in nature and cannot apply to those transactions that took place prior to its enforcement. Therefore, in the present case, Section 16, as it stood prior to the 2018 Amendment, would be applicable, since the matter dates back to 2002. Section 16 (as it then stood) is being reproduced hereunder:-

> "16. Personal bars to relief.- Specific performance of a contract cannot be enforced in favour of a person-
>
> (a) who would not be entitled to recover compensation for its breach; or
>
> (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 wilfully acts at variance with, or in subversion of, the relation intended to be established by the contract; or

(c) who fails to aver and 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 of the performance of which has been prevented or waived by the defendant.

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

(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 must aver performance of, or readiness and willingness to perform, the contract according to its true construction."

24. On a bare perusal of the aforementioned section, it becomes clear that prior to the 2018 Amendment, clause (c) of Section 16 laid down that the plaintiff is entitled for a specific performance of contract if he avers and proves

> that he has performed or has always been ready and willing to perform his obligation under the contract. The explanation attached to clause (c) further clarified that in a contract involving the payment of money, the plaintiff need not actually deposit the money to the defendant, and that he must aver that he has performed, or is ready and willing to perform the contract according to its true construction."

34. Reliance was placed on the decision of Hon'ble Supreme Court in case of **Nadiminti Suryanarayan Murthy (Dead) Through Legal Representatives v. Kothurthi Krishna Bhaskara Rao and others** reported in (2017) 9 Supreme Court Cases 622, in support of the submission that once bona fide agreement to sale is proved by the plaintiff then the next question is whether the plaintiff was able to prove that he was ready and willing to perform his part of the agreement and that he has always been ready and willing to perform his part of the agreement and has in fact

performed his part and secondly, whether any breach is committed by the defendant in not performing his part has to be considered as per the provisions of section 16(c) of the Specific Relief Act. It was therefore, submitted that in facts of the case before the Apex Court, it was held that once the plaintiff was ready and willing to perform his part of agreement, suit ought to have been decreed in favour of the plaintiff and against the defendant.

35. Reliance was placed on the decision of Hon'ble Apex Court in case of **Motilal Jain v. Ramdasi Devi (Smt) and others** reported in (2000) 6 Supreme Court Cases 420, wherein Hon'ble Apex Court in facts of the case held as under:

> "**9.** That decision was relied upon by a three Judges Bench of this Court in Syed Dastagir's case (supra), wherein it was held that in

construing a plea in any pleading, Courts must keep in mind that a plea is not an expression of art and science but an expression through words to place fact and law of one's case for a relief. It is pointed out that in India most of the pleas are drafted by counsel and hence they inevitably differ from one to the other; thus, to gather true spirit behind a plea it should be read as a whole and to test whether the plaintiff has performed his obligations, one has to see the pith and substance of the plea. It was observed, "Unless a statute specifically requires a plea to be in any particular form, it can be in any form. No specific phraseology or language is required to take such a plea. The language in Section 16(c) of the Specific Relief Act, 1963 does not require any specific phraseology but only that the plaintiff must aver that he has performed or has always been and is willing to perform his part of the contract." So the compliance of "readiness and willingness" has to be in spirit and substance and not in letter and form." It is thus clear that an averment of readiness and willingness in the plaint is not a mathematical formula which should only be in specific words. If the averments in the plaint as a whole do clearly indicate the readiness and willingness of the plaintiff to fulfil his part of the obligations under the contract which is subject-matter of the suit, the fact that

> they are differently worded will not militate against the readiness and willingness of the plaintiff in a suit of specific performance of contract for sale.
>
> **10.** In the instant case a perusal of paras 6 to 11 of the plaint do clearly indicate the readiness and willingness of the plaintiff. The only obligation which he had to comply with was payment of balance of consideration. It was stated that he demanded the defendant to receive the balance of consideration of Rs. 8000.00 and execute the sale deed. The defendant was in Patna (Bihar) at the time of notices and when he came back to his place the plaintiff filed the suit against him. In support of his case, he adduced the evidence of PW 1 and PW 2. The plaintiff had parted with two-third of the consideration at the time of execution of Ext. 2. There is no reason why he would not pay the balance of one-third consideration of Rs. 8,000.00 to have the property conveyed in his favour."

36. It was therefore submitted that once the defendant has failed to perform his part of the contract, the trial Court ought to have decreed the suit in favour of the plaintiff.

37. Reliance was placed on decision of

Hon'ble Apex Court in case of **Beemaneni Maha Lakshmi v. Gangumalla Appa Rao (Since Decd) By Legal Representatives** reported in (2019) 6 Supreme Court Cases 233 wherein Hon'ble Supreme Court in para no.10 to 12 held that when vendor fails to perform his part of contract, failure of vendee to demonstrate that he was having sufficient money with him to pay the balance consideration as per the agreement on date of his evidence is not much of consequence.

38. Learned advocate Mr. Shah submitted that expression "date" used in Article 54 of the Limitation Act, 1963 is suggestive of a specified date in the Calendar. It was therefore, submitted that Article 54 of the Limitation Act read with section 38 of the Specific Relief Act, meaning of word "date" and "fixed" would have to be considered to be a specified date in the calendar and as such,

in facts of the case once the defendant has not performed the agreement to sale by executing the sale deed in favour of the plaintiffs on completion of 6 years as agreed on 21.4.1991 agreement (Exh.109), the suit was filed within three years in the year 1999 from the specified date i.e. 21.04.1997. In support of his submission, reliance was placed on the decision of Hon'ble Supreme court in case of **Ahmmadsahab Abdul Milla (Dead) By Proposed Lrs. Versus Bibijan** reported in 2009(5) SCC 462 wherein Hon'ble Apex Court has held as under:

> "**5.** According to Advanced Law Lexicon by P. Ramanatha Aiyar, 3rd Edition 2005, the word `date' means as follows:
>
> > "Date. (As a noun) The point of time at which a transaction or event takes place; time given or specified; time in some way ascertained and fixed; in a deed, that part of the deed or writing which expresses the day of the month and year in which it was made, (2 Bl. Commn. 304; Tomlin). In Bement V/s. Trenton Locomotive, etc.,Mfg. Co., 32

NLJ 513 (515), it is said : `The primary signification of the word date, is not time in the abstract, nor time taken absolutely but, as its derivation plainly indicates, time given or specified time in some way ascertained and fixed; this is the sense in which the word is commonly used. When we speak of the date of a deed, we do not mean the time when it was actually executed but the time of its execution, as given or stated in the deed itself.

"Where a deed bears no date, or an impossible date, and in the deed reference is made to the `date', that word must be construed `delivery'; but if the deed bears a sensible date, the word `date', occurring in the deed, means the day of the date, and not that of the delivery" (Elph. 123, citing Styles V/s. Wardle, 4 B&C 908;

"Date", though sometimes used as the shortened form of "day of the date", is not its synonym; but mean the particular time on which an instrument is given, executed, or delivered (Howard's Case, 1 Raym. Ld 480; Armitt V/s. Breame, 2 Raym Ld 1076; Pewtress v Annan, 9 Dowl 828, at pp. 834, 835).

"The word `date' is much more commonly descriptive of a day than of any smaller division of time" (per Simpson V/s.

Marshall, 37 SLR 316).

"Date" means day, so that where a cover note providing for temporary insurance of a motor car expires "15 days after date of commencement" it runs for the full 15 days after the day on which it was to commence (Cartwright V/s. Mac Cormack; Trafalgar Insurance Co. (Third Party), 1963 1 WLR 18)."

6. `Fixed' in essence means having final or crystallized form or character not subject to change or fluctuation.

7. The inevitable conclusion is that the expression `date fixed for the performance' is a crystallized notion. This is clear from the fact that the second part "time from which period begins to run" refers to a case where no such date is fixed. To put it differently, when date is fixed it means that there is a definite date fixed for doing a particular act. Even in the second part the stress is on `when the plaintiff has notice that performance is refused'. Here again, there is a definite point of time, when the plaintiff notices the refusal. In that sense both the parts refer to definite dates. So, there is no question of finding out an intention from other circumstances. Whether the date was fixed or not the plaintiff had notice that performance is refused and the date thereof are to be established with reference to

> materials and evidence to be brought on record. The expression `date' used in Article 54 of the Schedule to the Act definitely is suggestive of a specified date in the calendar. We answer the reference accordingly. The matter shall now be placed before the Division Bench for deciding the issue on merits.”

39. Reliance was also placed on decision of Hon’ble Apex Court in case of **Madina Begum Versus Shiv Murti Prasad Pandey** reported in 2016 (15) SCC 322, wherein the Apex Court has held as under:

> **15.** In coming to the conclusion that the suit was barred by time, the High Court considered Article 54 of Schedule 1 of the Limitation Act, 1963 (for short, "the Act"). The discussion thereon was brief and it reads as follows:-
>
> > "Under Article 54 of the Limitation Act, the prescribed period of limitation for filing a suit of specific performance of a contract is three years and the period of three years has to be calculated based on two contingencies i.e. the date fixed for performance of the contract or if no such date is fixed, the date when the plaintiffs had notice about refusal of the performance by

> the defendants. In this case, admittedly, a date for performance is fixed i.e. six months from the date of execution of the contract and, therefore, as a specific period for performance is fixed, the period of limitation would be three years w.e.f. 3.03.2002 i.e. the date when the period of six months for execution of the sale-deed lapsed."
>
> XXX
>
> **17.** The interpretation of the first part of Article 54 of Schedule 1 of the Act is no longer res-integra. Article 54 reads as follows:-

54.	For specific performance of a contract	Three years	The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.

> XXX
>
> **20.** Quite independently and without reference to the aforesaid decision, another Bench of this Court in Rathnavathi and Another v. Kavita Ganashamdas, (2015) 5 SCC 223 came to the same conclusion. It was held in paragraph 42 of the Report that a mere reading of Article 54 would show that if the date is fixed for the performance of an agreement, then non-compliance with the agreement on the date would give a cause of action to

> file a suit for specific performance within three years from the date so fixed. But when no such date is fixed, the limitation of three years would begin when the plaintiff has notice that the defendant has refused the performance of the agreement. It was further held, on the facts of the case that it did not fall in the first category of Article 54 since no date was fixed in the agreement for its performance.
>
> xxx
>
> **22.** As far as the present appeal is concerned, the agreement between Gulab Bai and Madina Begum did not specify a calendar date as the date fixed for the performance of the agreement. Consequently, the view expressed in Ahmadsahab Abdul Mulla and Rathnavathi on the first part of Article 54 clearly applies to the facts of the case. In taking a contrary view, ignoring the absence of a specified date for the performance of the agreement and reversing the Trial Court, the High Court has fallen in error."

40. It was further contended that land situated at Survey No.26/1 admeasuring 14 guntha was subjected to consent of other brothers of the defendant and removal of their names from the revenue record. It was

submitted that with regard to the contention raised on behalf of the defendant that the defendant has no right to sell the land bearing Revenue Survey No.26/1 as it is hit by section 7 of the Gujarat Prevention of Fragmentation and Consolidation of Holdings Act,1947, it was submitted that section 20 of the Specific Relief Act confers equitable jurisdiction upon the Trial Court and conditional decree could have been passed by the trial Court on regularisation of the land situated at Revenue Survey No.26/1 which is adjacent to Revenue Survey No.25 and on consolidation of the lands under the provisions of the relevant Act, the defendant ought to have been directed to execute the sale deed.

41. In support of his submission, reliance was placed on the following decisions:

1) **Kartar Singh Versus Harjinder Singh** reported in 1990 (3) SCC 517, wherein it is held as under:

> "**4.** We are afraid that the very foundation of the. reasoning of the Division Bench of the High Court is defective. It was never disputed that the respondent and his sister had each half share in the suit properties. Hence a mere failure to mention in the agreement that they had such share in the property would not entitle one to come to the conclusion that they did not have that share. When the property is owned jointly, unless it is shown to the contrary, it has to be held that each one of the joint owners owns a moiety of the property. In the present case, there is neither a pleading nor a contention that the respondent and his sister did not own the property in equal shares. Secondly, the agreement of sale clearly mentions that respondent was entering into the agreement both on behalf of himself and his sister, and that he was, under the agreement, selling the whole of his share and also the whole of the share of his sister in the property. Further in the agreement itself he had stated that he was responsible to get the sale-deed executed by his sister and that he would pursuade her to do so. This being the case, the properties agreed to be sold were clearly distinguishable by the

> shares of the respective vendors. In the circumstances when the absentee vendor, for some reason or the other, refused to accept the agreement, there is no reason why the agreement should not be enforced against the vendor who had signed it and whose property is identifiable by his specific share.
>
> **5.** We are, therefore, of the view that this is not a case which is covered by sec. 12 of the Act. It is clear from sec. 12 that it relates to the specific performance of a part of a contract. The present is not a case of the performance of a part of the contract but of the whole of the contract so far as the contracting party, namely, the respondent is concerned. Under the agreement, he had contracted to sale whole of his property. The two contracts, viz. for the sale of his share and of his sister's share were separate and were severable from each other although they were incorporated in one agreement. In fact, there was no contract between the appellant and the respondent's sister and the only valid contract was with respondent in respect of his share in the property."

2) **Hanumappa Channappa Hullur (D) By Lrs. Versus Shivamaruthappa Parappa Kalli** reported in 2015 (9) Scale 328, wherein it is held as

under:

> **"14.** In Kammana Sambamurthy Vs. Kalipatnapu Atchutamma case (supra) this Court was concerned with a case where vendor-husband and his wife had each half share in the suit property and the agreement for the sale was executed by the vendor-husband concerning the entire suit property. The question arose as to whether the agreement be enforced against the vendor-husband to the extent of his half share in the property. This Court relying on the decision in Kartar Singh Vs. Harjinder Singh [(1990) 3 SCC 517] and the decision in A. Abdul Rashid Khan's case (supra) held that the vendee is not entitled to seek specific performance of the agreement to the extent of half share of the vendor's wife and there is no impediment for enforcement of the agreement against the vendor-husband to the extent of his half share in the property."

3) **Kammana Sambamurthy (D) By Lrs. Versus Kalipatnapu Atchutamma (D)** reported in 2011 (11) SCC 153, wherein it is held as under:

> "**19.** The crucial question in the case is whether the agreement could be enforced against the vendor to the extent of his half share in the property. The terms of the agreement show that the vendor represented to the vendee that he was absolute

owner of the property that fell to his share in the partition effected with his brothers and he did not have any male child. The vendor assured the vendee that excepting him none has got any right over the property and he would obtain the witness signatures of his daughters and get their voluntary consent letters in his favour. It is clear from the evidence that the vendee had no knowledge that vendor's wife has half share in the property which devolved upon her on the death of her son intestate.

21. Section 12 prohibits specific performance of a part of a contract except in the circumstances under sub-sections (2), (3) and (4). The circumstances mentioned in these sub-sections are exhaustive. Is Section 12 attracted in the facts and circumstances of the present case- We do not think so. The present case is not a case of the performance of a part of the contract but the whole of the contract insofar as the vendor is concerned since he had agreed to sell the property in its entirety but it later turned out that vendor had only half share in the property and his wife held the remaining half. The agreement is binding on the vendor as it is without being fractured. As regards him, there is neither segregation or separation of contract nor creation of a new contract. In Kartar Singh V/s. Harjinder Singh & Ors.1, this Court

was concerned with a case where vendor--brother and a sister had each half share in the suit properties. The agreement for the sale was executed by the brother concerning the suit properties in which the sister had half share. The sister was not executant to the agreement; rather she refused to accept the agreement. The question for consideration before this Court was whether agreement could be enforced against the vendor--brother to the extent of his half share. This Court considered Section 12 and held as under :

> "5. We are, therefore, of the view that this is not a case which is covered by Section 12 of the Act. It is clear from Section 12 that it relates to the specific performance of a part of a contract. The present is not a case of the performance of a part of the contract but of the whole of the contract so far as the contracting party, namely, the respondent is concerned. Under the agreement, he had contracted to sell whole of his property. The two contracts, viz. for the sale of his share and of his sister's share were separate and were severable from each other although they were incorporated in one agreement. In fact, there was no contract between the appellant and the respondent's sister and the only valid contract was with respondent in

> respect of his share in the property.
>
> 6. As regards the difficulty pointed out by the High Court, namely, that the decree of specific performance cannot be granted since the property will have to be partitioned, we are of the view that this is not a legal difficulty. Whenever a share in the property is sold the vendee has a right to apply for the partition of the property and get the share demarcated. We also do not see any difficulty in granting specific performance merely because the properties are scattered at different places. There is no law that the properties to be sold must be situated at one place. As regards the apportionment of consideration, since admittedly the appellant and respondent's sister each have half share in the properties, the consideration can easily be reduced by 50 per cent which is what the first appellate court has rightly done."

22. Kartar Singh has been followed by this Court in Manzoor Ahmed Magray V/s. Ghulam Hassan Aram & Ors. In Manzoor Ahmed Magray, this Court considered the matter in the context of Section 15 of J & K Specific Relief Act, 1977 which is pari materia to Section 12 of Specific Relief Act, 1963 . This Court said :

".....Hence, there is no bar for passing the decree for specific relief with regard to 1/3rd or 2/3rds share owned by the contracting party for which he can execute the sale deed. For the share of Ghulam Rasool (brother of Defendant 1) admittedly, no decree is passed by the High Court. Dealing with the similar contention where agreement was for sale of property belonging to a brother and sister each having a half share, the Court in Kartar Singh V/s. Harjinder Singh held that when the absentee vendor, for some reason or the other refused to accept the agreement, there is no reason why the agreement should not be enforced against the vendor who had signed and his property is identifiable by specific share. The Court further held that such case is not covered by Section 12 of the Specific Relief Act, 1963 which relates to specific performance of a part of a contract. Such type of case would be the case of specific performance of the whole of the contract so far as the contracting party is concerned. Further, whenever a share in the property is sold the vendee has the right to apply for the partition of the property and get the share demarcated. Hence there would not be any difficulty in granting specific performance of

the contract to the extent to which it is binding between the parties."

23. In the case of A. Abdul Rashid Khan (Dead) & Ors. V/s. P.A.K.A. Shahul Hamid & Ors.3, this Court held that even where any property is held jointly and once any party to the contract has agreed to sell such joint property by agreement, then, even if the other co-sharer has not joined, at least to the extent of his share, the party to the contract is bound to execute the sale deed. In that case, the suit property originally belonged to one Aziz Khan. On his death, his heirs under the Muslim law--nine sons and two daughters inherited that property. The sons agreed to sell that property to the first respondent therein. However, some dispute arose between the parties and that necessitated the first respondent therein to file the suit for specific performance in which the executants of the agreement as well as the two daughters of Aziz Khan were impleaded as defendants. It was admitted case that the daughters of Aziz Khan had not joined in the agreement of sale. The trial court dismissed the suit by holding that the agreement was indivisible and could only be enforced if the daughters of Aziz Khan agreed. The first respondent therein preferred an appeal before the High Court against the judgment and decree of the trial court. The High Court held that he had not pleaded and proved

that the daughters of Aziz Khan had agreed to sell the suit property and hence, it cannot be held that the said agreement was by all the heirs of Aziz Khan. The two daughters of Aziz Khan were held not bound by the agreement. However, the High Court held that insofar as the executants of the agreement (sons of Aziz Khan) were concerned they were bound by it and valid and enforceable contract existed between the first respondent and the sons of Aziz Khan. The High Court, accordingly, granted decree for specific performance to the extent of 5/6th shares which Aziz Khan's sons had in the property. This Court affirmed the decree of the High Court and it was held that plaintiff's suit for specific performance to the extent of 5/6th share was rightly decreed by the High Court warranting no interference. While holding so, this Court relied upon earlier decision in the case of Manzoor Ahmed Magray.

24. In view of the above decisions of this Court and the facts and circumstances which have already been noticed by us, in our opinion, there is no impediment for enforcement of the agreement against the vendor to the extent of his half share in the property. However, Mr. A.T.M. Sampath, learned counsel for the vendor's wife placed great reliance upon HPA International V/s. Bhagwandas Fateh Chand Daswani & Ors., (2004) 6 SCC 537 and, particularly, the following paragraphs of the report.

"67. If the vendee intended to seek conveyance separately of the life interest of the vendor, the earliest opportunity for him was when he had received notice dated 11-9-1979 sent through the lawyer by the vendor cancelling the contract. Assuming that at that time he could not opt for lesser relief as the suit for sanction was pending, he could have, in any case, opted for conveyance of life interest of the vendor soon after he came to know of the negotiations for sale with Bob Daswani, which took place in the presence of one of the partners of the plaintiff vendee. Even after deriving the knowledge of the execution of the sale deed dated 29- 12-1979 Ext. D-1, the option to obtain lesser relief of transfer of life interest was not exercised. It was exercised as late as on 25-11-1986 by filing an affidavit and at the time when pleadings of the parties were completed and the joint trial in the two suits had already commenced. During long pendency of the suits between 1979 to 1986, the parties interested in the property changed their positions. The vendor by executing a registered sale deed in favour of the subsequent vendee got his public dues paid to relieve the pressure on the property and obtained market price of the

property. After obtaining possession of the property pursuant to the sale deed, the subsequent vendee has raised construction and inducted tenants. Accepting the legal stand based on Sections 90, 91 and 92 of the Indian Trusts Act that the subsequent vendee, being a purchaser with knowledge of prior agreement, is holding the property as a trustee for the benefit of the prior vendee, the vendor, who changed his position by effecting a subsequent sale cannot be compelled to convey his life interest when such lesser relief was not claimed at the earliest opportunity and the terms of the contract did not contemplate transfer of life interest alone."

98. The above argument has no merit and the aforesaid decision is hardly of any help to the vendee. This is not a case where the vendor had only right of spes successionis and after execution of agreement of sale, he subsequently acquired full interest in the property to be held bound by Section 43 of the Transfer of Property Act. In the case before us, the reversioners were not parties to the agreement of sale. When in the suit for sanction to transfer their interest they were made parties and were noticed, they expressly objected to the

> proposed transfer. No principle of estoppel or provisions of Section 43 of the Transfer of Property Act can, therefore, operate against them. So far as the subsequent vendee is concerned, in the course of suit, he was pushed to a position in which he could not take a stand that he had no knowledge of the prior agreement with the vendee but he has separately purchased life interest from the vendor and obtained separate release deeds, on payment of consideration, from the reversioners. The reversioners being not parties to the sale agreement, Ext. P-1 entered into with the vendee, the latter could not enforce the contract, Ext. P-1 against the former."

It is sufficient to say that the agreement of sale and the facts which their Lordships had to consider in the case of HPA International were in many respects different from the agreement in the present case. In that case vide agreement of sale (Exhibit P1) therein, full interest in the property, i.e. life interest of the vendor and spes successionis of reversioners with sanction of the court was agreed to be sold. The reversioners were not parties to the sale agreement that was entered with the vendee therein. The parties were conscious that the vendor had only life interest in the property and he

could not convey more than his own interest. The court found that vendee entered into a speculative deal for obtaining full interest in the property depending upon the sanction to be granted by the court. In the backdrop of these facts, this Court observed in paragraphs 68, 69 and 70 of the report thus :

> "68. On duly appreciating the evidence on record, construing specific terms of the contract and considering the conduct of the parties, we have arrived at the conclusion that the rescission of the contract, due to non-grant of sanction by the Court within two years after execution of the contract and filing of the suit for sanction, was not an act of breach of contract on the part of the vendor to justify grant of relief of specific performance of the contract to the prior vendee.
>
> 69. We are also of the view that the plaintiff vendee, by his own act in the pending suits, was responsible for rendering the suit for sanction as infructuous. He was guilty of lapse in not seeking conveyance of life interest of the vendor at the earliest opportunity when notice of rescission of the contract was received by him and later when he derived the knowledge of execution of registered sale deed in favour of the subsequent vendee. The

> option was exercised conditionally in the midst of the joint trial of the two suits.
>
> 70. There was one integrated and indivisible contract by the vendor to convey full interest in the property i.e. his own life interest and the interest of the reversioners with sanction of the Court. As the Court had not granted the sanction, the contract could not be specifically enforced. The lesser relief of transfer of life interest was not claimed within a reasonable time after the vendor had intimated that the contract, as agreed for full interest, was not possible of performance. We find that neither equity nor law is in favour of the plaintiff vendee."

The Court further observed in paragraph 100 of the report as follows :

> "100. In the case before us, we have not found that the vendor was guilty of rendering the suit for sanction infructuous. It did terminate the contract pending the suit for sanction but never withdrew that suit. The vendee himself prosecuted it and rendered it infructuous by his own filing of an affidavit giving up his claim for the interest of reversioners. In such a situation where the vendor was not in any manner

> guilty of not obtaining the sanction and the clause of the contract requiring the Court's sanction for conveyance of full interest, being for the benefit of both the parties, the contract had been rendered unenforceable with the dismissal of the sanction suit."
>
> HPA International, thus, have no considerable bearing on the case in hand."

4) **Van Vibhag Karamchari Griha Nirman Sahkari Sanstha Maryadit (Regd.) Versus Ramesh Chander** reported in 2011 (0) AIR(SC) 41, wherein it is held as under:

> **"31.** In fact, a suit for Specific Performance could have been easily filed subject to the provision of Section 20 of the Ceiling Act. Similar questions came up for consideration before a Full Bench of Gujarat High Court in the case of Shah Jitendra Nanalal V/s. Patel Lallubhai Ishverbhai [AIR 1984 Guj 145]. The Full Bench held that a suit for Specific Performance could be filed despite the provisions of the Ceiling Act. A suit for Specific Performance in respect of vacant land in excess of ceiling limit can be filed and a conditional decree can be passed for Specific Performance, subject to exemption being obtained under Section 20 of

> the Act. (Paras 11- 13)
>
> **32.** We are in respectful agreement with the views of the Full Bench in the abovementioned decision and the principles decided therein are attracted here."

42. Referring to the above decisions, it was submitted that out of total consideration as agreed upon between the parties at the time of execution of agreement to sale for purchase of the suit land at the rate of Rs.1,45,000/- per vigha, the plaintiffs have already paid Rs.8,90,000/- out of total consideration of Rs.20,30,000/- i.e. more than 43% of the total amount of sale consideration which clearly shows the readiness and willingness of the plaintiffs to perform their part of agreement to sale.

43. It was submitted that the Trial Court has wrongly placed reliance on the photocopy of document at temporary Exh.130 dated 05.02.1991 whereby amount of Rs.2,00,000/-

was paid back to the plaintiffs by the defendant. It was submitted that no original proof or document was produced before the trial Court to show the same and therefore, the trial Court could not have referred to and relied upon such documents.

44. It was further submitted that the defendant in caveat application has admitted the fact of execution of agreement to sale between the parties and even if the document at temporary Exh.130 is to be considered without the original being produced alleging the returning of amount by the defendant to the plaintiffs, it clearly shows that consideration was paid by the plaintiffs to the defendant, part of which is alleged to have been returned. It was therefore, submitted that the trial Court has committed an error in coming to the conclusion that agreement to sale is not proved by the

plaintiffs.

45. Learned Senior Advocate Mr.Mehul Shah submitted that the trial Court has answered issue nos. 2 and 3 in the affirmative to the effect that there was an execution of agreement to sale between the parties on 26.09.1990 for a consideration of Rs. 1,45,000/- per vigha for the suit land and as such, the trial Court could not have answered the same issue by giving two separate findings when the signature is proved at Exh. 108 and the trial Court has held that the defendant has executed the sale deed and on the other hand, the trial Court has arrived at finding that payment of part consideration by the plaintiffs is not proved. It was therefore, submitted that in view of settled legal position unless and until when contrary is proved, the Court shall presume in favour of the plaintiffs and breach of contract to

transfer immovable property cannot be adequately removed by compensation in terms of money.

46. It was submitted that decree of specific performance ought to have been passed in favour of the plaintiff as per the provisions of section 10 of the Specific Relief Act, 1963.

47. It was submitted that the trial Court has wrongly placed reliance on section 17 of the Specific Relief Act which provides that a contract to sell or let out any immovable property cannot be specifically enforced in favour of a vendor or lessor who knowing not to have any title to the property, has contracted to sell or let the property or who though entered into the contract believing that he had a good title to the property, cannot at the time fixed by the parties or by

the Court for the completion of the sale or letting, give the purchaser or lessee a title free from reasonable doubt. It was submitted that agreement to sale was for two pieces of suit land and the defendant has not taken any defence regarding his efforts for making a clear title and ownership of the suit land.

Submissions of the Respondent-defendant

48. On the other hand, learned Senior Advocate Mr. Deven Parikh submitted that the plaintiffs have made averment in the plaint that a cash receipt dated 24.09.1990 (Exh.107) was executed in his favour. However, same was denied by the defendant in the written statement and also the signature on such cash receipt is denied and the plaintiffs have failed to prove these documents through any oral or written evidence and in the cross examination also

admitted that the signature of the defendant on the cash receipt (Exh.107) and agreement to sale dated 26.06.1990 (Exh.108) were different. It was further submitted that name of the person in whose favour cash receipt was issued was not mentioned. Hence such cash receipt is concocted document as the defendant has never received Rs. 1,90,000/- as alleged by the plaintiffs.

49. It was submitted that though the agreement to sale dated 26.09.1990 was executed by the defendant and was admitted in the written statement as well as caveat filed by the defendant, however terms and conditions of the execution of the sale deed was for 15 months from the date of execution of the agreement to sale which was not adhered to by the plaintiffs and no steps were taken to perform the part of the agreement to sale by the plaintiffs and after

9 years on 27.11.1997 the plaintiffs have issued a public notice (Exh.106) with no particulars such as name of owners of the land in question or reference to the agreement to sale dated 26.09.1990.

50. It was further submitted that the Trial Court has therefore, rightly compared the signatures of the defendant in Exh.107 and Exh.109 and has come to just and proper conclusion that signatures are different so as to hold that the plaintiffs have failed to prove Exh.109 for extension of time of 6 years for execution of the sale deed.

51. It was submitted that main contention of the plaintiffs that agreement to sale dated 26.09.1990 (Exh.108) was further extended by 6 years by subsequent agreement on 21.04.1991 (Exh.109) has been denied by the defendant and the plaintiffs have failed to prove the

same through oral or documentary evidence. It was submitted that witness of the plaintiffs Mansukh Chhaganbhai Tank (Exh.103), (Exh.104) (Exh.105) who according to the plaintiffs had signed as witness in such agreement for extension and who was alleged to have been present at the time of execution of the agreement for extension, has not supported the case of the plaintiffs and the plaintiffs has not sought permission to declare him hostile and accordingly, he was not even reexamined by the plaintiffs. It was submitted that the plaintiffs in his cross examination at Exh.115 has also denied execution of any other document except agreement to sale dated 26.09.1990 (Exh.108) and therefore, the contention of the plaintiffs regarding subsequent execution of agreement for extension of time dated 21.04.1991 is not tenable. It was submitted that the plaintiffs have failed to prove that

the amount of Rs. 5,00,000/- was paid to the defendant on 21.04.1991.

52. It was submitted by learned Senior Advocate Mr. Parikh that reason assigned by the plaintiffs for execution of the agreement for extension of time on 21.04.1991 that the loan amount was due on property in question and hence the amount of Rs.5,00,000/- was paid to clear the title of the property, is also incorrect as the plaintiffs before creating such concocted document to bring the suit within the limitation have failed to check the revenue entries of the property in question because as per Entry No.2113 dated 04.02.1991 (Exh.98), no dues on the property in question at the time of alleged execution of the agreement to sale was outstanding. It was therefore, submitted that the averments made in the pleadings as well as Exh.109 agreement for extension are concocted

documents. It was therefore, submitted that the Trial Court has rightly come to the conclusion that the plaintiffs have failed to prove Exh.109 agreement for extension of time.

53. It was further submitted that the suit property was re-conveyed to the defendant by separate agreement dated 05.02.1991 (Exh.130) and signature on the same was admitted by both the plaintiffs in the cross examination at Exh.76 and Exh.115 respectively and the same is also admitted by the witness of the plaintiffs namely Mansukh Chhaganbhai Tank (Exh.103) in his cross examination. It was therefore, submitted that the suit was filed only on basis of agreement for extension (Exh.109) concocted by the plaintiffs.

54. It was submitted that the plaintiffs have failed to bring on record any document

which suggest that the plaintiffs were ready and willing and to perform part of their agreement which was basic requirement before decree for specific performance can be passed. It was therefore, submitted that appeal being devoid of any merit is liable to be dismissed.

55. Learned Senior Counsel Mr. Parikh for the respondent placed reliance on decision in case of **U.N. Krishnamurthy (Since deceased) thr. Lrs. v. A.M. Krishnamurthy** (Judgment dated July, 12, 2022 rendered in Civil Appeal No.4703 of 2022 arising out of SLP(C) No.19463 of 2018) to submit that it is well settled that in a suit for Specific Performance of an agreement, it is for the plaintiff to prove his readiness and willingness to perform his obligations under the agreement. It was pointed out that where a certain amount has been paid in advance and

the balance is required to be paid within a stipulated time, it is for the plaintiff to show that he was in a position to pay the balance money and the plaintiff has to prove that he has the money or has alternatively made necessary arrangements to get the money for payment of consideration. The Hon'ble Apex Court has held as under:

> "21. It is well settled that, in a suit for Specific Performance of an agreement, it is for the Plaintiff to prove his readiness and willingness to perform his obligations under the agreement. Where a certain amount has been paid in advance and the balance is required to be paid within a stipulated time, it is for the Plaintiff to show that he was in a position to pay the balance money. The Plaintiff has to prove that he has the money or has alternatively made necessary arrangements to get the money. In this case, the Original Defendant/Appellants have all along contended that the Plaintiff Respondent neither offered to pay nor was in a position to pay the balance consideration of Rs.15,00,000/-.
>
> XXX
>
> 25. To aver and prove readiness and

> willingness to perform an obligation to pay money, in terms of a contract, the plaintiff would have to make specific statements in the plaint and adduce evidence to show availability of funds to make payment in terms of the contract in time. In other words, the plaintiff would have to plead that the plaintiff had sufficient funds or was in a position to raise funds in time to discharge his obligation under the contract. If the plaintiff does not have sufficient funds with him to discharge his obligations in terms of a contract, which requires payment of money, the plaintiff would have to specifically plead how the funds would be available to him. To cite an example, the plaintiff may aver and prove, by adducing evidence, an arrangement with a financier for disbursement of adequate funds for timely compliance with the terms and conditions of a contract involving payment of money."

56. It was therefore, submitted that in facts of the case, the plaintiffs have failed to prove that they were ready and willing to perform their part of contract by payment of balance amount of sale consideration to the defendant within the time period of 15 months

from the date of execution of agreement to sale.

57. Learned Senior Advocate Mr. Parikh also placed reliance upon the decision of Hon'ble Supreme Court in case of **Shehbagam and ors.v. K.K. Rathinavel** (Judgment dated January 20, 2022 rendered in Civil Appeal No.150 of 2022), wherein Hon'ble Apex Court after considering the settled legal position has held as under:

> "29 We shall now advert to the respondent's conduct throughout the sale transaction. The respondent has failed to provide any documents or communication which would indicate that he called upon the appellants to perform their obligations or discharge the mortgage within the time period stipulated in the contract. Even after the expiry of the six months, the respondent did not reach out to the appellants. It is only in response to the appellant's legal notice that the respondent demanded performance of their obligations. Merely averring that he was waiting with the balance consideration and believed that the appellants would clear the encumbrance is insufficient to prove

that the respondent-plaintiff was willing to perform his obligations under the contract.

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31 The “readiness” of the respondent to perform his obligations refers to whether he was financially capable of paying the balance consideration. Both thetrial court and the first appellate court have observed that the respondent was ready to pay the balance consideration as (i) he was paying income tax since 1988 and (ii) his bank passbooks indicate that he had sufficient funds. The payment of income tax by itself does not show that the respondent had sufficient resources to pay for the suit property. Moreover, the bank passbooks submitted in evidence by the respondent were for accounts opened on 11 March 1992 and 22 July 1994, that is, after the expiry of the period written in the contract. The first appellate court despite noting this, has chosen to hold that the respondent was ready and willing to perform the agreement. The respondent however did not lead any evidence to indicate that in the year 1990 he had the money to pay the balance consideration. The first appellate court shifted the burden on the appellants to prove that the respondent-plaintiff was incapable of paying the balance consideration. It is an established principle of law that the plaintiff must prove that he is ready and willing to perform the contract. The burden

lies on the plaintiff. The respondent has not led any evidence that he was ready or willing to perform his obligations under the agreement.

32. Even assuming that the respondent was willing to perform his obligations under the contract, we must decide whether it would be appropriate to direct the specific performance of the contract in this case. In Zarina Siddiqui v. A. Ramalingam [(2015) 1 SCC 705], a two-judge Bench of this Court while dealing with a suit for specific performance of a contract regarding the sale of immovable property observed that the remedy for specific performance is an equitable remedy and Section 20 of the Specific Relief Act confers a discretion on the Court. The Court held:

“24. It is well settled that remedy for specific performance is an equitable remedy. The court while granting decree of specific performance exercises its discretionary jurisdiction. Section 20 of the Specific Relief Act specifically provides that the Court's discretion to grant decree of specific performance is discretionary but not arbitrary. Discretion must be exercised in accordance with sound and reasonable judicial principles.”

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> 36. True enough, generally speaking, time is not of the essence in an agreement for the sale of immoveable property. In deciding whether to grant the remedy of specific performance, specifically in suits relating to sale of immovable property, the courts must be cognizant of the conduct of the parties, the escalation of the price of the suit property, and whether one party will unfairly benefit from the decree. The remedy provided must not cause injustice to a party, specifically when they are not at fault. In the present case, three decades have passed since the agreement to sell was entered into between the parties. The price of the suit property would undoubtedly have escalated. Given the blemished conduct of the respondent-plaintiff in indicating his willingness to perform the contract, we decline in any event to grant the remedy of specific performance of the contract. However, we order a refund of the consideration together with interest at 6% per annum."

58. Reliance was also placed on the decision in case of **Sukhwinder Singh v. Jagroop Singh & anr** (Judgment dated January 28, 2020 rendered in Civil Appeal No.760 of 2020) wherein it is held as under:

> "9. The suit being the one for

specific performance of the contract on payment of the balance sale consideration, the readiness and willingness was required to be proved by the plaintiff and was to be considered by the Courts below as a basic requirement if a decree for specific performance is to be granted. In the instant case though the defendant No.2 had denied the agreement as also the receipt of the earnest money, the same would not be of consequence as the agreement claimed by the plaintiff is with the defendant No.1 and the contention of the defendant No.2 to deny the same is without personal knowledge on that aspect. However, even in the absence of the defence put forth, the plaintiff was required to prove his readiness and willingness and that aspect of the matter was to be considered by the Courts below. In the present case though the plaintiff examined himself as PW1, as also PW2 and PW3, the document writer, and the witness to the agreement who stated with regard to the execution of the agreement, the evidence to prove the readiness and willingness with regard to the resources to pay the balance sale consideration is insufficient. In the absence of denial by the defendant No.1, even if the payment of Rs.69,500/ and the claim by the plaintiff of having gone to the office of Sub Registrar on 15.06.2004 is accepted, the fact as to whether the plaintiff had notified the defendant No.1 about he

> being ready with the balance sale consideration and calling upon the plaintiff to appear before the Sub-Registrar and execute the Sale Deed was required to be proved. From among the documents produced and marked as Exhibit P1 to P9 there is no document to that effect, more particularly to indicate the availability of the balance sale consideration as on 15.06.2004 and as on the date of filing the suit. Despite the same, merely based on the oral testimony of PW1, the Courts below have accepted the case put forth by the plaintiff to be ready and willing to complete the transaction."

Points for Determination:

1) Whether the Trial Court has correctly held that the plaintiffs have failed to prove that defendant had executed agreement to sell 14 Vigha of suit property to the plaintiffs on 24.09.1990 and accepted the amount of Rs.1,90,000/-?

2) Whether the Trial Court was justified in arriving at a conclusion that signature of

the defendant at Exh.107 and Exh.108 is different?

3) Whether the Trial Court was justified in holding that the plaintiffs have failed to prove that the plaintiffs have executed the additional document dated 21.04.1991 and have paid further amount of Rs.5,00,000/- by way of consideration by extending the time limit to 6 years?

4) Whether the Trial Court was right in holding that the plaintiffs were not ready and wiling to perform their part of the agreement to sale?

5) Whether the Trial Court was right in holding that the plaintiffs have proved that the defendant had no right, title or interest over the suit land?

6) Whether the Trial Court was justified in holding that the defendant has proved that agreement to sale dated 26.09.1990 was bogus and false?

7) Whether the Trial Court was justified in holding that Survey No.26/1 is a fragment land and therefore, no decree of specific performance can be granted in favour of the plaintiffs?

8) Whether the Judgment and Decree of the Trial Court suffer from any error of law or fact?

9) Whether the appellants are entitled to the relief sought in appeal?

Analysis

59. Having considered the submissions made by the learned advocates of both sides and

having perused the oral and documentary evidence led before the Trial Court, it emerges from the record that there was an agreement to sale dated 26.09.1990 (Exh.108) executed between the parties.

60. However, with regard to the averments made in the plaint that acknowledgment receipt was issued by the defendant on 24.09.1990(Exh.107) for an amount of Rs.1,90,000/- towards sale consideration, the Trial Court is justified in holding that the same is not proved by the plaintiffs, because, Dhirajlal Gordhanbhai Hadwani – plaintiff no.2 in his cross examination at Exh.77 has referred to the document dated 13.09.1990 which has been produced on record wherein it is agreed between the parties to give token money and execute an agreement to sale which was thereafter executed on 26.09.1990. It is further deposed by him that

no agreement was executed between 13.09.1990 and 26.09.1990. The plaintiffs have therefore, failed to prove the execution of acknowledgment receipt dated 24.09.1990 at Exh.107.

61. There is also inconsistency in the pleadings and documentary evidence led by the plaintiffs regarding payment of part consideration amounting to Rs.2,00,000/- referred to in Exh.108 agreement to sale dated 26.09.1990 and acknowledgment receipt of Rs.1,90,000/- as the Trial Court has rightly found that signatures of the defendant on both the documents are different. The plaintiffs have also failed to rebut the same in cross examination of the defendant (Exh.125) as no question is put with regard to the difference in signature and therefore, the Trial Court has rightly come to the conclusion that there is a

difference in signature in both the documents. Moreover, the plaintiff no.1 Jinabhai Kapadiya has also not stated that on which date he had paid Rs. 1,90,000/- to the defendant Hijibhai in spite of mentioning the fact of payment in his examination-in-chief at Exh.115. Even the witness of the defendant Kantilal Mahidas brother of the defendant has also denied that any consent was given for sale of land situated at Revenue Survey No.26/1. In his cross examination, the said witness has reiterated that no consent was given for sale of land of Revenue Survey No.26/1 which is a fragment land and the said land was never mortgaged.

62. Learned Trial Court has also rightly appreciated Exh.108 which contains no reference to payment of Rs.1,90,000/- nor the plaintiffs in cross examination have stated what amount was paid by them as reflected in

agreement to sale (Exh.108). There is no mention as to how much amount was paid by which plaintiff to the defendant in Exh.108 agreement to sale. Therefore, the Trial Court was justified in partly affirming with regard to extension of agreement to sale as it was admitted by the defendant in his affidavit in chief at Exh.125 that agreement at Exh.108 bears his signature and that sale deed was to be executed within 15 months.

63. With regard to the extension agreement dated 21.04.1991 (Exh.109) and further payment of Rs.5,00,000/- by the plaintiffs to the defendant and extension of time limit upto 6 years is concerned, the Trial Court has on comparison of the signature of the defendant on document at Exh.109 with the signature at document at Exh.107 and Exh.108 rightly held that the defendant has denied his signature on Exh.109 which is not

rebutted by the plaintiffs during the cross examination of the defendant.

64. It also appears from the pleadings and perusal of the documents placed on record that in order to bridge the gap between the execution of the agreement to sale on 26.09.1990 and filing of the suit in 1999, the plaintiffs have created the writing at Exh.109 without proving the same by leading documentary and oral evidence. The plaintiffs have tried to show continuation of transaction till the suit was filed as no prudent person would agree for extension of six years of time to execute the sale deed and making further payment of Rs.5,00,000/- without possession of land.

65. It also appears that the defendant has agreed to sell the property to a third party for which a separate suit is also pending

before the trial court being Special Civil Suit No.108 of 2010, wherein the plaintiffs are arraigned as defendants.

66. It appears that the plaintiffs have filed suit after one year in the year 1999 from the date of issuing public notice in Sandesh daily newspaper in 1997.

67. The Trial Court is also justified in arriving at a conclusion that as per the tentative Exh.130, the plaintiffs have accepted Rs. 2,10,000/- from the defendant on 05.02.1991 for re-conveying the suit land which was not clearly denied by the plaintiffs and signature on the tentative Exh.130- Mark 14/2 is admitted in the cross examination. Even in cross examination of the plaintiff at Exh.77, it is admitted that plaintiffs did not send any draft or cheque pertaining to the balance sale consideration

during 15 months period from the date of agreement to sale and no amount was paid towards sale consideration during the pendency of the suit. The Trial Court has therefore, rightly come to the conclusion that plaintiffs were not ready and willing to perform their part of the contract. The Trial Court has also considered the fact that there was a charge of State Bank of Saurashtra on the suit land which was cleared by the defendant on 06.12.1990 and thereafter Entry No. 2113 (Exh.98) was mutated in revenue record which was corroborated by the witness of the defendant- Kantilal, brother of the defendant at Exh.133 and even in cross examination it was reiterated that land bearing Survey No.25 and 26/1 are adjacent to each other and since land of survey no.26/1 is fragment land, same were not partitioned between the brothers and no consent to sell said parcel of land was given by him to the

defendant and therefore, no decree of specific performance could have been granted by the Trial Court as there was no clear title in the name of the defendant.

68. It also appears that averment in the plaint is silent about the date of execution of the agreement to sale at Exh.108 and though the defendant has admitted signature on the agreement to sale at Exh.108, has not denied the same and only the aspect of payment of Rs.2,00,000/- by the plaintiffs was not admitted.

69. On appreciation of evidence on record, the Trial Court has therefore, rightly come to the conclusion that the plaintiffs have failed to prove satisfactorily the execution of the agreement to sale at Exh.108.

70. In view of above analysis of the

evidence on record, it would be necessary to refer to the various decisions cited at bar to find out whether same would be applicable to the facts of the case or not.

71. Reliance was placed by learned advocate for the plaintiffs on the decision of Hon'ble Apex Court in cases of (i) **P. Ramasubbamma v. Vijayalakshmi** (supra) (ii) **K. Prakash v. B.R. Sampath Kumar** (iii) **Gaddipati Divija v. Pathuri Samrajyam** (iv) **Nadiminti Suryanarayan Murthy (Dead) Through Legal Representatives v. Kothurthi Krishna Bhaskara Rao and others and** (v) **Motilal Jain v. Ramdasi Devi (Smt) and others** and reliance placed on decisions with regard to "date" as per Article 54 of the Limitation Act, 1963 would also not be applicable in facts of the case as on appreciation of evidence on record, the plaintiffs have failed to prove the agreement to sale at Exh.108 and

agreement for extension of time at Exh.109. Admittedly, the suit is filed in 1999 for specific performance of agreement to sale dated 26.09.1990 on pretext of extension of time for further six years by extension agreement dated 21.04.1991. Therefore, the Trial Court has rightly not raised the issue with regard to limitation but on considering the facts of the case, Trial Court has rightly arrived at the conclusion that the plaintiffs have failed to prove the execution of the agreement to sale whereby time period is extended for further six years by the document at Exh.109.

72. It appears that there was a loan transaction between the plaintiffs and the defendant and as a security for repayment of loan, defendant would have executed the agreement to sale dated 26.09.1990. In such circumstances, the Trial Court was justified

in dismissing the suit for specific performance as the plaintiffs was never ready and willing to perform his part of the contract within the stipulated period of 15 months. Moreover, the plaintiffs have also failed to demonstrate as to payment of Rs.1,90,000/- on the basis of acknowledgment receipt at Exh.107 and payment of Rs.5,00,000/- as stated in extension deed dated 21.04.1991 at Exh.109 by any oral rebuttal during the cross examination or by leading any other corroborative evidence.

73. The Trial Court has therefore, rightly dismissed the suit for specific performance as no decree could have been passed in favour of the plaintiffs for directing the defendants to execute the sale deed of the suit land on the basis of oral and documentary evidence led by the plaintiffs and the defendants during the course of

trial.

74. Appeal therefore, being devoid of any merit, is accordingly dismissed. No order as to costs.

(BHARGAV D. KARIA, J)

(L. S. PIRZADA, J)

FURTHER ORDER

At this stage, learned Senior Advocate Mr. Mehul Shah submitted that the interim relief of maintaining status-quo qua the title and possession in respect of the property in question granted by the trial Court which has been continued by this Court, may continue for some time.

Considering the fact that the interim relief of maintaining status-quo qua the title and possession with respect to the property in question is in operation since 1999, in the interest of justice, same is ordered to be continued for a further period of 8 weeks from today.

(BHARGAV D. KARIA, J)

(L. S. PIRZADA, J)

RAGHUNATH R NAIR

Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: RAGHUNATH RAVINDRANATHAN NAIR(HC00196), PRINCIPAL PRIVATE SECRETARY, at High Court of Gujarat on 12/06/2026 17:13:18