

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.2424 OF 2025
WITH
INTERIM APPLICATION NO.13477 OF 2025
IN
FIRST APPEAL NO.2424 OF 2025

Satpal Singh.J Chawla,
Age: 54 years, Occu.: Business,
R/at: Sukhmani Niwas, B-44/259,
Opp. Holly Child School, Gandhi
Road, Ulhasnagar-5, Dist. Thane.

...Appellant
Org.Plaintiff

Versus

1) Subhash D. Sharma,
Age: 74 years, Occu.: Business

2) Amit S. Sharma,
Age: 36 years, Occu.: Business

3) Inderpal D. Sharma,
Age: 52 years, Occu.: Business,

No.1 to 3 R/at: Block No. A-257,
Room No. 513, Ulhasnagar,
District – Thane.

4) Suresh Deshraj Sharma,
Age: 74 years, Occu.:
R/at: Guru Niwas 292/19, First floor,
V. P. Road, Grand Road, Mumbai 400 004

...Respondents

Mr. Girish R. Agrawal a/w Ms. Chitra Darekar for the Appellant/Applicant

Mr. Vijay Watwani a/w Mr. Toni S. for the Respondent Nos.1 & 2

Mr. S. S. Patwardhan a/w Ms. Anjali Raut i/b Mr. Sujit Padarat for the Respondent No. 3

CORAM : SHARMILA U. DESHMUKH, J.
RESERVED ON : APRIL 17, 2026
PRONOUNCED ON : JUNE 8, 2026

JUDGMENT :

1. The present Appeal is at the instance of the original Plaintiff aggrieved by the impugned judgment of the Trial Court dated 29/12/2025 dismissing the Suit seeking specific performance of the Agreement for Sale dated 19/01/2010. For sake of brevity, the parties are referred to by their original status in the Trial Court.
2. Special Civil Suit No. 165 of 2014 was instituted seeking specific performance of Agreement for Sale dated 19/01/2010 executed with the Defendants, in respect of residential property described as Plot No. 172, Sheet No. 42 situated near Block No. A-257, Room No. 513, admeasuring about 750 square yards, Ulhasnagar. The suit property is compensation pool property and the Defendants represented to the Plaintiff that the Authorized Chief Settlement Commissioner, Mumbai in Revision Petition No. 45 of 2008 had ordered the S.D.O-cum-Managing Officer, Ulhasnagar to issue Conveyance Deed in respect of the suit property vide order dated 17/03/2009. After negotiations, the Defendants agreed to sell the suit property to the Plaintiff for consideration of Rs.1,08,00,000/-. On 18/01/2010, the Plaintiff paid

Rs.21,00,000/- and Agreement for Sale dated 19/01/2010 came to be executed between the parties. The plaint pleads that in view of stay to the issuance of Conveyance Deed by the Hon'ble Apex Court, no time limit was fixed for completing the transaction. The Defendants had agreed to receive balance consideration on receipt of Conveyance Deed from the Government and on execution of Sale Deed in favour of the Plaintiff. The Defendants, being in need of money, have further received payment of Rs.15,98,000/-, the receipt whereof they have acknowledged, and have lastly received the payment of Rs.10,000/- on 30/03/2014. It was pleaded that the sum of Rs.36,98,000/- was paid and balance amount of Rs.71,02,000/- was to be paid at the time of issuance of the Conveyance Deed by the office of S.D.O. and execution of final conveyance in favour of the Plaintiff. It was pleaded that the Plaintiff has learned that the Hon'ble Apex Court has directed issuance of Conveyance Deed and the Defendants are deliberately delaying the same. The Plaintiff is ready to perform his part of the contract and has kept the balance amount ready. As the Defendants intended to sell the suit property to some other purchasers, legal notice was issued on 14/05/2014 to the Defendants. The Defendant Nos. 1 and 2 have responded to the said legal notice and have raised false contentions.

3. The cause of action is pleaded as having arisen on 30/03/2014 when the Defendants received part consideration and further arose on

14/05/2014 and 23/05/2014 when the Defendants failed to perform their part of the contract. The Suit came to be filed on 09/06/2014 seeking specific performance of the Agreement for Sale dated 19/01/2010.

4. Initially, the Suit came to be filed only against Defendant Nos. 1 to 3 and after the written statement was filed, the Defendant No. 4, Suresh Deshraj Sharma, was impleaded.

5. The written statement filed by the Defendant Nos. 1 and 2 raises the issue of limitation. The Defendant No. 2 is the son of Defendant No. 1. It was contended that Defendant No. 1 has two more brothers besides Defendant No. 3, namely Dharampal Deshraj Sharma and Suresh Deshraj Sharma, who are the successors to the suit property and have 1/4th undivided share in the suit property. It was contended that as the period for performance was not fixed, the same had to be performed within a reasonable time which cannot be beyond three to six months. The Plaintiff has colluded with Defendant No. 3 and made certain payments to Defendant No. 3, which Defendant No. 3 was not authorized to receive on behalf of Defendant Nos. 1 and 2 and the Defendant No. 3 is not independently competent to give a valid discharge. It was further contended that the parties had orally agreed at the time of executing the Agreement for Sale that the period fixed for performance is six months from the date of execution and the time

period was kept blank and later on has been filled by the Plaintiff as "issuance of C.D.". It was contended that the obligation was upon the Plaintiff to take necessary steps for obtaining the Conveyance Deed and only signatures were required to be given by the Defendant Nos.1 and 2 to facilitate obtaining the Conveyance Deed. The Plaintiff has not taken any steps to obtain the Conveyance Deed nor expressed his desire to perform his contractual obligation. It was further stated that there is no such Supreme Court judgment in respect of the property of the Defendants whereby the Defendants were prevented or prohibited from obtaining the Conveyance Deed lawfully. It was contended that unless and until the Conveyance Deed in respect of the property of compensation pool is issued by the Competent Authority under the provisions of the Displaced Persons (Compensation and Rehabilitation) Act, 1952, it is the Union of India that continues to be owner of the property and as no Conveyance Deed has been issued till date, the Government continues to be the owner of the property, which was to the knowledge of the Plaintiff at the time of entering into the alleged Agreement dated 19/01/2010. The Plaintiff has failed to perform his contractual obligation of tendering the remaining consideration within a period of six months from the date of entering into the Agreement for Sale dated 19/01/2010. It was denied that the Defendants have received the sum as contended by the Plaintiff from time to time and

that the alleged payment by the Plaintiff to Defendant No. 3 was not authorized by these Defendants and the said transactions are not binding upon the Defendants.

6. The Defendant No. 3 admitted the execution of the Agreement for Sale dated 19/01/2010. He also admitted the receipt of money from time to time from the Plaintiff. He further contended that the Defendant No. 3 and Subhash Sharma have relinquished their rights in the property. He submitted that the Defendant No. 3 and his brother are ready and willing to execute the Sale Deed and that at the time of executing the Agreement for Sale, the other two brothers were not present and the Defendant No. 1, being their eldest brother, represented to the Plaintiff that he can execute the Agreement for Sale on behalf of the remaining younger brothers.

7. The Plaintiff, Defendant No. 2 and Defendant No. 3 examined themselves and were duly cross examined. The Plaintiff produced the the copy of legal notice dated 14/05/2014- Exhibit 48, the reply dated 27/05/2014- Exhibit 49, original Agreement for sale dated 19/01/2010- Exhibit 50.

8. The cross examination of the Plaintiff was concluded on 13/02/2025. An application was filed by the Plaintiff on 20/06/2025 seeking permission to produce on record the copy of the order of Hon'ble Apex Court in Civil Appeal No. 6079 of 2010 vacating the stay

granted and the judgment of Chief Settlement Commissioner in Revision Petition No. 45 of 2008. The Trial Court allowed production of documents.

9. After the evidence was concluded, an application was filed by the Plaintiff on 31/07/2025, seeking permission to deposit Rs.71,02,000/- in the Trial Court, which was allowed on 21/08/2025. On 17/09/2025, an application was filed by Defendant No. 3 seeking permission to place on record the Conveyance Deed along with the receipts evidencing deposit of money in the bank. It was contended that the Plaintiff had made necessary payment towards issuance of Conveyance Deed, which was collected by Defendant No. 3 and deposited in bank towards issuance of Conveyance Deed. The Plaintiff gave its no objection to taking the documents on record and the application was opposed by Defendant Nos. 1 and 2 . Vide order dated 25/09/2025, the Trial Court held that all parties were acquainted with the fact that sanad is obtained on 23/09/2021 and permitted the documents to be taken on record, which were marked as Exhibit 117 and 118 respectively.

10. The Trial Court framed the necessary issues as under:

- (1) Whether the Plaintiff proves that the Defendant Nos. 1 and 2 failed to perform their part of contract?

- (2) Whether the Plaintiff proves that he was and is ready and willing to perform his part of contract?
- (3) Whether the Suit suffers from non-joinder of the necessary parties?
- (4) Whether the Plaintiff is entitled for the reliefs sought?"

11. The Trial Court answered all the issues in the negative and dismissed the Suit on the ground of absence of readiness and willingness. The Trial Court noted the order of Settlement Commissioner dated 17/03/2009, the decision in the case of ***Union of India*** (SLP No.6703/2008), the order of Hon'ble Apex Court dated 25/02/2008 directing the Authorities not to implement the orders, and the order dated 05/12/2008 by which the Hon'ble Apex Court ordered the Authorities to decide the matter and pass appropriate orders. It observed that other members are not owners of the suit property and as per family arrangement, part payment was made to family members of Defendants. Only Defendant No. 1 is allottee of the land and mere formality remained to obtain sanad of allotted land by making necessary payment. It held that parties were well acquainted with the fact that performance of agreement was not possible unless sanad was obtained and therefore the agreement mentions performance of agreement on issuance of C.D.

12. The Trial Court noted relevant Clause No. (8) of the Agreement

for Sale imposing obligation on purchaser to bear the charges of getting Conveyance Deed, for which no co-operation is required from Defendant No 1. It further noted that the legal notice called upon Defendants to execute the Conveyance Deed and there is no evidence to show what kind of co-operation was required from the Defendants.

13. The Trial Court noted that the Plaintiff and Defendant No. 3 adduced evidence but did not disclose the fact of obtaining of sanad. The Plaintiff has not established what steps were taken by the Plaintiff to obtain sanad of the suit property in name of Defendant No. 1, and there is nothing on record to show that as on 14/05/2014, the Plaintiff was ready to pay the balance consideration as well as the expenses for the sanad. It held that the Plaintiff had failed to prove readiness and willingness.

14. The Trial Court noted that on 23/09/2021, the sanad was issued on payment and that upon issuance of legal notice on 14/05/2014, the amount was required to be deposited. It further noted that to prove readiness and willingness, the Plaintiff deposited the amount of Rs.71,02,000/- on 22/08/2025 after lapse of 11 years from institution of Suit.

SUBMISSIONS :

15. Mr. Agrawal, learned counsel appearing for the Appellant, has taken this Court through the various clauses of the Agreement for sale

to contend that as per Clause (3), the obligation was upon the Plaintiff to pay the balance consideration only upon the issuance of the Conveyance Deed, which Conveyance Deed was not issued due to the stay order passed by the Hon'ble Apex Court. He submits that there was no communication addressed by the Defendants to the Plaintiff calling upon him to make the payment for the Conveyance Deed and the inaction was on account of stay order of Hon'ble Apex Court. He would further point out order of Hon'ble Apex Court dated 28/04/2014 annexed to the present First Appeal directing the concerned authorities to decide the application expeditiously and within six months from the date of making of such application. He submits that subsequent thereto, notice was issued on 14/05/2014 calling upon the Defendants to accept the balance consideration and execute the registered Sale Deed. He has taken this Court through the contents of the reply letter dated 23/05/2014 and would submit that false case was set up about the time for performance being six months and that earnest money stands forfeited without any such clause in the Agreement.

16. He would further point out that the Agreement for Sale makes specific mention of Revision Petition No. 45 of 2008 and the order dated 17/03/2009 makes a reference to the stay order of the Hon'ble Apex Court on 05/02/2008. He would submit that Defendant No. 3 has

accepted the payments from the Plaintiff and during the pendency of the Suit, the balance consideration was also deposited by the Plaintiff. He submits that the Trial Court, though noted that Defendant No. 3 had filed an application stating that the amount was received from the Plaintiff and sanad has been issued, has failed to appreciate that the Plaintiff had complied with his obligations and nothing further remained to be complied. He submits that under Clause (8) of the Agreement for Sale, the responsibility was on the Plaintiff to pay the charges for the Conveyance Deed and unless and until the Defendants called upon the Plaintiff to make such payment, there was no occasion for the Plaintiff to pay the charges. He submits that it is only upon vacating of stay order by the Hon'ble Apex Court on 28/04/2014, that the Conveyance Deed could have been issued by the competent authority and immediately thereafter, the notice was issued by the Plaintiff. He submits that the evidence on record proves readiness and willingness of the Plaintiff and therefore the discretionary relief ought to have been exercised in favour of the Plaintiff.

17. Mr. Watwani, learned counsel appearing for Respondent Nos. 1 and 2 submits that the handwritten words inserted in Clause (3) were not within the knowledge of Respondent Nos. 1 and 2, as it was orally agreed between the parties that the time for performance of the contract was six months. He submits that the Plaintiff had knowledge

of the Revision Petition No. 45 of 2008 and the order passed thereon, which is also set out in Clause (2) of the Agreement for Sale. He submits that the order in the said Revision Petition regularized the occupation of the Defendant No. 1. He submits that the obligation to pay the charges for obtaining the Conveyance Deed was required to be complied with by the Plaintiff, which he has failed to do on the specious ground that there was a stay on issuance of the Conveyance Deed by the Hon'ble Apex Court. He submits that the Agreement is of the year 2010 and after a period of four years, a notice was issued by Plaintiff on 14/05/2014. He submits that in the notice dated 14/05/2014, the version of the Plaintiff has changed from the words "on or before Conveyance Deed" to "at the time of getting the Conveyance Deed". He submits that in the entire notice, there is no offer made by the Plaintiff to pay the charges for issuance of Conveyance Deed. He further submits that it was specifically pointed out in the reply notice that the time for performance was six months, to which there was no response.

18. He submits that the Defendant No. 3 is in collusion with the Plaintiff and the payments are allegedly made by the Plaintiff to Defendant No. 3 without any authority from the Defendant No. 1. He submits that the Suit filed in the year 2014 sought the relief of direction to the Defendants to execute the Sale Deed, which itself was

not maintainable as, without the Conveyance Deed being obtained, the Sale Deed could not have been registered. He would further submit that the cross-examination of PW-1 would indicate that the Plaintiff was aware that the Conveyance Deed was yet to be issued. He submits that PW-1 has admitted that he is not aware as to whether any communication was addressed as regards the Conveyance Deed. He submits that the same implies that no steps were taken for issuance of the Conveyance Deed. He would further point out the cross-examination of PW-1 admitting about releasing the money not only to Defendant No. 3 but also to the wife and son of Defendant No. 3. He would submit that the collusion between the Plaintiff and Defendant No. 3 is borne out from the evidence where PW-1 has admitted that even post filing of the Suit, payments were made by the Plaintiff to Defendant No. 3, which has been suppressed by the Plaintiff in the plaint. He would further point out the receipts endorsed by the Defendant No. 3 and his family members to contend that they accepted payments even after filing of the Suit. He submits that if the case of the Plaintiff was that the Defendant No. 1 was not cooperating in obtaining the Conveyance Deed, then in the year 2021, the Conveyance Deed could not have been obtained.

19. He submits that it is only in the year 2025 that an application was filed by the Plaintiff seeking permission to deposit the balance

consideration, which shows that there were no finances available with the Plaintiff at the time of filing of the Suit for completion of the sale. He submits that in the Interim Application seeking stay of the proceedings, the Supreme Court order has been annexed, which was not part of the record.

20. In rejoinder, Mr. Agrawal points out the Supreme Court order which is annexed along with the Interim Application and would submit that the Conveyance Deed could be issued only after the stay granted by the Hon'ble Apex Court was lifted. He submits that the Defendant Nos. 1 and 2 accepted payments even in the year 2011. He submits that DW-1 did not produce the photocopy of the Agreement for Sale in order to substantiate their contention that time limit of six months was fixed. He would submit that the Defendants are residing at the same address as per the Agreement for Sale and therefore the payments were made to Defendant No. 3, who had also executed the Agreement. He submits that the Conveyance Deed which was executed makes a reference to allotment letter, affidavit and indemnity bond executed by the Defendants in the year 2021, which was not within the knowledge of the Plaintiff. He submits that it was the duty of the Defendants to inform the Plaintiff about documents which were filed for issuance of the Conveyance Deed, in which case the charges would have been paid by the Plaintiff.

21. Mr. Patwardhan, learned counsel appearing for the Defendant No. 3, submits that Defendant No. 3 was also a signatory to the contract and has received payments from the Plaintiff. He submits that the Defendant No. 3 has led evidence and was cross-examined by the Plaintiff, but was not cross-examined by Defendant No. 1, and therefore the evidence stands unchallenged. He submits that the Defendant No. 3, by his application under Exhibit 115, has produced the sanad. He would further submit that the said fact was noted by the Trial Court in paragraph 36 of the judgment. He submits that the Defendant No. 3 is ready and willing to execute the Sale Deed.

POINTS FOR DETERMINATION:

22. The facts of the case would give rise to the following points for determination:

- (1) Whether the parties had agreed that the Sale Deed would be executed upon issuance of Conveyance Deed?
- (2) Whether the Defendants have committed breach of their obligation by failing to co-operate in obtaining the Conveyance Deed?
- (3) Whether the Plaintiff is ready and willing to comply with his obligations under the contract?

(4) Whether in facts of the case, the equitable jurisdiction is required to be exercised in favour of the Plaintiff?

AS TO POINT NO.1 :

23. The Agreement for Sale was executed on 19/01/2010 between the Plaintiff and Defendant Nos. 1, 2 and 3. The execution of the Agreement has not been disputed between the parties. Clause (2) of the Agreement for Sale describes the suit property as Plot No. 172 in Sheet No. 42 situated adjacent to Block No. A-257, Room No. 513, Ulhasnagar-4, District Thane, admeasuring about 750 square yards, ordered in Revision Petition No. 45 of 2008 before the Authorized Chief Settlement Commissioner for Compensation Pool Properties-cum-Custodian of Evacuee Properties, M.S., Mumbai dated 17/03/2009. Clause (3) of the Agreement for Sale reads as under:

“3) That the Purchaser agreed to pay the balance sale consideration amount of Rs.87 Lakhs/- (Rs. Eighty Seven Lakhs Only), on or before issuance of C/D and the Vendors doth hereby agreed for the same before witnesses.”

24. The words “issuance of C/D” in Clause (3) are handwritten. The Plaintiff contends that the Defendants had agreed to receive the balance consideration on receipt of Conveyance Deed from the Government and on execution of Sale Deed in favour of the Plaintiff. The Defendant Nos. 1 and 2 plead that it was orally agreed between

the Plaintiff and the Defendants at the time of entering into the Agreement for Sale that the period for reciprocal performance shall be six months from the date of execution of the Agreement dated 19/01/2010 and that the handwritten words were inserted unilaterally, which constitutes fraud. As fraud was pleaded, the burden was upon the Defendants to prove fraud.

25. It is pertinent to note that as per Clause (12) of the Agreement for Sale, the original of the Agreement was to remain with the Purchaser and the xerox copy of the same was to remain with the Vendors. The best possible evidence which was available with the Defendant Nos. 1 and 2 was the photocopy of the original agreement which would have established that the words "issuance of C/D" were inserted unilaterally without their consent. The photocopy of the Agreement for Sale would have clearly established whether, at the time of execution, the clause about time of performance, was kept blank, ;which was later filled in by the Plaintiff.

26. DW-1 has deposed that the agreement was that reciprocal performance shall be six months from date of execution of the agreement. He has further deposed that the Defendant Nos. 1 and 2 were made to sign the agreement containing the gap with the promise to fill in the date of six months and the addition is unilateral. In the cross-examination, he has admitted that he has not produced the

photocopy of the Agreement for Sale. He has further admitted that the period of six months has not been mentioned in the Agreement for Sale.

27. DW-1 has deposed that after a period of six months, when he approached the Plaintiff, the Plaintiff showed him that there was no period mentioned in the Agreement for Sale. In event, it was orally agreed between the parties that the period of six months would be inserted as the time for performance, the normal conduct of a person, upon expiry of six months, would be to call upon the Plaintiff to perform the agreement and pay the balance consideration.

28. It is pertinent to note that DW-1 has deposed that he approached the Plaintiff after a period of six months and that the Plaintiff had shown that the period has not been mentioned in the Agreement for Sale. He has admitted that even after perusing the Agreement for Sale, he has not adopted any legal proceedings.

29. The subject property assumes significance while considering whether the period of six months could have been agreed upon by the parties. The suit property is Compensation Pool property and Conveyance Deed was required to be obtained for the ownership to vest in the Defendant No 1. Without obtaining Conveyance Deed in favour of Defendants, the Plaintiff would acquire no rights in the suit property and it is improbable that the Plaintiff would agree for parting

with entire consideration without Conveyance Deed being obtained. Considering the evidence on record, the Defendants have failed to establish fraud by unilateral insertion of time of performance or that the time of performance was six months.

30. The clauses in the Agreement for Sale discloses that the parties made arrangement for the expenses to be borne by the Plaintiff and co-operation to be extended by the Defendants for obtaining Conveyance Deed. If it was the intention of the parties to provide for time bound programme of six months in obtaining the Conveyance Deed, the intention would have manifested in the clauses of the agreement. In such event, possibly, the parties would have set out a time schedule for the necessary documents to be executed by the Defendants for obtaining the Conveyance Deed, the time for payment of charges by the Plaintiff, etc. The inclusion of Clause (13) that if the Revision Petition gets terminated or disputed, the vendors shall give full co-operation to apply for fresh revision petition and/or get the order amended discloses the requirement of obtaining Conveyance Deed as precondition for execution of the Sale deed. The clauses of the Agreement are a strong indicator that the parties were aware of the requirement of obtaining a Conveyance Deed and that a Sale Deed could not be executed in favour of the Plaintiff unless a Conveyance Deed was first executed in favour of the Defendants.

31. The Trial Court has rightly interpreted the time for performance and has held that the parties to the Suit were well aware of the fact that unless and until sanad was obtained in favour of Defendant No. 1, performance of Agreement was not possible, and therefore, in the Agreement, it is properly mentioned that the performance of Agreement is contingent upon issuance of C.D. in favour of the Defendant No. 1, and there is no condition specifically mentioned that balance payment has to be made within three to six months.

32. The Defendant Nos. 1 and 2 have failed to prove that it was orally agreed between the parties that the period for performance of six months and that the words "issuance of C/D" was inserted unilaterally and constitutes fraud. The evidence on record establishes that the time for performance of the agreement was upon issuance of C/D. Point No 1 is answered accordingly.

AS TO POINT NOS. 2 and 3:

33. Both the points can be considered together as finding on breach of the agreement would involve determination of respective obligations of the parties and whether there was compliance thereof. In event of non compliance of obligation by the Plaintiff, the same would constitute absence of readiness and willingness on part of the Plaintiff.

34. The Agreement for Sale of 2010 sets out the respective obligation of the parties. As per the said Agreement, the total consideration which was agreed upon was Rs.1,08,00,000/-, out of which a sum of Rs.21,00,000/- was paid prior to the execution of the Agreement on 18/01/2010. As per Clause (3), the balance sale consideration amount of Rs.87,00,000/- was to be paid on or before issuance of Conveyance Deed. Clause (8) of the Agreement reads as under:

“8) That the Charges for getting Conveyance Deed (C.D.) against the order of R.P. Revision Petition No.45/2008, will be borne by the Purchaser alone.”

35. The obligation of the Vendor as set-out in Clause (5) reads as under:

“5) That the Vendor shall hand over all relevant documents of the said property to the Purchaser at the time of execution of the final sale agreement, and the Purchaser agreed for the same before witnesses.”

36. Clause (10) of the Agreement for Sale reads as under:

“10) That all the Signatures/Statements required for obtaining Conveyance Deed (C.D.) and all other relevant documents from the concerned authorities will be given by the Vendors without any hesitation and/or without demanding any amount whatsoever.”

37. The Clauses of the Agreement indicate that the only obligation upon the Vendors was to give all signatures required for obtaining the Conveyance Deed. Clause (8) and Clause (10) when read together, discloses that the obligation was upon the Plaintiff to take steps for obtaining the Conveyance Deed and to pay the charges for the Conveyance Deed. Clause (10) imposes an obligation upon the Defendants to only give signatures for obtaining Conveyance Deed without any further demand for money. In event, the obligation to obtain the Conveyance Deed was upon the Vendors, Clause (10) would have been worded differently, specifically setting out that the Vendor is required to obtain the Conveyance Deed. The use of the words “all the signature/statement, will be given by the Vendors without any hesitation” clearly conveys that the parties had agreed that the Vendors shall only execute the necessary documents required for obtaining Conveyance Deed (C.D) without demanding any further amount.

38. The interpretation of clause (10) is also supported by the admission of PW-1 that in the year 2010, the Plaintiff was engaged in the business of construction in addition with the business of purchase and sale of properties. It therefore stands to reason that it was the Plaintiff who had agreed to take all necessary steps for obtaining the

Conveyance Deed, including the payment of the charges thereof. Even assuming for the moment, that the obligation was upon the Defendants to obtain the Conveyance Deed. Upon failure of Defendants to obtain Conveyance Deed, there would at least be a communication on record calling upon the Defendants to complete the formalities for obtaining the Conveyance Deed.

39. The Plaintiff seeks to justify the inaction in obtaining the Conveyance Deed on the ground that there was stay order of Hon'ble Apex Court. PW-1 has deposed that the Conveyance Deed was not issued in favour of the Defendants, though the Authorized Chief Settlement Commissioner had ordered the issuance, as there was a stay on issuance of Conveyance Deed from the Hon'ble Apex Court. He has further deposed that he has learned from reliable source that the Hon'ble Supreme Court has directed the issuance of the Conveyance Deed. In cross examination, PW-1 has stated that his advocate is aware as to when the Hon'ble Supreme Court had given stay in respect of the Conveyance Deed. He has denied the suggestion that he has not produced the stay order on record.

40. In the cross-examination, PW-1 has admitted that he is unable to depose as to when the order of stay was passed by the Hon'ble Apex Court. He has further admitted that he is unable to recollect whether

he has issued any notice to the Defendants about execution of the Conveyance Deed. The deposition of PW-1 would indicate that PW-1 is totally unaware about the date of the order of stay, or about the order directing issuance of the Conveyance Deed.

41. After conclusion of the Plaintiff's evidence, an application was filed by Plaintiff on 20/06/2025 for placing on record the order of Hon'ble Apex Court in Civil Appeal No. 6079 of 2010 and the Chief Settlement Commissioner's judgment, which came to be allowed. The Plaintiff did not file any application for leading further evidence in respect of the documents and merely produced the documents on record. The orders so produced, were for obvious reasons not marked as Exhibits and thus cannot be read in evidence. The Defendant Nos. 1 and 2 had set up a specific case in the written statement that there is no such Supreme Court judgment in respect of the property of the Defendants staying issuance of the Conveyance Deed and that no such copy of the Supreme Court judgment or order of stay has been placed on record by the Plaintiff. It was specifically pleaded that no such order of the Supreme Court was ever passed whereby the Defendants were prevented or prohibited from obtaining the Conveyance Deed lawfully. Considering the specific case set up in the written statement, the Plaintiff was expected to lead necessary

evidence to prove that stay was granted by the Hon'ble Apex Court, which has been subsequently vacated giving rise to now claim specific performance.

42. DW-1 has specifically deposed that there is no order of the Supreme Court of stay on obtaining the Conveyance Deed, and the Plaintiff has not cross examined DW-1 on the said deposition, which remained uncontroverted. There is not even a suggestion given to DW-1 that by reason of stay of the Hon'ble Apex Court, the Conveyance Deed was not executed.

43. There is no cogent evidence led by the Plaintiff to prove that there was stay granted by the Hon'ble Apex Court by reason of which Conveyance Deed could not be issued.

44. Even accepting the order of Hon'ble Apex Court as evidence, the order of 28/04/2014 passed in Civil Appeal No. 6079 of 2010 directs the Respondent Nos. 6 and 8 therein to continue to decide the cases and proceedings pending on the date of said Repeal Act, 2005 and implement the decisions in the said cases under the unrepealed Displaced Person Compensation and Rehabilitation Act, 1954 and other related Acts. The order dated 28/04/2014 does not establish that stay was granted by Hon'ble Apex Court to issuance of Conveyance Deed.

45. The Agreement was executed in the year 2010 and no steps were taken by the Plaintiff for obtaining the Conveyance Deed. The delayed performance is attributed by the Plaintiff to the stay order of Hon'ble Apex Court, which the Plaintiff has failed to prove. PW-1 has placed on record the notice issued by the Plaintiff to the Defendants on 14/05/2014. The notice does not call upon the Defendants to execute the documents for the purpose of executing the Conveyance Deed nor does it indicate willingness to pay the charges required for obtaining the Conveyance Deed. The notice calls upon the Defendants to accept the balance consideration of Rs.71,02,000/- and to convey the property by executing the registered Sale Deed. PW-1 has deposed that the Defendants are delaying getting the Conveyance Deed without any specific deposition that the Defendants have refused to execute the necessary documents for obtaining Conveyance Deed.

46. A unique way was adopted by the Defendant No. 3 to produce the Conveyance Deed and receipts evidencing deposit of money in State Bank of India obtained in the year 2021 by filing an application below Exhibit 115 stating that the Plaintiff has complied with his obligation under Clause (8) and that the payments were made, which were collected by Defendant No. 3 and deposited in the State Bank of India towards issuance of Conveyance Deed and that the Conveyance

Deed has been executed on 22/09/2021. Neither the Plaintiff nor Defendant No. 3 stepped in the box to lead evidence in support of the documents sought to be produced. The application appears to have been filed after the evidence was concluded. The Trial Court surprisingly marked the documents as Exhibits 117 and 118 and considered the documents. As the documents were not tendered in evidence and no opportunity was given to the Defendant Nos. 1 and 2 to cross-examine the witness on the said documents, the Trial Court could not have read the documents in evidence.

47. The Defendant No 3 filed his affidavit in lieu of examination in chief on 26/10/2023. If the money had been paid by the Plaintiff to the Defendant No. 3 towards obtaining the Conveyance Deed in the year 2021. Defendant No.3 would have deposed about the same in his evidence. Similarly, the Plaintiff, in his cross examination, which took place in the year 2024/2025 would have stated about the said payment and the obtaining of the Conveyance Deed. The documents not being proved in manner known to law could not have been read in evidence. On the basis of evidence on record, it is difficult to come to a finding that the Plaintiff complied with his obligation of taking steps for obtaining the Conveyance Deed.

48. The Agreement imposed the obligation upon the Plaintiff to take steps for obtaining the Conveyance Deed and to make payment for the same and the only obligation was upon the Defendants to execute all necessary documents for the same. There is no evidence adduced by Plaintiff to establish that it was due to breach of the obligation by the Defendants and on the contrary the evidence shows non compliance of the Plaintiff's obligations under the contract.

49. Coming to the issue of readiness and willingness, in ***His Holiness Acharya Swami Ganesh Dassji vs. Sita Ram Thapar¹***, the Hon'ble Apex Court drew a distinction between readiness to perform the contract and willingness to perform the contract. It was observed that by readiness, it may be meant the capacity of the plaintiff to perform the contract which would include the financial position to pay the purchase price. As far as the willingness to perform the contract is concerned, the conduct of the Plaintiff has to be properly scrutinised along with attendant circumstances. On the facts available, the Court may infer whether or not the plaintiff was always ready and willing to perform his part of the contract. It was held in paragraph 2 as under:

"2. There is a distinction between readiness to perform the contract and willingness to perform the contract. By readiness may be meant the capacity of the plaintiff to perform the contract which includes his financial position to pay the purchase price. For determining his willingness to perform his

1 (1996) 4 SCC 526

part of the contract, the conduct has to be properly scrutinised. The factum of readiness and willingness to perform plaintiff's part of the contract is to be adjudged with reference to the conduct of the party and the attending circumstances. The court may infer from the facts and circumstances whether the plaintiff was ready and was always ready and willing to perform his part of the contract. The facts of this case would amply demonstrate that the petitioner/plaintiff was not ready nor had the capacity to perform his part of the contract as he had no financial capacity to pay the consideration in cash as contracted and intended to bide for the time which disentitles him as time is of the essence of the contract."

50. In *L.S. Sikandar (Dead) by LRs. v. K. Subramani & Ors.*², this Court noted that the Plaintiff is required to prove that from the date of execution of the Agreement for Sale till the date of the decree, he was always ready and willing to perform his part of the contract. In facts of that case, looking at the attendant facts and circumstances, the Court upheld the view of the Trial Judge that the Plaintiff had no money to pay the balance sale consideration and was apparently not capable of making necessary arrangements for payment of the balance consideration. It was held in paragraph 45 and paragraph 47 as under :

"45.....Further, the plaintiff is required to prove the fact that right from the date of execution of the agreement of sale till the date of passing the decree he must prove that he is ready and has always been willing to perform his part of the contract as per the agreement."

"47. Further, there is nothing on record to show that the plaintiff could have made arrangement for payment of the balance consideration amount to them. But, on the other hand the trial court has recorded the finding of fact to the effect that the correspondence between the parties and other

2 (2013) 15 SCC 27

circumstances would establish the fact that the plaintiff had no money for payment of balance sale consideration

51. The burden is upon the Plaintiff to prove that from the date of Agreement of Sale till passing of the decree, the Plaintiff is ready and willing to perform his obligations under the contract. As discussed above, insofar as the obligation of obtaining Conveyance Deed and making payment of the same, there are no steps taken by the Plaintiff to comply with the said obligation. Even accepting that the only obligation was to make payment of the Conveyance Deed charges, in the notice of 14/05/2014, there is no readiness and willingness demonstrated to make the payment of the Conveyance Deed charges.

52. Insofar as payment of balance consideration is concerned, it is well settled that the aspect of readiness refers to financial capacity of the Plaintiff. PW-1 has not produced any evidence, oral or documentary, to prove that the Plaintiff was financially capable of paying the balance consideration or that the balance amount was ready and available with the Plaintiff. There is not even an oral deposition to that effect. In the cross examination, PW-1 in answer to specific question as to the amount which is ready for payment, has deposed that he is unable to state the exact figure. PW-1 has further stated that he is unable to state the exact figure which had been accumulated by him to complete the transaction. He has further stated that he is

unable to state whether the balance consideration will be paid through cheque, or bank or through any other mode. He has further deposed that he is unable to depose as to the source through which the balance consideration was kept ready.

53. The payments made by the Plaintiff as endorsed on the Agreement for Sale are small amounts paid from time to time aggregating to Rs.15,98,000/-, whereas the balance consideration as per the Agreement for Sale was Rs.87,00,000/-. The last payment received on 30/03/2014 was of Rs.10,000/-. The payment of smaller amounts indicates that the Plaintiff was not in a financial position to make the payment of the entire balance consideration and was biding time for completion of the sale. If it is the Plaintiff's case that the balance consideration was payable upon obtaining the Conveyance Deed, there is no acceptable explanation for making such small payments from time to time.

54. The Trial Court has rightly noted that the Plaintiff deposited the sum of Rs.71,02,000/- in the year 2025 i.e. after a period of 11 years from institution of Suit and that mere averment in the notice of 14/05/2024 is insufficient to establish readiness and willingness.

55. Upon cumulative appreciation of the evidence and the attendant facts and circumstances, the Plaintiff has failed to prove readiness and willingness to perform his obligation of obtaining the Conveyance

Deed and to make payment of the balance consideration. Point Nos. 2 and 3 are answered accordingly.

AS TO POINT NO 4:

56. It is well settled that the remedy of specific performance is an equitable remedy and discretion is conferred on the Court and it is not necessary to grant specific performance simply because it is legal to do so. In addition to the finding of non compliance of his obligations by the Plaintiff and absence of readiness and willingness, the conduct of the Plaintiff disentitles him to the equitable relief of specific performance.

57. In the cross-examination, PW-1 has admitted that the sum of Rs.15,98,000/- was paid to the persons who have acknowledged the receipt on the Agreement for Sale. He has further admitted that the receipts overleaf page Nos.1,2,3,4 and 5 of Exhibit 50 have been executed by Defendant No. 3. He had admitted that one of the receipts on page No. 5 has been executed by Sunita I. Sharma, wife of Defendant No.3. He has admitted that receipts of 13/3/2016, 18/3/2016 and 12/3/2016 contain the signature of Defendant No. 3 and the receipts of 5/04/2016, 19/05/2016 and 25/04/2016 have been executed by Punit Indrapal Sharma, who is the son of Defendant No 3. He has admitted that further receipts executed on Page No. 6 and

thereafter have been signed by Defendant No. 3. He has further admitted that he has not received any written communication to make the payment to the wife of Defendant No. 3. He has deposed that the amounts paid to the son of Defendant No. 3 were on the instructions of Defendant No. 1. In response to a specific question, he has deposed that as the Defendant Nos. 1 and 3 were present at the time of making the payment to the wife and son of Defendant No. 3, no authority letter was sought. He has further deposed in response to the specific question as to why the signatures of Defendant Nos. 1 and 3 were not taken if they were present, that he had taken the signatures of the party to whom the payment was made. He has further deposed that from time to time he has made the payment to Defendant No. 3 and even after filing of the Suit, the payments have been made to Defendant No. 3. In response to a specific question as to why there is no deposition as regards the payments made to Defendant No. 3 were not brought on record in the plaint, he has deposed that as the Defendants were willing to proceed with the transaction, he kept on making the payment and did not bring the said payments on record. He has further deposed that even after filing of the Suit till 2018, he has made payments.

58. The admissions of PW-1 proves payments made to wife and son of Defendant No.3, who were not signatories to the agreement. There

is no explanation worth accepting, tendered for making substantial payments to Defendant No.3 and his family members. There is also no acceptable explanation as to why even after filing of the Suit, payments were made to Defendant No 3. The Plaintiff and Defendant No.3, in collusion, have suppressed the payments made after the filing of the Suit. The conduct of the Plaintiff disentitles him to the equitable relief of specific performance. Point No 4 is answered accordingly.

59. Resultantly, the following order is passed:

ORDER

- (1) The First Appeal stands dismissed.
- (2) The Interim Application does not survive for consideration and stands disposed of accordingly.

(SHARMILA U. DESHMUKH, J.)