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A.S(MD)No.214 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 04.11.2025

Pronounced on : 02.02.2026

CORAM

THE HONOURABLE MR.JUSTICE P.VADAMALAI

**A.S(MD)No.214 of 2017
and
C.M.P(MD)No.12141 of 2017**

Thirugnanam,
S/o.Shenbhagam,
36-A, Govt. Higher Secondary School Road,
Avaniapuram,
Madurai.

...Appellant/Plaintiff

Vs.

1. S.B.Vijayaraghavan (Died),
S/o.Balasundaram,
No.2, North Perumal Maestri Street,
Madurai.

...1st Respondent/Defendant

2.Mohanavalli,
W/o.Late S.B.Vijayaraghavan,
No.2, North Perumal Maistry Street,
Madurai.

3.V.Vishnu Priya,
D/o.Late.S.B.Vijayaraghavan,
No.2, North Perumal Maistry Street,
Madurai.

4.V.Yogeshwari,
D/o.Late.S.B.Vijayaraghavan,
No.2, North Perumal Maistry Street,
Madurai.

...Respondents 2 to 4



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(Respondents 2 to 4 are brought on record as LR's of the deceased sole respondent vide Court order, dated 28.07.2023 made in C.M.P(MD)No.1315 of 2020 in A.S(MD)No.214 of 2017)

PRAYER :- This Appeal Suit is filed under Order 41 Rule 1 r/w Section 96 of CPC., to set aside the judgment and decree made in O.S.No.10 of 2015 on the file of the VI Additional District Court, Madurai, dated 17.07.2017.

For Appellant : Mr.K.Ganesamoorthy
R1 : Died
For R2 to R4 : Mr.J.Barathan

JUDGMENT

This Appeal is filed against the judgment and decree, dated 17.07.2017 made in O.S.No.10 of 2015 on the file of the VI Additional District Court, Madurai.

2. The appellant is the plaintiff in O.S.No.10 of 2015 on the file of the VI Additional District Court, Madurai. The first respondent is the defendant in that suit.

3. For the sake of convenience, the parties are referred to as per their rank before the trial Court.



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4. The brief facts are as below:

(a) The case of the plaintiff (appellant herein):-

The suit properties to a total extent of 12 acres 72 cents, shown as three items. The item Nos.1 and 2 are absolute properties of the defendant by virtue of the sale deed, dated 21.03.1985. In the 3rd item, he is having 1/5th share. He and his brother are in joint possession of the 3rd item. The defendant agreed to sell item Nos.1 and 2 and 1/5 share in item No.3 to the plaintiff for a total consideration of Rs.10,49,400/- at the rate of Rs.825/- per cent. The plaintiff and the defendant entered into sale agreement on 16.09.2007. The plaintiff paid Rs.1,00,000/- to the defendant as advance. The sale should be completed within one month. The defendant further received Rs.1,50,000/- on 07.02.2008; Rs.1,00,000/- on 11.02.2008 and Rs.10,000/- on 25.02.2008 and thus the defendant received totally Rs.3,60,000/- out of sale consideration. The defendant made an endorsement for receipt of the said sum on the back side of sale agreement. The plaintiff has always been ready and willing to perform his part of the contract and insisting the defendant to execute the sale deed. The defendant has been postponing the registration, stating that there was a dispute between the defendant and his brothers. On 14.02.2014, the plaintiff approached the defendant and insisted for execution of the sale deed, for which



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the defendant gave a promise letter stating that he would definitely perform his part of the contract. However, the defendant failed to do so. Hence, the plaintiff issued a legal notice on 28.03.2014 to the defendant, calling upon him to execute the sale deed. Again, the defendant gave another letter on 25.04.2014 promising that he would definitely complete the sale and asked the plaintiff to wait for some period. The plaintiff is having sufficient means and is always ready and willing to get the sale deed registered. Since the plaintiff was in possession of the suit properties, he was on hope that the defendant would sell the suit property to him. On 05.01.2015, the plaintiff learnt that the defendant was attempting to sell the suit properties to third parties. Hence, the plaintiff filed the suit for specific performance.

(b) The case of the defendant:-

The plaintiff and the defendant entered into sale agreement, dated 16.09.2007. One month time was stipulated for completion of sale. The defendant received a sum of Rs.1,00,000/- on 16.09.2007, Rs.1,50,000/- on 07.02.2008, Rs.1,00,000/- on 11.02.2008 and Rs.10,000/- on 25.02.2008. The balance sale consideration was to be paid within another one month time. The plaintiff has not paid. The plaintiff has to file the suit within three years,



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i.e., on or before 22.03.2011, but the plaintiff filed the suit on 14.02.2014, stating that the defendant sent a letter to the plaintiff promising to perform his part of contract. As per Limitation Act, the acknowledgement should have been given within three years i.e., on or before 22.03.2011. The defendant never sent any reply on 25.04.2014 as alleged. So, the suit is filed beyond the limitation period and the suit is barred by limitation. The plaintiff was not ready and willing to perform his part of contract. The plaintiff committed a breach of contract. Hence, the plaintiff is not entitled to the discretionary relief of specific performance and the suit is liable to be dismissed.

5.The trial Court framed the following issues upon the pleadings of both parties.

(1) Whether the suit is barred by limitation as alleged by the defendant?

(2) Whether the plaintiff was ready and willing to perform the contract as per the terms of sale agreement dated 16.09.2007?

(3) Whether the plaintiff is entitled to the relief of specific performance of contract as prayed for?

(4) To what other relief and cost, the plaintiff is entitled to?



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6.During the trial, the plaintiff has examined two witnesses as P.W.1 and P.W.2 and marked nine exhibits as Ex.A.1 to Ex.A.9. The defendant was examined himself as D.W.1 and no exhibit was marked.

7.On appreciation of evidence and the submissions made on behalf of the parties, the trial Court has concluded that the suit is barred by limitation and that the plaintiff was not ready and willing to perform his part of the contract and thereby dismissed the suit by its judgment, dated 17.07.2017.

8.The judgment and decree of the trial Court, dated 17.07.2017 are under challenge in this appeal.

9.I have heard the arguments of the learned counsel of both sides. On hearing both sides and on perusing the material records along with the grounds of appeal, both sides admitted that they had entered into an unregistered sale agreement, dated 16.09.2007, in respect of the suit properties for Rs.10,49,400/- , fixing one month time for completion of the contract. It is further admitted that an advance of Rs.1,00,000/- was paid on the date of the sale agreement i.e., on 16.09.2007 itself and further payment amounts of



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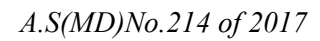
Rs.1,50,000/- on 07.02.2008, Rs.1,00,000/- on 11.02.2008 and Rs.10,000/- on 25.02.2008. So, there is no dispute that a total sum of Rs.3,60,000/- was paid towards the sale consideration from 16.09.2007 to 25.02.2008. From their arguments and records, the learned counsel for both side have made submissions mainly on the point of limitation and readiness and willingness.

10. The points for consideration in this appeal are:

- 1) Whether the suit is barred by limitation?*
- 2) Whether the time is the essence of contract?*
- 3) Whether the trial Court erred in dismissing the suit, and whether the finding of the trial Court is liable to be set aside?*
- 4) Whether the present appeal is to be allowed?*

11. Points 1 to 4:

The learned counsel for the appellant/plaintiff submitted that the plaintiff and the defendant entered into Ex.A.3 sale agreement, dated 16.09.2007, for selling the suit properties to an extent of 12 acres 72 cents for a sale consideration of Rs.825/- per cent, i.e., the total sale price is Rs.10,49,400/-. Eventhough one month time was fixed for completion of the contract, the defendant had received further amounts from the plaintiff beyond one month



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12. The learned counsel for the appellant/plaintiff further argued that the plaintiff has always been ready to pay the balance sale consideration amount for getting the sale deed registered. The defendant has also admitted in his letter Ex.A.4, reply notice Ex.A.6 and also in his evidence that the plaintiff and his father have met the defendant 100 or 300 times for completion of the sale agreement. So, the plaintiff has clearly established his readiness and willingness, whereas the defendant has not been ready and willing to perform his part of contract. The trial Court has not considered all these aspects, but mainly came to the conclusion that the suit is barred by limitation. The trial Court has not considered the admission of the defendant, which is the best piece of evidence as per the Evidence Act. Since the defendant has given Ex.A.4 letter promising to perform his part of the contract, time is not the essence of contract, even though Ex.A.4 was given after three years. The Hon'ble Supreme Court held that whether the time is of the essence of contract has to be culled out from the reading of the entire contract and the surrounding circumstances. The plaintiff should not be blamed for the delay due to the inaction of the defendant. Hence, the relief of specific performance has to be granted in favour of the plaintiff.



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13. In support of his argument, the learned counsel for the plaintiff has relied on the following citations:

(1) (2022) 2 Supreme Court Cases 382 in the case of **“Welspun Speciality Solutions Ltd., /v/ ONGC”**, in which it is held in paragraph No.35 as follows:

“35. It is now well settled that “whether time is of the essence in a contract” has to be culled out from the reading of the entire contract as well as the surrounding circumstances. Merely having an explicit clause may not be sufficient to make time the essence of the contract.”

(2) AIR 2002 Himachal Pradesh 166 in the case of **“Ranjana Nagpal alias Ranjana Malik /v/ Devi Ram and Ors.’** it is held in paragraph Nos.45, 46 and 48 as follows:

“45. In the case before the Hon’ble Supreme Court, the specific performance of the agreement was refused since the plaintiff therein was found to be guilty of inaction for a period of 2½ years after initial payment of a small amount as earnest money by him. This inaction on the part of the plaintiff weighed against the exercise of a discretion for grant of specific performance of the agreement in favour of the plaintiff.



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46. *In the present case, the plaintiff is not to be blamed for the delay. Though the agreement Ex.P.W.3/A was executed on 1.10.1983, the necessary mutation in favour of the defendants was sanctioned only on 30.11.1984. The sale deed was to be executed by the defendants only after the sanction of such mutation in their favour. While discussing question No.2 above, it has been observed that the defendants after the sanction of mutation had never informed the plaintiff in this regard. The defendant even failed to serve the notice on the plaintiff as stipulated in clause (2) of the agreement calling upon him to get the sale deed executed and registered in his favour. Rather the plaintiff on coming to know about the sanctioning of mutation in favour of the defendants on 17.9.1985 had served a notice Ex.P.W4/A upon them calling upon them to execute the sale deed in his favour on or before 5.10.1985. The defendants did not respond to such notice. No reply was even given by them. As a result the present suit was on 24.6.1986. Since the defendant themselves were guilty of inaction, they cannot be permitted to take advantage of their own inaction. The discretionary relief of specific performance of the agreement was, therefore, rightly granted by the two Courts below in favour of the plaintiff inasmuch as the defendants themselves are to be blamed for the delay.*



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14. Per contra, the learned counsel for the respondent/defendant contended that it is the specific condition in the Ex.A.3 sale agreement, dated 16.09.2007 that the time for conclusion of the contract has been fixed as one month. The time of one moth expired on 15.10.2007. The suit ought to have been filed on or before 15.10.2010, but the suit was filed on 13.01.2015, which is beyond the three years period. The further payments made on 07.02.2008, 11.02.2008 and 25.02.2008. The last payment was made on 25.02.2008. If three years are calculated from that date, the limitation expires on 24.02.2011. Hence, the suit is hopelessly barred by limitation. Even for the argument's sake, Ex.A.4 and Ex.A.6 are admitted, those letters were said to have been written on 14.02.2014 and 25.04.2014. As per Section 18 of the Limitation Act, the acknowledgements ought to have been executed within the three year period of limitation. In this case, three years expired on 15.10.2010 or 24.02.2011 from the last payment. Those letters said to have been signed on 14.02.2014 and 25.04.2014, were executed beyond the three years. Hence, these letters will not come under the definition of Section 18 of the Limitation Act and therefore, the suit is barred by limitation.



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15.The learned counsel for the defendant has further argued that as regards to readiness and willingness, the plaintiff has not been ready and willing to perform his part of contract, because after the last payment on 25.02.2008, the plaintiff did not make any further payment towards the sale. Mere assertions that he was ready 100 or 300 time do not establish his continuous readiness and willingness. The suit was filed after lapse of 8 years. All these years, the plaintiff has not made any effort for making payment. Even after filing the suit, the plaintiff has only deposited the balance sale consideration into Court on 04.03.2016. The plaintiff had not taken a single step to pay the balance sale consideration after 25.02.2008. From 25.02.2008 to 14.02.2014 there was no correspondence from the plaintiff. The alleged handing over possession is false one as there is no word in sale agreement in this regard. The act of the plaintiff itself shows that the plaintiff is not ready and willing to perform his part of contract.

16.In support of this contention, the learned counsel for the defendant has relied on the judgment of the **Hon'ble Apex Court** rendered in the case of **“U.N.Krishnamurthy /v/ A.M.Krishnamurthy”** reported in **(2023) 11**



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Supreme Court Cases 775, in which it is held in paragraph Nos.22, 23, 24 and 31 to 34 as follows:

"22. Section 16 of the Specific Relief Act, 1963, as it stood at the material time (prior to amendment with effect from 1.10.2018), inter alia, provides:-

*“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 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



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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.”

23. Section 16 (c) of the Specific Relief Act, 1963 bars the relief of specific performance of a contract in favour of a person, who fails to aver and prove his readiness and willingness to perform his part of contract. In view of Explanation (i) to clause (c) of Section 16, it may not be essential for the plaintiff to actually tender money to the defendant or to deposit money in Court, except when so directed by the Court, to prove readiness and willingness to perform the essential terms of a contract, which involves payment of money. However, Explanation (ii) says the plaintiff must aver performance or readiness and willingness to perform the contract according to its true construction.

24. 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



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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.

*31.In **K.S. Vidyanadam v. Vairavan**, Justice B.P.Jeevan Reddy said that grant of the relief of specific performance is discretionary and the Court is not bound to grant it. This Court further held that though time is not of essence to a contract relating to transfer of property, such contracts need to be completed within a reasonable time period. Thus, the time element cannot be completely ignored.*

32.In a suit for specific performance of a contract, the Court is required to pose unto itself the following questions, namely:-

32.1 Whether there is a valid agreement of sale binding on both the vendor and the vendee and

32.2 Whether the plaintiff has all along been and still is ready and willing to perform his part of the contract as envisaged under Section 16(c) of the



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Specific Relief Act, 1963.

33. *There is a distinction between readiness and willingness to perform the contract and both ingredients are necessary for the relief of specific performance. In **Acharya Swami Ganesh Dassji v. Sita Ram Thapar** cited by Mr.Venugopal, this Court said that there was a difference between readiness and willingness to perform a contract. While readiness means the capacity of the plaintiff to perform the contract which would include his financial position, willingness relates to the conduct of the plaintiff. The same view was taken by this Court in **Kalawati v. Rakesh Kumar**.*

34. *Even in a first appeal, the first Appellate Court is duty bound to examine whether there was continuous readiness and willingness on the part of the plaintiff to perform the contract. This proposition finds support from **Balraj Taneja v. Sunil Madan**, and **H.P. Pyarejan v. Dasappa** where this Court approved the views taken by the Privy Council in **Ardeshir Mama v. Flora Sassoon**.*

17.The learned counsel further submitted that the total payment of Rs.3,60,000/- is admitted. However, the plaintiff is not entitled to refund as the plaintiff has not specifically sought the alternative relief of refund of money



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according to provisions of Sec.22(2) of the Specific Relief Act. Unless the plaintiff claims a refund of the advance amount by way of alternative relief, the plaintiff is not entitled to get refund of the said advance amount. In support of this contention, the learned counsel relied on the judgment of the **Hon'ble Supreme Court** in the case of “**K.R.Suresh /v/ R.Poornima and Others**” reported in **2025 SCC Online SC 1014**, it is held in paragraph Nos.53, 54, 55, 58 to 64 as follows:

"ii. Law on the Alternative Relief of Refund of Earnest Money under Section 22 of the 1963 Act

53. The High Court denied the relief of refund of advance money to the appellant herein, having regard of the fact that the appellant had not sought for an alternative prayer for refund of the advance sale consideration in the suit as mandated by Section 22(2) of the 1963 Act.

54. Before we proceed to answer the question formulated by us in para 27, we deem it necessary to examine Section 22 of the 1963 Act. It reads thus:

“22. Power to grant relief for possession, partition, refund of earnest money, etc.—
(1) Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908 (5 of 1908), any person suing for the specific performance of a contract for the transfer of



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immovable property may, in an appropriate case, ask for—

(a) possession, or partition and separate possession, of the property, in addition to such performance; or

(b) any other relief to which he may be entitled, including the refund of any earnest money or deposit paid or [made by] him, in case his claim for specific performance is refused.

(2) No relief under clause (a) or clause (b) of sub-section (1) shall be granted by the court unless it has been specifically claimed:

Provided that where the plaintiff has not claimed any such relief in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just for including a claim for such relief.

(3) The power of the court to grant relief under clause (b) of subsection (1) shall be without prejudice to its powers to award compensation under section 21.”

55. Sir Frederick Pollock, 3rd Baronet, in Pollock & Mulla: The Indian Contract and Specific Relief Acts, 16th Edn., has discussed the object and scope of Section 22 of the 1963 Act and the alternative relief of refund of earnest money deposit,



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as follows:

“[s 22.6.2] Refund of Earnest Money or Deposit

[...] The relief of refunding of earnest money or deposit cannot be granted unless specifically claimed. Further such a plea cannot be considered in a second appeal, particularly when the issue of execution of the agreement has been held as not having been proved.....

*58. It is thus a settled position of law that the plaint may be amended at any stage of the proceedings to enable the plaintiff to seek an alternative relief, including that of refund of earnest money, and the courts have been vested with wide judicial discretion to permit such amendments. However, under Section 22 of the 1963 Act, the courts cannot grant such relief suo moto, since the inclusion of the prayer clause remains a sine qua non for the grant of such a relief. In other words, when an “appropriate case” exists for seeking the said relief under this provision, it must be specifically sought either in the original plaint or by way of an amendment. This has been emphatically held by this Court in **Desh Raj v. Rohtash Singh**, reported in (2023) 3 SCC 714. The relevant observations are reproduced hereunder:*



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“35. On a plain reading of the above-reproduced provision, we have no reason to doubt that the plaintiff in his suit for specific performance of a contract is not only entitled to seek specific performance of the contract for the transfer of immovable property but he can also seek alternative relief(s) including the refund of any earnest money, provided that such a relief has been specifically incorporated in the plaint. The court, however, has been vested with wide judicial discretion to permit the plaintiff to amend the plaint even at a later stage of the proceedings and seek the alternative relief of refund of the earnest money. The litmus test appears to be that unless a plaintiff specifically seeks the refund of the earnest money at the time of filing of the suit or by way of amendment, no such relief can be granted to him. The prayer clause is a sine qua non for grant of decree of refund of earnest money.

36. Applying these principles to the facts of the case in hand, we find that the respondent has neither prayed for the relief of refund of earnest money in the original plaint nor he sought any amendment at a subsequent stage. In the absence of such a prayer, it is difficult to accept that the courts would suo motu grant the refund of earnest money irrespective of the fact as to whether Section 22(2) of the SRA Act is to



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be construed directory or mandatory in nature.”

(Emphasis supplied)

59. The judgment in **Desh Raj** (supra) has been relied upon by the learned counsel appearing for the appellant herein. However, it is difficult to understand how this judgment furthers their case. On the contrary, this judgment clearly contradicts their position, stating in unequivocal terms that, in the absence of a prayer for the relief of refund of earnest money, such relief cannot be granted by this Court.

60. Another judgment which has been relied upon by the learned counsel for the appellant in reference to the issue of refund of earnest money, is the case of **Kamal Kumar v. Premlata Joshi**, reported in (2019) 3 SCC 704. Notably, the ruling in this case also stands contrary to the arguments advanced by the appellant on account of the fact that the relief of refund of earnest money was denied therein. The relevant observations are extracted hereunder:

“9. In the case at hand, we find that the two courts below have gone into these questions in the light of pleadings and evidence and recorded a categorical finding against the plaintiff holding that the plaintiff was neither ready nor willing to perform



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his part of the contract and, therefore, he was not entitled to claim the relief of specific performance of the contract against the defendants in relation to the suit land. It was also held that the plaintiff was not entitled to claim any relief of refund of earnest money because it was liable to be adjusted as agreed between them.”

(Emphasis supplied)

61. Applying these principles to the facts of the case at hand, we find ourselves unable to accept the submissions of the appellant that, in the absence of a specific prayer for the refund of advance money paid by them, Prayer (c) of the plaint which specifies the grant of “such other relief(s) as the Hon’ble Court deems fit in the facts and circumstances of the case in the interest of justice”, can be construed to include a prayer for such an alternative relief.

*62. The reasoning set forth in the case of **Manickam** (supra) as regards the relief of possession under Section 22(1)(a) of the 1963 Act, can be appropriately imported in the present case to say that the relief of refund of earnest money under Section 22(1)(b) is not a relief that automatically flows from a decree for specific performance of a sale agreement and must, therefore, be explicitly sought.*



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63. *In our considered opinion, the law contained under Section 22(2) of the 1963 Act is adequately broad and flexible to allow the appellant to seek an amendment of the plaint for the said relief, even at the appellate stage. However, no such application for an amendment of the plaint was moved either before the trial court or during the course of the first appeal before the High Court. That is to say, the appellant never prayed for the refund of the advance money. Here, it would be redundant to state that the law aids the vigilant, not those who sleep over their rights.*

E. CONCLUSION

64. *For all the foregoing reasons, we have reached the conclusion that the forfeiture of advance money by the respondent nos. 1-4 was justified. In such circumstances, we are not inclined to grant the relief of refund of advance money to the appellant.*

65. *We are unable to find any kind of perversity or illegality in the impugned judgment passed by the High Court. As a result, the present appeal stands dismissed.*

66. *Parties shall bear their own costs. Pending application(s), if any, stand disposed of."*



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18. In reply, the learned counsel for the plaintiff made his submissions that the plaintiff deposited the balance sale consideration. Moreover, the plaintiff and the defendant's families are relatives and the plaintiff has purchased 96 acres from the defendant's family. D.W.1 has also admitted the letters Ex.A.4 and Ex.A.6, hence, the surrounding circumstances have also to be looked into as per the judgment of **Welspun Specialty Solution Ltd. case (2022) 2 SCC 382** supra. Therefore, the appeal may be allowed.

19. On hearing both sides and on perusal of records, the main points argued pertain to limitation, readiness & willingness and the essence of time. The plaintiff mainly relied on Ex.A.4 and Ex.A.6, which were written by the defendant on 14.02.2014 and 25.04.2014, since the defendant has admitted execution of the sale agreement and receipt of the advance amount. The suit was filed on 13.01.2015 which is within three years from 25.04.2014. But, the defendant's side vehemently argued that those letters were written after the expiry of three years from the date of sale agreement on 16.09.2007, as well as the last payment of Rs.10,000/- on 25.02.2008, hence, these letters cannot be taken as acknowledgement as per Section 18 of the Limitation Act. Admittedly, there is no dispute that the sale agreement was executed on



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16.09.2007 for a total sale consideration of Rs.10,49,400/-, out of which, the plaintiff paid a sum of Rs.1,00,000/- on 16.09.2007; another Rs.1,50,000/- on 07.02.2008; another Rs.1,00,000/- on 11.02.2008 and the last payment of Rs.10,000/- on 25.02.2008. It is also agreed that the time for completion of sale was fixed as one month. While the facts being so, the three-year limitation period calculated from the date of the sale agreement ended on 15.10.2010, while the period calculated from the last payment date of 25.02.2008 concluded on 24.02.2011. Therefore, it is to be looked into whether the Ex.A.4 and Ex.A.6 letters, dated 14.02.2014 and 25.04.2014, written by the defendant, can be taken as an acknowledgment as per provisions of Section 18 of the Limitation Act.

20.Section 18 of the Limitation Act 1963 deals with the effect of acknowledgment in writing, which reads as follows:-

"18. Effect of acknowledgement in writing--

(1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgement of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person



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through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

(2)Where the writing containing the acknowledgement is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received.

Explanation: For the purposes of this Section -

(a) an acknowledgement may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set-off, or is addressed to a person other than a person entitled to the property or right;

(b) the word "signed" means signed either personally or by an agent duly authorized in this behalf; and

(c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right."



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21.In the decision in **State of Kerala v. Chacko, 2000 (3) M.LJ. 135**

(S.C.), the Hon'ble Supreme Court had an occasion to deal with the scope of Section 18 of the Limitation Act and held as follows:-

"From a perusal of Sub-section (1) of Section 18 it is evident that to invoke this provision:

(1) there must be an acknowledgment of liability in respect of property or right;

(2) the acknowledgment must be in writing signed by the party against whom such right of property is claimed (or by any person) through whom he derives his title or liability;

(3) the acknowledgment must be made before the expiration of the period prescribed for a suit or application (other than application for the execution of a decree) in respect of such property or right.

The effect of such an acknowledgment is that a fresh period of limitation has to be computed from the time when the acknowledgment was so signed.

22.From the above provisions and decision of the Hon'ble Supreme Court, it is clearly held that the acknowledgement has to be made within three years, and certainly not beyond three years of the original limitation period.



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It is admitted by both parties that the sale agreement was entered into on 16.09.2007 and the last payment was made on 25.02.2008. One month was the stipulated condition for completing the sale. Therefore, the limitation ends on 15.10.2010 and 24.02.2011 respectively. The alleged Ex.A.4 and Ex.A.6 acknowledgement letters were written by the defendant on 14.02.2014 and on 25.04.2014, i.e., beyond the three years period. Hence, they cannot be considered as acknowledgment within the meaning of provision of Section 18 of the Limitation Act, as rightly held by the trial Court and also rightly argued by the counsel for the defendant. But, the suit was filed on 13.01.2015, i.e., nearly a lapse of 7 years from the sale agreement and the last payment date. The plaintiff as P.W.1 has admitted as “ஒப்பந்தம் ஏற்பட்டு 6 வருடம் கழித்து வழக்கு தொடரப்பட்டது என்றால் சரிதான்.கிரைய ஒப்பந்தம் மற்றும் அதில் குறிப்பிட்டுள்ள கால அவகாசம் 1 மாதம் கழித்தது போக 3 ஆண்டு காலத்திற்குள் வா.சா.ஆ.4 கடிதம் பெறப்படவில்லை என்றால் சரிதான். 24.02.2011க்குள்ளாகவும் வா.சா.ஆ.4 எழுதி பெறவில்லை என்றால் சரிதான்”

Therefore, this Court holds that the suit is hopelessly barred by limitation. The trial Court has correctly appreciated the evidence and held that the suit is barred by limitation, which need not be interfered by this Appellate Court.



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23. The next point is regarding readiness and willingness. It is argued by the plaintiff's counsel that the trial Court has decided the suit only on the limitation point, it has not considered the aspect of readiness and willingness. It is admitted by both parties that the performance should have been completed within one month i.e., 15.10.2007, from the date of Ex.A.3 sale agreement on 16.09.2007. It is also admitted that the plaintiff paid some part of the sale consideration on 07.02.2008, 11.02.2008 and 25.02.2008. Thereafter, there was no attempt to pay the sale amount till filing of the suit. Even after filing of the suit, the plaintiff has deposited the balance sale consideration on 04.03.2016 as per his chief evidence as P.W.1, who categorically deposed as “தாவா கிரைய ஒப்பந்தத்திற்குண்டான பாக்கி கிரைய தொகை ரூ.6,89,400/யை 4.3.2016 அன்று கோர்ட்டில் டெபாசிட் செய்துவிட்டேன்..”. The Hon'ble Supreme Court has held in **Kirshnamurthy case reported in (2023) 11 Supreme Court Cases 775**, that the discretionary relief of specific performance cannot be granted in favour of a person who failed to prove readiness & willingness and also the first Appellate Court is duty bound to examine whether there was continuous readiness and willingness on the part of the plaintiff to perform the contract.



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24. On perusal of records, there is no correspondence between the period 25.02.2008 to 14.02.2014 made by the plaintiff to the defendant specifically mentioning his readiness and willingness or the availability of the balance sale consideration. Except oral evidence that 100 or 300 times the plaintiff asked the defendant, which is not sufficient, the same has to be established by admissible evidence other than oral evidence. But the plaintiff has not substantiated his continuous readiness and willingness. The evidence of P.W.1 in his cross examination is better to extract hereunder. He admitted that “25.02.2008 தேதியிலிருந்து 24.2.2011க்குள் வழக்கை தாக்கல் செய்யவில்லை என்றால் சரிதான். இடைப்பட்ட 3 வருட காலத்திற்குள் நான் எழுத்து மூலமாக ஒப்புந்தபடி நடந்துகொள்ளும்படி பிரதிவாதிக்கு அறிவிப்போ கடிதமோ எழுதி ஒப்புந்தபடி நடக்க கேட்கவில்லை என்றால் சரிதான். வாய்மொழியாக கேட்டேன்..”. The defendant in his evidence as D.W.1 deposed that “நானும் வாதியும் வாதியின் தந்தையும் 100 முறைக்கு மேல் சந்தித்துள்ளோம். அந்த 100 முறையும் சீக்கிரம் பதிந்து வாங்கிக்கொள்ளுங்கள் என்று நான்தான் சொன்னேன். வாதிகள் என்னிடம் பதிந்து தரும்படி கேட்கவில்லை சுமார் ஏழெட்டு வருடங்களுக்கு முன் கடைசியாக பதிந்து கொள்ளும்படி சொன்னேன். நான்கு வருடங்களுக்கு முன் அவர்களை கடைசியாக பார்த்தேன் அதன்பின் நேரில் சந்திக்கவில்லை ..” From the above material facts and evidence, it is very clear that the plaintiff has not been ready and willing to perform his part of contract.



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25.It is settled law that for the relief of specific performance, the plaintiff has to prove that all along and till the final decision of the suit, he was ready and willing to perform his part of the contract. It is the bounden duty of the Plaintiff to prove his readiness and willingness by adducing evidence. This crucial facet has to be determined by considering all circumstances including availability of funds and a mere statement or averment in the plaint of readiness and willingness, would not suffice. In *Umabai Vs. Nilkanth Dhondiba Chavan* reported in **2005 [6] SCC 243**, the Hon'ble Supreme Court has held that there must be a finding by the Court regarding the continuous readiness and willingness of the plaintiff to perform his part of the contract before granting specific performance. And also, from several judgments of the Hon'ble Supreme Court, this Court has no difficulty in holding that Section 16[c] of the Specific Relief Act is a personal bar and that the mandatory requirement of readiness and willingness cannot be dispensed with merely because the defendants have repudiated the contract or they were not in a position to perform their part of the contract. Section 51 of the Contract Act does not dispense with the proof of readiness of the plaintiff to perform his part of the contract. In the instance case, the appellant/plaintiff has not let in any



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evidence to show that he was ready with the money to complete the transaction within the time stipulated in the Agreement Ex.A.3. Therefore, this Court further holds that the plaintiff has not established his continuous readiness and willingness to perform his part of the contract.

26.The next point is regarding refund of the advance amount. On perusal of the plaint, no alternative relief for the refund of the advance amount was sought by the plaintiff. The Hon'ble Supreme Court in **K.R.Suresh's case** reported in **2025 SCC Online SC 1014** clearly settled the proposition of law that in the absence of a specific prayer for the refund of advance money, the plaintiff is not entitled for refund of advance amount. In view of the above settled position the plaintiff is not entitled for refund of advance amount. The citations relied on by the respondent/defendant are squarely applicable to the facts and circumstances of the case and the citations relied on by the appellant/plaintiff are not applicable to the facts of the case.

27.From the above facts and circumstances conjoined with the evidence oral and documentary adduced in this case, the trial Court correctly found that the suit is barred by limitation and the plaintiff is not entitled to the relief of



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specific performance. Hence, the finding of the trial Court need not be interfered with by way of this appeal. All the points for consideration are answered against the appellant/plaintiff. Thus, the appeal is liable to be dismissed.

28.In the result, this appeal is dismissed. The judgment and decree, dated 17.07.2017 made in O.S.No.10 of 2015 on the file of the learned VI Additional District Judge, Madurai, is confirmed. No costs. Consequently, the connected Miscellaneous Petition is closed.

02.02.2026

NCC : Yes / No
Internet : Yes / No
Index : Yes / No
VSD

To

- 1.The VI Additional District Court,
Madurai.
- 2.The Record Keeper,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

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P.VADAMALAI, J.

VSD

**Pre-Delivery Judgment made in
A.S(MD)No.214 of 2017
and
C.M.P(MD)No.12141 of 2017**

02.02.2026