



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

114

RSA-3945-2023 (O&M)
Reserved on : 31.10.2025
Pronounced on : 28.01.2026
Uploaded on : 28.01.2026

Whether only operative part of the judgment is pronounced? No
Whether full judgment is pronounced? Yes

Renu Sharma Appellant

versus

Satish Nagar and another Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Puneet Bali, Senior Advocate with
Mr. Gagandeep Singh, Advocate
Mr. Paramvir Singh, Advocate and
Ms. Parneet Kaur, Advocate
for the appellants.

Mr. Chetan Mittal, Senior Advocate with
Mr. Kunal Mulwani, Advocate and
Mr. Kanwal Goyal, Advocate
for respondent No.1.

Mr. Amit Jhanji, Senior Advocate with
Ms. Priyanka Kansal, Advocate and
Ms. Divya Sharma, Advocate (through V.C.)
for respondent No.2.

PANKAJ JAIN, J.

1. Plaintiff is in second appeal aggrieved of concurrent judgment and decree passed by both the Courts below.
2. Plaintiff filed suit seeking decree of specific performance of agreement to sell dated 16.10.2008. As per plaintiff, defendant No.1 agreed to sell land measuring 06 kanal 12 marlas as detailed out in the



headnote of the plaint (hereinafter referred to as the suit land) for a total sale consideration of Rs.1,01,70,000/- by way of written agreement to sell dated 16.10.2008. A sum of Rs.45,70,000/- was paid to defendant No.1 at the time of execution of agreement to sell. Parties agreed to get the sale deed executed on or before 15.12.2008. As per the averments made in the plaint, defendant No.1 approached the plaintiff on 20.11.2008 and raised demand of Rs.5 lakhs. Plaintiff paid the same. Writing to the said effect was made on the original receipt dated 16.10.2008. Accordingly, the plaintiff by 20.11.2008 paid an amount of Rs.50,70,000/- to defendant No.1 towards sale consideration.

3. Plaintiff claims to have remained present before the Office of Sub Registrar, Sohna on 15.12.2008 for execution of sale deed along with the stamp papers and a demand draft of Rs.10 lakhs dated 13.12.2008 and the remaining sale consideration in cash. Defendant No.1 remained absent and failed to perform his part. Plaintiff claims to have got her presence marked before the Office of Sub Registrar.

4. She further pleads that she called upon defendant No.1 by way of legal notice dated 16.12.2008 to come present before the Office of Sub Registrar, Sohna on 05.01.2009 and to execute sale deed in her favour. Plaintiff apprehending that defendant No.1 was contemplating to alienate the suit land, filed suit seeking permanent injunction restraining defendant No.1 from alienating the suit property. Defendant No.1 appeared before the Court in the suit for permanent injunction and admitted execution of agreement to sell in favour of plaintiff and receipt of Rs.50,70,000/-.

5. 05.01.2009 was declared as a public holiday. On



06.01.2009, plaintiff remained present before the Sub Registrar to get the sale deed executed. She possessed bank drafts of Rs.51 lakhs for paying the balance sale consideration. The sale deed was drafted with the consent of defendant No.1. She paid a stamp fee of Rs.1,91,100/- on the asking of Sub Registrar, Sohna. Instead of signing the sale deed, defendant No.1 opted to turn around. He left the Office of Sub Registrar, Sohna without executing the sale deed.

6. Plaintiff again served legal notice dated 10.01.2009 requesting defendant No.1 to execute the sale deed. Plaintiff claims to have again appeared before the Sub Registrar on 19.01.2009. After defendant No.1 failed to execute the sale deed in favour of plaintiff, plaintiff instituted the present suit alleging that defendant No.1 in complete disregard to the agreement executed in favour of the plaintiff acted in collusion with defendant No.2 and executed sale deed dated 28.10.2010 qua the suit land in favour of defendant No.2. Plaintiff thus, claims that the sale deed is illegal and is act of result of collusion between defendants. She pleads of having remained ready and willing to perform her part of contract continuously.

7. Defendants contested the suit. Defendant No.1 in his written statement, has admitted the execution of agreement to sell and receipt of an amount of Rs.50,70,000/- from the plaintiff. He, however questions the readiness and willingness of the plaintiff. As per defendant No.1, plaintiff entered into an agreement to sell dated 16.10.2008 intending to book profit. She had no intention of purchasing the land. Plaintiff lacked capacity to pay the balance sale consideration. As per defendant No.1, he remained present before the



Office of Sub registrar on the appointed date from 9 a.m. to 5 p.m., but it is the plaintiff who failed to turn up to perform her part. Defendant No.1 pleads that after the plaintiff failed to perform her part on the appointed date, he provided her another opportunity to get the sale deed registered by paying balance consideration by way of legal notice dated 18.12.2008 calling upon her to remain present before the Office of Sub Registrar, Sohna on 05.01.2009. Defendant No.1 denies that the plaintiff came present before the Office of Sub Registrar on 06.01.2009. It is denied that plaintiff got the sale deed scribed with the consent of defendant No.1 on the stamp papers or that she paid deficient stamp fee of Rs.1,91,100/- on the asking of the Sub Registrar.

8. In a separate written statement filed before the Court of First Instance, defendant No.2 claims to be a bonafide purchaser of the suit land for valuable consideration without any notice of the prior agreement to sell dated 16.10.2008 executed between plaintiff and defendant No.1. Defendant No.2 claims that he having purchased suit land by way of a valid registered sale deed dated 28.10.2010 for a valuable consideration of Rs.2,10,00,000/-, defendant No.2 is absolute owner of the suit property.

9. Suit filed by the plaintiff was put to trial by the Court of First Instance framing following issues:-

1. *Whether the defendants entered into an agreement to sell dated 16.10.2008 as alleged? OPP*
2. *Whether the plaintiff has been ready and willing to perform his part of contract? OPP*
3. *If issues no. 1 and 2 are proved, whether the plaintiff is entitled to a decree for possession by way of specific performance of the agreement to sell dated 16.10.2008*



directing the defendants to execute the sale deed of the land in question in favour of the plaintiff in favour of plaintiff as well as injunction as prayed for? OPP

4. *Whether the defendant no. 2 is bonafide purchaser of the suit land? OPD*

5. *Whether the plaintiff has not come with clean hands before the court?OPD*

6. *Whether the plaintiff has no locus standi to file the present suit? OPD*

7. *Whether the plaintiff is estopped from filling the present suit by his own act and conduct? OPD*

8. *Whether the plaintiff has no cause of action to file the present suit? OPD*

9. *Whether the suit is not maintainable? OPD*

10. *Relief.”*

10. While returning findings on issue No.1 and 2, the Court of First Instance found that both the parties got their presence marked before the Sub Register, Sohna and have proved the same vide Ex. P15 and Ex. DA. Plaintiff vide legal notice dated 16.12.2008 Ex. P16 insisted upon defendant No.1 to get the land partitioned after obtaining NOC from other co-sharers and to deliver clear possession of a rectangular portion on the main road fenced with barbed wire. She asked him to come present before the Office of Sub Registrar on 05.01.2009 for registration of sale deed thereafter. Defendant No.1 too called upon the plaintiff to come present before the Office of Sub Register and to get the sale deed registered on 05.01.2009 vide legal notice dated 18.12.2008. 05.01.2009 being declared a public holiday, both the parties appeared before the Office of Sub Registrar on 06.01.2009, but the sale deed still could not be registered. Court of the First Instance found that the plaintiff tried to incorporate new terms and conditions into the agreement to sell dated 16.10.2008, which were in



fact never part of the agreement to sell. As per Trial Court, burden was upon the plaintiff to show her continuous readiness and willingness to perform her part which she failed to prove. On the appointed date, i.e. 15.12.2008, plaintiff was short of stamp duty to the tune of Rs.1,91,100/-. She filed suit for specific performance with delay without there being any reasonable cause. Rather than preferring suit for specific performance, she filed suit for permanent injunction on 17.12.2008. Even though, cause of action to file suit for specific performance was available to her. Court of the First Instance found that all these facts to show that the plaintiff having failed to show her readiness and willingness to perform her part, she is not entitled to the relief of specific performance.

11. On issue No.4, the Court of First Instance found that defendant No.2 duly proved of having paid the valid sale consideration for the purchase of suit property and having perfected its title in due course of law. He is proved to be a bonafide purchaser. Issue No.5 to 9 have been answered in favour of the plaintiff and against the defendant. The Court of First Instance denied the discretionary relief of specific performance to the plaintiff and decreed her suit for alternate relief of recovery of Rs.52.70 lakhs along with interest @ of 12% per annum from the date of filing of the suit till the date of its realization.

12. Unsuccessful plaintiff preferred an appeal. Lower Appellate Court culled out the following issues for determination:-

“(a) Whether the due execution of Agreement of Sale EX-P1 is proved in this case?

(b) Whether the plaintiff is/was always ready and willing to perform the essential terms of the contract which were to be



performed by her?

(c) Whether the plaintiff is entitled to decree for Specific Performance of Agreement of Sale EX-P1?

(d) Whether the appeal is fit to be accepted on the grounds taken by the plaintiff?

(e) What Order or Decree?”

13. While affirming the findings recorded by the Court of First Instance, the Lower appellate court observed as under:-

“32. The Plaintiff has relied upon the legal notices dated 16.12.2008 and 10.01.2009 i.e. EX-P16 and EX-P31, affidavits of presence before the Registrar, Sohna dated 15.12.2008, 06.01.2009 and 19.01.2009. Drift Sale Deed EX-P26. copies of Bank Drafts and Statement of Account EX-P30 to prove that she was always ready and willing to perform her part of the contract. Even though, it may be true that the Plaintiff was ready with the balance sale consideration, it cannot be ignored that she only filed a suit for permanent injunction. She had not produced the aforesaid documents in the suit filed by her seeking Permanent Injunction against the defendant no.1. Further, the defendant no.1 filed written statement in that suit on 05.05.2009 stating that the Sale Deed executed in her favour. After the framing of issues she constantly sought adjournments for leading evidence and her evidence was closed by Order on 03.11.2010. She then filed application to withdraw the said suit with liberty to file another suit for Specific Performance. She concealed the fact that She had already filed the suit for Specific Performance and fraudulently succeeded in obtaining the Order dated 09.02.2011 EX-P21. Despite the fact that the plaintiff was having apprehension that the defendant no.1 may have sold the subject land, she had not filed the suit for Specific Performance and waited till execution of Sale Deed EX-DW1/1 dated 28.10.2010. The defendant no.1 was present in the Office of Registrar, Sohna and got his presence recorded vide Affidavit EX-DA. On the next day, she got served Legal Notice EX-P16 upon the defendant no.1 and in the said notice she insisted that the defendant no.1 should get the land partition and to obtain the no objection from all other co-sharers. She also mentioned that the defendant no.1 is required



to deliver the possession of the land in rectangular shape on the main road fenced with barbed wires. The Ld. Trial Court took note of the entire evidence lead, and observed that no such conditions were incorporated in the Agreement of Sale EX-P1 as it is clearly mentioned in the same that the plaintiff agreed to purchase the unpartitioned subject land falling in two Khewats. The conditions came to light only in the legal notice EX-P16 and suit for permanent injunction filed by the plaintiff. It was also held by the Ld. Trial Court that since new terms and conditions were introduced by the plaintiff on her own, which were never the part of original Agreement of Sale EX-P1, it can not be presumed that she was ready and willing to perform her part of the contract. She may be having the sale consideration and the payment to purchase the Stamp Fee, but the fact remains, she was not ready to purchase the unpartitioned land. She wanted it to be in single Khewat after being partitioned, which was not a condition in the Agreement of Sale. She insisted on the same, so the Sale Deed could not be executed. Further, there is delay of two years in filing the suit for Specific Performance.

33. It is settled law that for relief of specific performance, the Plaintiff has to prove that all along and till the final decision of the suit, she was ready and willing to perform her part of the contract. It is the bounden duty of the Plaintiff to prove her readiness and willingness by adducing evidence. This crucial facet has to be determined by considering all circumstances including availability of funds and mere statement or averment in plaint of readiness and willingness, would not suffice. Even if it is accepted that the Plaintiff may have been willing to perform her part of contract. It however, appears that she was not ready to purchase the unpartitioned land. She was possibly trying to buy time to discharge her part of contract. For lack of readiness and willingness, the plaintiff is not entitled to a decree for Specific Performance. Equitably also, she is not entitled to get the discretionary relief as her conduct is not blemish free. In addendum, the plaintiff also filed a writ petition in the Hon'ble High Court of Punjab and Haryana challenging the License issued in favour of the defendant no.2. The Hon'ble High Court commented upon the conduct of the plaintiff by making observation that though the



remedy of specific performance was available to the plaintiff, she chose to file the suit for injunction only. The claim of plaintiff lacks bonafide and the writ petition was dismissed with costs of `50,000/-. Under these circumstances, the Ld. Trial Court has already given enough relief to the plaintiff by directing the defendant no.1 to return the amount received by him alongwith interest @ 12% per annum. As the claim of plaintiff has not be approved, there is no application of principle of lis pendens. The authorities relied upon by learned counsel for the plaintiff **Panchanan Dharma and Ors and Suresh Kumar Wadhwa** (Supra) are not applicable in the present context.”

14. The Lower Appellate Court accordingly dismissed the appeal preferred by the plaintiff.

15. Plaintiff is in second appeal seeking main relief of specific performance.

16. Learned senior counsel appearing for the plaintiff submits that both the Courts below have erred on facts as well as law, thereby returning perverse findings which are unsustainable in the eyes of law. Senior counsel submits that the Courts below have been wrongly swayed away by the legal notice dated 16.12.2008 to hold that the plaintiff tried to incorporate new terms and conditions in the agreement to sell and was thus not willing to perform her part in terms of agreement to sell dated 16.10.2008. He submits that on 06.01.2009, draft sale deed was prepared. The same was scribed on the stamp paper purchased by the plaintiff. The same was in accordance with agreement to sell and thus, the findings recorded by the Courts below cannot be sustained. He further refers to cross examination of the plaintiff, wherein she was specifically asked whether she is ready to get the registered sale deed executed in accordance with the notice dated



16.12.2008 Ex. P16. He submits that a specific answer was given by plaintiff indicating her willingness to get the registered sale deed executed in accordance with the agreement to sell dated 16.10.2008.

17. Mr. Bali submits that the Lower Appellate Court erred in holding that the plaintiff has not approached the Court with clean hands or that the claim of the plaintiff is not bonafide. He submits that the observations made by High Court in revision, i.e. Civil Revision No.6045 of 2013 were expunged by Supreme Court in its order dated 01.05.2015. It has been further contended that the Courts below have wrongly given undue weightage to delay in filing the suit. He submits that the limitation to file suit for specific performance is three years from the date of refusal to execute the sale deed. In the present case, the limitation shall commence from 15.12.2008/06.01.2009. Thus, the plaintiff had three years thereafter to file the present suit. The suit was instituted on 23.12.2010, which is well within the three years prescribed period of limitation. The plaintiff always remained ready and willing to perform her part. Financial capacity of plaintiff to perform her part has been proved. It has been proved on record that on the appointed date, the plaintiff had demand drafts of more than Rs.40 lakhs in her possession and had also paid an amount of Rs.1,91,100/- to make good deficiency in the stamp duty. The same was proved by examining Satyawan Clerk from the Office of Sub Registrar as PW4.

18. Mr. Bali further submits that the claim of the plaintiff has to be adjudicated in terms of mandate of Section 19 of Specific Relief Act, 1963. Prior execution of agreement to sell by defendant No.1-the owner in favour of plaintiff is not in dispute. Defendant No.2 in order to



save their rights were required to prove that they had no knowledge of prior agreement to sell in favour of plaintiff. The said plea raised by defendant No.2 in the written statement stands demolished by the testimony of DW-4 Rahul Soni and affidavit filed in CWP No.12321 of 2013 by respondent No.2. Mr. Bali submits that the plaintiff in order to succeed in a suit for specific performance, is required to prove continuous readiness and willingness to perform her part. There is overwhelming evidence on record to prove that the plaintiff always remained ready and willing to perform her part and had financial capacity to honor the commitment. Reliance is being placed upon ***P. Ramasubbamma v. V. Vijayalakshmi and Ors, (2022) 7 SCC 384, Motilal Jain v. Ramdasi (SMT) and Ors. (2000) 6 SCC 420, A.K. Narula v. Iqbal Ahmed and Ors. ILR (2013) 1 DELHI 315, Harvinder Pal Singh and Ors v. S.K. Mukherjee and Ors. (2015) SCC Online Del 11508, A.Kanthmani v. Nasreen Ahmed (2017) 4 SCC 654, H.K.N. Swami v. Irshad Basith (dead) by LRs (2005) 10 SCC 243, Zarina Siddiqui v. A.Ramalingam (2015) 1 SCC 705, Usha Sinha v. Dina Ram and Ors. (2008) 7 SCC 144, Devalsaab (dead) by LRs. V. Ibrahimsab F. Karajagi and Anr. (2005) 3 SCC 342, Sucha Singh Sodhi (Dead) through LRs VERSUS Baldev Raj Walia and Another [(2018) 6 SCC 733], Anil Kumar VERSUS Rajiv Chopra and another (RSA-5703-2015), P.C. Varghese VERSUS Devaki Amma 26-36 Balambika Devi and Others [(2005) 8 SCC 486], Siddamsetty Infra Projects Pvt. Ltd. Versus Katta Sujatha Reddy and Others (2024 SCC OnLine 37-61 SC 3214), Maharaj Singh and Others VERSUS Karan Singh (Dead) through LRs and Others (2024) 8 SCC, Amrik Singh***



VERSUS Govt. Of NCT of Delhi [WP(C) 3463 of 2017], P. Daivasigamani VERSUS S. Sambandan [(2022) 14 SCC 793].

19. *Per contra*, learned senior counsel for respondents, Mr. Chetan Mittal submits that the grant of relief of specific performance is a discretionary and equitable relief under Section 20 of the Specific Relief Act, 1963. The Courts below have rightly exercised their discretion in denying the main relief to the plaintiff. This Court in second appeal need not interfere in exercise of the discretion by the Courts below.

20. Mr. Mittal submits that from legal notice dated 16.12.2008 Ex. P16, it is evident that the plaintiff tried to add new terms and conditions which are not part of the agreement. The same cuts at the root of claim of plaintiff of being ready and willing. It has been further contended that even though the plaintiff had cause of action to file suit for specific performance, yet she opted to file simple suit for permanent injunction on 17.12.2008 thereby omitting to claim relief of specific performance. Thus, the present suit is barred under Order II Rule 2 CPC. Mr. Mittal refers to legal notice served on plaintiff at the behest of defendant No.1 dated 17.12.2008 Ex.P22 to submit that the defendant called upon the plaintiff to get the sale deed executed on or before 05.01.2009 with a specific stipulation that in the event of her failure to do so, the earnest money shall stand forfeited and the agreement shall stand cancelled. Plaintiff filed present suit without seeking declaration with respect to termination of agreement and for forfeiture of earnest money. Thus, the present suit is not maintainable. Reliance is being placed upon ratio of law laid down by Supreme Court in the case of ***I.S.***



Sikandar (D) by Lrs. vs. K. Subramani & Ors. 2013(15) SCC 27 and Anita G. Hawa vs. Navtej Singh Bains 2023 (2) RCR (Civil) 696.

21. Mr. Mittal submits that there is an unexplained delay in filing the present suit on part of plaintiff and the same is sufficient to deny her main relief. Grant of discretionary relief at this stage would amount to unfair advantage to the plaintiff keeping in view escalation of value of property, creation of third party rights and on account of change in the nature of property. He relies upon ***G. Jayashree & Ors. Vs. Bhagwandas Patel & Ors. (2009) 3 SCC 141, Kamal Kumar vs. Premlata Joshi & Ors (2019) 3 SCC 704, Umanaravan s/o Thakur Prasad Awathi vs. Sant Kumar 2013(25) R.C. R. (Civil) 729, Kaluram Agarwal vs. Dinesh Kumar Agarwal & Ors 2013(12) RC.R. (Civil) 932, M/s Virgo Industries (Eng.) P Ltd. vs M/s Venturetech Solution P. Ltd. 2013(1) SCC 625, Vurimi Pullaro vs. Vemari Vvankata Radharani & Anr. 2020 (14) SCC 110, LS Sikandar (D) by Lrs, vs. K Subramani & Ors. 2013(15) SCC 27, Anita G. Hawa vs. Navtej Singh Bains 2023(2) R.C.R. (Civil) 696, U.N. Krishnamurthy (since deceased) thr. Lrs. Vs. A.M. Krishnamurthy 2022 SCC Online SC 840, Mangal S& Anr, vs. Sube Singh (since deceased) & Anr. 2018(4) R.C.R.(Civil) 261, Nanjappan vs, Ramasamy & Anr. (2015) 14 SCC 341, Kulwant Singh & Anr. vs. Bhinder Singh & Ors. 2010 SCC Online P&H 4327.”***

22. Mr. Jhanji appearing for respondent No.2 has also argued on the same lines and has submitted that sale deed in favour of respondent No.2 having not been challenged by the plaintiff, the present suit is not maintainable.



23. I have heard counsel for the parties and have carefully gone through the records of the case.

24. A lot has been argued by the counsel representing parties with respect to maintainability of the suit relying upon Order II Rule 2 CPC and the suit being bad for having not sought decree of declaration against cancellation of agreement to sell, forfeiture of the earnest money and sale deed in favour of defendant No.2.

25. The Court of First Instance formed a specific issue with respect to maintainability of the suit, i.e. issue No.9. Issue No.4 to 9 were answered by Trial Court as under:-

“51. Onus to prove these issues lied upon the defendants. However, during the course of the arguments, learned counsel for the defendants have neither pressed these issues and nor any evidence has been led on record. Accordingly, the present issues are decided against the defendants.”

26. The said findings were never challenged by the respondents, even though the suit filed by the plaintiff was decreed though for alternate relief. In view thereof, this Court finds that it is too late in the day for the defendants to question the maintainability of the suit. Still further, the observations made by the Appellate Court to conclude that the conduct of the plaintiff is not blemish free and she thus, not entitled to get the discretionary relief, cannot be sustained in light of findings returned by Court of First Instance on issue No.5 in the absence of any appeal preferred by defendant.

27. That apart, this Court finds that the finding recorded by the Lower Appellate Court regarding conduct of the plaintiff cannot be sustained. Merely for the reason that the plaintiff preferred a writ petition challenging the license issued in favour of defendant No.2, she



cannot be accused of having not approached the Court with clean hands. The parties were in thick of *lis*. The plaintiff had every right to question the action of defendant No.2. Dismissal of the writ petition by High Court imposing cost of Rs.50,000/- does not affect her rights in the present suit seeking decree of specific performance. Writ Court decried the conduct of plaintiff in filing writ petition, it has no bearing on the present suit.

28. The material issues that need to be decided by this Court are issue No.2 to 4 as framed by the Court of First Instance. Parties admittedly entered into an agreement to sell dated 16.10.2008, whereby defendant No.1 agreed to sell suit land in favour of the plaintiff for a total sale consideration of Rs.1,01,70,000/-. It is also admitted by defendant No.1 that an amount of Rs.52.70 lakhs was paid to him by plaintiff prior to agreed date of execution of sale deed, i.e. 15.12.2008. It is also a matter of record that on 15.12.2008, both the parties claimed to have appeared before the Office of Sub Registrar, but the sale deed could not be executed. Both the parties by cross legal notices called upon each other to come before the Sub Registrar to execute the sale deed on 05.01.2009. 05.01.2009 was declared as public holiday. Both the parties claim to have appeared before the Sub Registrar on 06.01.2009. Thus, it is their conduct on 06.01.2009 that assumes significance.

29. Defendant No.1 and the Courts below have referred to the legal notice served by the plaintiff upon defendant No.1 dated 16.12.2008 to hold that the plaintiff having sought execution of sale deed on the basis of improved terms and conditions, is not entitled to



discretionary relief as attempt made by her cuts at the very root of her claim of being willing to get the sale deed executed. However, the plea raised on behalf of the plaintiff is that on 06.01.2009, sale deed was drafted on the stamp papers strictly in terms of agreement to sell dated 16.10.2008 which shows that even though plaintiff initially called upon defendant No.1 to get the sale deed executed on the improved terms, but on 06.01.2009, the sale deed was drafted strictly in terms of agreement to sell dated 16.10.2008. Trial court rejected the contention raised by the plaintiff holding that the plaintiff never brought on record the draft sale deed for the reasons best known to her and thus failed to prove that the sale deed was drafted on 06.01.2009 and not drafted subsequently to create an evidence for readiness and willingness.

30. In the considered opinion of this Court, the said finding recorded by the Court of the First Instance cannot be sustained. Draft sale deed is on record as Ex.P26. Even the doubt expressed by the Court of the First Instance with respect to drafting of the sale deed on 06.01.2009 stands dispelled in the light of legal notice dated 10.01.2009 Ex. P31, wherein plaintiff claimed as under:-

“3. That the cut off date of the agreement was 15th December, 2008. On the said date you were not in a position to handover the peaceful possession of the land in question and therefore, the sale deed could not be executed even then our client was having the balance consideration of the agreement to sell. However, vide notice dated 18.12.2008 you asked to our client execute the sale deed on or before 5th of January, 2009. The said notice was duly received by our client and the date of execution of the sale deed was duly conveyed vide a separate telegram. In these circumstances, our client got prepared three demand drafts of the balance consideration in your favour for a sum of Rs.51,00,000/-. Apart from this, our



client with your consent and choice got typed the sale deed on the stamp papers. All of a sudden, you intentionally and deliberately failed to put signatures on the sale deed duly typed on the stamp papers. Despite making number of efforts on the part of our client, you remained failed to execute the sale deed of the land in question and handing over the peaceful possession of the same, therefore, you have violated the terms and conditions of the agreement dated 16.10.2008 and your own notice dated 18.12.2008.”

31. Testimony of PW4 further proves that plaintiff was present before Sub Registrar, Sohna on 06.01.2009. She made good deficiency in stamp duty to the tune of Rs.1,91,100/-. The Court of the First Instance has held that the proceedings regarding making of deficiency of stamp fee, blemishes the readiness and willingness on part of the plaintiff. The said finding recorded by the Court of First Instance and affirmed by the Lower Appellate Court cannot be sustained. The fact that the plaintiff paid for deficient stamp duty not only shows that she was willing to get the sale deed executed, but also evinces her financial capacity. In view thereof, this Court finds that the Courts below erred in holding that the plaintiff was not ready and willing to perform her part. Plaintiff successfully proved draft sale deed Ex.P26. She proved her financial capacity to pay the balance sale consideration by proving bank drafts Ex.P24. Accordingly, findings recorded by the Courts below on issue No.2 are hereby ordered to be reversed.

32. Defendants have also questioned conduct of the plaintiff referring to the delay in filing the suit seeking specific performance. As per the agreement to sell in question, parties agreed to get the sale deed executed on or before 15.12.2008. The plaintiff instituted suit for permanent injunction on 16.12.2008. In terms of legal notice served

upon each other, parties agreed to get the sale deed executed on 05.01.2009/06.01.2009. The present suit was instituted by the plaintiff on 23.12.2010. Though the suit of the plaintiff is well within the prescribed period of limitation in terms of Article 54 of the Limitation Act, but the counsel representing defendants have urged this Court to hold that the delayed filing of the suit to be a reason enough to relief of specific performance to the plaintiff.

33. Supreme Court in the case of ‘**Mademsetty Satyanarayana v. G. Yelloji Rao**’, 1964 SCC OnLine SC 33 observed as under :

“7. The following are cases in which the court may properly exercise a discretion not to decree specific performance:

I. Where the circumstances under which the contract is made are such as to give the plaintiff an unfair advantage over the defendant, though there may be no fraud or misrepresentation on the plaintiff's part.

Illustrations

II. Where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff.

Illustrations

The following is a case in which the court may properly exercise a discretion to decree specific performance:

III. Where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.

The First Schedule to the Limitation Act		
Description of suit	Period of Limitation	Time from which period begins to run
Article 113. 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.

Under Section 22 of the Specific Relief Act, relief of specific performance is discretionary but not arbitrary : discretion must be exercised in accordance with sound and reasonable judicial principles. The cases providing for a guide to courts to exercise discretion one way or other are only illustrative; they are not intended to be exhaustive. As Article 113 of the Limitation Act prescribes a period of 3 years from the date fixed thereunder for specific performance of a contract, it follows that mere delay without more extending up to the said period cannot possibly be a reason for a court to exercise its discretion against giving a relief of specific performance. Nor can the scope of the discretion, after excluding the cases mentioned in Section 22 of the Specific Relief Act, be confined to waiver, abandonment or estoppel. If one of these three circumstances is established, no question of discretion arises, for either there will be no subsisting right or there will be a bar against its assertion. So, there must be some discretionary field unoccupied by the three cases, otherwise the substantive section becomes otiose. It is really difficult to define that field. Diverse situations may arise which may induce a court not to exercise the discretion in favour of the plaintiff. It may better be left undefined except to state what the section says, namely, discretion of the court is not arbitrary, but sound and reasonable guided by judicial principles and capable of correction by a court of appeal.

8. Mr Lakshmaiah cited a long catena of English decisions to define the scope of a court's discretion. Before referring to them, it is necessary to know the fundamental difference between the two systems — English and Indian — qua the relief of specific performance. In England the relief of specific performance pertains to the domain of equity; in India, to that of statutory law. In England there is no period of limitation for instituting a suit for the said relief and, therefore, mere delay — the time lag depending upon circumstances — may itself be sufficient to refuse the relief; but, in India mere delay cannot be a ground for refusing the said relief, for the statute prescribes the period of limitation. If the suit is in time, delay is sanctioned by law; if it is beyond time, the suit will be



dismissed as barred by time; in either case, no question of equity arises.

9. With this background let us look at the English text-books and decisions relied upon by the learned counsel for the appellant. In *Halsbury's Laws of England*, Vol. 36, at p. 324, it is stated:

“Where time is not originally of the essence of the contract, and has not been made so by due notice, delay by a party in performing his part of the contract, or in commencing or prosecuting the enforcement of his rights, may constitute such laches or acquiescence as will debar him from obtaining specific performance. The extent of delay which has this effect varies with circumstances, but as a rule must be capable of being construed as amounting to an abandonment of the contract. A much shorter period of delay, however, suffices if it is delay in declaring an option or exercising any other unilateral right; and if the other party has already given notice that he does not intend to perform the contract, the party aggrieved must take proceedings promptly if he desires to obtain specific performance.”

In *Fry on Specific Performance*, 6th Edn., at p. 517, it is said:

“Where one party to the contract has given notice to the other that he will not perform it, acquiescence in this by the other party, by a comparatively brief delay in enforcing his right, will be a bar : so that in one case two years' delay in filing a bill after such notice, in another case one year's delay, and in a third (where the contract was for a lease of collieries) five months' delay was held to exclude the intervention of the Court.”

Learned counsel cited many English decisions in support of his argument that there shall be promptitude and diligence in enforcing a claim for specific performance after a repudiation of the contract by the other party and that mere continual claim without any active steps will not keep alive the right



which would otherwise be defeated by laches : see *Clegg v. Edmondson* [(1857) 114 RR 336] , *Eads v. Williams* [(1854) 43 ER Chan 671] , *Lehmann v. McArthur* [(1968) LR 3 Ch AC 496] , *Watsoh v. Reid* [(1830) 39 ER Chan 91] , and *Emile Erlanger v. New Sombrero Phosphate Company* [(1878) LR 3 AC 1218] . But as stated earlier, the English principles based upon mere delay can have no application in India where the statute prescribes the tune for enforcing the claim for specific performance. But another class of cases which dealt with the doctrine of laches have some bearing in the Indian context. In *Lindsay Petroleum Company v. Prosper Armstrong Hurd, Abram Farewell, and John Kemp*[(1874) LR 5 PCA 221, 239-240] Sir Barnes Peacock defined the doctrine thus:

“Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material.”

This passage indicates that either waiver or conduct equivalent to waiver along with delay may be a ground for refusing to give a decree for specific performance. In *Caesar Lamare v. Thomas Dixon* [(1873) 6 HLC 414, 423] Lord Chelmsford said:

“The conduct of the party applying for relief is always an important element for consideration.”

The House of Lords in *Emile Erlanger v. New Sombrero Phosphate Company* [(1878) LR 3 AC 1218] approved the passage in *Lindsay Petroleum Company v. Prosper Armstrong Hurd, Abram Farewell, and John Kemp* [(1874) LR 5 PCA 221, 239-240] which we have extracted earlier.

10. It is clear from these decisions that the conduct of a party which puts the other party in a disadvantageous position,



though it does not amount to waiver, may in certain circumstances preclude him from obtaining a decree for specific performance.

11. Now we shall consider some of the Indian decisions cited at the Bar. A Division Bench of the Allahabad High Court held in *Nawab Begum v. A.H. Creet* [(1905) ILR 27 All 678] that great delay on the part of the plaintiff in applying to the court for specific performance of a contract of which he claimed the benefit was of itself a sufficient reason for the Court in the exercise of its discretion to refuse relief. But it will be seen from the facts of that case that apart from the delay the conduct of the plaintiff was such that it induced the other party to change his position to his detriment. A Division Bench of the Patna High Court in *Rameshwar Prasad Sahi v. Mt. Anandi Devi* [(1960) ILR 39 Pat 79] held on the facts of that case that the delay in bringing the suit for specific performance was always fatal to a suit, and that it amounted to an abandonment of the contract and waiver of his rights to sue for specific performance. If the learned Judges meant to lay down that mere delay would amount to abandonment of a right, we find it difficult to agree with them. The decision of the Calcutta High Court in *Gosthe Behari v. Omiyo Prosad* [AIR 1960 Cal 361] recognized that mere delay was not sufficient to deny the relief of specific performance, but pointed out that though it was not necessary to establish that the plaintiff had abandoned his right, the Court may, in view of the conduct of the plaintiff coupled with his delay that had prejudiced the defendant, refuse to give the equitable relief. In *Chamarti Suryaprakasarayudu v. Arardhi Lakshminarasimha* [(1914) 26 MLJ 518, 521, 523] , a Division Bench of the Madras High Court rightly pointed out that delay by itself was not a ground for refusing to give a decree in a suit for specific performance. Sadasiva Aiyar, J., observed:

“I think that it is an error of law to hold that mere delay amounts to a waiver or abandonment apart from other facts or circumstances or conduct of the plaintiff indicating that the delay was due to a waiver or abandonment of the contract on the plaintiffs part.”



Seshagiri Aiyar, J., said much to the same effect, thus:

“There is nothing in the Specific Relief Act which says that laches in bringing a suit will by itself be a ground for refusing specific performance.... Having regard to the fact that a special period of limitation has been fixed for bringing a suit for specific performance, I think the legislature has not intended that mere laches should be one of the grounds for refusing specific performance.”

We do not think, though the observations of Sadasiva Aiyar, J., are rather wide, that the learned Judges intended to lay down that unless there is a waiver or abandonment by the plaintiff of his rights to sue for specific performance, he should be non-suited, for if that was the law, as we have pointed out earlier, the substantive part of Section 22 of the Specific Relief Act would become nugatory. A Division Bench of the Calcutta High Court in *Jadu Nath Gupta v. Chandra Bhusan* [AIR 1932 Cal 493] again emphasized the fact that the English doctrine of delay and laches showing negligence in seeking relief in a court of equity cannot be imported into the Indian law in view of Article 113 of the Limitation Act. But it pointed out that where the conduct of the plaintiff was such that it did not amount to abandonment but showed waiver or acquiescence especially when inaction on his part induced the defendant to change his position, the plaintiff ought not to be allowed any relief. This case brings out not only the distinction between English and Indian law but also that waiver or abandonment of a right is not a pre-condition for refusing relief of specific performance.

12. The result of the aforesaid discussion of the case law may be briefly stated thus : While in England mere delay or laches may be a ground for refusing to give a relief of specific performance, in India mere delay without such conduct on the part of the plaintiff as would cause prejudice to the defendant does not empower a court to refuse such a relief. But as in England so in India, proof of abandonment or waiver of a right is not a pre-condition necessary to disentitle the plaintiff to the said relief, for if abandonment or waiver is established, no question of discretion on the part of the Court would arise.



We have used the expression “waiver” in its legally accepted sense, namely, “waiver is contractual, and may constitute a cause of action : it is an agreement to release or not to assert a right”; see *Dawson's Bank Ltd. v. Nippon Menkwa Kabushiki Kaisha* [(1935) LR 62 IA 100, 108] . It is not possible or desirable to lay down the circumstances under which a court can exercise its discretion against the plaintiff. But they must be such that the representation by or the conduct or neglect of the plaintiff is directly responsible in inducing the defendant to change his position to his prejudice or such as to bring about a situation when it would be inequitable to give him such a relief.”

34. Further, in the case of **P. Daivasigamani v. S. Sambandan, (2022) 14 SCC 793**, Apex Court held as under:

“15. It cannot be gainsaid that even though time is not considered as the essence of the contract in case of immovable property and that the suit could be filed within three years as provided in Article 54 of the Limitation Act, the respondent-plaintiff had to perform his part of the contract within the reasonable time having regard to the term of the agreement prescribing the time-limit. **The time-limit prescribed in the agreement cannot be ignored on the ground that time was not made the essence of the agreement or that the suit could be filed within three years from the date fixed for performance or from the date when the performance is refused by the vendor. Nonetheless, as discussed above, the suit having been filed by the respondent well within the prescribed time-limit under Article 54 of the Limitation Act, the respondent could not have been non-suited on the ground of the suit being barred by limitation as sought to be submitted by the learned counsel for the appellant.**

16. As regards the delay in filing the suit, it is very pertinent to note that the rule of equity that exists in England, does not apply in India, and so long as a suit for specific performance is filed within the period of limitation, delay cannot be a ground to refuse the relief of specific performance to the plaintiff. In *Mademsetty Satyanarayana v. G. Yelloji Rao* [*Mademsetty Satyanarayana v. G. Yelloji Rao*, 1964 SCC



OnLine SC 33 : AIR 1965 SC 1405] it has been observed as under : (AIR p. 1409, para 7)

“7. Mr Lakshmaiah cited a long catena of English decisions to define the scope of a court's discretion. Before referring to them, it is necessary to know the fundamental difference between the two systems—English and Indian—qua the relief of specific performance. In England the relief of specific performance pertains to the domain of equity; in India, to that of statutory law. In England there is no period of limitation for instituting a suit for the said relief and, therefore, mere delay — the time lag depending upon circumstances — may itself be sufficient to refuse the relief; but, in India mere delay cannot be a ground for refusing the said relief, for the statute prescribes the period of limitation. If the suit is in time, delay is sanctioned by law; if it is beyond time, the suit will be dismissed as barred by time; in either case, no question of equity arises.”

17. The aforesaid ratio has also been followed recently by this Court in *R. Lakshmikantham v. Devaraji* [*R. Lakshmikantham v. Devaraji*, (2019) 8 SCC 62] . **We, therefore, have no hesitation in holding that mere delay alone in filing the suit for specific performance, without reference to the conduct of the plaintiff, could not be a ground for refusing the said relief, when the suit was filed within the statutory time-limit by the respondent-plaintiff.**

31. There is a distinction between limitation and delay and laches. Limitation is a ground for dismissing a suit even if the plaintiff is otherwise entitled to specific performance, while delay operates to determine the discretion and exercise under Section 20 of the Specific Relief Act, even if the suit is not dismissed on account of limitation. However, not one but several aspects have to be considered when the court, in terms of Section 20 of the Specific Relief Act, exercises discretion, guided by judicial principles, sound and reasonable.

33. Though much reliance was placed by the learned counsel for the appellant on the decisions of this Court in *Ritu Saxena v. J.S. Grover* [*Ritu Saxena v. J.S. Grover*, (2019) 9



SCC 132 : (2019) 4 SCC (Civ) 302] , in *Abdullakoya Haji v. Rubis Tharayil* [*Abdullakoya Haji v. Rubis Tharayil*, (2019) 17 SCC 216 : (2020) 3 SCC (Civ) 399] , and other cases, to submit that the respondent had failed to establish his financial capacity to pay the balance amount of consideration at the relevant time and had also failed to deposit the said amount in the court at the time of filing of the suit, he was not entitled to the discretionary relief of specific performance as granted by the Court, we do not find any substance in any of the said submissions. As per the ratio of judgment laid down by the three-Judge Bench in *Syed Dastagir* [*Syed Dastagir v. T.R. Gopalakrishna Setty*, (1999) 6 SCC 337] , the compliance of “readiness and willingness” has to be in spirit and substance and not in letter and form, while making averments in the plaint. As per Explanation (i) to Section 16(c), he need not tender to the defendant or deposit the amount in the court, but he must aver performance of, or readiness and willingness to perform the contract according to its true construction.

34. Having regard to the facts and circumstances of the case and to the conduct of the parties, we have no hesitation in holding that there was due compliance of Section 16(c) read with its Explanation on the part of the respondent and that it was the appellant who had failed to perform as per the terms of the agreement, though called upon by the respondent to perform. The High Court also had rightly held that the plaintiff had complied with the requirements of Section 16(c) of the said Act by making a specific pleading with regard to his readiness and willingness and also proving the same by reliable evidence. This Court does not find any illegality or infirmity in the impugned judgment [*S. Sambandam v. P. Daivasigamani*, 2010 SCC OnLine Mad 3459] passed by the High Court. We, therefore confirm the same, so far as granting of decree for specific performance of the agreement in question is concerned.”

35. Apex Court in the case of **Saradamani Kandappan v. S.**

Rajalakshmi, (2011) 12 SCC 18 observed as under :-

“40. The principle underlying the said decisions with reference to statutes, would on the same logic, apply to decisions of courts also.



41. A correct perspective relating to the question whether time is not of the essence of the contract in contracts relating to immovable property, is given by this Court in *K.S. Vidyanadam v. Vairavan* [(1997) 3 SCC 1] (by Jeevan Reddy, J. who incidentally was a member of the Constitution Bench in *Chand Rani* [(1993) 1 SCC 519]). This Court observed: (SCC pp. 7 & 9, paras 10-11)

“10. It has been consistently held by the courts in India, following certain early English decisions, that in the case of agreement of sale relating to immovable property, time is not of the essence of the contract unless specifically provided to that effect. ... *in the case of urban properties in India, it is well-known that their prices have been going up sharply over the last few decades—particularly after 1973. ...*

11. ... *We cannot be oblivious to the reality—and the reality is constant and continuous rise in the values of urban properties—fuelled by large-scale migration of people from rural areas to urban centres and by inflation. ... Indeed, we are inclined to think that the rigor of the rule evolved by courts that time is not of the essence of the contract in the case of immovable properties—evolved in times when prices and values were stable and inflation was unknown—requires to be relaxed, if not modified, particularly in the case of urban immovable properties. It is high time, we do so.”*

(emphasis supplied)

42. Therefore there is an urgent need to revisit the principle that time is not of the essence in contracts relating to immovable properties and also explain the current position of law with regard to contracts relating to immovable property made after 1975, in view of the changed circumstances arising from inflation and steep increase in prices. We do not propose to undertake that exercise in this case, nor referring the matter to a larger Bench as we have held on facts in this case that time is the essence of the contract, even with reference to the principles in *Chand Rani* [(1993) 1 SCC 519] and other cases. Be that as it may.



43. Till the issue is considered in an appropriate case, we can only reiterate what has been suggested in *K.S. Vidyanadam* [(1997) 3 SCC 1] :

(i) The courts, while exercising discretion in suits for specific performance, should bear in mind that when the parties prescribe a time/period, for taking certain steps or for completion of the transaction, that must have some significance and therefore time/period prescribed cannot be ignored.

(ii) The courts will apply greater scrutiny and strictness when considering whether the purchaser was “ready and willing” to perform his part of the contract.

(iii) Every suit for specific performance need not be decreed merely because it is filed within the period of limitation by ignoring the time-limits stipulated in the agreement. The courts will also “frown” upon suits which are not filed immediately after the breach/refusal. The fact that limitation is three years does not mean that a purchaser can wait for 1 or 2 years to file a suit and obtain specific performance. The three-year period is intended to assist the purchasers in special cases, as for example, where the major part of the consideration has been paid to the vendor and possession has been delivered in part-performance, where equity shifts in favour of the purchaser.”

36. In the considered opinion of this Court, though delayed filing of the suit is one of the considerations while decreeing the suit for specific performance, but the same cannot be the sole criteria. Plaintiff paid about half of the sale consideration to the defendant before the date of execution of the sale deed. She proved her financial capacity to perform her part on the agreed date on 06.01.2009. In view of above, this Court finds that delay in filing of the suit cannot held to be a reason adequate enough to deny the plaintiff main relief of decree of specific performance. Thus, finding on issue No.3 is also answered in favour of



the plaintiff and against the defendant.

37. Mr. Chetan Mittal has relied upon *I.S. Sikandar (D) by Lrs. (supra)*, to question maintainability of suit asserting that the plaintiff has not challenged cancellation of the agreement to sell. However, bare perusal of the agreement to sell would reveal that there is no clause in the agreement to sell that enables defendant No.1-vendor to cancel the agreement to sell. Rights of the parties are contractual in nature and are governed by the covenant contained in the contract. There being no power vested with defendant No.1 to cancel the agreement to sell, the cancellation pleaded in legal notice is inconsequential.

38. Defendant No.2 claims to be a bonafide purchaser and the Courts below have also held him to be so.

39. Admittedly, agreement to sell in favour of the plaintiff is prior to sale deed/agreement to sell executed by defendant No.1 in favour of defendant No.2. Section 19 of the Specific Relief Act, 1963 reads as under:-

“19. Relief against parties and persons claiming under them by subsequent title.—

Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against—

[\(a\)](#) either party thereto;

[\(b\)](#) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;

[\(c\)](#) any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been displaced by the defendant;

[\(d\)](#) when a company has entered into a contract and subsequently becomes amalgamated with another company,



the new company which arises out of the amalgamation;

(e)when the promoters of a company have, before its incorporation, entered into a contract for the purpose of the company and such contract is warranted by the terms of the incorporation, the company:

Provided that the company has accepted the contract and communicated such acceptance to the other party to the contract.”

40. The plaintiff has placed on record the affidavit dated 28.01.2010 executed by defendant No.2. As per which, it was stated by defendant No.2 on oath that defendant no.2 have knowledge of agreement to sell executed by vendor and the company, i.e. defendant No.2 will be responsible for legal proceedings or act. The affidavit is part of Ex.PX-1/4. The authorized representative of defendant No.4 Rahul Soni appeared as DW-4 wherein he admitted that defendant No.1 had informed defendant No.2 about agreement to sell executed by him qua suit land prior to execution of sale deed. The Courts below ignored the overwhelming evidence in form of affidavit and admission made by the authorized representative of defendant No.2 and returned perverse finding regarding defendant No.2 being bonafide purchaser. Thus, finding on issue No.4 recorded by the Courts below cannot be sustained and the same need to be reversed.

41. As a sequel of the discussion held hereinabove, this Court finds that the Courts below erred in declining main relief of specific performance to the plaintiff and decreeing the suit merely for alternate relief of recovery.

42. Accordingly, it is ordered as under:-

(i) The finding recorded by the Courts below on issue No.1 to 4 are hereby reversed.



- (ii) Suit filed by the plaintiff is decreed.
- (iii) It is ordered that the plaintiff is entitled for decree of specific performance of agreement to sell dated 16.10.2008 qua land measuring 6 kanal 12 marlas as detailed out in the headnote of the plaint on the payment of balance sale consideration within a period of 03 months from the date of passing of the decree.

- 43. Disposed off, accordingly.
- 44. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

28.01.2026

Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : Yes