



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF MARCH, 2026

PRESENT

THE HON'BLE MR. JUSTICE D K SINGH

AND

THE HON'BLE MR. JUSTICE T.M.NADAF

REGULAR FIRST APPEAL NO. 1292 OF 2018 (SP)

BETWEEN:

SMT VIJAYA VENKATESH
39 YEARS,
W/O C VENKATESH
R/AT NO.6/1,
1ST FLOOR, 3RD TEMPLE STREET,
16TH CROSS, MALLESHWARAM,
BANGALORE.

...APPELLANT

(BY SRI. GANAPATHY BHAT VAJRALLI., ADVOCATE)

AND:

1. SRI THIAMMARAYAPPA
S/O BYRAPPA
70 YEARS,
RESIDING AT KATTUGOLLANAHALLI
MANDURU POST,
BIDARAHALLI,
BANGALORE.

2. SMT VENKATLAKSMMAMMA
D/O THIMMARAYAPPA
28 YEARS,
RESIDING AT KATTUGOLLANAHALLI
MANDURU POST, BIDARAHALLI,
BANGALORE.





3. SMT ANUSUYA
D/O THIMMARAYAPPA
33 YEARS,
RESIDING AT KATTUGOLLANAHALLI.
MANDURU POST, BIDARAHALLI,
BANGALORE.
4. SRI ASHWATH
S/O THIMMARAYAPPA
28 YEARS,
RESIDING AT KATTUGOLLANAHALLI,
MANDURU POST, BIDARAHALLI,
BANGALORE.

...RESPONDENTS

(SERVED AND UNREPRESENTED)

THIS RFA IS FILED UNDER SECTION 96 OF CPC, AGAINST THE JUDGMENT AND DECREE DATED 31.03.2018 PASSED IN O.S.NO.727/2008 ON THE FILE OF THE PRINCIPAL SENIOR CIVIL JUDGE, BANGALORE RURAL DISTRICT BANGALORE, DISMISSING THE SUIT FOR SPECIFIC PERFORMANCE OF CONTRACT.

THIS APPEAL, COMING ON FOR ORDERS, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE D K SINGH
and
HON'BLE MR. JUSTICE T.M.NADAF

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE T.M.NADAF)

Though this appeal is listed for orders for non-filing of translated copies which is now made available by the



learned counsel appearing for the appellant, since the respondents are served and unrepresented, with the consent of learned counsel for the appellant, the matter is taken up for final disposal.

2. The plaintiff is in appeal before us under Section 96 of CPC, challenging the Judgment and Decree dated 31.03.2018 passed by the Prl. Senior Civil Judge, Bengaluru Rural District, Bengaluru (for short 'the Trial Court').

3. The learned Trial Court by the impugned Judgment and Decree, dismissed the suit filed by the plaintiff for the relief of specific performance answering all the issues framed in the suit against the plaintiff though there is no contest by the defendants.

4. The parties are referred to as per their rankings before the Trial Court.



5. Heard, Sri.Ganapathy Bhat Vajralli., learned counsel appearing for the appellant. The respondents though served, remained unrepresented.

6. The factual matrix leading to file the present appeal are as under:

As per the plaintiff:

The plaintiff filed the suit for the following reliefs:

- a) Decree of specific performance, directing the Defendants 1 to 4, their agents, workmen, nominees, representatives or any one claiming under them, to perform their obligations by executing a Registered Sale Deed by receiving the balance of the sale consideration in favour of the Plaintiff, in respect of the Schedule Land OR if the Defendants 1 to 4 fail to perform their part of the obligations and to execute the Sale Deed, this Hon'ble Court may be pleased to execute the Sale deed in respect of Schedule Land in favour of the Plaintiff and get the name duly Registered in accordance with law.
- b) To direct the Defendants 1 to 4 to deliver the vacant possession of the Schedule Land to the Plaintiff OR if the Defendants fail to deliver the vacant possession, this Hon'ble Court may be



pleased to deliver the vacant possession of the Schedule Land to the Plaintiff.

- c) For declaration that the Sale deed dated 1-9-2007 executed by Defendants No.1 to 4 in favour of the fifth Defendant, Registered as No.BDH-1-01869/07-08, Book-I, CD No.BDHD 5 and Registered in the office of the Sub-Registrar, Bidarahalli, Bangalore East Taluk, is *ab-initio void* and is not binding on the Plaintiff.
- d) For possession directing the fifth Defendant, his agents, nominees, workmen or any one claiming under him, to quit, vacate and deliver the vacant possession of the Schedule Land to the Plaintiff.
- e) For Permanent Injunction against the Defendants, their agents, workmen, nominees, representatives or any one claiming under them, restraining them from alienating, conveying, transferring, encumbering or parting with possession of the plaint Schedule Land to any third parties, in any manner whatsoever.
- f) For consequential ancillary relief of mandatory injunction directing the Sub-Registrar, Bidarahalli, Bangalore East Taluk, to record the decree that may be granted by this Hon'ble Court with reference to the Schedule Land and the Sale deed dated 1.9.2007, Registered as No.BDH-1-01869/07-08, and Registered in the office of the Sub-Registrar Bidarahalli, Bangalore.



g) To award costs of this suit and grant such other reliefs, as this Hon'ble Court deems fit to grant, in the circumstances of the case and in the interest of justice.

7. The plaintiff claims to have entered into an agreement of sale with defendant No.1 in the year 2007 in respect of land bearing Sy.No.36/1 measuring 01 Acre 7½ Guntas situated at Kattugollahalli Village, Bidarahalli Hobli, Bengaluru East Taluk, Bengaluru, described as suit schedule property.

8. It is the case of the plaintiff that defendant No.1 represented her that he had acquired the suit schedule property under registered sale deed dated 17.07.1974 registered in the office of Sub-Registrar, Hoskote bearing Document No.813/74-75, Book-1, Volume 1389 at pages 164 and 165. It is contended that defendant No.1 further represented that the suit schedule property is his self-acquired, absolute and exclusive property and after purchase, his name has been entered in



the RTC of the land for the year 2007-08 vide Mutation Record M.R.No.32/06-07, whereby reflecting name of defendant No.1.

9. It is the further case of the plaintiff that upon mutual deliberations and discussions, the plaintiff expressed her willingness to purchase the suit schedule property and the plaintiff and defendant No.1 have entered into an Agreement of Sale dated 10.07.2007. The sale consideration was fixed at Rs.31,46,875/- (Rs.26,50,000/- per Acre). The plaintiff paid a sum of Rs.3,00,000/- under a Cheque bearing No.0131112 dated 10.02.2007 drawn on Vijaya Bank, Brigade Road, Bengaluru. According to the plaintiff, the Cheque has been encashed by defendant No.1 and balance sale consideration was required to be paid within 21 days, after defendant No.1 arranging all necessary documents to execute valid sale deed.



10. It is the further case of the plaintiff that ever since the date of the sale agreement, throughout and even now she has been ready and willing to perform her part of the obligations and to complete the sale transaction. She has got financial capacity to complete the registration and has approached defendant No.1 several time requesting to perform his part of the contract, but defendant No.1 deliberately delayed in production of the documents. However, defendant No.1 is pressuring the plaintiff to part with the balance money without performing his part of the contract. Since defendant No.1 has failed to perform his part of the contract, the plaintiff got issued notice on 26.09.2007 (Ex.P.5) to defendant No.1 calling upon him to complete the sale transaction in accordance with the law. The copy of the notice has been served on defendant No.1 which was answered by him through his advocate denying the agreement between him and the plaintiff and further stated in the legal notice that, for his family and legal necessities, defendant No.1 alongwith his family members



have jointly sold the suit schedule property in favor of Sri.K.Swaroop Kumar Reddy S/o.K.Ramlinga Reddy on 01.09.2007, that is, prior to issuance of notice by the plaintiff. Defendant No.1 specifically denied that he was paid Rs.3,00,000/- under a Cheque and has not executed any document, much less the sale agreement in favor of the plaintiff. The plaintiff thereafter, filed a suit for specific performance, calling upon defendant No.1 to execute the sale deed in her favor in terms of the sale agreement, so also to deliver the vacant possession of the property, for declaration that the sale deed in favor of defendant No.5 is not binding on her, for permanent injunction and other consequential reliefs, which we have already been extracted supra.

11. After service of notice, defendant No.1 appeared and filed written statement denying the agreement of sale, passing of sale consideration under a Cheque and also stated that he never came across the



plaintiff, especially in Paragraph No.7 of his written statement and sought to dismiss the suit.

12. During the pendency of the suit, defendant No.1 died and defendants 2 to 4 were brought on record as his legal representatives. Though defendant No.5 who is the subsequent purchaser made an attempt to file written statement at the fag end of the trial, the Trial Court dismissed the application along with Written Statement to take it on record. The same was challenged before this Court in W.P.No.17717/2016 and the same came to be dismissed on 01.09.2016.

13. After completion of pleadings, the Trial Court framed following:

ISSUES

- 1) *Whether the plaintiff proves that Defendant No.1 to 4 are agreed to sell the suit schedule property for a sum of Rs.31,46,875/- by executing agreement of sale on 10/02/2007 in favour of her by receiving Rs.3,00,000/- as a part sale consideration?*



- 2) *Whether plaintiff proves that she is always ready and willing to perform her part of the contract from the date of agreement of sale?*
- 3) *Whether Plaintiff proves that Defendant No.1 to 4 sold the suit schedule property in favour of Defendant No.5 on 1.9.07 is illegal not binding on her?*
- 4) *Whether Defendant proves suit is barred by limitation?*
- 5) *Whether suit is bad for non-joiner and mis joinder of proper and necessary parties?*
- 6) *Whether plaintiff is entitled for the relief as prayed in the plaint?*
- 7) *What order or decree?*

14. The plaintiff in order to prove her case, examined herself as PW.1 and produced 11 documents marked as Ex.P1 to Ex.P11 and also examined one independent witness as PW.2 and closed her evidence. On the other hand, defendants neither adduced oral evidence nor produced documentary evidence. However, the plaintiff and her witness have been cross-examined by them.



15. The Trial Court after completion of evidence and hearing the rival submissions, passed the Judgment and decree dismissing the suit in its entirety.

16. The Trial Court answered all the Issues against the plaintiff, which includes the agreement, passing of consideration, readiness and willingness, which are required to be proved by the plaintiff to seek specific performance. The Trial Court while answering Issue No.1, at paragraph No.12 has stated that the plaintiff except examining herself as PW1, has not examined any witnesses of the documents, that is, the sale agreement and not marked the signatures of defendant No.1 and other witnesses in her evidence. The Trial Court further observed that the time stipulated under the agreement was 21 days, however no notice has been issued within 21 days. To put it in other words, the plaintiff has not issued notice within 21 days, the moment she came to know that defendant No.1 has not provided all the documents required for due execution of the sale deed. However, a



notice was issued only on 26.09.2007, by that time, the suit schedule property under Ex.P.1 has already been alienated under the registered sale deed dated 01.09.2007.

17. So far as passing of consideration of Rs.3,00,000/- as contended by the plaintiff, the Trial Court has answered the same at Paragraphs 13 and 14 of the Judgment stating that the plaintiff has not produced any document to show that the cheque has been encashed. The cheque which has been issued for Rs.3,00,000/- is in the account maintained with the M/s.D.V Infrastructure. The witness who has been examined is said to be the partner of M/s.D.V Infrastructure. The witness has categorically admitted that the amount has been paid from the Company account. However, neither in the sale agreement nor in the pleadings, nothing has been stated regarding the payment made through the Company on behalf of the plaintiff. Nothing has been placed by the plaintiff regarding the payment through M/s.D.V



Infrastructure. In these circumstances, the Trial Court comes to a conclusion that there is no passing of sale consideration of Rs.3,00,000/- as contended by the plaintiff. Though PW.2 has stated that he is having interest in the suit schedule property, however he was admittedly not a signatory to Ex.P1 sale agreement. He pleads his ignorance regarding signatories of the Agreement of sale, though he has stated that he was present at the time of agreement. In these circumstances, the Trial Court formed an opinion that changing version of PW.2 cannot be relied on and is not helpful to the case of the plaintiff, while reasoning its decision especially at Paragraph No.14 of the Judgment.

18. The Trial Court further observed that PW.1 categorically stated that the amount of Rs.3,00,000/- has been shown in the Income Tax Returns of the Company, however nothing has been placed on record to substantiate the same. The plaintiff in the cross-examination has stated that she was the partner in the



Company stated supra and the Cheque was issued from the account of the Company and the amount has been shown in the Income Tax Returns of the Company and she has not issued an individual cheque, however nothing of that sort is stated neither in the agreement nor in the plaint. The Trial Court comes to a conclusion that though Ex.P11 has been produced which is the Account Statement standing in the name of M/s.D.V Infrastructure, the Cheque under which the payment has been made was issued in the name of one Thimma and name of defendant No.1 is Sri.Thimmarayappa as such there is no passing of amount. In order to prove that both, i.e., Thimma and Thimmarayappa are one and the same, the plaintiff has not produced any documents before the Trial Court. These are the circumstances for the Trial Court to hold that the agreement which is the basis for the right and disputed by defendant No.1 has not been proved by the plaintiff and accordingly answered Issue No.1 in the Negative.



19. So far as readiness and willingness is concerned, the Trial Court has formed an opinion that the agreement was in the month of February 2007 with a time line of 21 days. However, within 21 days, the plaintiff has not shown her readiness and willingness by issuing any notice and by making further payment. The Trial Court has observed that the plaintiff has not produced any document to show that she was having sufficient balance to perform her part under the sale agreement and comes to a conclusion that the plaintiff has failed to prove the readiness and willingness, which is the main key ingredient for considering the relief of specific performance and answered Issue No.2 against the plaintiff.

20. So far as Issue No.3, regarding alienation of property, the Trial Court has answered the issue in the Negative and held that the alienation is binding on all parties, including the plaintiff. The Court further held that the allegation of illegality made by the plaintiff cannot be sustained, as the plaintiff has miserably failed to prove the



alleged sale agreement. The Trial Court answered all other issues against the plaintiff and dismissed the suit. It is this Judgment and Decree passed by the Trial Court is called in question in this appeal.

21. Sri.Bhat., learned counsel appearing for the appellant with all vehemence submits that the appellant has filed an application under Order XLI Rule 27 seeking to produce documents i.e. Resolution dated 09.02.2007, Request Letter dated 09.02.2007, three bank statements at Documents No.3, 4 and 5, Income Tax Returns of 2007-08 and 2008-09, to show the financial capacity of the plaintiff.

22. The application filed is supported by an affidavit sworn by the appellant. In the affidavit, it has been stated that the documents now sought to be produced, are essential to prove the relationship between the plaintiff and partnership firm, and the said documents are very much essential to determine real controversy between the



parties in the suit. The plaintiff has produced the Bank statements and the Resolution to contend that M/s.D.V Infrastructure has paid Rs.3,00,000/- in favor of defendant No.1 on her behalf. The reason for non-producing these documents before the Trial Court is stated in Paragraph 7 of the affidavit, wherein it is stated that these documents have been recently traced while searching other documents and some of the documents have been taken from the Bank. As such, now sought permission to produce these documents. Learned counsel further submits that these documents are very essential to throw light on the readiness and willingness of the plaintiff.

23. He further submits that the findings of the Trial Court on the issue regarding agreement, passing of earnest amount and the readiness and willingness are depending on the documents now sought to be produced, which clearly throws light on the disputed aspects. He submits that the Trial Court has failed to consider that though the notice was not issued within 21 days as



stipulated in the agreement, but it is issued within time prescribed under the Limitation Act. He further submits that prior to the payment as contemplated under the sale agreement fixing the period of 21 days, the defendant has to perform his part of the contract i.e., to supply all the documents which are essential and necessary for execution of the valid sale deed, which has not been done. In these circumstances, since there is failure on the part of the defendant, though, he has been approached several times, notice was not issued and amount agreed was also not paid but the plaintiff was ready with the same within time line of 21 days stipulated. The plaintiff left with no other remedy, issued notice within 7 months from the date of agreement calling upon defendant No.1 to execute the sale deed as contemplated under the sale agreement dated 10.07.2007 and sought to remand the matter by allowing the application now filed for producing additional documents and provide him an opportunity to lead



evidence before the Court to prove Issue No.1 to 3, the essential issues for proper adjudication of the case.

24. Having heard the learned counsel for the appellant, perused the appeal papers, Trial Court record as well as the application filed under Order XLI Rule 27 of CPC, the following points would arise for consideration:

- (1) Whether the plaintiff has made out any case to allow the application filed under Order XLI Rule 27 of CPC for production of additional documents?
- (2) Whether any interference is required at the hands of this Court with the Judgment and Decree passed by the Trial Court?

25. Our answer to both the points for consideration are in the ***Negative*** for the following:

REASONS

26. Before advertng to the contentions stated in the application filed to produce the additional evidence, it



would be apt to extract the provisions of Order LXI Rule 27 of CPC.

27. Production of Additional Evidence in Appellate Court.

(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court, But if:

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.

(emphasis supplied)

27. Order LXI Rule 27 Sub-Rule (1) starts with sentence 'the parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court', however an exception is carved to this Rule under the following circumstances, (a) when the Trial Court refused to admit the evidence. It is not the case of the appellant that she has produced the document



and the Trial Court has refused to consider the said documents. The next exception is (aa) additional evidence can be considered only when it is established that notwithstanding the due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed was passed. This clearly states two things, one is the plaintiff has exercised all her due diligence to produce the documents which is now sought to be produced, but they were not within her knowledge and could not, after exercise of due diligence be produced by her before the Trial Court.

28. The word due diligence has been repeatedly considered by the Hon'ble Apex Court as well as this Court in catena of cases. The party must establish his case to produce the additional documents to the satisfaction of the Court that the documents could not be produced without there being any fault attributable to him, since he has



exercised his all due diligence, but these documents were not within his knowledge or otherwise.

29. The word 'due diligence' used in Rule 27 plays a pivotal role when parties seek to introduce additional evidence. This is very crucial to maintaining the fairness while preventing the abuse of the Appellate process.

30. Due diligence refers to reasonable, persistent and careful efforts a party must have made to discover and produce evidence during the trial stage. If a party was aware of the evidence during the trial, but failed to produce it, is barred from claiming any relief under the rule as due diligence is distinct and differ from ignorance. In other words, despite the knowledge, ignorance by a party or his advocate cannot be a matter of due diligence. The word due diligence thus determines the scope of a party's constructive knowledge of the claim and the exercise of which is necessary before claiming the relief.



The ignorance thus destructive to the word due diligence and debars litigant to take shelter under the same.

31. As a General Rule, the Appellate Court should not admit additional evidence for the purpose of disposal of an appeal and the parties are not entitled to produce additional evidence, whether oral or documentary in the Appellate Court as a matter of right. The Code, however empowers the Court under the Rule to take additional evidence but subject to the riders stated therein. Though the power envisaged is discretionary but must be exercised on sound judicial principles and in the interest of justice and not in a mechanical routine manner.

32. The word 'additional evidence' does not mean evidence over and above the evidence led by the party in the Trial Court. The basic principles on which the Court could exercise its discretion are:

- (1) *Where Trial Court refused to admit the evidence which ought to have been admitted.*



- (2) *The party who wants to produce the additional evidence if establishes that notwithstanding the exercise of,*
- (a) *due diligence.*
 - (b) *evidence was not within his knowledge.*
 - (c) *could not after exercising due diligence be produced before the Trial Court.*
- (3) *If Appellate Court requires such document to enable it to pronounce the judgment or for any other substantial cause.*

33. It is thus clear from the language used in the provision that in the absence of these manifest conditions, the application could not be entertained under Clause (b) of Order XLI Rule 27(1). It is for the Court to consider that such evidence is necessitated to pronounce the Judgment or for some other substantial cause. This presupposes that, the additional evidence tendered should not be considered until the Appellate Court after examining the evidence on record has formed an opinion/ conclusion that the evidence as it stands is inherently defective and the



evidence produced is absolutely necessitated to resolve the dispute and pronouncing the Judgment. Until this is done, the Appellate Court is not obliged even if the additional evidence to be produced or offered as an evidence is of new matter discovered post the Judgment of the Trial Court and could not be produced before the Judgment.

34. The language encapsulated in the provision is to advance the cause of justice and not to allow the unsuccessful litigant to patch up the lacuna/ weak points in his case and plug-in to cover it in the Court of appeal. The Appellate Court in exercise of its appellate jurisdiction cannot travel outside the Trial Court record, but in furtherance of cause of justice it has discretion to allow the additional evidence but subject to the condition envisaged in the provision/ Rule and with all limitation contained therein.



35. Reverting to the case on hand, the documents now stated to be produced are the Bank Statements and the Income Tax Returns which cannot be said that they are not within the knowledge of the plaintiff, so also the resolution copy. These documents even as per the evidence of plaintiff were available to her, since in the cross-examination she has categorically admitted that the account statement of M/s.D.V Infrastructure is available and within the knowledge of the plaintiff. However, the same were not produced before the Trial Court. There is no plausible explanation as to why these documents were not produced before the Trial Court.

36. The Appellate Court while exercising its power is expected with all circumspect to examine the application filed under Order XLI Rule 27, and cannot exercise its power in a casual and routine manner, because the provision starts with a negative sentence, which states 'parties to the appeal shall not be entitled', in that view of the matter, the power cannot be exercised, not as a Rule,



but it has to be exercised as an exception if the circumstances contained under the provision are made out to the satisfaction of the Court.

37. Our view gains support from the recent Judgment of the Hon'ble Apex Court in the case of **GOBIND SINGH AND OTHERS VS. UNION OF INDIA AND OTEHRS** dated 09.03.2026, wherein the Hon'ble Apex Court has held that the Appellate Court may permit additional evidence only upon being satisfied with the conditions stipulated under Order XLI Rule 27 of CPC are fulfilled and the parties do not possess any vested or automatic right to seek admission of additional evidence at the appellate stage.

38. The Hon'ble Apex Court in Paragraph No.11.4 has held as under:

"11.4. Accordingly, it is only upon satisfaction of any of the aforesaid three contingencies that an application under Order XLI Rule 27 of CPC can be entertained. Sub-rule (2) of the said provision further mandates that where the appellate court forms an opinion that additional evidence is required to be admitted, it must record the reasons for such admission. While elucidating the scope and object of Order XLI Rule 27 of CPC, this Court, in **UNION OF INDIA V. IBRAHIM UDDIN**,



undertook an exhaustive analysis of the provision. The relevant extract is reproduced hereinafter: -

"36. The general principle is that the appellate court should not travel outside the record of the lower court and cannot take any evidence in appeal. However, as an exception, Order 41 Rule 27 CPC enables the appellate court to take additional evidence in exceptional circumstances. The appellate court may permit additional evidence only and only if the conditions laid down in this Rule are found to exist. The parties are not entitled, as of right, to the admission of such evidence. Thus, the provision does not apply, when on the basis of the evidence on record, the appellate court can pronounce a satisfactory judgment.

The matter is entirely within the discretion of the court and is to be used sparingly. Such a discretion is only a judicial discretion circumscribed by the limitation specified in the Rule itself.

...

38. Under Order 41 Rule 27 CPC, the appellate court has the power to allow a document to be produced and a witness to be examined. But the requirement of the said court must be limited to those cases where it found it necessary to obtain such evidence for enabling it to pronounce judgment. This provision does not entitle the appellate court to let in fresh evidence at the appellate stage where even without such evidence it can pronounce judgment in a case. It does not entitle the appellate court to let in fresh evidence only for the purpose of pronouncing judgment in a particular way. In other words, it is only for removing a lacuna in the evidence that the appellate court is empowered to admit additional evidence.

...

41. The words "for any other substantial cause" must be read with the word "requires" in the beginning of the sentence, so that it is only where,



for any other substantial cause, the appellate court requires additional evidence, that this Rule will apply e.g. when evidence has been taken by the lower court so imperfectly that the appellate court cannot pass a satisfactory judgment."

(emphasis supplied)

Thus, a holistic reading of the aforesaid decision makes it clear that the appellate court's inquiry, while considering an application for leading additional evidence, is confined to examining whether such evidence is necessary to remove a lacuna in the case. More importantly, the appellate court may permit additional evidence only upon being satisfied that the conditions expressly stipulated under Order XLI Rule 27 of CPC are fulfilled. The parties do not possess any vested or automatic right to seek admission of additional evidence at the appellate stage. Consequently, the provision has no application where the appellate court is in a position to render a satisfactory and reasoned judgment on the basis of the evidence already available on record"

39. A reading of the affidavit in support of the application, there is nothing which presupposes the words due diligence contemplated under the provision, but a routine casual and vague explanation offered in the affidavit in support of the application, in these circumstances, the Court must be guarded itself while exercising of power allowing the additional documents, but strictly adhering to the provisions contemplated under the provisions which we have already extracted supra. There is one more reason to reject the application even otherwise on another ground, i.e., there is no supporting



pleading found in the plaint regarding the contention now taken to produce the documents. In the absence of foundational facts, the evidence now sought to be laid cannot be accepted and considered. In these circumstances, in view of settled position of law, while exercising power under the provision of Order XLI Rule 27 rendered by the Hon'ble Apex Court as well as this Court, we are of the considered opinion that the plaintiff has not made out any case to allow the application and accordingly, we reject the application by answering Point No.1 in the ***Negative***.

40. **POINT NO.2**: As seen from the language used in Section 16-C of Specific Relief Act, the plaintiff is not only obliged to make specific statement regarding his readiness and willingness in the averments of the plaint, so also he has to establish the same with oral and documentary evidence to show the availability of funds with his conduct to perform his part of the performance under the agreement. There are legion of precedents on



the subject to the readiness and willingness declared by the Hon'ble Apex Court as well as this Court and other Hon'ble High Courts across the country. While readiness means the capacity of the plaintiff to perform the contract which include his financial condition/position and willingness is to the conduct of the plaintiff. There are some instances where the plaintiff may be ready but unwilling and there are some instances though he is willing but he is not ready with the proper funds. In order to perform part of the contract by the plaintiff in furtherance of the agreement, both these key ingredients required to go hand in hand to exercise the discretion enjoined under the provision of Specific Relief Act to grant the relief of specific performance.

41. To seek for specific performance, the plaintiff has to prove three essential factors. (1) The valid agreement, which is not otherwise prohibited. (2) The readiness and willingness which are the key ingredients to be established from the date the agreement is entered till



the last date the sale deed is executed in furtherance of the same. (3) The denial by the defendant when first noticed and immediate further action. Apart from this while establishing these three factorial salient ingredients to seek for specific performance, the contents and language used in the agreement assumes importance. In Ex.P1 i.e., Agreement to sell, the parties have fixed the time line of 21 days for execution of the sale deed where under the plaintiff has to pay balance sale consideration and defendant has to submit all the documents which are essential for due execution of the sale deed as per the plaintiff.

42. The 21 days fixed clearly shows the intention of the parties. There is denial by the defendant regarding the agreement. However he has not led any evidence, but the fact remains that the plaintiff has not taken any action within 21 days to show her readiness and willingness to perform her part of the contract in terms of the agreement. A notice which is issued even according to the



plaintiff is in the fall end of September 2007, that too, after execution of sale deed in favor of defendant No.5 by defendant No.1 and his family members. Though in the cross-examination the plaintiff has admitted that amount has been paid through the account of M/s.D.V Infrastructures, however there is nothing on record either in the agreement or in the plaint to show that amount is paid by M/s.D.V Infrastructures. All that could be ascertained from the agreement of sale is that it is an individual agreement entered into between the plaintiff and defendant No.1 even according to the plaintiff. There is no iota of material to show that the plaintiff in the capacity of partner of M/s.D.V Infrastructure entered into an agreement and the amount has been paid through the account of M/s.D.V Infrastructure. In these circumstances, in the absence of any documents before the Trial Court, which were within the knowledge of the plaintiff now sought to be produced, which we have already rejected



while answering Point No.1, the plaintiff has failed to make out any case and is rightly considered by the Trial Court.

43. Since the plaintiff has failed in all the Issues framed by the Trial Court, no case has been made out to cause any interference to ascertain regarding the readiness and willingness of the plaintiff. We have enquired the learned counsel for the appellant, whether the plaintiff has got any documents on record to show that within 21 days, she has performed her part of the contract by approaching the defendant seeking specific performance except the notice issued in the month of September 2007. Sri.Bhat., with all fairness submits that except Ex.P5 Notice dated 26.09.2007, no other documents are available to show that within 21 days as fixed in the sale agreement, the plaintiff has taken any action in furtherance of her readiness and willingness. All that he seeks before us is, the amount has been paid and encashed under the Cheque bearing No.0131112, which is mentioned in the agreement which can be gathered from



Ex.P11. However, a perusal of Ex.P11 clearly shows that the document Ex.P11 is the account statement standing in the name of M/s.D.V Infrastructure. In the absence of any foundational averments either in the agreement at Ex.P1 regarding payment through M/s.D.V Infrastructure on behalf of the plaintiff or in the plaint, we are unable even to mould the relief to that of refund of the amount, though the same has been denied by the defendant. In the absence of specific pleadings and the documentary evidence with proper supporting documents to that effect, the Trial Court has properly considered the aspect of passing of the consideration of Rs.3,00,000/- as contended by the plaintiff stating that the plaintiff has failed to prove the said aspect with substantial cogent evidence while answering Issue No.1 morefully in Paragraphs No.13 to 15 of the Judgment. In view of the reasoned order passed by the Trial Court, we are unable to take any contrary view. No case has been made out by the plaintiff which would cause any interference at the hands



of this Court with the Judgment and Decree of the Trial Court. As such, Point No.2 is also answered in the ***Negative.***

44. The appeal sans merits and accordingly, ***dismissed.*** In the facts and circumstances, there is no order as to costs.

Sd/-
(D K SINGH)
JUDGE

Sd/-
(T.M.NADAF)
JUDGE

TKN
List No.: 1 Sl No.: 4