



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 2<sup>ND</sup> DAY OF APRIL, 2026**

**PRESENT**

**THE HON'BLE MR. JUSTICE D K SINGH**

**AND**

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

**REGULAR FIRST APPEAL NO. 2168 OF 2018 (SP)**

**BETWEEN:**

1. SRI. T.M. BASAVARAJ,  
S/O MANJAPPA,  
SINCE DEAD BY HIS LRS
- 1(a) SMT. PARAMA,  
W/O LATE MANJAPPA,  
AGED ABOUT 94 YEARS,  
R/AT. TAYAR STREET,  
BEHIND GANAPATHI PANDAL,  
TARIKERE, CHIKKAMAGALURU.

...APPELLANT

(BY SRI. PRAKASH T HEBBAR., ADVOCATE)



**AND:**

1. SRI. L. VINODH,  
S/O SRI. P. LOKESH,  
AGRICULTURIST,  
R/AT KOTE,  
AJJAMPURA TOWN,  
TARIKERE TOWN,  
CHIKKAMAGALURU DISTRICT
2. SMT. SHARADA,  
D/O. LATE M.S.S. MANJAPPA,  
AGED ABOUT 48 YEARS,



R/AT. YAUAR STREET,  
TARIKERE TOWN & TALUK,

NOW RESIDING AT:  
LOKASUNDARI RAMAN,  
K.S.C.L.W. NO.135, 3<sup>RD</sup> CROSS,  
WORKING WOMEN HOSTEL,  
JAI MAHAL EXTENSION,  
BENGALURU - 560 046.

3. SMT. M. MAHALAXMI,  
D/O. M.S. MANJAPPA,  
AGED ABOUT 60 YEARS  
R/AT. 1<sup>ST</sup> CROSS, 2<sup>ND</sup> MAIN,  
IEW COLONY,  
NANDINI LAYOUT POST,  
SHANKARANAGAR,  
MAHALAXMI EXTENSION,  
BENGALURU - 560 096.
4. SMT. M. KAMALA,  
AGED ABOUT 58 YEARS,  
D/O. M.S. MANJAPPA,  
W/O. SRI. B.S. KRISHANMURTHY,  
R/AT. SIDDARUDHA NAGARA,  
NEAR VISHWESHWARAIAH CONVENT,  
BHADRAVATHI TOWN,  
SHIVAMOGGA DISTRICT.
5. SMT. M. KAVITHA,  
D/O M.S. MANJAPPA,  
AGED ABOUT 55 YEARS,  
W/O SRI. B. NAGARAJU,  
R/AT. NO. 62, 16<sup>TH</sup> CROSS,  
VAIYALIKAVAl, BENGALURU - 560 003.
6. SMT. M. SUSHILA (LAXMI),  
D/O. M.S. MANJAPPA,  
W/O K.C. MOHAN,  
R/AT. NO.114, 1<sup>ST</sup> MAIN ROAD,



BANASHANKARI 3<sup>RD</sup> STAGE,  
BENGALURU.

7. SMT. M. CHANDRAKALA,  
AGED ABOUT 46 YEARS,  
D/O. M.S. MANJAPPA,  
W/O. SRI. A. RAMESH,  
R/AT. NO.711, MARUTHI NILAYA,  
68<sup>TH</sup> CROSS, 2<sup>ND</sup> STAGE,  
KUMARASWAMY LAYOUT,  
BENGALURU - 560 078.
8. SMT. DHANALAKSHMI,  
D/O LATE SRINIVAS,  
W/O. LATE T.M. BASAVARAJ,  
R/AT. KARLAMMA TEMPLE STREET,  
M.G. ROAD,  
CHIKKAMAGALURU TOWN - 577 101.

...RESPONDENTS

(BY SRI. BALAGANGADHAR G S., ADVOCATE FOR R1,  
SRI. H.R. RAGHAV, ADVOCATE FOR R2 TO R7,  
SRI. K.S. GANESHA & S.Y. SUMA DIXIT,  
ADVOCATES FOR R8)

THIS RFA IS FILED UNDER ORDER 41 RULE 1 R/W  
SEC.96 OF CPC, AGAINST THE JUDGMENT AND DECREE  
DATED:11.09.2018 PASSED IN OS.NO.53/2015 ON THE FILE  
OF THE SENIOR CIVIL JUDGE AND PRL.JMFC., TARIKERE,  
DECREEING 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)

The defendant is in appeal under Section 96 read with Order 41 Rule 1 of Code of Civil Procedure, calling in question the Judgment and Decree dated 11.09.2018 in OS.No.53/2015 passed by the Senior Civil Judge and Principal J.M.F.C, Tarikere.<sup>1</sup>

2. Under the impugned Judgment and Decree, the suit filed by the plaintiff for the relief of specific performance has been decreed directing the defendant to execute the registered sale deed in favour of plaintiff in respect of suit schedule property by receiving balance consideration amount of Rs.87,00,000/- from the plaintiff within three months from the date of the Judgment.

3. The parties are referred to as per their rankings before the trial Court.

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<sup>1</sup> 'Trial Court' for short



4. Brief facts leading to filing of this appeal are as under:

The plaintiff claims that the defendant is the owner and in possession of property bearing Sy.No.165 to the extent of 5 acres 12 guntas situated at Haliyuru Village, Kasaba Hobli, Tarikere Taluk (suit schedule property).<sup>2</sup>

It is the further case that the defendant represented the plaintiff that he is the absolute owner of the property as he has purchased it from the previous owner and the SSP stands in his name. Since both plaintiff and defendant are well known to each other, the defendant offered to sell the SSP for his domestic expenses. Upon deliberations, on 06.09.2012, the sale consideration was fixed at Rs.92,00,000/-. Accordingly, a registered sale agreement was executed under which, a sum of Rs.5,00,000/- has been paid towards advance sale consideration.

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<sup>2</sup> 'SSP' for short.



It is his further case that as per the terms of the contract, plaintiff has agreed to pay balance consideration at the time of registration of regular sale deed, whenever the defendant was called to do so, within three months from the date of agreement.

He further claims that he has requested the defendant several times to execute the sale deed by receiving balance sale consideration amount. However, the defendant on one or the other pretext, stating that, there are certain hurdles in the execution of the registration of sale deed, one among them is not in possession of the SSP as per the sale deed and sought time for the correction of the same and undertook to execute the registered sale deed after the issue is cleared. On 22.06.2013, the defendant has executed another unregistered agreement of sale in continuation of the earlier agreement stating that suit filed by the defendant in OS.No.139/2012 is pending before the Civil Judge's Court at Tarikere, and execute sale deed thereafter.



It is the further case of the plaintiff that he was and he is ever ready and willing to perform his part of the contract, by paying balance sale consideration of Rs.87,00,000/- but it is the defendant who is postponing the same. However, the defendant is not coming forward to execute the sale deed. The plaintiff left with no other alternatives, filed a suit in OS.No.53/2015 seeking specific performance of contract dated 06.09.2012, with alternative prayer for refund of Rs.5,00,000/- with 24% interest per annum.

5. Upon notice, the defendant entered appearance engaging his counsel and filed a written statement denying the plaint averments, taking a specific contention that the defendant is suffering from haemophilia and he is unable to walk. The plaintiff taking advantage of the innocence of defendant, misused him and being in a financially dominant position over the poor persons like the defendant, plaintiff used to get signature over stamp papers as and when required stating that the signatures



are necessary for his financial business to maintain the accounts and to submit the financial returns to the Government. Though, the defendant at no point of time has agreed to sell the SSP and he was not having any such intention to alienate, the plaintiff has taken the defendant to the Sub-Registrar Office, Tarikere, stating that his signature is necessary as a witness for several transactions and got created concocted and fabricated documents, the same are void and using these documents, he has filed the present suit.

6. It is his further contention in paragraph No.15 of the written statement on the registered agreement dated 06.09.2012 stating that as per the contents of the sale agreement, the sale deed must be executed within three months. As such, time is the essence of the contract. The suit filed in 2015 is belated as such, barred by law of limitation. With this he sought to dismiss the suit.



7. The Trial Court upon completion of pleadings framed in all eight issues which reads as under:

- i) *"Whether the plaintiff proves that the defendant had executed agreement of sale in his favour to sell the suit property on 06.06.2012 by receiving advance amount of Rs.5,00,000/-?"*
- ii) *Whether the plaintiff proves that the defendant executed another registered agreement of sale on 22.06.2013 in continuation of the agreement of sale dated 06.09.2012 agreeing to sell the suit schedule property?*
- iii) *Whether the plaintiff proves that he was and is ready and willing to perform his part of the contract?*
- iv) *Whether the defendant proves that time is essence of contract?*
- v) *Whether the defendant proves that this suit is barred by law of limitation?*
- vi) *Whether the defendant proves that the plaintiff has created, concocted and fabricated the agreement of sale?*
- vii) *Whether the plaintiff is entitled for the relief of specific performance of contract as prayed for?*
- viii) *What order or decree?"*

8. The Plaintiff in order to prove his case, examined himself as PW.1 and examined 4 witnesses as PW.2 to PW.5 and has produced all 12 documents, which



were marked as Ex.P1 to Ex.P12. On the other hand, the defendant examined himself as DW.1. However, no documents were produced on behalf of the defendant.

9. The Trial Court, after hearing the parties and appreciation of pleadings as well as evidence, both oral and documentary, decreed the suit as stated supra answering all the issues in favour of the plaintiff and against the defendant. The witnesses who have been examined on behalf of plaintiff are the witnesses to the agreement of sale dated 06.09.2012 - Ex.P1,. The witnesses have stated that the defendant has agreed to sell the property for Rs.92,00,000/- and paid a sum of Rs.5,00,000/- under the registered agreement and agreed to execute the sale deed within three months from the date of agreement. The said PW.2 did not subject himself for cross-examination accordingly an application came to be filed by plaintiff and his evidence was discarded. PW.3 has deposed that the defendant has agreed to sell the SSP for Rs.92,00,000/- and received a sum of Rs.5,00,000/- as



advance under the registered sale agreement and agreed to execute the sale deed by receiving Rs.87,00,000/-. The other witnesses deposed in line with the witness PW.3.

10. On the other hand, the defendant has been examined as DW.1 who has filed his affidavit in lieu of his examination-in-chief stating the averments taken in the written statement and specifically now in the evidence he has stated that the plaintiff has taken a signature on blank papers at the instance of T.R.Nagaraj, in order to cheat him. He has submitted that he has taken sum of Rs.5,00,000/- as loan from plaintiff on interest and he has paid the interest on the said loan amount and he has denied that he has executed any agreement, much less the agreement contented by the plaintiff. He has stated that the plaintiff in order to prove his case has cross-examined DW.1 at length. In the cross-examination DW.1 has stated that his father had seven children and his father had 05 acres 05 guntas of land, one house and one



site. His father died in the year 1990 and thereafter, he is looking after his family.

11. The Trial Court has further observed that the defendant admitted that he has studied upto PUC in English medium. He further admitted that he has filed a suit against TMC, Kadur in OS.No.139/2012 in respect of the SSP for exchange of the properties. He admitted that the matter was compromised in Government level. He has further admitted that Ex.P1 and Ex.P2 are in Kannada language and he knows the contents of Ex.P1 and Ex.P2. He has admitted that he has received a sum of Rs.5,00,000/- from plaintiff for his family necessities and to perform the marriage of his sisters. He has further admitted that the market value of the property as on 2012 was 90 to 95 lakhs. He further admitted that he has not issued any notice to the plaintiff asking him to receive Rs.5,00,000/- with interest. The trial Court has stated that the defendant in order to disprove the case of the plaintiff has not examined any independent witness. Wherein the



plaintiff has denied that under the agreement in respect of SSP, a sum of Rs.5,00,000/- was given as loan on interest. He further denied that the agreement is a created one and further denied that the defendant never intended to sell the suit schedule property.

12. The Trial Court further stated that the witnesses have been examined with respect to agreement of sale as well as sale consideration. Further held that the witnesses denied the suggestion that the transaction took place was a loan transaction and the suit property as on the date of agreement was in the possession of Kadur Municipality. So far as PW4, the trial Court has stated that the said witness in the cross-examination has stated that the transaction took place on 06.09.2012 for Rs.92,00,000/- but denied that he along with plaintiff and T.R.Nagaraj have created the false agreement. So far as PW5 is concerned, the Trial Court has stated that the said witness in his cross-examination has denied that the plaintiff had given the amount to the defendant on interest. On this, the trial



Court has reasoned that nothing worthwhile has been elicited in the cross examination of PW.1, PW.3 to PW.5 with respect to the creation of agreement of sale and the transaction between plaintiff and defendant is a loan transaction.

13. The Trial Court further observed that the defendant has admitted the receipt of Rs.5,00,000/- from the plaintiff. He has also admitted his signature on Ex.P1 and Ex.P2 and considering his admission which we have already stated above, concluded that the contention of the defendant is unbelievable and unacceptable. Further, the Trial Court observed that the defendant though has stated that he has taken Rs.5,00,000/- for his family necessity i.e., for performance of marriage of his sisters, but in the cross-examination has stated that he had performed the marriage of his last sister about 15 to 16 years ago. In these circumstances, the contention that the defendant has taken a sum of Rs.5,00,000/- as loan for his family necessity for performing marriage of his sister is



unbelievable and untrustworthy. With this the Trial Court has concluded that the defendant has not issued any notice to the plaintiff asking him to receive a sum of Rs.5,00,000/- with interest and on the basis of such reasons has held that the plaintiff has proved his case of sale agreement with respect to the SSP for a sale consideration of Rs.92,00,000/- and has paid a sum of Rs.5,00,000/-, under the said agreement and defendant has failed to prove that the plaintiff has created, concocted and fabricated the agreement of sale, as such answered Issue Nos.1, 2 and 6 in favour of the plaintiff.

14. So far as readiness and willingness is concerned, the trial Court while answering Issue No.3 has stated that the plaintiff has pleaded and adduced evidence to show that he was ever ready and willing to perform his part of the contract. But it was the defendant who, on one or the other reason was taking time, pleading his inability, stating that there are certain hurdles to execute the registered sale deed on the premise that he is not in



possession of the SSP and after correction of the same, he would execute the sale deed. Further observed that there is one more agreement of sale executed on 22.06.2013 in continuation of the earlier agreement stating regarding the pendency of the suit in OS.No.139/2012 before the Civil Court, Tarikere, against the Municipality. The Trial Court further observed that the plaintiff has produced Ex.P12 - SBI Bank passbook showing a sum of Rs.90,10,279/- as on 24.03.2016 and since nothing worthwhile has been elicited in cross-examination of PW1 with respect to his readiness and willingness to perform his part of the contract and in view of the admission regarding Rs.5,00,000/- though it is stated to be a loan under a created document, the Trial Court has held that the plaintiff has proved the issue regarding his readiness and willingness to perform his part of the contract.

15. So far as the limitation is concerned, the Trial Court has answered the same against the defendant holding that the defendant has failed to prove the said



issue with cogent evidence, so also regarding the contention of time as the essence of the contract.

16. The Trial Court while answering Issue No.7, i.e., on the specific performance of contract has come to a conclusion that the contention of the defendant that the suit schedule property is the only source of income of the defendant is highly unbelievable and as it has already answered the said issue in favour of the plaintiff stating that the plaintiff is entitled for the relief of specific performance of contract, answered the issue in favour of plaintiff. With this the Trial Court concluded that the plaintiff has proved his case for the relief sought and decreed the suit granting the relief which we have already stated supra. It is this judgment and decree passed by the trial Court is heard in question in this appeal.

17. Heard Sri.Prakash T.Hebbar, learned counsel appearing for the appellant and Sri.Balagangadhar G.S, learned counsel for respondent No.1, Sri.H.R.Raghu,



learned counsel for respondent Nos.2 to 7 and Sri.Ganesha and Ms.Suma Dixit, learned counsel for respondent No.8.

18. Sri. Prakash T.Hebbar, argued on several points that the trial Court has failed to consider the case of the defendant, as well as the fact that the plaintiff has failed to prove his case with respect to readiness and willingness, and also the issue on limitation.

19. Firstly, he submits that the trial Court has failed to consider the cross-examination of the plaintiff wherein he has given categorical admissions, which goes against the case put forth by the plaintiff. Though, the plaintiff has stated in terms of the plaint averments in his examination-in-chief, however, he has categorically admitted that he has not issued any notice prior to the institution of the suit against the defendant. The plaintiff, in order to prove his case, examined four witnesses, of whom PW2 has been examined as a witness to the agreement. Since he failed to subject him to cross-examination, his evidence has



been taken as discarded. So far as the evidence of other witnesses are concerned, i.e., PW3 to PW5 are shaky and the trial Court has failed to consider this aspect of the matter.

20. Secondly, he submits that at Ex.P12 the bank passbook produced by the plaintiff before the Court to contend that he was having sufficient amount in the account for the purpose of performance of the contract. A perusal of the passbook clearly depicts that as on the date of filing of the suit, i.e., on 05.09.2015, there is no amount forthcoming/standing in the account. Till 17.03.2016, the amount standing in the account as depicted in the passbook is only Rs,10,279/-. On 23.03.2016, a sum of Rs.78,00,000/- has been deposited, and on 24.03.2016 another sum of Rs.12,00,000/- has been deposited. The balance amount in the account of the bank on 24.03.2016 was Rs.90,10,279/-. However, no further extract of account has been produced to show that subsequent to the evidence, the same amount is



maintained to honour his part of performance. In these circumstances, the element of readiness and willingness has not been satisfactorily proved before the trial Court. He further submits that though a subsequent agreement has been stated in the plaint, in the prayer column the relief sought is with respect to the specific performance of agreement dated 06.09.2012.

21. Thirdly, Sri.Hebbar, submits that the plaintiff has produced Ex.P2, the further agreement, which is unregistered, dated 22.06.2013, said to have been executed by Sri.T.M.Basavaraju, though it is said to be the agreement of sale, however, only the alleged signature of the defendant was found on the document and there was no signature of the plaintiff in order to say that there is an agreement between two parties. None of the witnesses to the said agreement have been examined to substantiate the same. The trial Court has failed to consider this aspect of the matter.



22. Fourthly, he submits that the defence of the defendant is that, the transaction between the parties to the suit is loan transaction, the plaintiff is a money lender doing business in finance, and as a collateral security, the agreement has been executed and not with an intention to sell the property. He has further submitted that the defendant is ready to pay back the amount with reasonable interest that he has received under the agreement. He further submits that nearly half of the property, to an extent of 2 acres 28 guntas, has been acquired for the formation of the road by the authorities. This fact is not denied by the plaintiff.

23. He further submits but without admitting that the transaction even if any is frustrated. The trial Court has failed to consider these aspects of the matter. The time fixed under the registered agreement even according to the plaintiff is 3 months, however, the plaintiff filed suit on 05.09.2015 i.e., at the fag end of the limitation fixed under Section 57 of the Limitation Act, 1963. In these



circumstances, the trial Court has failed to consider the main ingredient of Section 16(c) to seek for specific performance of contract, with this he sought to allow the appeal and set aside the decree.

24. In contrast, Sri.Balagangadhar, with all vehemence submits that the trial Court having found that the defendant has not denied the agreement and even the receipt of amount under the agreement and considering the other documents especially the bank passbook wherein, as on the date of recording of the evidence, the plaintiff had a sum of Rs.90,10,279/- in his account, decreed the suit.

25. He further submits that the witnesses who have been examined to substantiate the claim of the plaintiff have clearly stated regarding the agreement as well as the passing of advance amount. The defendant has failed to elucidate anything worthwhile in the evidence of these witnesses. In these circumstances, the trial Court having



considered the fact that the defendant owns other lands besides the land covered under the suit and after going through the fact that the plaintiff has proved his part of performance, so also the main aspect of the matter, i.e., readiness and willingness granted relief for specific performance.

26. He further submits that once the plaintiff has proved his readiness and willingness before the Trial Court, nothing remained before the appellate Court to consider on the said aspect. In these circumstances, Sri.Balagangadhar submits that the appeal filed is only to delay the further proceedings of the decree and sought to dismiss the appeal with costs.

27. Having considered the rival submissions, the points that would arise for consideration are as follows:

(i) Whether the trial Court is right in answering issue Nos.1, 2, 3 and 7 in 'affirmative'?



(ii) Whether the trial Court is right in granting relief of specific performance?

(iii) Whether the appellate Court can go into the question and examine, whether there was/is continuous readiness and willingness on the part of the plaintiff to perform the contract?

(iv) Whether any interference is warranted in the judgment and decree passed by the trial Court?

28. Our answer to the above point for consideration are as follows:

Point No.1: in the Negative

Point No.2: in the Negative

Point No.3: in the Affirmative

Point No.4: in the Affirmative.

29. For the sake of convenience we have taken point No.3, to answer first on the power of the Appellate Court in examining the continuous readiness and



willingness. The specific performance of contract is a discretionary relief. It is settled position of law that the plaintiff has to plead and prove the readiness and willingness to seek for specific performance. Readiness and willingness are the key ingredients under Section 16(c), to seek for specific performance of contract against the defendant. The word readiness is the source including the financial capacity of the person with which he can perform his part of the contract whereas the willingness is the mental conduct, to get the sale deed executed by performing acts prescribed under the contract. As such, these two ingredients should go hand in hand and must be proved that the plaintiff was and is ever ready and willing to perform his obligations from the date of agreement till execution of the sale deed i.e., it is satisfied.

30. The ingredients of readiness and willingness will not come to a halt the moment the suit is decreed. These are more demanding after the decree till the same is executed and ending with the execution of the sale deed.



The amount involved in the present case on hand is Rs.92,00,000/- according to the plaintiff, he has paid Rs.5,00,000/- in 2015 and Rs.87,00,000/- is required to be paid, which is still remaining with the plaintiff. The point on readiness and willingness to be considered by the first appellate Court i.e., the examination of continuous readiness and willingness on the part of the plaintiff to perform the contract by the appellate Court is no more *res integra*.

31. The Hon'ble Apex Court in the legion of cases has held that the first appellate Court is duty-bound to examine whether there was continuous readiness and willingness on the part of the plaintiff to perform the contract, as the appeal is the continuation of the original proceedings. In appellate jurisdiction, the appellate Court rehears on fact as well as law involved in the *lis* invoked by the aggrieved party. The first appeal is a valuable right provided under the statute to the aggrieved party. As all the questions, either on fact or law, decided by the trial



Court are again open for reconsideration. Therefore, the Appellate Court is required to address on all the issues and decide the case by giving reasons. Order XLI Rule 31 and 33 of CPC, enjoins appellate power in the appellate jurisdiction.

32. Though the learned counsel for plaintiff has submitted that the trial Court has already decided the issue of readiness and willingness in issue No.3, answering the same in the affirmative, that the plaintiff has proved his readiness and willingness by examining himself as PW1 and other witnesses who are the signatories to the agreement as well as passing of consideration and his financial condition to perform his part of the contract, by placing reliance on Ex.P12, the Bank passbook produced before the Court, there is nothing more survives to reconsider on the said fact. We refrain to accede to the argument advanced by Sri. Balagangadhar. Though the trial Court has stated that the plaintiff has proved readiness and willingness, but the appellate Court in its



appellate jurisdiction is duty-bound to reconsider the said fact as it has to reconsider the entire facts as well as law with the help of the materials placed on record.

33. Our view as an appellate Court to reconsider and examine the continuous readiness and willingness on the part of the plaintiff to perform his part of the contract, gains support with the judgment of the Hon'ble Apex Court, in the case of ***U. N. KRISHNAMURTHY (since deceased) Through Legal Representatives Vs. A. M. KRISHNAMURTHY***<sup>3</sup>. In paragraph Nos.34 and 35 the Apex Court has held as under:

*"34. Even in a first appeal, the first appellate court is duty-bound to examine whether there was continuous readiness and willingness on the part of the plaintiff to perform the contract. This proposition finds support from Balraj Taneja v. Sunil Madan [Balraj Taneja v. Sunil Madan, (1999) 8 SCC 396] and H.P. Pyarejan v. Dasappa [H.P. Pyarejan v. Dasappa, (2006) 2 SCC 496] where this Court approved the views taken by the Privy Council in Ardeshir Mama v. Flora Sassoon [Ardeshir Mama v. Flora Sassoon, 1928 SCC OnLine PC 43 : (1927-28) 55 IA 360 at p. 372 : AIR 1928 PC 208] .*

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<sup>3</sup> (2023) 11 SCC 775



**35.** *In Malluru Mallappa v. Kuruvathappa* [Malluru Mallappa v. Kuruvathappa, (2020) 4 SCC 313 : (2020) 2 SCC (Civ) 686] , this Court observed and held : (SCC pp. 317-19, paras 13-14 & 18)

"13. It is a settled position of law that an appeal is a continuation of the proceedings of the original court. Ordinarily, the appellate jurisdiction involves a rehearing on law as well as on fact and is invoked by an aggrieved person. The first appeal is a valuable right of the appellant and therein all questions of fact and law decided by the trial court are open for reconsideration. Therefore, the first appellate court is required to address itself to all the issues and decide the case by giving reasons. The court of first appeal must record its findings only after dealing with all issues of law as well as fact and with the evidence, oral as well as documentary, led by the parties. The judgment of the first appellate court must display conscious application of mind and record findings supported by reasons on all issues and contentions (see : Santosh Hazari v. Purushottam Tiwari [Santosh Hazari v. Purushottam Tiwari, (2001) 3 SCC 179] , Madhukar v. Sangram [Madhukar v. Sangram, (2001) 4 SCC 756], B.M. Narayana Gowda v. Shanthamma [B.M. Narayana Gowda v. Shanthamma, (2011) 15 SCC 476 : (2014) 2 SCC (Civ) 619] , H.K.N. Swami v. Irshad Basith [H.K.N. Swami v. Irshad Basith, (2005) 10 SCC 243] and Sri Raja Lakshmi Dyeing Works v. Rangaswamy Chettiar [Sri Raja Lakshmi Dyeing Works v. Rangaswamy Chettiar, (1980) 4 SCC 259] ).

14. A first appeal under Section 96CPC is entirely different from a second appeal under Section 100. Section 100 expressly bars second appeal unless a question of law is involved in a case and the question of law so involved is substantial in nature.

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*18. It is clear from the above provisions and the decisions of this Court that the judgment of the first appellate court has to set out points for determination, record the decision thereon and give its own reasons. Even when the first appellate court affirms the judgment of the trial court, it is required to comply with the requirement of Order 41 Rule 31 and non-observance of this requirement leads to infirmity in the judgment of the first appellate court. No doubt, when the appellate court agrees with the views of the trial court on evidence, it need not restate effect of evidence or reiterate reasons given by the trial court. Expression of a general agreement with the reasons given by the trial court would ordinarily suffice."*

34. In these circumstances, we answer point No.3 in affirmative, holding that the appellate Court is duty-bound and possessing power to examine as to whether there was continuous readiness and willingness on the part of the plaintiff to perform the contract.

35. Point Nos.1, 2 and 4: The trial Court has held that the plaintiff has proved the agreement as well as passing of the consideration and the part performance on the part of the plaintiff i.e., readiness and willingness, has been proved. The trial Court framed its reasons mainly on agreement Ex.P1 and the further agreement i.e., Ex.P2



and Ex.P12 as well as the evidence of the witnesses. The trial Court more swayed on the cross-examination of the defendant, wherein he had stated that he has studied up to PUC in English medium and he has been managing the family affairs since 1990. He has agreed to sell the property for Rs.92,00,000/- and has received Rs.5,00,000/- for his family necessities.

36. The trial Court has stated that the defendant, in his evidence, has admitted that the marriage of his last sister was performed somewhere 15 to 20 years prior to the agreement, in these circumstances the trial Court has observed that the defendant has failed to prove that he has obtained a loan of Rs.5,00,000/- for the marriage of his sister. It further observed that the defendant has further admitted that there is a dispute between the defendant and the TMC Kadur in the Civil Court, and he has not issued any notice to the plaintiff, calling upon him to receive the amount of Rs.5,00,000/-. Further, the trial Court was of the opinion that nothing worthwhile has been



elicited in the evidence of the witnesses to disprove the case of the plaintiff. The trial Court considering the amount found in the passbook as of 24.03.2016, has held that the plaintiff has proved the ingredient of readiness and willingness, which has been corroborated by the evidence of the others, and answered issue Nos.1 and 3 in favour of the plaintiff. So far as the issue No.2 is concerned, the trial Court though, has answered the issue in the affirmative, however has stated nothing while answering the said issue. The plaintiff has examined none of the witnesses to the said document to prove the same. Even, the trial Court has not deliberated much on the said aspect, except stating a few lines as per the contention of the plaintiff, but, not deliberated anything on the said agreement. Even the plaintiff has not examined any of the witnesses to the said document to substantiate that the agreement executed in 2013. In these circumstances, issue No.2 is required to be answered against the plaintiff. Accordingly, it is answered.



37. Though, the plaintiff to some extent established execution of the document and the defendant was not in a position to substantiate his claim that it was a loan transaction and not that of a sale agreement with intention to sell the property. However, the fact remains that whether the plaintiff is entitled for the specific performance. The plaintiff to seek the specific performance must satisfy Section 16 of the Specific Relief Act, 1963, which reads as under:

***"16. Personal bars to relief.—Specific performance of a contract cannot be enforced in favour of a person—***

*(a) who has obtained substituted performance of contract under section 20; or*

*(b) who has become incapable of performing, or violates any essential term of, the contract that on his part remains to be performed, or acts in fraud of the contract, or wilfully acts at variance with, or in subversion of, the relation intended to be established by the contract; or*

*(c) who fails to prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant."*



38. It is trite that the plaintiff, to prove the essentials of Section 16(c) of the Specific Relief Act, must not actually tender money to the defendant or to deposit the money in Court, except when he was so directed. To prove readiness and willingness to perform the essential terms of the contract, among which the payment of money is also involved. However, the explanation 2 provided to Section 16(c) Specific Relief Act, which provides that the plaintiff must not only aver and plead the essential ingredients of readiness and willingness, but also to prove the same to its true construction.

39. The plaintiff is required to make a specific statement in the plaint and adduce evidence to show the availability of funds to make payments in terms of the conditions of the contract in time. In another way, the plaintiff would have to plead that the plaintiff had sufficient funds or was in a position to raise funds in time to discharge his obligation under the contract, if the plaintiff had no sufficient funds with him to discharge his obligation



in terms of the contract. In these circumstances, the plaintiff would have to specifically plead how the funds would be available to him. In the case on hand, the amount involved under the contract is Rs.92,00,000/- out of which, Rs.5,00,000/- said to be paid on the date of agreement of sale, as on 06.09.2012 and agreed to pay the balance within 3 months.

40. The plaintiff, except the payment of Rs.5,00,000/- has not parted with any further sum, which is Rs.87,00,000/- as on 2015, agreed to be paid within 3 months. The amount paid is very negligible. In these circumstances, the Court, while exercising the discretion in a suit for specific performance, should bear in mind that when the party prescribes a certain time limit for their performance, that must have a significance, as such, the time prescribed cannot be easily ignored. In these circumstances, the Court is duty-bound to apply greater scrutiny and strictness while considering whether the



purchaser was ever ready and willing to perform his part of the contract.

41. It is trite that, the Courts are under obligation to find the element of readiness and willingness by the evidence adduced by the parties. It is settled portion of law that every suit filed for specific performance need not be decreed on mere asking on the contention that the same is filed within the period of limitation, by ignoring the time limits prescribed under the agreement. The limitation prescribed for filing suit seeking for specific performance is 3 years does not mean that the plaintiff can wait till the fag end and thereafter, jolted awake and file the suit to bring the same within the limitation and seek for performance. This is where the Courts are required to apply much scrutiny, while deciding the factor of readiness and willingness. There are so many circumstances which warrant filing of the suit within the time limit prescribed, the intention of the legislature, in prescribing period of 3 years, is with an owe object to



assist the purchaser in specific cases with special circumstances, for example wherein the major portion of the amount of sale consideration has been paid to the vendor and possession has been delivered in part performance and the circumstances beyond control of plaintiff to seek for specific performance immediately with time prescribed under the control or other wise immediately within 3 years prescribed under land without waiting for long duration. In these circumstances, the equity and discretion favours the plaintiff.

42. In the case on hand, the agreement was entered on 06.09.2012 fixing sale consideration of Rs.92,00,000/-. A sum of Rs.5,00,000/- has been paid as advance amount on the date of agreement and Rs.87,00,000/- was agreed to be paid within 3 months. There is nothing forthcoming in the entire plaint to suggest that the plaintiff has taken any initiation within the 3 months calling upon the defendant to perform his part of



the contract by accepting Rs.87,00,000/- balance, under the sale agreement.

43. The contention of the learned counsel for the plaintiff that there is one more agreement entered in 2013 extending the period cannot be countenanced for the reason that the said agreement has not been proved in accordance with law, as none of the witnesses are examined to substantiate the existence of the said agreement, which we have already answered above.

44. Another aspect is, the suit is decreed on 11.09.2018. Though appeal was filed immediately thereafter, the interim order has been granted by this Court on 23.01.2019 i.e., 4<sup>1</sup>/<sub>2</sub> months thereafter. The trial Court directed for execution of sale deed by the defendant, in favour of the plaintiff by receiving balance consideration of Rs.87,00,000/- within 3 months from the date of the order. Nothing has been placed by the plaintiff, to show that he has tendered the amount within the period of 3



months and called upon the defendant to execute the sale deed, even if the defendant fails to comply with the directions of the trial Court. The Ex.P12 which is produced clearly indicates that till 17.03.2016 the balance amount available was just Rs.10,279/-. On 23.03.2016 and 24.03.2016 a sum of Rs.78,00,000/- and Rs.12,00,000/- have been deposited i.e., at the time of evidence. However, nothing is forthcoming or placed on record as to whether the same amount is still available with the bank to perform the performance on the part of the plaintiff. The trial Court has failed to consider this aspect of the matter. A perusal of Ex.P12 clearly shows that the plaintiff has not maintained sufficient balance as on the date of the filing of this suit, except at the time of filing of his affidavit while examination-in-chief and at the time of marking of the said document. However, nothing is furnished thereafter, to show the very same amount is maintained, which clearly shows that he did not have sufficient funds to discharge his part of the contract.



45. It is trite law that the plaintiff to seek for specific performance has to prove all along until the final decision in the suit is made, that he was ready and willing to perform his part of the contract and the plaintiff is duty-bound to prove his readiness and willingness by adducing cogent evidence to that effect even after the decree till it is satisfied in execution ending with registration of sale deed by paying balance sale consideration. The bank passbook shows that though the agreement entered in 2012, the amount of Rs.90,00,000/- has been deposited in 2016 i.e., even after lapse of 3 months from September 2012, was nearly 3<sup>1</sup>/<sub>2</sub> years. This clearly shows that the plaintiff was not having sufficient funds with him to establish the ingredients of readiness and willingness. The trial Court has failed to consider this important aspect of the matter.

46. Our view on this aspect regarding proof of readiness and willingness has again gained support from the judgment of the Hon'ble Apex Court in the case of



**U.N.Krishnamurthy** stated supra, wherein the Hon'ble Apex Court in paragraph Nos.22 to 34 and 40 to 50, has held as under:

*"22. Section 16 of the Specific Relief Act, 1963, as it stood at the material time (prior to amendment with effect from 1-10-2018), inter alia, provides:*

*"16. Personal bars to relief.—Specific performance of a contract cannot be enforced in favour of a person—*

*(a) who would not be entitled to recover compensation for its breach; or*

*(b) who has become incapable of performing, or violates any essential term of, the contract that on his part remains to be performed, or acts in fraud of the contract, or wilfully acts at variance with, or in subversion of, the relation intended to be established by the contract; or*

*(c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.*

*Explanation.—For the purposes of clause (c),—*

*(i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court;*

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

**23.** Section 16 (c) of the Specific Relief Act, 1963 bars the relief of specific performance of a contract in favour of a person, who fails to aver and prove his readiness and willingness to perform his part of



*contract. In view of Explanation (i) to clause (c) of Section 16, it may not be essential for the plaintiff to actually tender money to the defendant or to deposit money in court, except when so directed by the Court, to prove readiness and willingness to perform the essential terms of a contract, which involves payment of money. However, Explanation (ii) says the plaintiff must aver performance or readiness and willingness to perform the contract according to its true construction.*

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

**25.** *In Man Kaur v. Hartar Singh Sangha [Man Kaur v. Hartar Singh Sangha, (2010) 10 SCC 512 : (2010) 4 SCC (Civ) 239] , this Court held that : (SCC p. 531, para 40)*

*"40. ... A person who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him (other than the terms the performance of which has been prevented or waived by the defendant) is barred from claiming specific performance. Therefore, even assuming that the defendant had committed breach, if the plaintiff fails to*



*aver in the plaint or prove that he was always ready and willing to perform the essential terms of contract which are required to be performed by him (other than the terms the performance of which has been prevented or waived by the plaintiff), there is a bar to specific performance in his favour. Therefore, the assumption of the respondent that readiness and willingness on the part of the plaintiff is something which need not be proved, if the plaintiff is able to establish that the defendant refused to execute the sale deed and thereby committed breach, is not correct. Let us give an example. Take a case where there is a contract for sale for a consideration of Rs 10 lakhs and earnest money of Rs 1 lakh was paid and the vendor wrongly refuses to execute the sale deed unless the purchaser is ready to pay Rs 15 lakhs. In such a case there is a clear breach by the defendant. But in that case, if the plaintiff did not have the balance Rs 9 lakhs (and the money required for stamp duty and registration) or the capacity to arrange and pay such money, when the contract had to be performed, the plaintiff will not be entitled to specific performance, even if he proves breach by the defendant, as he was not "ready and willing" to perform his obligations."*

**26.** *In Prem Raj v. DLF Housing Co. Construction (P) Ltd. [Prem Raj v. DLF Housing Co. Construction (P) Ltd., 1968 SCC OnLine SC 151 : AIR 1968 SC 1355] cited by Mr Venugopal, this Court speaking through Ramaswamy, J. held that : (AIR p. 1357, para 5)*

*"5. ... It is well settled that in a suit for specific performance the plaintiff should allege that he is ready and willing to perform his part of the contract...."*

*and if the fact is traversed, he is required to prove a continuous readiness and willingness from the date of the contract to the time of the hearing, to perform the contract on his part. For such conclusion the learned Judge relied upon the opinion of Lord Blanesburgh, in Ardeshir Mama v. Flora Sassoon [Ardeshir*



*Mama v. Flora Sassoon, 1928 SCC OnLine PC 43 : (1927-28) 55 IA 360 at p. 372 : AIR 1928 PC 208] .*

**27.** *In DLF Housing Co. Construction (P) Ltd. [Prem Raj v. DLF Housing Co. Construction (P) Ltd., 1968 SCC OnLine SC 151 : AIR 1968 SC 1355] , in the absence of an averment on the part of the plaintiff in the plaint, that he was ready and willing to perform his part of the contract, it was held that the plaintiff had no cause of action so far as the relief for specific performance was concerned. In this case, of course, there is an averment in the plaint that the respondent-plaintiff was all along ready and willing to perform his obligations under the contract. The question is whether the respondent-plaintiff had proved his readiness and willingness to perform his obligations under the contract.*

**28.** *In N.P. Thirugnanam v. R. Jagan Mohan Rao [N.P. Thirugnanam v. R. Jagan Mohan Rao, (1995) 5 SCC 115] , this Court reiterated that Section 16(c) of the Specific Relief Act, 1963 envisages that the plaintiff must plead and prove that he had performed or has always been ready and willing to perform the essential terms of the contract which were to be performed by him other than those terms, the performance of which has been prevented or waived by the defendant. In N.P. Thirugnanam [N.P. Thirugnanam v. R. Jagan Mohan Rao, (1995) 5 SCC 115] this Court said that the continuous readiness and willingness on the part of the plaintiff was a condition precedent for grant of the relief of specific performance.*

**29.** *This Court, in effect, held that for determining whether the plaintiff was ready and willing to perform his part of the agreement it is necessary for the Court to consider the conduct of the plaintiff prior and subsequent to filing the suit for specific performance. The relevant part of the judgment is extracted hereinbelow : (N.P. Thirugnanam case [N.P. Thirugnanam v. R. Jagan Mohan Rao, (1995) 5 SCC 115] , SCC pp. 117-18, para 5)*



*"5. ... Section 16(c) of the Act envisages that plaintiff must plead and prove that he had performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than those terms the performance of which has been prevented or waived by the defendant. The continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of specific performance. This circumstance is material and relevant and is required to be considered by the court while granting or refusing to grant the relief."*

**30.** *In Umabai v. Nilkanth Dhondiba Chavan [Umabai v. Nilkanth Dhondiba Chavan, (2005) 6 SCC 243] , this Court held that a finding as to whether the plaintiffs were all along and still ready and willing to perform their part of the contract, was a mandatory requirement under Section 16(c) of the Specific Relief Act. The Court would necessarily have to arrive at the finding that the plaintiff all along were, and still are ready and also willing to perform their part of the contract, taking into account the entirety of the pleadings as also the evidence brought on record. To quote this Court : (SCC p. 258, para 38)*

*"38. ... '5. ... So far these being a plea that they were ready and willing to perform their part of the contract is there in the pleading, we have no hesitation to conclude, that this by itself is not sufficient to hold that the appellants were ready and willing in terms of Section 16(c) of the Specific Relief Act. This requires not only such plea but also proof of the same. Now examining the first of the two circumstances, how could mere filing of this suit, after exemption was granted be a circumstance about willingness or readiness of the plaintiff. This at the most could be the desire of the plaintiff to have this property. It may be for such a desire this suit was filed raising such a plea. But Section 16(c) of the said Act makes it clear that mere plea is not sufficient, it has to be proved.' [Ed. : As observed in Pushparani S. Sundaram v. Pauline Manomani James,*



(2002) 9 SCC 582, p. 584, para 5.] ”  
(emphasis supplied)

**31.** In *K.S. Vidyanadam v. Vairavan* [*K.S. Vidyanadam v. Vairavan*, (1997) 3 SCC 1] , B.P. Jeevan Reddy, J. said that grant of the relief of specific performance is discretionary and the Court is not bound to grant it. This Court further held that though time is not of essence to a contract relating to transfer of property, such contracts need to be completed within a reasonable time period. Thus, the time element cannot be completely ignored.

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

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

**32.2.** Whether the plaintiff has all along been and still is ready and willing to perform his part of the contract as envisaged under Section 16(c) of the Specific Relief Act, 1963.

**33.** There is a distinction between readiness and willingness to perform the contract and both ingredients are necessary for the relief of specific performance. In *Acharya Swami Ganesh Dassji v. Sita Ram Thapar* [*Acharya Swami Ganesh Dassji v. Sita Ram Thapar*, (1996) 4 SCC 526] cited by Mr Venugopal, this Court said that there was a difference between readiness and willingness to perform a contract. While readiness means the capacity of the plaintiff to perform the contract which would include his financial position, willingness relates to the conduct of the plaintiff. The same view was taken by this Court in *Kalawati v. Rakesh Kumar* [*Kalawati v. Rakesh Kumar*, (2018) 3 SCC 658 : (2018) 2 SCC (Civ) 609] .

**34.** Even in a first appeal, the first appellate court is duty-bound to examine whether there was continuous readiness and willingness on the part of the plaintiff to perform the contract. This proposition finds support



*from Balraj Taneja v. Sunil Madan [Balraj Taneja v. Sunil Madan, (1999) 8 SCC 396] and H.P. Pyarejan v. Dasappa [H.P. Pyarejan v. Dasappa, (2006) 2 SCC 496] where this Court approved the views taken by the Privy Council in Ardeshir Mama v. Flora Sassoon [Ardeshir Mama v. Flora Sassoon, 1928 SCC OnLine PC 43 : (1927-28) 55 IA 360 at p. 372 : AIR 1928 PC 208] ."*

35.xxx

36.xxx

37.xxx

38.xxx

39.xxx

**40.** In *K.S.Vidyanadam v. Vairavan* [K.S. Vidyanadam v. Vairavan, (1997) 3 SCC 1] this Court held : (SCC p. 7, para 10)

"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. The period of limitation prescribed by the Limitation Act for filing a suit is three years. From these two circumstances, it does not follow that any and every suit for specific performance of the agreement (which does not provide specifically that time is of the essence of the contract) should be decreed provided it is filed within the period of limitation notwithstanding the time-limits stipulated in the agreement for doing one or the other thing by one or the other party. That would amount to saying that the time-limits prescribed by the parties in the agreement have no significance or value and that they mean nothing. Would it be reasonable to say that because time is not made the essence of the contract, the time-limit(s) specified in the agreement have no relevance and can be ignored with impunity? It would also mean denying the discretion vested in the court by both



*Sections 10 and 20. As held by a Constitution Bench of this Court in Chand Rani v. Kamal Rani [Chand Rani v. Kamal Rani, (1993) 1 SCC 519] : (SCC p. 528, para 25)*

*'25. ... it is clear that in the case of sale of immovable property there is no presumption as to time being the essence of the contract. Even if it is not of the essence of the contract the Court may infer that it is to be performed in a reasonable time if the conditions are (evident?):*

- (1) from the express terms of the contract;*
- (2) from the nature of the property; and*
- (3) from the surrounding circumstances, for example : the object of making the contract.'*

*In other words, the court should look at all the relevant circumstances including the time-limit(s) specified in the agreement and determine whether its discretion to grant specific performance should be exercised."*

**41.** *In Azhar Sultana v. B. Rajamani [Azhar Sultana v. B. Rajamani, (2009) 17 SCC 27 : (2011) 1 SCC (Civ) 761] this Court held : (SCC pp. 35-36, paras 28 & 35)*

*"28. ... The court, keeping in view the fact that it exercises a discretionary jurisdiction, would be entitled to take into consideration as to whether the suit had been filed within a reasonable time. What would be a reasonable time would, however, depend upon the facts and circumstances of each case. No hard-and-fast law can be laid down therefor. The conduct of the parties in this behalf would also assume significance.*

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*35. We, therefore, are of the opinion that interest of justice would be subserved if this Court refuses to exercise its discretionary jurisdiction in terms of Section 20 of the Act, directing the defendant to pay a sum of Rs 60,000 to the plaintiff which sum would include the amount of advance paid by her."*



**42.** *In Saradamani Kandappan [Saradamani Kandappan v. S. Rajalakshmi, (2011) 12 SCC 18: (2012) 2 SCC (Civ) 104] this Court reiterated that:*

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

**42.2.** *The courts will apply greater scrutiny and strictness when considering whether purchaser was ready and willing to perform his part of the contract.*

**42.3.** *Every suit for specific performance need not be decreed merely because it is filed within the period of limitation, by ignoring 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 one or two years to file a suit and obtain specific performance. The three year period is intended to assist the purchaser 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.*

**43.** *In Atma Ram v. Charanjit Singh [Atma Ram v. Charanjit Singh, (2020) 3 SCC 311 : (2020) 2 SCC (Civ) 107] V. Ramasubramanian, J. speaking for this Court made the following pertinent observation : (SCC p. 316, para 9)*

*"9. ... No explanation was forthcoming from the petitioner for the long delay of three years, in filing the suit (on 13-10-1999) after issuing a legal notice on 12-11-1996. The conduct of a plaintiff is very crucial in a suit for specific performance. A person who issues a legal notice on 12-11-1996 claiming readiness and willingness, but who institutes a suit only on 13-10-1999 and that too only with a prayer for a mandatory injunction carrying a fixed court fee relatable only to the*



*said relief, will not be entitled to the discretionary relief of specific performance."*

**44.** *The respondent-plaintiff has relied upon the notice dated 13-2-2003 and evidence of PW 2 and PW 3 to prove that he was always ready and willing to perform his part of the contract. Even though it may be true that the respondent-plaintiff had deposited the balance sale consideration in court on 6-4-2010, it cannot be ignored that such deposit was made by him seven years after 15-3-2003, being the date by which the sale had to be concluded. No evidence has been adduced on behalf of the respondent-plaintiff as to how the respondent-plaintiff was in a position to pay or make arrangements for payment of the balance sale consideration within time. The courts below also erred in not adjudicating upon this vital issue except to make a sweeping observation that, given that the respondent-plaintiff was a businessman he had sources to arrange the balance funds. Careful study of balance sheet dated 31-3-2003 of the respondent-plaintiff would demonstrate that he did not have sufficient funds to discharge his part of contract.*

**45.** *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, he was ready and willing to perform his part of the contract. It is the bounden duty of the plaintiff to prove his readiness and willingness by adducing evidence. This crucial facet has to be determined by considering all circumstances including availability of funds and mere statement or averment in plaint of readiness and willingness, would not suffice.*

**46.** *In this case, the respondent-plaintiff has failed to discharge his duty to prove his readiness as well as willingness to perform his part of the contract, by adducing cogent evidence. Acceptable evidence has not been placed on record to prove his readiness and willingness. Further, it is clear from the respondent-plaintiff's balance sheet that he did not have sufficient*



*funds to discharge his part of contract in March 2003. Making subsequent deposit of balance consideration after lapse of seven years would not establish the respondent-plaintiff's readiness to discharge his part of contract. Reliance may be placed on Umabai v. Nilkanth Dhondiba Chavan [Umabai v. Nilkanth Dhondiba Chavan, (2005) 6 SCC 243] wherein this Court speaking through S.B. Sinha, J. held that deposit of amount in court is not enough to arrive at conclusion that plaintiff was ready and willing to perform his part of contract. Deposit in court would not establish plaintiff's readiness and willingness within meaning of Section 16(c) of Specific Relief Act. The relevant part of the judgment is reproduced below : (SCC p. 260, para 45)*

*"45. ... Deposit of any amount in the court at the appellate stage by the plaintiffs by itself would not establish their readiness and willingness to perform their part of the contract within the meaning of Section 16(c) of the Specific Relief Act."*

**47.** *It is, therefore, patently clear that the respondent-plaintiff has failed to prove his readiness to perform his part of contract from the date of execution of the agreement till date of decree, which is a condition precedent for grant of relief of specific performance. This Court finds that the respondent-plaintiff was not entitled to the relief of specific performance.*

**48.** *The respondent-plaintiff may have been willing to perform his part of contract. It however appears that he was not ready with funds. He was possibly trying to buy time to discharge his part of contract.*

**49.** *In Bhavyanath v. K.V. Balan [Bhavyanath v. K.V. Balan, (2020) 11 SCC 790] cited by Mr Raju to contend that the respondent-plaintiff was entitled to relief of specific performance and the courts had rightly granted such relief, the plaintiff had filed the suit for specific performance three days after the last day for execution of the sale deed. In this case however, the respondent-plaintiff waited for nearly 3 years and filed*



*the suit for specific performance just before expiry of the limitation period. Furthermore, in Bhavyanath v. K.V. Balan [Bhavyanath v. K.V. Balan, (2020) 11 SCC 790] the plaintiff had adduced cogent evidence to prove his readiness and willingness to discharge his part of the contract and to prove that he had sufficient funds to discharge his obligation. No such evidence has been adduced by the respondent-plaintiff in this case either to show his readiness or to prove that sufficient funds were available with him to enable him to discharge his part of contract. Therefore, Bhavyanath v. K.V. Balan [Bhavyanath v. K.V. Balan, (2020) 11 SCC 790] is of no assistance to the respondent-plaintiff.*

**50.** *In view of foregoing, this Court is of the considered opinion that the respondent-plaintiff was not entitled to the relief of specific performance. The trial court and the High Court erred both in law and on facts in granting such relief.*

In these circumstances, we answer point Nos.1, 2 and 4 accordingly against the plaintiff and in favour of defendant.

47. Now, the fact remains regarding the refund of the amount. The defendant in this case has not denied the fact of receipt of Rs.5,00,000/-. But his contention is that it is a loan transaction, which we have declined to accept. The defendant has taken the sum of Rs.5,00,000/- way back in the year 2012. Now we are in 2026. He is also in



possession of the property all along. It is also forthcoming from the record that in lieu of acquisition of his land, another land of same extent has been allotted in his favour. In these circumstances, he is bound to refund the amount with a reasonable interest, which shall not be less than 12% per annum. Accordingly, we proceed to pass the following:

**ORDER**

- i. The appeal is ***allowed-in-part***.
- ii. The judgment and decree dated 11.09.2018 passed by the Senior Civil Judge and Principal JMFC, Tarikere, directing the defendant to execute the registered sale deed within 3 months from the date of judgment after receiving balance sale consideration of Rs.87,00,000/- from the plaintiff, is set-aside and modified to that of refund of advance amount of Rs.5,00,000/- along with 12% interest per



annum from the date of agreement dated  
06.09.2012, till the same is deposited.

- iii. Any failure would entail plaintiff to file execution  
for realization of the amount ordered.
- iv. No order as to cost.

**Sd/-**  
**(D K SINGH)**  
**JUDGE**

**Sd/-**  
**(T.M.NADAF)**  
**JUDGE**

PK  
List No.: 1 Sl No.: 3  
ct-vn.