

## **Aniglase Yohannan vs Ramlatha And Ors on 23 September, 2005**

**Equivalent citations: AIR 2005 SUPREME COURT 3503, 2005 (7) SCC 534, 2005 AIR SCW 4789, (2005) 2 CLR 594 (SC), (2005) 5 CTC 800 (SC), 2005 (7) SLT 376, 2005 (9) SRJ 255, 2005 (2) CLR 594, (2006) 1 ALLMR 24 (SC), (2005) 8 JT 499 (SC), 2005 (7) SCALE 471, (2005) 35 ALLINDCAS 805 (SC), 2005 (2) CTLJ 301, 2005 (5) CTC 800, 2006 (1) ALL MR 24, 2006 (1) HRR 198, 2006 SCFBRC 70, (2005) 2 ANDH LT 15, MANU/SC/653/2005, (2005) 4 CURCC 40, (2005) 4 PAT LJR 203, (2005) 2 WLC(SC)CVL 664, (2005) 4 KER LT 280, (2006) 1 LANDLR 660, (2006) 1 PUN LR 779, (2005) 7 SCJ 581, (2005) 4 JLJR 127, (2005) 61 ALL LR 766, (2006) 1 ALL RENTCAS 43, (2005) 4 ALL WC 3776, (2006) 1 CIVLJ 855, (2005) 1 CPR 10, (2005) 3 CIVILCOURTC 663, (2005) 6 ANDHLD 11, (2005) 6 SUPREME 535, (2005) 4 RECCIVR 563, (2005) 4 ICC 641, (2005) 7 SCALE 471, (2005) 3 CPJ 21**

**Author: Arijit Pasayat**

**Bench: Arijit Pasayat, C.K. Thakker**

CASE NO.:

Appeal (civil) 6260 of 2004

PETITIONER:

Aniglase Yohannan

RESPONDENT:

Ramlatha and Ors.

DATE OF JUDGMENT: 23/09/2005

BENCH:

Arijit Pasayat & C.K. Thakker

JUDGMENT:

**JUDGMENT ARIJIT PASAYAT, J.**

The defendant in a suit for specific performance of contract questions correctness of the judgment rendered by a Full Bench of the Kerala High Court holding that the plaintiff-respondent no.1 is entitled to a decree in the manner prayed for. Though the Trial Court held that the requirements of Section 16(c) of the Specific Relief Act, 1963 (in short 'the Act') were not complied with and plaintiff was entitled only to the money paid, in appeal by the plaintiff, learned Single Judge of the High

Court as well as in appeal before the Full Bench of the High Court, held otherwise. Plaintiff's suit for specific performance was decreed.

The factual background as highlighted by the original plaintiff, who after his death was substituted by additional plaintiffs nos. 2 to 5 (respondents herein) is essentially as follows:

The suit was filed by the plaintiff for specific performance of Ext. A1 agreement for sale. His case is that the defendant executed Ext.A1 agreement in his favour agreeing to sell the suit property for a consideration of Rs. 12,000. An advance of Rs. 8,000 was paid on the date of the agreement i.e. 15.2.1978. The period fixed for the execution of the sale deed was six months from the date of the agreement. Though the plaintiff was ready and willing to perform his part of the contract, the defendant was not prepared to execute the sale deed. The defendant resisted the suit contending that though he executed Ext.A1 agreement in favour of the plaintiff, it was executed only as security for the amount paid by the plaintiff to him. It was also contended that the property covered by the agreement is owned by the defendant and his wife jointly and since the property has not been partitioned, the defendant had no legal right to enter into an agreement for the sale of the entire property. The defendant further pleaded that on 15.2.1978 itself, (Ext.B1) the plaintiff had executed an agreement in favour of the defendant agreeing not to enforce the specific performance of the agreement. On these contentions, the defendant wanted the suit to be dismissed.

The suit was originally decreed by the trial Court. On appeal filed by the defendant as A.S. No. 227/1980, the High Court set aside the decree and judgment of the trial Court and remanded the case for the purpose of considering the genuineness of Ext.B1 document. After remand Ext.B1 agreement was sent for expert opinion and Ext.C1 report was obtained. The trial Court found that the plaintiff was not the author of Ext.B1 and Ext.A1 agreement was not executed as security for the repayment of the amount advanced, as contended by the defendant. But, the trial Court denied the relief of specific performance of the contract on the ground that the plaintiff has failed to plead and prove that he is still ready and willing to perform his part of the contract. However, the plaintiff was given a decree for realization of a sum of Rs. 8,000 paid as advance with 6% interest per annum from 15.2.1978. Dissatisfied with the decree, the additional plaintiffs 2 to 5 filed appeal before the High Court.

Learned Single Judge held that the averments in the plaint clearly indicate readiness and willingness of the plaintiff to fulfill his part of contract. It was held that the plaint contains essential facts which lead to inference of plaintiff's readiness and willingness. In the appeal before the Full Bench of the High Court several points were raised. Ultimately, however, the challenge was restricted to the question whether the learned Single Judge's view in the background of Section 16(c) of the Act was correct. The High Court held that the same was in order.

Mr. T.L.V. Iyer, learned senior counsel for the appellant submitted that both the learned Single Judge and the Full Bench considered the true scope and ambit of Section 16(c) of the Act. According to him the requirements were mandatory and the averments in the plaint should clearly establish that the plaintiff established that he was willing to perform the essential terms of the contract.

In response, learned counsel for the respondent submitted that the learned Single Judge has referred to various averments in the plaint, the conduct of the parties and attending circumstances and keeping in view the settled position in law recorded the findings which are essentially of facts, has come to hold that the plaintiff's suit was to succeed. The Full Bench also concurred with the view.

In order to appreciate the rival submissions Section 16(c) needs to be quoted along with the Explanations. The same reads as follows:

"16. Personal bars to relief:

(a) .....

(b) .....

(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 of the performance of which has been prevented or waived by the defendant.

Explanation - For the purpose 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 accordingly to its true construction."

In *Ardeshir H. Mama v. Flora Sassoon*, (AIR 1928 PC 208), the Privy Council observed that where the injured party sued at law for a breach, going to the root of the contract, he thereby elected to treat the contract as at an end himself and as discharged from the obligations. No further performance by him was either contemplated or had to be tendered. In a suit for specific performance on the other hand, he treated and was required by the Court to treat the contract as still subsisting. He had in that suit to allege, and if the fact was traversed, he was 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. Failure to make good that averment brings with it and leads to the inevitable dismissal of the suit. The observations were cited with approval in *Prem Raj v. The D.L.F. Housing and Construction (Private) Ltd. and Anr.*, AIR (1968) SC 1355.

The requirements to be fulfilled for bringing in compliance of the Section 16(c) of the Act have been delineated by this Court in several judgments. Before dealing with the various judgments it is necessary to set out the factual position. The agreement for sale was executed on 15.2.1978 and the period during which the sale was to be completed was indicated to be six months. Undisputedly, immediately after the expiry of the six months period lawyer's notice was given calling upon the present appellant to execute the sale deed. It is also averred in the plaint that the plaintiff met the defendant several times and requested him to execute the sale deed. On finding inaction in his part, the suit was filed in September, 1978. This factual position has been highlighted in the plaint itself. Learned Single Judge after noticing the factual position as reflected in the averments in the plaint came to hold that the plaint contains essential facts which lead to inference to plaintiff's readiness and willingness. Para 3 of the plaint indicates that the plaintiff was always ready to get the sale deed prepared after paying necessary consideration. In para 4 of the plaint reference has been made to the lawyer's notice calling upon the defendant to execute the sale deed. In the said paragraph it has also been described as to how after the lawyer's notice was issued plaintiff met the defendant. In para 5 it is averred that defendant is bound to execute the sale deed on receiving the balance amount and the plaintiff was entitled to get the document executed by the defendant. It is also not in dispute that the balance amount of the agreed consideration was deposited in Court simultaneously to the filing of the suit. While examining the requirement of Section 16(c) this Court in *Syed Dastagir v. T.R. Gopalakrishna Setty*, [1999] 6 SCC 337 noted as follows:

"So the whole gamut of the issue raised is, how to construe a plea specially with reference to Section 16(c) and what are the obligations which the plaintiff has to comply with in reference to his plea and whether the plea of the plaintiff could not be construed to conform to the requirement of the aforesaid section, or does this section require specific words to be pleaded that he has performed or has always been ready and is willing to perform his part of the contract. In construing a plea in any pleading, courts must keep in mind that a plea is not an expression of art and science but an expression through words to place fact and law of one's case for a relief. Such an expression may be pointed, precise, sometimes vague but still it could be gathered what he wants to convey through only by reading the whole pleading, depending on the person drafting a plea. In India most of the pleas are drafted by counsel hence the aforesaid difference of pleas which inevitably differ from one to the other. Thus, to gather true spirit behind a plea it should be read as a whole. This does not distract one from performing his obligations as required under a statute. But to test whether he has performed his obligations, one has to see the pith and substance of a plea. Where a statute requires any fact to be pleaded then that has to be pleaded may be in any form. The same plea may be stated by different persons through different words; then how could it be constricted to be only in any particular nomenclature or word. Unless a statute specifically requires a plea to be in any particular form, it can be in any form. No specific phraseology or language is required to take such a plea. The language in Section 16(c) does not require any specific phraseology but only that the plaintiff must aver that he has performed or has always been and is willing to perform his part of the contract. So the compliance of "readiness and willingness" has to be in spirit and substance and not in letter and form. So to insist for a mechanical

production of the exact words of a statute is to insist for the form rather than the essence. So the absence of form cannot dissolve an essence if already pleaded."

Again in *Motilal Jain v. Ramdasi Devi (Smt.) and Ors.*, [2000] 6 SCC 420 it was noted as follows:

The other contention which found favour with the High Court, is that plaintiff averments do not show that the plaintiff was ready and willing to perform his part of the contract and at any rate there is no evidence on record to prove it. Mr. Choudhary developed that contention placing reliance on the decision in *Varghese case* [1969]

2 SCC 539. In that case, the plaintiff pleaded an oral contract for sale of the suit property. The defendant denied the alleged oral agreement and pleaded a different agreement in regard to which the plaintiff neither amended his plaint nor filed subsequent pleading and it was in that context that this Court pointed out that the pleading in specific performance should conform to Forms 47 and 48 of the First Schedule of the Code of Civil Procedure. That view was followed in *Abdul Khader case* [1989] 4 SCC 313 : AIR (1990) SC 682.

However, a different note was struck by this Court in *Chandiok case* [1970] 3 SCC 140 : AIR [1971] SC 1238. In that case 'A' agreed to purchase from 'R' a leasehold plot. 'R' was not having lease of the land in his favour from the Government nor was he in possession of the same. 'R', however, received earnest money pursuant to the agreement for sale which provided that the balance of consideration would be paid within a month at the time of the execution of the registered sale deed. Under the agreement 'R' was under obligation to obtain permission and sanction from the Government before the transfer of leasehold plot. 'R' did not take any steps to apply for the sanction from the Government. 'A' filed the suit for specific performance of the contract for sale. One of the contentions of 'R' was that 'A' was not ready and willing to perform his part of the contract. This Court observed that readiness and willingness could not be treated as a straitjacket formula and that had to be determined from the entirety of facts and circumstances relevant to the intention and conduct of the party concerned. It was held that in the absence of any material to show that 'A' at any stage was not ready and willing to perform his part of the contract or that he did not have the necessary funds for payment when the sale deed would be executed after the sanction was obtained, 'A' was entitled to a decree for specific performance of contract.

That decision was relied upon by a three-Judge Bench of this Court in *Syed Dastagir case* [1999] 6 SCC 337 wherein it was held that in construing a plea in any pleading, courts must keep in mind that a plea is not an expression of art and science but an expression through words to place fact and law of one's case for a relief. It is pointed out that in India most of the pleas are drafted by counsel and hence they inevitably differ from one to the other; thus, to gather the true spirit behind a plea it should be read as a whole and to test whether the plaintiff has performed his obligations, one has to see the pith and substance of the plea. It was observed :

"Unless a statute specifically requires a plea to be in any particular form, it can be in any form. No specific phraseology or language is required to take such a plea. The language in Section 16(c) of the Specific Relief Act, 1963 does not require any specific

phraseology but only that the plaintiff must aver that he has performed or has always been and is willing to perform his part of the contract. So the compliance of 'readiness and willingness' has to be in spirit and substance and not in letter and form."

It is thus clear that an averment of readiness and willingness in the plaint is not a mathematical formula which should only be in specific words. If the averments in the plaint as a whole do clearly indicate the readiness and willingness of the plaintiff to fulfil his part of the obligations under the contract which is the subject-matter of the suit, the fact that they are differently worded will not militate against the readiness and willingness of the plaintiff in a suit for specific performance of contract for sale."

Lord Campbell in *Cork v. Ambergate etc. and Railway Co.*, (1851) 117 ER 1229 observed that in common sense the meaning of such an averment of readiness and willingness must be that the non-completion of the contract was not the fault of the plaintiffs, and that they were disposed and able to complete it had it not been renounced by the defendant.

The basic principle behind Section 16(c) read with Explanation (ii) is that any person seeking benefit of the specific performance of contract must manifest that his conduct has been blemishless throughout entitling him to the specific relief. The provision imposes a personal bar. The Court is to grant relief on the basis of the conduct of the person seeking relief. If the pleadings manifest that the conduct of the plaintiff entitles him to get the relief on perusal of the plaint he should not be denied the relief.

Section 16(c) of the Act mandates the plaintiff to aver in the plaint and establish as the fact by evidence aliunde that he has always been ready and willing to perform his part of the contract. On considering almost identical fact situation it was held by this Court in *Surya Narain Upadhyaya v. Ram Roop Pandey and Ors.*, AIR (1994) SC 105 that the plaintiff had substantiated his plea.

When the factual background is considered in the light of principles set out above, the inevitable conclusion is that the judgments of the learned Single Judge and the Full Bench do not suffer from any infirmity to warrant interference.

The appeal is dismissed but without any order as to costs.