

A U.N. KRISHNAMURTHY (SINCE DECEASED) THR. LRS.

v.

A. M. KRISHNAMURTHY

(Civil Appeal No. 4703 of 2022)

B JULY 12, 2022

[INDIRA BANERJEE AND HRISHIKESH ROY, JJ.]

- Specific Relief Act, 1963 – s.16 (prior to amendment w.e.f 1.10.2018) – Readiness and willingness to perform – Both ingredients necessary for the relief of specific performance – Suit for specific performance of an agreement for sale – Certain amount paid in advance, failure to pay balance within stipulated time – Grant of relief – Not justified – Held: There is a distinction between readiness and willingness to perform the contract and both ingredients are necessary for the relief of Specific Performance –*
- C *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 – Mere statement or averment in plaint of readiness and willingness would not suffice – In the present case, the respondent-plaintiff failed to prove his readiness to perform his part of contract from the date of execution of the agreement till date of decree, a condition precedent for grant of relief of specific performance – Respondent deposited the balance sale consideration in the court seven years after the date by which the sale had to be concluded – He did not have sufficient funds to discharge his part of contract – No evidence was adduced as to how he was in a position to pay or make*
- D *arrangements for payment of the balance sale consideration within time – Making subsequent deposit of balance consideration after lapse of seven years would not establish the respondent's readiness to discharge his part of contract – Respondent was not entitled to the relief of specific performance as he was not ready with funds*
- E *though may have been willing to perform his part of contract – Impugned judgment of High Court and the decree of Trial court set aside – Appellants-defendant to return the earnest money to the respondent with interest @ 7% p.a from the date of deposit of the same, till the date of refund.*

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Suit – For specific performance of an agreement – Certain amount paid in advance, balance to be paid within a stipulated time – Held: In a suit for Specific Performance of an agreement, it is for the Plaintiff to prove his readiness and willingness to perform his obligations under the agreement – Where a certain amount has been paid in advance and the balance is required to be paid within a stipulated time, it is for the Plaintiff to show that he was in a position to pay the balance money – Plaintiff has to prove that he has the money or has alternatively made necessary arrangements to get the money.

Suit – For specific performance– Continuous readiness and willingness of plaintiff – Held: 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.

Allowing the appeal, the Court

HELD: 1.1 The primary question for determination is whether the Respondent Plaintiff has proved his readiness and willingness to perform his part of the contract or not? In a suit for Specific Performance of an agreement, it is for the Plaintiff to prove his readiness and willingness to perform his obligations under the agreement. Where a certain amount has been paid in advance and the balance is required to be paid within a stipulated time, it is for the Plaintiff to show that he was in a position to pay the balance money. The Plaintiff has to prove that he has the money or has alternatively made necessary arrangements to get the money. In this case, the Original Defendant/Appellants have all along contended that the Plaintiff Respondent neither offered to pay nor was in a position to pay the balance consideration of Rs.15,00,000/-. [Paras 21, 22][260-F-H]

1.2 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,

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- A 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. 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. [Paras 24, 25][261-F-H; 262-A-C]

- E 1.3 In a suit for Specific Performance of a contract, the Court is required to pose unto itself the following questions, namely:-
 - (i) Whether there is a valid agreement of sale binding on both the vendor and the vendee and (ii) 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. There is a distinction between readiness and willingness to perform the contract and both ingredients are necessary for the relief of Specific Performance. 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. [Paras 33-35][265-B-E]

- G 1.4 In this case, the suit property is located in the industrial town of Hosur located about 30/40 kms. from Bengaluru. The Court is obliged to take judicial notice of the phenomenal rise in the price of real estate in Hosur. It was argued that the Plaintiff had only paid an insignificant amount of Rs.10,001/- as advance

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when the consideration was Rs.15,10,000/- . Having paid an insignificant amount the Plaintiff was not entitled to discretionary equitable relief of Specific Performance. The fact that the suit had been filed after three years, just before expiry of the period of limitation, was also a ground to decline the Respondent Plaintiff the equitable relief of Specific Performance for purchase of immovable property. The Respondent Plaintiff has relied upon the notice dated 13.02.2003 and evidences of PW2 & PW3 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 06.04.2010, 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 31.03.2003 of the Respondent Plaintiff would demonstrate that he did not have sufficient funds to discharge his part of contract. [Paras 38-40, 45][267-C-E; 268-E]

1.5 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. 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

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- A of seven years would not establish the Respondent Plaintiff's readiness to discharge his part of contract. 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. The Respondent Plaintiff was not entitled to the relief of specific performance. 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. 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. The impugned judgment of the High Court and the judgment and decree of Trial court are set aside. The Appellants shall return the earnest money to the Respondent Plaintiff, within 4 weeks from today with interest at the rate of 7% per annum from the date of deposit of the same, till the date of refund. It will also be open to the Respondent Plaintiff to withdraw the deposit if any of the balance consideration in Court. [Paras 46-49, 51 and 52][271-D-G; 272-B-C, G]

Bhavyanath v. K. V. Balan (2020) 11 SCC 790 – held inapplicable.

- E *Man Kaur v. Hartar Singh Sangha (2010) 10 SCC 512 : [2010] 12 SCR 515; In Pt. Prem Raj v. D.L.F. Housing and Construction (Private) Ltd. And Anr. AIR 1968 SC 1355 : [1968] 3 SCR 648; N. P. Thirugnanam v. Dr. R. Jagan Mohan Rao and Ors (1995) 5 SCC 115 : [1995] 2 Suppl. SCR 53; Umabai v. Nilkanth Dhondiba Chavan (2005) 6 SCC 243 : [2005] 3 SCR 521; K.S. Vidyanadam v. Vairavan (1997) 3 SCC 1 : [1997] 1 SCR 993; His Holiness Acharya Swami Ganesh Dassji v. Sita Ram Thapar (1996) 4 SCC 526 : [1996] 2 Suppl. SCR 111; Kalawati v. Rakesh Kumar (2018) 3 SCC 658 : [2018] 1 SCR 482; Balraj Taneja v. Sunil Madan (1999) 8 SCC 396 : [1999] 2 Suppl. SCR 258; H.P. Pyarejan v. Dasappa (2006) 2 SCC 496 : [2006] 2 SCR 120; Malluru Mallappa v. Kuruvathappa (2020) 4 SCC 313; Saradamani Kandappan v. S. Rajalakshmi*
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(2011) 12 SCC 18 : [2011] 8 SCR 874; *P.R. Deb and Associates v. Sunanda Roy* (1997) 3 SCC 1; *Manjunath Anandappa v. Tammanasa* (2003) 10 SCC 390 : [2003] 2 SCR 1068; *Azhar Sultana v. B. Rajamani* (2009) 17 SCC 27 : [2009] 2 SCR 537; *Atma Ram v. Charanjit Singh* (2020) 3 SCC 311 : [2020] 3 SCR 697 – relied on. A

Ardesir Mama v. Flora Sassoon 55 IA 300, at pg. 372 : AIR 1928 PC 208; *Cort v. Ambergate etc. and Rly. Co* (1851) 117 ER 1229 – referred to. B

<u>Case Law Reference</u>			C
[2010] 12 SCR 515	relied on	Para 26	
[1968] 3 SCR 648	relied on	Para 27	
[1995] 2 Suppl. SCR 53	relied on	Para 29	
[2005] 3 SCR 521	relied on	Para 31	D
[1997] 1 SCR 993	relied on	Para 32	
[1996] 2 Suppl. SCR 111	relied on	Para 34	
[2018] 1 SCR 482	relied on	Para 34	
[1999] 2 Suppl. SCR 258	relied on	Para 35	E
[2006] 2 SCR 120	relied on	Para 36	
[2011] 8 SCR 874	relied on	Para 39	
[2003] 2 SCR 1068	relied on	Para 40	
[2009] 2 SCR 537	relied on	Para 40	F
[2020] 3 SCR 697	relied on	Para 44	
(2020) 11 SCC 790	held inapplicable	Para 50	

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4703 of 2022. G

From the Judgment and Order dated 30.10.2017 of the High Court of Judicature at Madras in Appeal Suit No. 262 of 2011.

Krishnan Venugopal, Shashikiran Shetty, Sr. Advs., Mahesh Thakur, Ms. Vipasha Singh, Advs. for the Appellants. H

A N. D. B. Raju, M. A. Chinnasamy, Ms. C. Rubavathi, Ch. Leela Sarveswar, T. Meikandan, P. Rajaram, V. Senthil Kumar, Advs. for the Respondent.

The Judgment of the Court was delivered by

INDIRA BANERJEE, J.

B Leave granted.

2. Heard Mr. Krishnan Venugopal learned Senior Advocate appearing with Mr. Mahesh Thakur, AOR on behalf of Appellants and Mr. N.D.B Raju, learned Advocate appearing with Mr. M.A.

C Chinnasamy, AOR on behalf of Respondent.

3. This Appeal is against a final judgment and decree dated 30th October 2017 passed by the High Court of Judicature at Madras, dismissing the Appeal Suit No. 262 of 2011 filed by the Appellants and confirming a judgment and order and decree dated 30th November 2010

D passed by the Principal District Judge, Krishnagiri, hereinafter referred to as “the Trial Court” in Original Suit No. 30 of 2005 filed by the Respondent Plaintiff, for specific performance of an agreement for sale of the suit property.

E 4. In the plaint, it is pleaded that the original Defendant U.N. Krishnamurthy’s father, U.R. Narasaiah had executed a will on or about 9th May 1984, bequeathing the suit property to the original Defendant, U.N. Krishnamurthy (since deceased). After the death of his father, U.R. Narasaiah, on 25th April 1987, the original Defendant U. N. Krishnamurthy became the absolute owner of the suit property.

F 5. It is the case of the Appellants that on 11th November 2002, while the original Defendant was getting the suit property whitewashed, a real estate agent Mr. N. Anjappa approached the original Defendant with an offer to arrange the sale of the suit property at a good price.

G 6. As per the pleadings in the plaint, the original Defendant agreed to sell the suit property to the Respondent Plaintiff, in the presence of Mr. N. Anjappa, Mr. S.A. Muralidharan and Mr. M. Murali Reddy. The terms and conditions of the agreement for sale of the suit property were recorded by the original Defendant U.N. Krishnamurthy in his own handwriting in a letter dated 11th November 2002 given by the original Defendant to the Respondent Plaintiff.

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7. It is the case of the Respondent Plaintiff that the original Defendant agreed to sell the suit property to the Respondent Plaintiff for a consideration of Rs.15,10,000/-, out of which sum of Rs.10,001/- was paid by the Respondent Plaintiff to the original Defendant in advance. It was further agreed between the parties, that the Respondent Plaintiff would get the sale deed registered on or before 15th March 2003, upon payment of the full sale consideration. The agreement was allegedly witnessed by the real estate agent, Mr. N. Anjappa.

8. According to the Respondent Plaintiff, the Respondent Plaintiff approached the original Defendant with the balance consideration several times and requested the original Defendant to execute the sale deed in his favour, but the original Defendant kept postponing execution of the sale deed on one pretext or the other.

9. On or about 13th February 2003, the Respondent Plaintiff issued a legal notice to the original Defendant through his lawyer stating that the Respondent Plaintiff is ever ready and willing to perform his part of the contract and called upon the original Defendant to execute the sale deed in favour of Respondent Plaintiff after receiving the balance consideration. By a letter dated 10th March 2003 sent in response to the aforesaid legal notice, the original Defendant denied having entered into any oral sale agreement for sale of the suit property.

10. On 8th October 2005, the Respondent Plaintiff allegedly approached the original Defendant with a request to receive the balance consideration and to execute the sale deed in favour of the Respondent Plaintiff. It is alleged that the original Defendant went back upon his promise and refused to accede to the request made by the Respondent Plaintiff.

11. In the circumstances, on or about 17th October 2005, the Respondent Plaintiff filed the suit. The original Defendant filed a written statement denying the allegations in the plaint. In the written statement, the original Defendant denied the execution of any agreement for sale of the suit property for consideration of Rs.15,10,000/- as alleged.

12. The original Defendant has categorically stated that he did not agree to sell the suit property to the Respondent Plaintiff as alleged and that he did not receive any advance on 11th November 2002 as alleged or on any other date. It is the case of the Appellants that there was no concluded contract to sell the suit property. In the written

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- A statement it is also pleaded that in any case, the Respondent Plaintiff was never ready or willing to perform his part of the contract.

13. The Trial Court framed the following issues:-

“1. Whether the oral agreement of sale in the 1st week of November, 2002 is true?

- B *2. Whether the alleged confirmation letter dated 11.11.2002 is true and valid?*
- C *3. Whether there is no concluded contract between the plaintiff and defendant is true?*
- C *4. Whether the plaintiff always ready and willing to perform his part of contract?*
- C *5. Whether the plaintiff is entitled to get the relief of specific performance and possession?*
- D *6. To what relief the plaintiff is entitled to?”*

14. The Respondent Plaintiff examined three witnesses and the original Defendant deposed as witness on his own behalf. By a judgment and order dated 30th November 2010, the Trial Court decreed the suit and directed the original Defendant to receive the balance sale consideration of Rs.15 lakhs and execute the sale deed in favour of the Respondent Plaintiff.

- E 15. All the issues framed by the Trial Court were answered in favour of the Respondent Plaintiff. The Trial Court found that the Respondent Plaintiff was ready and willing to perform his part of the contract, and thus entitled to the relief of specific performance. The relevant part of judgment of the Trial Court is set out hereinbelow:-

G *“21. But I already discussed that the plaintiff is a businessman and he is having sufficient means to pay the amount to the defendant Rs.15,00,000/- also deposited into court. The amount has not shown in Ex. A4 to A6 is not the ground for denying the prayer. The plaintiff is also ready and willing to perform his contract and in view of the above discussions, the plaintiff is entitled the relief of Specific performance and possession of schedule property. Accordingly, I answered the Issues Nos.4 and 5.”*

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16. By the impugned judgment and order dated 30th October 2017, A the High Court upheld the judgment and decree passed by the Trial Court, holding that the Respondent Plaintiff had always been ready and willing to perform his part of the contract. The relevant part of the impugned judgment and order reads:-

"18. The letter dated 11.11.2002 has been marked as Ex. A-1. In Ex. A1 period has been fixed for execution of a registered sale deed. The consistent case of the plaintiff is that despite of repeated demands, the defendant has not come forward to execute a sale deed in favour of the plaintiff and therefore, a legal notice has been issued. Ex.A2 is a copy of the legal notice dated 13.02.2003 and the same has also been received by the defendant. After receipt of the same he has given a false reply notice dated 10.03.2003. Since on the side of the plaintiff, necessary documentary and oral evidence have been let in, it is easily discernible that the plaintiff has always been ready and willing to perform his part of the contract. Therefore, the fourth contention put forth on the side of the appellants/defendant[s] also goes out without merit.

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20. It has already been discussed in detail that the suit property is the absolute property of the defendant. From the evidence given by the defendant [D.W.1], the Court can very well come to conclusion that the entire transaction is based upon on oral sale agreement emerged between the plaintiff and defendant. Further, the plaintiff has shown his readiness and willingness to perform his part of the contract. Therefore, viewing from any angle, the contentions put forth on the side of the appellants /defendants[s] cannot be accepted."

17. Mr. Krishnan Venugopal, learned Senior Counsel appearing on behalf of the Appellants argued that both the Trial Court and the High Court committed an error on facts and also in law. According to him the issue relating to "readiness and willingness" on the part of the Respondent Plaintiff, had not been properly appreciated by the Courts below. Emphasizing on Section 16(c) of the Specific Relief Act, 1963, Mr. Venugopal submitted that the Respondent Plaintiff had not adduced any evidence to demonstrate continuous "readiness and willingness"

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- A which the Respondent Plaintiff was required to prove, regardless of any default by the original Defendant. Mr. Venugopal also argued that the Court should also take judicial notice of the steep rise in the price of real estate, before granting the discretionary relief of specific performance.

18. Mr. N.D.B. Raju appearing on behalf of the Respondent Plaintiff submitted that the issues framed by the Trial Court of whether there was a concluded contract between the Plaintiff and the Defendant, and whether the Plaintiff was always ready and willing to perform his part of the contract were factual issues determinable on evidence.

19. Mr. Raju argued that this Court should not disturb the concurrent factual findings of the Trial Court and the High Court of readiness and willingness of the Respondent Plaintiff to perform his part of the contract.

20. Mr. Raju has emphatically argued that the Respondent Plaintiff was ever ready and willing to perform his part of the contract and that the original Defendant had been delaying the execution of the sale deed. To prove readiness and willingness of the Respondent Plaintiff, Mr. Raju referred to the testimony of the Plaintiff's witnesses, N. Anjappa (PW 2) and S.A. Muralidharan (PW3) who have stated that the Respondent Plaintiff had on multiple occasions, before the cut-off date of 15.03.2003 approached the original Defendant for execution of the sale deed, but the original Defendant delayed the execution of the sale deed.

21. It is well settled that, in a suit for Specific Performance of an agreement, it is for the Plaintiff to prove his readiness and willingness to perform his obligations under the agreement. Where a certain amount has been paid in advance and the balance is required to be paid within a stipulated time, it is for the Plaintiff to show that he was in a position to pay the balance money. The Plaintiff has to prove that he has the money or has alternatively made necessary arrangements to get the money. In this case, the Original Defendant/Appellants have all along contended that the Plaintiff Respondent neither offered to pay nor was in a position to pay the balance consideration of Rs.15,00,000/-.

22. The primary question for determination is whether the Respondent Plaintiff has proved his readiness and willingness to perform his part of the contract or not?

23. 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.”

24. 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.

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- A 25. 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.

26. In *Man Kaur v. Hartar Singh Sangha*¹, this Court held that:

- D “**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.”

27. In **Pt. Prem Raj v. D.L.F. Housing and Construction (Private) Ltd. And Anr.**² cited by Mr. Venugopal, this Court speaking through Ramaswamy J. held that “*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**³.

28. In **D.L.F. Housing and Construction (Pvt.) Ltd.** (supra), 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.

29. In **N.P. Thirugnanam v. Dr. R. Jagan Mohan Rao and Ors.**⁴, 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** (supra) 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.

30. This Court, in effect, held that for determining whether the Plaintiff was ready and willing to perform his part of the agreement it is

² AIR 1968 SC 1355

³ 55 IA 300, at pg. 372:AIR 1928 PC 208
⁴ (1995) 5 SCC 115

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- A 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:-

- B *"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..."*

- D 31. In ***Umabai v. Nilkanth Dhondiba Chavan***⁵, 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:-

- E *"So far there 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."

- G 32. In ***K.S. Vidyadanam v. Vairavan***⁶, Justice B.P. Jeevan Reddy said that grant of the relief of specific performance is discretionary and

H ⁵(2005) 6 SCC 243
⁶(1997) 3 SCC 1

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.

33. In a suit for Specific Performance of a contract, the Court is required to pose unto itself the following questions, namely:-

- (i) Whether there is a valid agreement of sale binding on both the vendor and the vendee and
- (ii) 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.

34. There is a distinction between readiness and willingness to perform the contract and both ingredients are necessary for the relief of Specific Performance. In *His Holiness Acharya Swami Ganesh Dassji v. Sita Ram Thapar*⁷ 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*⁸.

35. 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*⁹, and *H.P. Pyarejan v. Dasappa*¹⁰ where this Court approved the views taken by the Privy Council in *Ardeshir Mama v. Flora Sassoon*¹¹.

36. In *Malluru Mallappa v. Kuruvathappa*¹², this Court observed and held:-

"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

⁷(1996) 4 SCC 526

⁸(2018) 3 SCC 658

⁹(1999) 8 SCC 396

¹⁰(2006) 2 SCC 496

¹¹AIR 1928 PC 208

¹²(2020) 4 SCC 313

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- A *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, (1980) 4 SCC 259]]*
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14. *A first appeal under Section 96 CPC 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.*

- F **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.*
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37. In **H.P. Pyarejan v. Dasappa** (supra), Justice Arijit Pasayat speaking for this Court reversed the judgment of the High Court holding that High Court did not provide reasoning for its conclusion that Plaintiff was ready and willing to perform his part of contract. To arrive at such conclusion the Court had relied upon **Cort v. Ambergate etc. and Rly. Co**¹³ where Lord Campbell observed that in common sense, the meaning of such an averment of readiness and willingness must be that the non-completion of contract was not the fault of the Plaintiff.

38. In this case, we cannot overlook the fact that the suit property is located in the industrial town of Hosur located about 30/40 kms. from Bengaluru. The Court is obliged to take judicial notice of the phenomenal rise in the price of real estate in Hosur. The proposition finds support from case reported in **K.S. Vidyadanam v. Vairavan** (supra). To quote this Court “*we cannot be oblivious to reality – and the reality is constant and continuous rise in the values of urban properties - fuelled by large scale migration of people from rural areas to urban centres and by inflation.*”

39. Mr. Venugopal argued that the Plaintiff had only paid an insignificant amount of Rs.10,001/- as advance when the consideration was Rs.15,10,000/-. Having paid an insignificant amount the Plaintiff was not entitled to discretionary equitable relief of Specific Performance, as observed by this Court in **Saradamani Kandappan v. S. Rajalakshmi**¹⁴. The relevant paragraph of the judgment of this Court is set out hereinbelow:-

“37. The reality arising from this economic change cannot continue to be ignored in deciding cases relating to specific performance. The steep increase in prices is a circumstance which makes it inequitable to grant the relief of specific performance where the purchaser does not take steps to complete the sale within the agreed period, and the vendor has not been responsible for any delay or non-performance. A purchaser can no longer take shelter under the principle that time is not of essence in performance of contracts relating to immovable property, to cover his delays, laches, breaches and “non-readiness”. The precedents from an era, when high inflation was unknown, holding that time is not of the essence

¹³ (1851) 117 ER 1229

¹⁴ (2011) 12 SCC 18

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- A *of the contract in regard to immovable properties, may no longer apply, not because the principle laid down therein is unsound or erroneous, but the circumstances that existed when the said principle was evolved, no longer exist. In these days of galloping increases in prices of immovable properties, to hold that a vendor who took an earnest money of say about 10% of the sale price and agreed for three months or four months as the period for performance, did not intend that time should be the essence, will be a cruel joke on him, and will result in injustice. Adding to the misery is the delay in disposal of cases relating to specific performance, as suits and appeals therefrom routinely take two to three decades to attain finality. As a result, an owner agreeing to sell a property for rupees one lakh and receiving rupees ten thousand as advance may be required to execute a sale deed a quarter century later by receiving the remaining rupees ninety thousand, when the property value has risen to a crore of rupees."*
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40. As argued by Mr. Venugopal, the fact that the suit had been filed after three years, just before expiry of the period of limitation, was also a ground to decline the Respondent Plaintiff the equitable relief of Specific Performance for purchase of immovable property. E Mr. Venugopal's argument finds support from the judgments of this Court in *P.R. Deb and Associates v. Sunanda Roy*¹⁵; *K.S. Vidyanadam v. Vairavan*¹⁶; *Manjunath Anandappa v. Tammanasa*¹⁷, *Azhar Sultana v. B. Rajamani*¹⁸; *Saradamani Kandappan v. S. Rajalakshmi*¹⁹.

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41. In *K.S. Vidyanadam v. Vairavan* (supra) this Court held:
- "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*

¹⁵ (1996) 4 SCC 423

¹⁶ (1997) 3 SCC 1

¹⁷ (2003) 10 SCC 390

¹⁸ (2009) 17 SCC 27

H ¹⁹ (2011) 12 SCC 18

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 [(1993) 1 SCC 519] : (SCC p. 528, para 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...”

42. In *Azhar Sultana v. B. Rajamani* (supra) this Court held:-

“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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- A *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."*
- B 43. In *Saradamani Kandappan* (supra) this Court reiterated that (i) 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; (ii) the Courts will apply greater scrutiny and strictness when considering whether purchaser was ready and willing to perform his part of the contract and (iii) 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.

44. In *Atma Ram v. Charanjit Singh*²⁰ Justice V. Ramasubramanian speaking for this Court made the following pertinent observation:-

- F “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.”

45. The Respondent Plaintiff has relied upon the notice dated 13.02.2003 and evidences of PW2 & PW3 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 06.04.2010, 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 31.03.2003 of the Respondent Plaintiff would demonstrate that he did not have sufficient funds to discharge his part of contract.

46. 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.

47. 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* (supra) where this Court speaking through Justice SB Sinha 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: -

- A *"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..."*
- B 48. 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.
- C 49. 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.
- D 50. In *Bhavyanath v. K.V. Balan*²¹ 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* (supra) 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* (supra) is of no assistance to the Respondent Plaintiff.
- E 51. 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.
- F 52. The appeal is accordingly allowed. The impugned judgment of the High Court and the judgment and decree of Trial court are accordingly set aside. The Appellants shall return the earnest money to

the Respondent Plaintiff, within 4 weeks from today with interest at the rate of 7% per annum from the date of deposit of the same, till the date of refund. It will also be open to the Respondent Plaintiff to withdraw the deposit if any of the balance consideration in Court. Parties to bear their own costs.

Divya Pandey
(Assisted by : Deepak Panwar, LCRA)

Appeal allowed.

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