

P. DAIVASIGAMANI

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v.

S. SAMBANDAN

(Civil Appeal No. 9006 of 2011)

OCTOBER 12, 2022

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[SANJIV KHANNA AND BELA M. TRIVEDI, JJ.]

Specific Relief Act, 1963 – Ss. 10, 16 & 20 – Agreement to sell – default to perform contract – readiness and willingness – delay in filing of suit – Appellant entered into an agreement to sale with the respondent in the year 1989 with a stipulation for completion of the sale transaction in 6 months – Despite respondent's periodical correspondences, appellant failed to respond or perform his part of the contract – Respondent filed a suit for specific performance before the trial court – Trial court allowed the suit partly, allowing recovery of earnest money and refusing specific performance in view of the finding that the respondent could not prove readiness and willingness as at the time of filing of suit, respondent did not deposit the balance sale consideration amount in the court – Respondent appealed before High Court – High Court reversed the order of the trial court and allowed the appeal, thereby granting the relief of specific performance to the respondent – On appeal, held: The period of limitation had started running from the date the respondent noticed that the performance was refused by the appellant and not from the date of execution of agreement in question – The suit was filed by the respondent was well within the prescribed time u/Art.54 of the Limitation Act – Mere delay alone in filing the suit for specific performance, without reference to the conduct of the plaintiff, could not be a ground for refusing the said relief, when the suit was filed within the statutory time limit by the respondent-plaintiff – Respondent-plaintiff had not only issued notices within the period of six months of the agreement in question, calling defendant to perform his part of contract and conclude sale, he had also showed his readiness and willingness to perform the his part of contract by proving same by stepping into witness box –

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- A *There was due compliance of s. 16(c) read with its explanation on part of the respondent to perform – No illegality or infirmity in the judgment of the High Court.*
Delay/Laches – Limitation - There is a distinction between limitation and delay and laches – Limitation is a ground for dismissing a suit even if the plaintiff is otherwise entitled to specific performance, while delay operates to determine the discretion and exercise under Section 20 of the Specific Relief Act, even if the suit is not dismissed on account of limitation – However, not one but several aspects have to be considered when the court, in terms of section 20 of the Specific Relief Act, exercises discretion, guided by judicial principles, sound and reasonable.
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Dismissing the appeal, the Court

- HELD: 1.1** The period of limitation had started running from the date the respondent noticed that the performance was refused by the appellant and not from the date of the execution of agreement in question. Even though time is not considered as the essence of the contract in case of immoveable property and that the suit could be filed within three years as provided in Article 54 of the Limitation Act, the respondent - plaintiff had to perform his part of the contract within the reasonable time having regard to the term of the agreement prescribing the time limit. The time limit prescribed in the agreement cannot be ignored on the ground that time was not made the essence of the agreement or that the suit could be filed within three years from the date fixed for performance or from the date when the performance is refused by the vendor. The suit having been filed by the respondent well within the prescribed time limit under Article 54 of the Limitation Act, the respondent could not have been non-suited on the ground of the suit being barred by limitation. As regards, the delay in filing the suit, it is very pertinent to note that the rule of equity that exists in England, does not apply in India, and so long as a suit for specific performance is filed within the period of limitation, delay cannot be a ground to refuse the relief of specific performance to the plaintiff. Mere delay alone in filing the suit for specific performance, without reference to the conduct of the plaintiff, could not be a ground for refusing the said relief, when
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the suit was filed within the statutory time limit by the respondent- A plaintiff. [Paras 9, 10, 11 & 12][208-C-G; 209-E]

1.2 Readiness and willingness are not one, but two separate elements. Readiness means the capacity of the plaintiff to perform the contract, which would include the financial position to pay the purchase price. Willingness refers to the intention of the plaintiff as a purchaser to perform his part of the contract. Willingness is inferred by scrutinising the conduct of the plaintiff/purchaser, including attending circumstances. Continuous readiness and willingness on the part of the plaintiff/purchaser from the date the balance sale consideration was payable in terms of the agreement to sell, till the decision of the suit, is a condition precedent for grant of relief of specific performance. [Para 15][212-G, 213-A]

1.3 Section 20 of the Specific Relief Act (Pre-amendment), which confers discretion on the court to exercise jurisdiction to decree of specific performance, states that this exercise should not be arbitrary, but guided by sound and reasonable judicial principles. Sub-section (2) to Section 20 of the Specific Relief Act (Pre-amendment) lists some of the principles that the court should take into consideration while exercising discretion. D [Para 19][215-C-D; 216-G]

1.4 Time, it is stated, is not the essence of the contract in the case of immovable properties, unless there are grounds to hold to the contrary. This doctrine is applied, without being unfair and inequitable to the defendant/seller, as the court should not ignore that a person sells the property when he needs money, and, therefore, expects the money in the stipulated or reasonable time, which would meet the purpose of the sale. There has been a steep rise in the prices of land in the last quarter of the 20th Century in India. With the rise in property value, the value of money has fallen. At times, delay in payment would defeat the defendant/seller's purpose. Therefore, the offer of the plaintiff/purchaser in writing and the time and occasion when the offer to pay the balance amount to the defendant/seller is an important factor which would matter when the court examines the question of discretion, that is, whether or not to grant a decree of specific F G

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- A performance. While examining these aspects, the quantum of money paid by the plaintiff/seller to the defendant/purchaser may become a relevant fact that merits due consideration. There is a distinction between limitation and delay and laches. Limitation is a ground for dismissing a suit even if the plaintiff is otherwise entitled to specific performance, while delay operates to determine the discretion and exercise under Section 20 of the Specific Relief Act, even if the suit is not dismissed on account of limitation. However, not one but several aspects have to be considered when the court, in terms of Section 20 of the Specific Relief Act, exercises discretion, guided by judicial principles,
- B sound and reasonable. [Para 20][217-G; 218-A-D]

1.5 There was due compliance of Section 16(c) read with its Explanation on the part of the respondent and that it was the appellant who had failed to perform as per the terms of the agreement, though called upon by the respondent to perform.

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- D The High Court also had rightly held that the plaintiff had complied with the requirements of Section 16(c) of the said Act by making a specific pleading with regard to his readiness and willingness and also proving the same by reliable evidence. There is no illegality or infirmity in the impugned judgment passed by the High Court. Therefore, the same is confirmed. [Para 22] [219-C-D]

1.6 The agreement in question was entered into between the parties in October 1989, and considering the steep rise in the prices of land, interest of justice would be met if the respondent is directed to pay some more amount. Respondent is directed to

- E deposit a sum of Rupees One Crore in the Trial Court towards the sale consideration, over and above the amount that might have been deposited by him. On such deposit being made, the appellant shall execute the sale deed in favour of the respondent and shall also be at liberty to withdraw the said amount deposited
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- G by the respondent. [Para 23][219-F-H; 220-A]

*Mademsetty Satyanarayana vs. G. Yelloji Rao AIR 1965
SC 1405 : [1965] SCR 221; R. Lakshmikantham V.
Devaraji (2019) 8 SCC 62 : [2019] 9 SCR 1009; Smt.
Katta Sujatha Reddy v. Siddamsetty Infra Projects Ltd.,*

Civil Appeal No. 5822 of 2022; Syed Dastagir vs. T.R. Gopalakrishna Setty (1999) 6 SCC 337 : [1999] 1 Suppl. SCR 351; Sukhbir Singh v. Brij Pal Singh (1997) 2 SCC 200 : [1996] 2 Suppl. SCR 863; A. Kanthamani v. Nasreen Ahmed (2017) 4 SCC 654 : [2017] 2 SCR 610; C.S. Venkatesh v. A.S.C. Murthy (2020) 3 SCC 280 : [2020] 2 SCR 676; Kamal Kumar v. Premlata Joshi and Others (2019) 3 SCC 704 : [2019] 1 SCR 54; K.S. Vidyanadam and Others v. Vairavan (1997) 3 SCC 1 : [1997] 1 SCR 993; Saradamani Kandappan v. S. Rajalakshmi and Others (2011) 12 SCC 18 : [2011] 8 SCR 874; Ritu Saxena vs. J.S. Grover & Another (2019) 9 SCC 132 : [2019] 13 SCR 349; Abdullakoya Haji Vs. Rubis Tharayil (2019) 17 SCC 216 – referred to.

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<u>Case Law Reference</u>		
[1965] SCR 221	referred to	Para 11
[2019] 9 SCR 1009	referred to	Para 12
[1999] 1 Suppl. SCR 351	referred to	Para 16
[1996] 2 Suppl. SCR 863	referred to	Para 18
[2017] 2 SCR 610	referred to	Para 18
[2020] 2 SCR 676	referred to	Para 18
[2019] 1 SCR 54	referred to	Para 19
[1997] 1 SCR 993	referred to	Para 19
[2011] 8 SCR 874	referred to	Para 20
[2019] 13 SCR 349	referred to	Para 21
(2019) 17 SCC 216	referred to	Para 21

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9006 of 2011.

From the Judgment and Decree dated 15.06.2010 of the High Court of Judicature at Madras in Appeal Suit No.196 of 2002.

- A Anupamlal Das, Sr. Adv., S. Hariharan, Anirudh Singh, Ms. Jaikriti S. Jadeja, Ms. Prapti Allagh, Vikash Singh, Advs. for the Appellant.
 Basava Prabhu S. Patil, Sr. Adv., Ms. Promila, Geet Rajan Ahuja, S. Thananjayan, Advs. for the Respondent.
- B The Judgment of the Court was delivered by
BELA M. TRIVEDI, J.
- C 1. The present appeal is directed against the judgment and order dated 15.06.2010 passed by the High Court of Judicature at Madras in Appeal Suit No. 196 of 2002, whereby the High Court has allowed the said appeal, modified the decree passed by the Subordinate Judge, Poonamallee (hereinafter referred to as the “Trial Court”) in O.S. 212 of 1993, and decreed the said suit by granting the prayer for specific performance and also for permanent injunction against the present appellant (original defendant) in respect of the suit property.
- D 2. The respondent (original plaintiff) had filed the suit in the Trial Court seeking specific performance of an agreement for sale dated 05.10.1989, against the appellant (original defendant) and had prayed in the alternative for refund of the earnest (advance) money with interest, and also for the compensation. The respondent had also prayed for permanent injunction restraining the appellant – defendant from alienating or transferring the suit property to any third party. The Trial Court partly decreed the suit granting prayer for refund of the earnest money with interest at the rate of 12% per annum and dismissed the suit so far as other prayers were concerned, vide the judgment and decree dated 28.06.2002.
- F 3. The short facts given rise to the present appeal are that the appellant Mr. P. Daivasigamani was the owner of the suit land i.e., the land to an extent of 1 acre out of 1.80 acre of wetland comprised in survey nos. 287 and 288, situated in No. 85 Ayanambakkam, District Ambattur. He had entered into an agreement to sell the suit land with the respondent Shri S. Sambandan on 05.10.1989. The appellant had agreed to sell the said land for a sum of Rs. 6,50,000/- On the date of execution of the agreement, the respondent had paid a sum of Rs. 50,000/- by way of earnest money as part of sale consideration. The time for completion of sale transaction was stipulated to be 6 months in the said agreement. As per the case of the respondent, though he had
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periodically contacted the appellant requesting him to execute the sale deed, and had shown his readiness and willingness to perform his part of the contract, the appellant failed to respond or to perform his part of the contract. The respondent thereafter vide the letter dated 17.03.1990 sent by registered post, called upon the appellant to execute a deed of power of attorney and to conclude the said transaction, however there was no response from the appellant to the said letter. The respondent thereafter again sent a notice through his lawyer on 26.03.1990, to the appellant which was returned with an endorsement “refused”. The respondent thereafter caused a public notice published in the Tamil daily “Dhina Thanthi” on 02.05.1990 and in English daily “Indian Express” on 06.05.1990, informing the public at large not to enter into any sale transaction with the appellant in respect of the suit property. Despite the said efforts having been made by the respondent, the appellant failed to fulfill his obligation under the agreement. The respondent-plaintiff thereafter filed the suit seeking specific performance of the said agreement.

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4. The suit was contested by the appellant-defendant by filing the written statement. The appellant while admitting the execution of the agreement in question had denied the receipt of Rs. 50,000/- as contended by the respondent. The appellant also denied the readiness and willingness on the part of the respondent to perform his part of the contract. The appellant also denied to have received the letter dated 17.03.1990 sent by the respondent by registered post and also the notice dated 26.03.1990 sent by the respondent through his lawyer.

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5. The Trial Court had framed as many as seven issues, pursuant to which the respondent-plaintiff examined himself as PW-1 and adduced the documents at Ex. A1 to A7. The appellant-defendant also examined himself as DW-1, however had not adduced any documentary evidence. The Trial Court partly decreed the suit as stated hereinabove by observing, *inter alia*, that though the plaintiff had paid Rs. 50,000/- by way of earnest money/advance money to the defendant, the plaintiff had not deposited the balance sale consideration of Rs. 6,00,000/- in the court at the time of filing of the suit, and that the plaintiff had also not proved that he had got adequate financial strength to pay the balance sale consideration of Rs. 6,00,000/- to the defendant within the time stipulated in the sale agreement. The Trial Court, therefore, came to the conclusion that the plaintiff had failed to prove his readiness and willingness to

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- A perform his part of the agreement, and therefore was not entitled to the decree for specific performance of the agreement, however he was entitled to recover from the defendant the amount of Rs. 50,000/- paid by way of advance, together with interest at the rate of 12% per annum from the date of sale agreement till the date of realization.
- B 6. The High Court in the appeal, decreed the suit of the respondent-plaintiff vide the impugned order, observing as under:
- "26. As the appellant/plaintiff has made clear averments to the effect that he was and has been ready and willing to pay the balance consideration and get the sale deed registered at his cost, there cannot be any inference against the readiness and willingness, especially in the absence of evidence adduced by the respondent/defendant to the effect that any call made by the respondent/defendant for accepting performance was not responded by the appellant/plaintiff. Therefore, this Court comes to the conclusion that the finding of the Court below to the effect that the appellant/plaintiff had not proved his continued readiness and willingness to perform his part of the obligations under the agreement is not based on sound reasoning and in fact it is perverse finding, which deserves interference by this Court. Accordingly, the said finding of the trial court regarding Issue No. 4 framed in the suit is set aside and reversed. It is hereby held that the appellant/plaintiff has complied with the requirements of Section 16(c) of the Specific Relief Act by making a specific pleading regarding his readiness and willingness and proving the same by reliable evidence."**
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- H 7. While raising multiple contentions, the learned counsel appearing for the appellant submitted that the suit having been filed by the respondent – plaintiff after three years of the execution of the agreement, it was barred by the Law of Limitation. Even otherwise, the time being the essence of the contract, and the respondent having failed to perform

the essential terms of the contract within the time limit stipulated in the agreement, the High Court had committed a gross error in granting the discretionary relief of the specific performance in favour of the respondent. According to him, there was no explanation given by the respondent for the delay occurred in filing the suit. He further submitted that as per the legal position settled by this Court, the respondent was not only required to aver in the pleading but was also required to prove by cogent evidence like producing statement of his bank account or other document that he was financially capable of making payment of the balance amount of sale consideration, which the respondent-plaintiff had failed to prove. The respondent had also failed to deposit the remaining amount of sale consideration in the court at the time of filing the suit.

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8. Per contra, the learned counsel appearing for the respondent submitted that time is never considered to be an essence of the contract in case of immoveable property, and even otherwise the respondent had shown his readiness and willingness to perform the essential terms, namely calling upon the appellant to execute a power of attorney and complete the sale transaction, by issuing three notices one after the other, within the stipulated time limit, however, the appellant had failed to respond the said notices and had also failed to execute the sale deed in favour of the respondent. According to him, there was no requirement of law to deposit the balance of the amount of sale consideration, at the time of filing of the suit, as sought to be submitted by the learned counsel for the appellant.

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9. Now, adverting to the first contention raised by the learned counsel for the appellant that the respondent – plaintiff having filed the suit for specific performance of the agreement after the expiry of three years of the agreement, it may be noted that as per Article 54 of the Limitation Act, 1963, the suit for the specific performance of contract could be filed within three years from the date fixed for the performance, or when no such date has been fixed, from the date when the plaintiff has noticed that performance is refused. In the instant case, the execution of the agreement on 05.10.1989 has not been disputed. It was also proved by the respondent by leading the evidence that the respondent had sent a notice dated 17.03.1990 by registered post and called upon the appellant to execute the power of attorney and to conclude the sale transaction in view of Clause 10 of the agreement. However, there was no response from the appellant to the said letter. The respondent thereafter had

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- A again sent a notice through his lawyer on 26.03.1990, which had come back with the endorsement “refused”. Thereafter, again the respondent caused a public notice published in the Tamil daily “Dhina Thanthi” on 02.05.1990 and in the English daily “Indian Express” on 06.05.1990. The appellant having not responded to any of the said notices, the suit was filed on 26.03.1993. Since the sale had to be completed within a period of six months from the date of the execution of the agreement dated 05.10.1989, the respondent had called upon the appellant to perform his part of the contract by issuing the notices within six months of the said agreement. However, the appellant having failed to respond to any of the said notices, it was deemed that the appellant had refused to
- B perform his part of contract. The period of limitation had started running from the date the respondent noticed that the performance was refused by the appellant and not from the date of the execution of agreement in question.

10. It cannot be gainsaid said that even though time is not

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

11. As regards, the delay in filing the suit, it is very pertinent to note that the rule of equity that exists in England, does not apply in India, and so long as a suit for specific performance is filed within the period of

- G limitation, delay cannot be a ground to refuse the relief of specific performance to the plaintiff. In *Mademsetty Satyanarayana vs. G Yelloji Rao AIR 1965 SC 1405* it has been observed as under:

“7. Mr Lakshmaiah cited a long catena of English decisions to define the scope of a

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

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

13. This takes us to the next question as to whether the High Court was justified in granting the relief of specific performance in favour of the respondent – plaintiff? Now, before answering the said question, it may be noted that some of the relevant provisions contained in the Specific Relief Act, 1963 (hereinafter referred to as the “Said Act”) have undergone a substantive change by way of amendments made by the Act 18 of 2018, which came into force with effect from 01.10.2018. As per the recent decision of the three-judge bench of this Court, in case of *Smt. Katta Sujatha Reddy v. Siddamsetty Infra Projects Ltd., Civil Appeal No. 5822 of 2022* decided on 25th August, 2022, the said Act 18/2018 amending the Specific Relief Act is prospective in nature and cannot apply to those transactions that took place prior to its coming into force. In the instant case, the subject agreement having taken place prior to the said Amendment, we will have to take into consideration the

A legal position as it stood prior to the 2018 amendment. The relevant provisions contained in Section 10, Section 16 and Section 20 as they stood prior to the amendment are reproduced for ready reference.

Section 10. - Cases in which specific performance of contract enforceable –

B Except as otherwise provided in this Chapter, the specific performance of any contract may, in the discretion of the court, be enforced –

C (a) when there exists no standard for ascertaining actual damage caused by the non-performance of the act agreed to be done; or

(b) when the act agreed to be done is such that compensation in money for its non-performance would not afford adequate relief.

D Explanation - Unless and until the contrary is proved, the court shall presume -

(i) that the breach of a contract to transfer immovable property cannot be adequately relieved by compensation in money; and

E (ii) xxx xxx xxx xxx

Section 16 – Personal bars to relief –

Specific performance of a contract cannot be enforced in favour of a person -

F (a) xxx xxx xxx xxx xxx

(b) xxx xxx xxx xxx xxx

G (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.

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

- (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.

Section 20 - Discretion as to decreeing specific performance.— C

(1) The jurisdiction to decree specific performance is discretionary, and the court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal.

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(2) The following are cases in which the court may properly exercise discretion not to decree specific performance:—

(a) where the terms of the contract or the conduct of the parties at the time of entering into the contract or the other circumstances under which the contract was entered into are such that the contract, though not voidable, gives the plaintiff an unfair advantage over the defendant; or

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(b) where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff; or

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(c) where the defendant entered into the contract under circumstances which though not rendering the contract voidable, makes it inequitable to enforce specific performance.

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Explanation 1. Mere inadequacy of consideration, or the mere fact that the contract is onerous to the defendant or improvident in its nature, shall not be H

- A **deemed to constitute an unfair advantage within the meaning of clause (a) or hardship within the meaning of clause (b).**
- B **Explanation 2. The question whether the performance of a contract would involve hardship on the defendant within the meaning of clause (b) shall, except in cases where the hardship has resulted from any act of the plaintiff subsequent to the contract, be determined with reference to the circumstances existing at the time of the contract.**
- C **(3) The court may properly exercise discretion to decree specific performance in any case where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.**
- D **(4) The court shall not refuse to any party specific performance of a contract merely on the ground that the contract is not enforceable at the instance of the party".**
- E 14. From the bare reading of the afore-stated provisions, it clearly emerges that the Specific Performance of the contract, may in the discretion of the court, be enforced, when the act agreed to be done, was such that compensation in money for its non-performance would not afford adequate relief, and that the breach of a contract to transfer immoveable property could not be adequately relieved by compensation in money. It also emerges that specific performance of a contract could not be enforced in favour of a person, who failed to aver and prove that he had performed or had always been ready and willing to perform the essential terms of the contract, which were to be performed by him. It
- F F could also not be enforced in favour of a person who failed to aver in the plaint the performance of, or readiness and willingness to perform the contract according to its true construction.
- G 15. Readiness and willingness are not one, but two separate elements. Readiness means the capacity of the plaintiff to perform the contract, which would include the financial position to pay the purchase price. Willingness refers to the intention of the plaintiff as a purchaser to perform his part of the contract. Willingness is inferred by scrutinising the conduct of the plaintiff/purchaser, including attending circumstances¹.
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- H ¹ See paragraph 2 in His Holiness Acharya Swami Ganesh Dassji v. Sita Ram Thapar, (1996) 4 SCC 526

Continuous readiness and willingness on the part of the plaintiff/purchaser from the date the balance sale consideration was payable in terms of the agreement to sell, till the decision of the suit, is a condition precedent for grant of relief of specific performance²

16. The expression “readiness and willingness” used in Section 16 (c) of the said Act, has been interpreted in catena of decisions by this Court, in the light of facts and circumstances of the cases under consideration for the purpose of granting or refusing to grant the relief of Specific Performance of a contract. The said expression cannot be interpreted in a straitjacket formula. In a very apt decision of this Court in case of *Syed Dastagir vs. T.R. Gopalakrishna Setty (1999) 6 SCC 337*, a three-Judge Bench of this Court, construing a plea of “readiness and willingness to perform” in view of the requirement of Section 16(c) and its explanation, observed as under:

“9. 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

² See paragraph 5 in N.P. Thirugnanam(dead) by LRs v Dr. R. Jagan Mohan Rao and Others, (1995) 5 SCC 115. Also see Ardeshir H. Mama v. Flora Sassoon, AIR 1928 PC 208.

- A **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 maybe 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”.**
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17. It was further observed therein that:

- F **“It is significant that this explanation carves out a contract which involves payment of money as a separate class from Section 16(c). Explanation (i) uses the words “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”. (emphasis supplied) This speaks in a negative term what is *not essential* for the plaintiff to do. This is more in support of the plaintiff that he need not tender to the defendant or deposit in court any money but the plaintiff must [as per Explanation (ii)] at**
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least aver his performance or readiness and willingness to perform his part of the contract".

18. In *Sukhbir Singh v. Brij Pal Singh*³ this Court had laid down that Law is not in doubt and it is not a condition that the respondents (Plaintiffs) should have ready cash with them. It is sufficient for the respondents to establish that they had the capacity to pay the sale consideration. It is not necessary that they should always carry the money with them from the date of the suit till the date of the decree. The said principle was followed in case of *A. Kanthamani v. Nasreen Ahmed*⁴, in case of *C.S. Venkatesh v. A.S.C. Murthy*⁵etc.

19. Section 20 of the Specific Relief Act (Pre-amendment), which confers discretion on the court to exercise jurisdiction to decree of specific performance, states that this exercise should not be arbitrary, but guided by sound and reasonable judicial principles. Interpreting and elucidating on Section 20 of the Specific Relief Act (Pre-amendment) and factors to be considered, this Court in **Kamal Kumar v. Premlata Joshi and Others**⁶ has also referred to Sections 16(c), 22, 23 and 24 of the Specific Relief Act and forms 47/48 of Appendix A to C of the Code of Civil Procedure, 1908, to summarise:

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"7. It is a settled principle of law that the grant of relief of specific performance is a discretionary and equitable relief. The material questions, which are required to be gone into for grant of the relief of specific performance are:

7.1 First, whether there exists a valid and concluded contract between the parties for sale/purchase of the suit property;

7.2 Second, whether the plaintiff has been ready and willing to perform his part of contract and whether he is still ready and willing to perform his part as mentioned in the contract;

³ (1997) 2 SCC 200

⁴ (2017) 4 SCC 654

⁵ (2020) 3 SCC 280

⁶ (2019) 3 SCC 704

- A **7.3 Third, whether the plaintiff has, in fact, performed his part of the contract and, if so, how and to what extent and in what manner he has performed and whether such performance was in conformity with the terms of the contract;**
- B **7.4 Fourth, whether it will be equitable to grant the relief of specific performance to the plaintiff against the defendant in relation to suit property or it will cause any kind of hardship to the defendant and, if so, how and in what manner and the extent if such relief is eventually granted to the plaintiff;**
- C **7.5 Lastly, whether the plaintiff is entitled for grant of any other alternative relief, namely, refund of earnest money etc. and, if so, on what grounds.**
- D **8. In our opinion, the aforementioned questions are part of the statutory requirements [See Sections 16 (c), 20, 21, 22, 23 of the Specific Relief Act, 1963 and the Forms 47/48 of Appendix A to C of the Code of Civil Procedure]. These requirements have to be properly pleaded by the parties in their respective pleadings and proved with the aid of evidence in accordance with law. It is only then the Court is entitled to exercise its discretion and accordingly grant or refuse the relief of specific performance depending upon the case made out by the parties on facts.”**
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- G Sub-section (2) to Section 20 of the Specific Relief Act (Pre-amendment) lists some of the principles that the court should take into consideration while exercising discretion. The factors to be considered while exercising discretion include hardship to the defendant/seller which he did not foresee, hardship to the plaintiff/purchaser in case of non-performance, or whether the contract, even when not void, was entered under the circumstances that make the enforcement of specific
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performance inequitable, or whether the plaintiff has done substantial acts or suffered losses as a consequence of the contract, and the conduct of the parties, including that of the defendant/seller and other circumstances under which the contract was entered are such that they give an unfair advantage over the defendant/seller. The court should examine whether the plaintiff/purchaser had, in fact, performed his part of the contract, and if so, how and to what extent, and in what manner he has performed, and whether such performance was in conformity with the terms of the contract. The status of the parties, and whether the plaintiff/purchaser is a speculator in the property, who buys and sells properties, and whether his conduct reflects an attempt to gain on account of the rise in the price of the property, hoping that the delay in payment of full consideration would go to his advantage, will be a relevant consideration⁷. Incapacity of the defendant/seller and whether the plaintiff/purchaser is operating in property trade, or as a financer or middleman and the defendant/seller is a typical property owner, may also affect the exercise of discretion. In cases where the defendant/seller claims that he was gullible and nescient, who got caught by entering into the agreement to sell, facts like whether the sale consideration is lower than the market price and the terms and conditions settled are unfavourable, should be given due weightage. Sometimes the defendant/seller, post the agreement to sell, in consultation with elders or family members, wishes to back out because the decision to sell was a folly, unwise, or a result of trickery. In such cases, the conduct of the defendant/seller would be of consequence. The defendant/seller would be well advised to immediately and without delay write to the plaintiff/purchaser renegeing the agreement to sell and enclose a cheque for the amount received. His offer to pay or payment of interest or damages would be an added factor as the intending purchaser would then be entitled to look for another property.

20. Time, it is stated, is not the essence of the contract in the case of immovable properties, unless there are grounds to hold to the contrary. This doctrine is applied, without being unfair and inequitable to the defendant/seller, as the court should not ignore that a person sells the property when he needs money, and, therefore, expects the money in the stipulated or reasonable time, which would meet the purpose of the sale. The purpose of sale can vary from the need for liquid cash to be

⁷ See K.S. Vidyanadam and Others v. Vairavan, (1997) 3 SCC 1

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- A invested to earn interest, medical, educational, child's marriage or purchasing another property. To save capital gains, the seller has to purchase another immovable property, unless the proceeds are exempt. There has been a steep rise in the prices of land in the last quarter of the 20th Century in India. With the rise in property value, the value of money has fallen. At times, delay in payment would defeat the defendant/seller's purpose⁸. Therefore, the offer of the plaintiff/purchaser in writing and the time and occasion when the offer to pay the balance amount to the defendant/seller is an important factor which would matter when the court examines the question of discretion, that is, whether or not to grant a decree of specific performance. While examining these aspects, the quantum of money paid by the plaintiff/seller to the defendant/purchaser may become a relevant fact that merits due consideration. There is a distinction between limitation and delay and laches. Limitation is a ground for dismissing a suit even if the plaintiff is otherwise entitled to specific performance, while delay operates to determine the discretion and exercise under Section 20 of the Specific Relief Act, even if the suit is not dismissed on account of limitation. However, not one but several aspects have to be considered when the court, in terms of Section 20 of the Specific Relief Act, exercises discretion, guided by judicial principles, sound and reasonable.
- E 21. Having said that, let us examine the facts of this case. As discussed earlier, the respondent – plaintiff had not only averred in the plaint about his issuing notices within the period of six months of the agreement in question, calling upon the appellant – defendant to perform his part of contract and conclude the sale transaction, also showing his readiness and willingness to perform his part of the contract, but the respondent had also proved the same by stepping into the witness box. Though much reliance was placed by the learned counsel for the appellant on the decisions of this Court in case of *Ritu Saxena vs. J.S. Grover & Another* (2019) 9 SCC 132, in case of *Abdulkoya Haji Vs. Rubis Tharayil* (2019) 17 SCC 216, and other cases, to submit that the respondent had failed to establish his financial capacity to pay the balance amount of consideration at the relevant time and had also failed to deposit the said amount in the court at the time of filing of the suit, he was not entitled to the discretionary relief of Specific Performance as granted
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⁸ See Paragraphs 25, 36 & 37 in *Saeadamani Kandappan v. S. Rajalakshmi and Others* (2011) 12 SCC 18.

by the Court, we do not find any substance in any of the said submissions. As per the ratio of judgment laid down by the three-judge bench in case of *Syed Dastagir* (supra), the compliance of “readiness and willingness” has to be in spirit and substance and not in letter and form, while making averments in the plaint. As per the Explanation (i) to Section 16(c), he need not tender to the defendant or deposit the amount in the court, but he must aver performance of, or readiness and willingness to perform the contract according to its true construction.

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

23. At this juncture, the Court cannot be oblivious to the fact that there has been a steep rise in the price of immovable properties since last few decades. Before the final hearing of the appeal, the parties were sent to the Mediation Centre for exploring the possibility of settlement, however, the mediation remained unsuccessful. Having regard to the fact that the agreement in question was entered into between the parties in October 1989, and considering the steep rise in the prices of land, we are of the opinion that interest of justice would be met if the respondent is directed to pay some more amount. It is also noted that the appellant had enjoyed the possession of the suit land all through out. Hence in the facts and circumstances of the case, the respondent is directed to deposit a sum of Rupees One Crore in the Trial Court towards the sale consideration, over and above the amount that might have been deposited by him, within a period of eight weeks from today. On such deposit being made, the appellant shall execute the sale deed in favour

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A of the respondent and shall also be at liberty to withdraw the said amount deposited by the respondent.

24. The appeal is dismissed subject to the aforesaid directions.

Ankit Gyan and Anurag Bhaskar
(Assisted by : Adnan Khan, LCRA)

Appeal dismissed.