

# **Raj Kumar Agrawal vs Smt. Anita Agrawal on 30 September, 2022**

**Author: Arun Kumar Sharma**

**Bench: Arun Kumar Sharma**

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IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR  
BEFORE  
HON'BLE SHRI JUSTICE ARUN KUMAR SHARMA

FIRST APPEAL No. 412 of 2011

BETWEEN: -

RAJ KUMAR AGRAWAL S/O  
LATE KISHANLAL, AGED  
ABOUT 48 YEARS, H.NO. 8  
TABBA MIYAN MAHAL ROAD  
BHOPAL (MADHYA PRADESH)

.....APPELLANT

(BY SHRI RAVISH AGRAWAL, LEARNED SENIOR  
ADVOCATE ASSISTED BY MS. SANJNA SAHNI,  
ADVOCATE).

AND

1. SMT. ANITA AGRAWAL W/O  
LATE RAJEEV AGRAWAL H.NO  
8 MALIPURA PEERGATE  
BHOPAL (MADHYA PRADESH)  
2. SMT.KAMLESH AGRAWAL  
W/O K.K. AGRAWAL H.NO.8,  
MALIPURA, PEERGATE,  
BHOPAL (MADHYA PRADESH)  
3. SMT. VIMLESH W/O R.K.  
GUPTA H.NO.8, MALIPURA,  
PEERGATE, BHOPAL (MADHYA  
PRADESH)

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FA No.412/2011

4. SUSHRI MEENA AGRAWAL  
D/O LATE BRIJ VALLABH  
AGRAWAL H.NO.8, MALIPURA,

PEERGATE, BHOPAL (MADHYA  
PRADESH)

5. SANJAY AGRAWAL S/O LATE  
BRIJ VALLABH AGRAWAL  
H.NO.8, MALIPURA, PEERGATE,  
BHOPAL (MADHYA PRADESH)

6. DISTRICT COLLECTOR THE  
STATE OF MADHYA PRADESH  
COLLECTORATE OFFICE, OLD  
SECRETARIAT, BHOPAL  
(MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI SANKALP KOCHAR, ADVOCATE FOR THE  
RESPONDENTS NO. 2 TO 5. NONE FOR RESPONDENT  
NO.1. SHRI S. K. MALVIYA, PL FOR RESPONDENT NO.6 /  
STATE )

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This appeal coming on for admission, this day, the court passed  
the following:

#### JUDGMENT

(Delivered on 30th day of September 2022) Feeling aggrieved and dissatisfied with the impugned judgment and decree dated 31.03.2011 passed in R.C.S.No.435- A/2006 by learned XII Additional District Judge, Bhopal, whereby the suit instituted by the appellant / plaintiff for specific performance of contract has been partly decreed in his favour.

2. The facts leading to the present appeal in a nutshell are that the appellant herein, the original plaintiff, instituted a civil suit no.435-A/2006 against the respondents no. 1 to 5 herein, the defendants, before the XII Additional District Judge, Bhopal, for grant of decree of specific performance of the contract / agreement in respect of the suit schedule property ad-measuring 0.42 acres out of 0.84 acres comprising in Khasra no.22/4 P.C. No.20 situated in village Ahmadpurkala, Tahsil Huzur, District Bhopal, which was renumbered as Khasra no.22/4/2 upon mutation, on the basis of the agreement took place between the parties on 26.05.2005 and also for grant of permanent injunction, inter alia contending that the respondents / defendants no. 1 to 5 are the joint owners of the aforesaid agricultural land and the defendants no. 1 to 5 were keenly interested to sell the suit land to the plaintiff for a sum of Rs.32,00,000/- (Rupees thirty two lacs) and they entered into a written sale agreement on 26.05.2005. On the said date of agreement, the appellant / plaintiff paid an advance amount of Rs.12,00,000/- (Rupees twelve lacs) and agreed to pay the balance amount i.e. Rs.20,00,000/- (Rupees twenty lacs) on fulfillment of conditions ascribed in the agreement viz after measuring land, upon supply of the certified copy of the khasra on mutation of the names of the defendants and preparation of the Bahi to the plaintiff by the defendants and publication of the public notice in newspaper, if objection is not received. The plaintiff stated that he was ready and willing to perform his part of contract but the defendants were postponing the same without any reason. Thus, a public notice was published in the daily newspaper on 27.7.2006 with regard to the property in question.

3. After getting information of publication in the daily newspaper with regard to the aforesaid property, respondent / defendant no. 1 Smt. Anita Agrawal through her advocate sent an objection to the appellant / plaintiff on 30.7.2006 and also got published her rebuttal in Raj Express on 2.8.2006. In turn, the appellant / plaintiff also got published an information in the newspaper with regard to the suit land that he entered into an agreement to sale with the respondents / defendants no.1 to 5 but the defendants are interested to sell the suit property to other persons on exceeded price.

4. The appellant herein / original plaintiff filed the civil suit for specific performance of contract / agreement and also for permanent injunction restraining the respondents / defendants no. 1 to 5 from transferring / alienating the suit land to other persons. In the alternative, it was also prayed to pass a decree directing the respondents / defendants no. 1 to 5 to return a sum of Rs.32 lacs.

5. The respondent / defendant no.1 contested the suit contending that she never wanted to sell the property in question and denied the execution of agreement. The respondents / defendants no.2 to 5 filed their separate written statement denying the pleadings of the plaint and contending that the alleged agreement is a fraudulent document which was a created one. There was no part of the contract to be performed by the defendants and also denied the receipt of part consideration. It was the case on behalf of the defendants that the plaintiff was not ready and willing to perform his part of contract as he was not having balance of sale consideration and, therefore, he could not pay the amount and obtain the sale deed. Respondent no. 6 / State remained ex-parte before the trial court.

6. The trial court on the basis of the pleadings of the parties, framed as many as six issues, recorded the evidence of the parties and finally decree the suit partly vide impugned judgment and decree dated 31.03.2011.

7. The learned Senior counsel appearing on behalf of the appellant at the time of argument has contended that the trial court has committed grave error of law and facts in holding that the plaintiff failed to perform his part of contract in terms of agreement Ex.P/2. In fact, he expressed his readiness and willingness to perform his part of the contract by furnishing pay slip, income tax return, books of accounts etc. In this regard Ex.P/3 and Ex.P/7 to Ex.P/11 are relevant for fortifying the conduct of the appellant / plaintiff. Learned trial Court has further not considered the clause 3 of the agreement Ex.P/2 in its right perspective and burden to perform the same, overlooking that the terms thereof have to be completed by the vendor. Further submitted that the time was not of the essence of the contract and that the plaintiff was always ready and willing to perform the contract. Trial court has further erred in holding that the factum of denial of performance of contract by the defendants does not establish, giving a go-bye to the pleadings and evidence of Sanjay Agrawal (PW-1) in this regard. In the matter of immovable property, time is never the essence of the contract. The execution of sale deed Ex.P/15 by the defendant no.1 in favour of the plaintiff manifestly establishes that the plaintiff has always been ready and willing to get the deed executed by performing his part of contract. In support of the said contentions, the learned Senior counsel appearing on behalf of the appellant cited the judgment of the Hon'ble Supreme Court of India in the case of Beemaneni Mahalaxmi Vs. Gangumalla Apparao through Lrs reported in (2019) 6 SCC 233 and Chandrani (dead) Through Lrs Vs. Kamalrani (dead) Through Lrs. Reported in (1993) 1

SCC 519 and prayed that the appeal be allowed passing a decree for specific performance of contract and permanent injunction.

8. Per contra, learned counsel for the respondents no. 2 to 5 has argued that the time was of the essence of the contract as a specific period was mentioned for the deposit of the remaining sale consideration and in fact the consequences of the failure to deposit the remaining sale consideration have also been explicitly spelled out in the agreement to sale dated 26.05.2005. Further, the appellant / plaintiff himself has admitted the fact that the publication was made in the newspaper after fourteen months of the agreement and further admitted that the rebuttal was made after four days of the publication. He has further submitted that the plaintiff has never proved the availability of funds or the financial capacity to tender the sale consideration on the date fixed by the parties i.e. 25.10.2011. Further submitted that it has not been proved by the plaintiff that he made any offer to pay the remaining sale consideration to the defendants at any point of time before or on 25.10.2011. Further contended that the trial court has rightly passed the judgment and decree which is impugned herein. The trial court has passed a detailed judgment taking into consideration all aspect of the matter and facts and circumstances of the case. To buttress his contentions, learned counsel for the respondents no. 2 to 5 has relied upon the cases of Hon'ble the Supreme Court in the case of I. S. Sikandar (dead) by Lrs vs. K. Subramani and others (2013) 15 SCC 27; Pawan Kumar Dutt and another vs. Shakuntala Devi and others (2010) 15 SCC 601 [paras 7 to 9];

Vimlesh Kumari Kulshrestha vs. Sambhajirao and another (2008) 5 SCC 58; Pandru and others vs. Dharam Singh and others (2010) 3MPLJ 477; Haseena Bi vs. State of M.P. (2011) 108 AIC 642; and contended that the relief of specific performance is an equitable relief and weighing the entire facts and circumstances, the trial Court rejected the relief of specific performance in favour of the appellant / plaintiff and there is no irregularity as such.

9. I have heard the learned counsel for the respective parties at great length and also perused the record and also perused and considered in depth the impugned judgment passed by the trial Court.

10. On deep cogitation of the impugned judgment it is found that the appellant / plaintiff did not fulfill the conditions of the agreement dated 26.05.2005 inasmuch as the agreement for sale of the suit property has been taken place between the appellant and the defendants for a sum of Rs.32,00,000/- and as there were five respondents, the amount has to be equally shared by each of them, therefore, each would get Rs.6,40,000/- and it is an admitted fact as the equal share of Rs.2,40,000/- has been received by the respondent no. 1 from the appellant / plaintiff and this fact is clearly mentioned in Ex.P/15 (copy of another agreement of Rs.7,40,000/- between the appellant and respondent no.1), the document produced by the plaintiff himself. Hence, the plaintiff had already violated the terms and conditions of the agreement dated 26.5.2005. Further, it is evident from the documents produced by the appellant that the appellant / plaintiff did not follow the condition no. 3 which speaks about the publication of information for calling objection in respect of the land involved in the sale agreement that too within a period of 15 days from the preparation of "book of accounts". Copy of khasra was issued on 9.5.2006 and publication in the newspaper was made on 27.7.2006 and thus, the learned trial court has rightly held that no any specific evidence has been produced by the plaintiff in respect of the fact that the plaintiff had published the

information within the stipulated time period from the date when the 'bahi' was prepared. The trial Court has rightly come to the conclusion that the appellant

- plaintiff has breached the condition no. 3 of the agreement.

11. Further, there is no evidence and even pleading in respect of the date, on which, the appellant / plaintiff had approached the respondents no. 2 to 5 for payment of residuary amount in compliance of condition no. 3 after the paper publication. Further, it is ascribed in condition no. 3 of the agreement that the balance amount would be paid if objection is not received. On bare perusal of the plaint of the plaintiff it is clear that the appellant / plaintiff through his Advocate got published an information in the daily newspaper with regard to purchase of the suit land on 27.7.2006 and the respondent / defendant no.1 raised an objection and the same was sent to the appellant through her counsel on 30.7.2006 and an information in this regard was also published in Raj Express, on 2.8.2006. Since, there is a breach of condition no. 3 then certainly, the appellant / plaintiff has no right to lie a suit for specific performance of contract and thus, the learned trial court has rightly given finding in this regard. In fact, the plaintiff has no legs to stand on its own.

12. As per the requirement of Section 16(c) of the Specific Relief Act, 1963 which reads as under:-

16(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.

The plaintiff is under an obligation to plead and prove his readiness and willingness to perform his part of the contract. I find force in the submission made by learned counsel for the respondents no. 2 to 5 as the Supreme Court in the case of Kalawati (dead) Through Lrs and others vs. Rakesh Kumar and others, (2018) 3 SCC 658 in paragraph-18 relying upon a judgement reported in (1996) 4 SCC 526 parties being Acharya Swami Ganesh Dasji Vs. Sita Ram Thapar, has observed as under :-

"18. In Acharya Swami Ganesh Dassji v. Sita Ram Thapar-(1996) 4 SCC 526 this Court drew a distinction between readiness to perform the contract and willingness to perform the contract. It was observed that by readiness it may be meant the capacity of the plaintiff to perform the contract which would include the financial position to pay the purchase price. As far as the willingness to perform the contract is

concerned, the conduct of the plaintiff has to be properly scrutinised along with the attendant circumstances. On the facts available, the Court may infer whether or not the plaintiff was always ready and willing to perform his part of the contract. It was held in para 2 of the Report: (SCC p. 528).

"2. There is a distinction between readiness to perform the contract and willingness to perform the contract. By readiness may be meant the capacity of the plaintiff to perform the contract which includes his financial position to pay the purchase price. For determining his willingness to perform his part of the contract, the conduct has to be properly scrutinised. ... The factum of readiness and willingness to perform the plaintiff's part of the contract is to be adjudged with reference to the conduct of the party and the attending circumstances. The court may infer from the facts and circumstances whether the plaintiff was ready and was always ready and willing to perform his part of the contract. The facts of this case would amply demonstrate that the petitioner/plaintiff was not ready nor had the capacity to perform his part of the contract as he had no financial capacity to pay the consideration in cash as contracted and intended to bide for the time which disentitles him as time is of the essence of the contract.""

13. Further, the Supreme Court in the case of Ritu Saxena vs. J. S. Grover and another (2019) 9 SCC 132; while dealing with the material produced by the plaintiff to show his readiness and willingness has observed that the statement of the plaintiff and his witnesses in the nature of ipse dixit and without support of any corroborating evidence is not enough to show the financial condition to perform his part of the contract. The Supreme Court in the case of Ritu Saxena (supra) has observed as under:-

"15. Coming to the facts of the present case, the sole document relied upon by the appellant to prove her readiness and willingness is the approval of loan on 30-7-2004 by ICICI. Such approval was subject to two conditions viz. furnishing of income tax documents of the appellant and the property documents. M/s ICICI has sent an email on 12-5- 2005 to the husband of the appellant requiring an agreement to sell on a stamp paper of Rs 50 to be executed between the parties, as per the legal opinion sought from the empanelled lawyer, without which ICICI will not be able to disburse the loan. Admittedly, no agreement was executed on stamp paper, therefore, the appellant could not avail loan of Rs 50 lakhs from ICICI. Independent of such loan, there is mere statement that the appellant and her husband have income of Rs 80 lakhs per annum unsupported by any documentary evidence. Such statement will be in the nature of ipse dixit of the appellant and/or her husband and is without any corroborating evidence. Such self-serving statements without any proof of financial resources cannot be relied upon to return a finding that the appellant was ready and willing to perform her part of the contract. The appellant has not produced any income tax record or the bank statement in support of her plea of financial capacity so as to be ready and willing to perform the contract. Therefore, mere fact that the bank has assessed the financial capacity of the appellant while granting loan earlier in

respect of another property is not sufficient to discharge of proof of financial capacity in the facts of the present case to hold that the appellant was ready and willing to perform her part of the contract. Such is the finding recorded by both the courts below as well."

14. In the present case also, the plaintiff did not produce any evidence except the oral evidence to substantiate his readiness and willingness to pay the remaining sale consideration of Rs.20,00,000/-. In absence of any cogent evidence and also taking note of the fact that at the time of execution of the sale-deed, the plaintiff has paid only Rs.12,00,000/- but not total remaining sale consideration of Rs.20,00,000/-. Thus, in absence of any denial of the said fact, this Court has no hesitation to hold that the plaintiff has not paid the remaining sale consideration of Rs.20,00,000/- but paid only Rs.12,00,000/-. Accordingly, I am of the opinion that the trial Court was right in holding and deciding the issue No.4 in respect of readiness and willingness of the plaintiff. The Supreme Court in the case of Surinder Kaur (dead) Through Lrs Jasinderjit Singh (Dead) through Lrs vs. Bahadur Singh (Dead) through Lrs (2019) 8 SCC 575, has observed as under:-

"6. The aforesaid provisions have to be read along with Section 16(c) of the Specific Relief Act, 1963 which clearly lays down that the specific performance of a contract cannot be enforced in favour of a person who fails to prove that he has performed or was always ready and willing to perform the essential terms of the contract which were to be performed by him.

7. We shall also have to take into consideration that the specific performance of contract of an immovable property is a discretionary relief in terms of Section 20 of the Specific Relief Act as it stood at the time of filing of the suit.

8. Section 20 of the Specific Relief Act lays down that the jurisdiction to decree a suit for specific performance is a discretionary jurisdiction and the court is not bound to grant such relief merely because it is lawful.

9. The first issue is whether the promises were reciprocal promises or promises independent of each other. There can be no hard-and-fast rule and the issue whether promises are reciprocal or not has to be determined in the peculiar facts of each case. As far as the present case is concerned, the vendor, who was a lady received less than 20% of the sale consideration but handed over the possession to the defendant, probably with the hope that the dispute would be decided soon, or at least within a year. Therefore, Clause 3 provided that if the case is not decided within one year, then the second party shall pay to the first party the customary rent for the land. It has been urged by the respondents that the High Court rightly held that this was not a reciprocal promise and had nothing to do with the sale of the land. One cannot lose sight of the fact that the land had been handed over to Bahadur Singh and he had agreed that he would pay rent at the customary rate. Therefore, the possession of the land was given to him only on this clear-cut understanding. This was, therefore, a reciprocal promise and was an essential part of the agreement to sell.

10. Admittedly, Bahadur Singh did not even pay a penny as rent till the date of filing of the suit. After such objection was raised in the written statement, in replication filed by him, he instead of offering to pay the rent, denied his liability to pay the same. Even if we were to hold that this promise was not a reciprocal promise, as far as the agreement to sell is concerned, it would definitely mean that Bahadur Singh had failed to perform his part of the contract. There can be no manner of doubt that the payment of rent was an essential term of the contract. Explanation (ii) to Section 16(c) clearly lays down that the plaintiff must prove performance or readiness or willingness to perform the contract according to its true construction. The only construction which can be given to the contract in hand is that Bahadur Singh was required to pay customary rent.

11. It has been urged that no date was fixed for payment of rent. Tenancy can be monthly or yearly. At least after expiry of one year, Bahadur Singh should have offered to pay the customary rent to the vendor which could have been monthly or yearly. But he could definitely not claim that he is not liable to pay rent for 13 long years.

12. The learned counsel for the respondents urged that in case of non-payment of rent the plaintiff was at liberty to file suit for recovery of rent. We are not impressed with this argument. A party cannot claim that though he may not perform his part of the contract he is entitled to specific performance of the same.

13. Explanation (ii) to Section 16(c) of the Specific Relief Act lays down that it is incumbent on the party, who wants to enforce the specific performance of a contract, to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract. This the plaintiff miserably failed to do insofar as payment of rent is concerned.

14. A perusal of Section 20 of the Specific Relief Act clearly indicates that the relief of specific performance is discretionary. Merely because the plaintiff is legally right, the court is not bound to grant him the relief. True it is, that the court while exercising its discretionary power is bound to exercise the same on established judicial principles and in a reasonable manner. Obviously, the discretion cannot be exercised in an arbitrary or whimsical manner. Sub-clause (c) of sub-section (2) of Section 20 provides that even if the contract is otherwise not voidable but the circumstances make it inequitable to enforce specific performance, the court can refuse to grant such discretionary relief. Explanation (2) to the section provides that the hardship has to be considered at the time of the contract, unless the hardship is brought in by the action of the plaintiff."

15. In view of the above, it is clear that a person who seeks a decree of specific performance of contract then the same cannot be enforced in his favour unless he proves that he was always ready to perform the essential terms of the contract which was to be performed by him. Here, in this case, the



plaintiff did not give any notice to the defendants showing that he had an arrangement to pay Rs.20,00,000/-, the remaining sale consideration. Further, it is in- fact undisputed that the plaintiff has not paid Rs.20,00,000/- but has given only Rs.12,00,000/- at the time of execution of the sale-deed. The Supreme Court in the case of Syed Dastagir vs. T. R. Gopalkrishna Setty (1999) 6 SCC 337 has observed as under:-

"11. Section 16(c) of the Specific Relief Act, 1963 is quoted hereunder:

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

(a)-(b) \* \* \*

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

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 least aver his performance or readiness and willingness to perform his part of the contract. This does not mean that unless the court directs the plaintiff cannot tender the amount to the defendant or deposit in the Court. The plaintiff can always tender the amount to the defendant or deposit it in court, towards performance of his obligation under the contract. Such tender rather exhibits the willingness of the plaintiff to perform his part of the obligation. What is "not essential"

only means need not do but does not mean he cannot do so. Hence, when the plaintiff has tendered the balance amount of Rs 120 in court even without the Court's order it cannot be construed adversely against the plaintiff under Explanation (i). Hence, we do not find any merit in the submission of the learned counsel for the respondents."

[Emphasis Supplied]

16. Now it is clear that the plaintiff had to discharge his obligation to deposit the remaining amount of sale consideration even though he has not been directed by the Court to deposit the said amount. The Supreme Court in the case of Jagjit Singh (Dead) Through Lrs vs. Amarjit (2018) 9 SCC 805 (supra) has observed as under:-

"4. It is settled law that a plaintiff who seeks specific performance of contract is required to plead and prove that he was always ready and willing to perform his part of the contract. Section 16(c) of the Specific Relief Act mandates that the plaintiff should plead and prove his readiness and willingness as a condition precedent for obtaining relief of grant of specific performance. As far back as in 1967, this Court in Gomathinayagam Pillai v. Palaniswami Nadar [Gomathinayagam Pillai v. Palaniswami Nadar, (1967) 1 SCR 227 : AIR 1967 SC 868] held that in a suit for specific performance the plaintiff must plead and prove that he was ready and willing to perform his part of the contract right from the date of the contract up to the date of the filing of the suit. This law continues to hold the field and it has been reiterated in J.P. Builders v. A. Ramadas Rao [J.P. Builders v. A. Ramadas Rao, (2011) 1 SCC 429 : (2011) 1 SCC (Civ) 227] and P. Meenakshisundaram v. P. Vijayakumar [P. Meenakshisundaram v. P. Vijayakumar, (2018) 15 SCC 80 : (2018) 5 Scale 229]. It is the duty of the plaintiff to plead and then lead evidence to show that the plaintiff from the date he entered into an agreement till the stage of filing of the suit always had the capacity and willingness to perform the contract."

17. The words "ready" and "willing" imply that the person was prepared to carry out the terms of the contract. The distinction between "readiness" and "willingness" is that the former refers to financial capacity and the latter to the conduct of the plaintiff wanting performance. Generally, readiness is backed by willingness. It has been rightly considered in R.C. Chandiok v. Chuni Lal Sabharwal that "readiness and willingness" cannot be treated as a straitjacket formula. This has to be determined from the entirety of the facts and circumstances relevant to the intention and conduct of the party concerned. In His Holiness Acharya Swami Ganesh Dassji v. Sita Ram Thapar (1996) 4 SCC 526 wherein it has been observed as under:

"2. There is a distinction between readiness to perform the contract and willingness to perform the contract. By readiness may be meant the capacity of the plaintiff to perform the contract which includes his financial position to pay the purchase price. For contract, the conduct has to be properly scrutinized. There is no documentary proof that the plaintiff had ever funds to pay the balance of consideration. Assuming that he had the funds, he has to prove his willingness to perform his part of the contract."

18. In view of the aforesaid discussion and in the facts and circumstances of the case, so far as the reliance placed on the decisions by learned Senior Advocate appearing on behalf of the appellant / plaintiff, are concerned, none of the decisions shall be applicable to the facts of the case on hand; and more particularly the findings recorded by the learned trial court, this court also confirms. Apart from above, it would be profitable to mention here that the plaintiff himself in the suit has

sought an alternative relief that if execution of agreement to sale is not possible due to any legal obstacle, then the respondents no. 1 to 5 be directed to refund the sale consideration amounting to Rs.32,00,000/- .

19. A perusal of Section 20 of the Specific Relief Act clearly indicates that the relief of specific performance is discretionary. Merely because the plaintiff is legally right, the court is not bound to grant him the relief. True it is, that the court while exercising its discretionary power is bound to exercise the same on established judicial principles and in a reasonable manner. Obviously, the discretion cannot be exercised in an arbitrary or whimsical manner. Sub-clause (c) of sub-section (2) of Section 20 provides that even if the contract is otherwise not voidable but the circumstances make it inequitable to enforce specific performance, the court can refuse to grant such discretionary relief. Explanation (2) to the section provides that the hardship has to be considered at the time of the contract, unless the hardship is brought in by the action of the plaintiff."

20. Applying the said principles with reference to the facts and circumstances of the present case, this Court is of an opinion that the judgment of the trial Court is to be upheld. Accordingly, the first appeal fails and is dismissed. The judgment and decree dated 31.03.2011 passed in R.C.S. No.435-A/06 stands confirmed. However, in the facts and circumstances of the case, there shall be no order as to costs. Accordingly, the orders granting stay on 19.05.2011 and consequently, confirmed on 25.04.2012 stand vacated.

21. A copy of this judgment along with records be sent back to the trial court for information and its compliance.

(ARUN KUMAR SHARMA) JUDGE JP/-

JITENDRA KUMAR PAROUHA 2022.09.30 16:48:33 +05'30'