

Duraisamy (Died) vs C.Ranganathan on 15 September, 2021

S.A.N

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : Delivered on :
27.02.2024 19.03.2024

CORAM

THE HONOURABLE Mr. JUSTICE G.ARUL MURUGAN

S.A.No.1599 of 2011
and
M.P.No.1 of 2011

1.Duraisamy (died)
2.Bakiyalakshmi
3.D.Arul
4.Vasuki Krishnan
5.Kaliyarasi
6.Karthik ... Appellants
(Appellants 2 to 6 brought on record as legal heirs
of deceased sole appellant vide order dated 15.09.2021
in C.M.P.No.13970 of 2021)

vs.
C.Ranganathan ...Respondent

Prayer:- Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 27.07.2011 in A.S.No.83/2010 passed by the learned I Additional District Judge, Salem, reversing the judgment and decree dated 30.07.2010 in O.S.No.12 of 2007 passed by the learned I Additional Subordinate Judge, Salem.

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<https://www.mhc.tn.gov.in/judis>

S.A.

For appellants : Mr.D.Shivakumaran
For respondent : Mr.P.Jagadeesan

JUDGMENT

The defendant in the suit for specific performance is the appellant before this Court.

2. Pending this appeal, the sole appellant died and his legal heirs were brought on record as appellants 2 to 6.

3. This Second Appeal has been filed challenging the judgment and decree dated 27.07.2011 in A.S.No.83 of 2010 on the file of the I Additional District Court, Salem, reversing the judgment and decree dated 30.07.2010 in O.S.No.12 of 2007 on the file of the I Additional Sub Court, Salem.

1. For the sake of convenience, the parties are referred to according to their ranking as before the Trial Court. <https://www.mhc.tn.gov.in/judis> The brief facts, which gave rise to this Second Appeal, are as follows:

5. According to the plaintiff, the defendant is the owner of the suit property and he had purchased the suit property through a registered sale deed in document no.1271 of 2002. The defendant had entered into an agreement to sell the suit property with the plaintiff on 05.03.2004 for a sale consideration of Rs.3,00,000/-.

On the date of sale agreement itself, the plaintiff had paid a sum of Rs.2,50,000/- as advance, out of the total consideration of Rs.3,00,000/-. It had been specifically agreed that the balance of sale consideration has to be paid within a period of 15 months i.e., on or before 05.06.2005. The plaintiff was always ready and willing to get the sale deed executed by paying the balance sale consideration of Rs.50,000/-, but, the defendant postponed the execution of sale deed for some reasons. As the defendant evaded, it instigated the plaintiff to lodge a police complaint before the <https://www.mhc.tn.gov.in/judis> Suramangalam Police station for the misbehaviour and indifferent attitude and intention of cheating by the defendant. The case was registered as Crime No.232 of 2005 on 11.05.2005.

6. According to the plaintiff, on enquiry, the defendant admitted the said sale agreement liability and agreed to return the advance amount to the plaintiff within 150 days. Accordingly, the police closed the matter by recording the same and obtained signatures of both the parties. After having accepted his liability, the defendant neither returned the amount nor acted as per the sale agreement dated 05.03.2004. Contrarily, the defendant issued a legal notice by suppressing entire real facts and introduced a new story. However, the plaintiff had narrated entire facts and issued a reply dated 19.05.2005 to the defendant and also called him to be present in the Suramangalam Sub Registrar's Office on 27.05.2005 for the execution of the sale deed, after receiving the balance sum of Rs.50,000/-. The plaintiff had also prepared the amount of <https://www.mhc.tn.gov.in/judis> Rs.50,000/- by withdrawing it from the Subramanianagar Co-operative Urban Bank on 27.05.2005 and was present for the whole day at the Sub Registrar Office. But, the defendant neither presented himself for execution of the sale deed nor issued any reply. According to the plaintiff, the defendant, however, requested him in person that he would perform his part of contract within another 20 months. Based on the request, the plaintiff was eagerly waiting to get the sale deed executed in his favour, but all his efforts went in vain. As such, the plaintiff issued another legal notice and since the defendant did not choose to respond, the plaintiff has come up with the suit for specific performance to execute the sale deed as per the sale agreement dated 05.03.2004 or in the alternative, pass a decree directing the defendant to refund the advance amount with interest @ 12% p.a from the date

of the suit till the date of realization.

7. The defendant resisted the suit by filing a written <https://www.mhc.tn.gov.in/judis> statement and denied the execution of the sale agreement in Ex.A1. According to the defendant, he had never agreed to sell or entered into any agreement and had not received any advance amount and he had not executed any agreement as alleged, at any point of time. According to the defendant, the plaintiff, who was a professional money lender, was running his financial company under the name and style of "Vinayaga Finance" and the defendant had money dealings with the plaintiff for a long period. The plaintiff used to lend money by getting signature in blank pronotes and old stamp papers. The loan amount received would have to be repaid to the plaintiff with interest in monthly installments. According to the defendant, after adjusting the earlier amounts, a sum of Rs.80,000/- was borrowed on 12.04.2002. The defendant was periodically repaying the interest, for which, he was having receipts and when the principal and interest stood at Rs.60,000/-, the defendant was not in a position to pay. When he had requested the plaintiff to wait for some more time enabling him to repay the amount in full, the <https://www.mhc.tn.gov.in/judis> plaintiff had lodged a complaint with Suramangalam Police Station for recovery of the said amount. By threatening, the police obtained signatures from the defendant in blank stamp papers and asked the plaintiff to return them after the amounts are repaid by the defendant. The defendant agreed only to pay a sum of Rs.60,000/-, which was actually due to the plaintiff and since the plaintiff, had obtained the documents with the help of the police, he issued a legal notice through his advocate for which, he received a reply on 19.05.2005. Therefore, according to the defendant, only a sum of Rs.60,000/- is due and the document in Ex.A1 is not true and sought for dismissal of the suit.

Evidence and documents:

8. During trial, the plaintiff examined himself as P.W.1 and the attester viz., Ganesan as P.W.2 and marked Exs.A1 to A9.

On the side of the defendant, the defendant examined himself as D.W.1 and one Nallathambi as D.W.2 and marked Exs.B1 and B2. <https://www.mhc.tn.gov.in/judis>

9. In the Appeal, on the side of the plaintiff, Ex.A10 was marked.

Findings of the Courts below:

10. After analysing the documents and evidence, the Trial Court dismissed the suit. The Trial Court found that the stamp papers in Ex.A1 have been purchased from the document writer viz., one Alagar by the plaintiff on 17.10.2002. After 16 months from the date of purchase, the agreement in Ex.A1 has been executed on 05.03.2004. The Trial Court also found that in between the contents found in the agreement and signature, there is a huge gap. The Trial Court found that from Ex.B1, which is the account book pertaining to Vinayaga Finance, a sum of Rs.80,000/- is entered as loan and further from the evidence of D.W2, it is found that around 10 persons have lodged a complaint dated 19.04.2010 before the District Collector as against the plaintiff for the financial <https://www.mhc.tn.gov.in/judis> irregularities committed by him.

11. Aggrieved by the same, the plaintiff filed appeal in A.S.No.83 of 2010 on the file of the I Additional District Court, Salem. Along with the appeal, I.A.No.1113/2011 was also filed for receiving additional evidence under Order 41 Rule 27 of C.P.C. After reappraising the evidence, the Lower Appellate Court, by judgment and decree dated 27.07.2011, allowed the Interlocutory Application and received the additional document, which was marked as Ex.A10 and also allowed the appeal, thereby, decreeing the suit for specific performance.

12. Challenging the judgment and decree of the Lower Appellate Court, the defendant has preferred this Second Appeal. Substantial questions of law:

13. This Court, by order dated 12.01.2024, framed the following substantial questions of law:

<https://www.mhc.tn.gov.in/judis> “When the plaintiff has not performed his part of the contract to show his readiness and willingness within the time frame stipulated in the sale agreement, is the lower Court correct in law in granting the discretionary relief of specific performance in favour of the plaintiff?

(ii) When the pleading and evidence of the plaintiffs is to the effect that he has gone to the police to get return of money from the defendant that on failure of the defendant to return the money as allegedly undertaken by the defendant at the police station and that thereafter the plaintiff has come forward with the suit for specific performance, is the lower appellate Court correct in dislodging the well considered findings by the trial Court that it was only a loan transaction between the plaintiff and the defendant and that the plaintiff is not entitled for a decree for specific performance?

(iii) When the pleading and evidence on the side of the plaintiff clearly establish that he is absolutely disentitled for a decree of specific performance, is the lower appellate Court correct in reversing the <https://www.mhc.tn.gov.in/judis> judgment of dismissal of suit by the trial Court and in granting a decree for specific performance in favour of the plaintiff, by erroneously placing the burden of proof on the defendant?” Submissions on both sides:

14. The learned counsel for the defendant/appellant argued that absolutely the documents in Ex.A1 was not intended to execute a sale agreement, but, it was only in respect of loan transaction. The plaintiff had specifically denied the agreement and passing of consideration. The learned counsel further contended that when the stamp papers had been purchased as early as 17.10.2002 and the same had been used for preparing the sale agreement in Ex.A1 after the period of 16 months, it is clear that the parties never intended to execute a sale agreement, but, it is only a loan transaction.

15. The learned counsel further contended that when the plaintiff had admitted in his evidence that he was a professional <https://www.mhc.tn.gov.in/judis> and seasonal money lender, as he was a partner of Vinayaga Finance and also he was a party to several cases, thereby, had legal knowledge and if the defendant had not come forward to execute the sale, the plaintiff would have only filed the

suit for specific performance and not resorted to filing a complaint before the police station. The learned counsel further contended that when the major portion of a sum of Rs.2,50,000/-, was paid on the date of agreement itself, there was no reason to fix the period of 15 months to pay the meagre balance sum of Rs.50,000/-. Further, when the plaintiff was aware that the defendant evaded the contract, his claim that the defendant requested in person for further time of 20 months and therefore, he waited for that period, is not believable and also not supported by any materials.

16. According to the learned counsel, the plaintiff was never ready and willing to perform his part of the contract, which is a basic requirement under Section 16(c) of the Specific Relief Act, <https://www.mhc.tn.gov.in/judis> 1963 and therefore, the plaintiff is not entitled to the discretionary relief.

17. The learned counsel further contended that the closure of the complaint given by the plaintiff, by the police itself shows that there was an issue in respect of money transaction and the reply notice issued by the plaintiff's counsel on 19.05.2005 in Ex.A2 would clearly show that the defendant agreed to return the advance amount to the plaintiff within 150 days and on the consent of both the parties, the police obtained the signatures and closed the matter.

18. The learned counsel, by pointing out paragraph 6 in the plaint submitted that even as per the averments in the plaint, the defendant had admitted the sale agreement liability and agreed to return the advance amount to plaintiff within 150 days. Only <https://www.mhc.tn.gov.in/judis> because the defendant had not returned the amount nor acted as per the terms of the agreement, the suit has been filed. The plaintiff on his own conduct by giving complaint and consenting to get his advance amount returned, he was not willing to proceed with the contract as on 11.05.2005 itself. The learned counsel further argued that when the sale agreement in Ex.A1 had not been proceeded and parties consented for refund of money, if at all the plaintiff had any greivances, he could only have filed a suit for recovery of the money and the instant suit filed by the plaintiff for specific performance is not sustainable.

19. The learned counsel further contended that even though the period of 15 months has been fixed for the payment of balance consideration of a meagre sum of Rs.50,000/-, the plaintiff has not completed the sale, but, has extended the agreement by another 20 months as though there was an oral consent. All these factors will go to show that the plaintiff was never ready and willing to perform <https://www.mhc.tn.gov.in/judis> his part of the contract and moreover, it is only regarding the loan availed by the defendant and not a true sale transaction.

20. The learned counsel argued that even though the Trial Court has rightly dismissed the suit, the Lower Appellate Court simply by relying on Ex.A10, which was received as additional evidence, has come to a conclusion that since the defendant had given different reason in that notice, the sale agreement in Ex.A1 stands proved. As such, the finding is perverse and therefore, sought for allowing this Second Appeal.

21. The learned counsel for the appellant relied on the following decisions in support of his contentions:

1. Mademsetty Satyanarayana vs. G.Yelloji Rao & others reported in 1965 AIR (SC) 1405,
2. K.S.Sundaramayyar vs. K.Jagadeesan reported in 1965 <https://www.mhc.tn.gov.in/judis> AIR (Mad) 85,
3. T.Thangamuthu vs. A.Gowrishanker reported in 1983 (2) MLJ 215,
4. Kantilal C.Shah vs. A.G.Devarajulu Reddiar reported in 1977 (2) MLJ 484,
5. Surjit Singh Bhatia & others vs. Tej Raj Singh Goel reported in 2014 (O) Supreme (Del) 1592,
6. U.Ventakesan vs. Susila & others reported in 2023 (5) CTC 283,
7. Slough Estates Limited vs. Buckinghamshire County Council reported in 1969 (2) All.E.R. 988
8. Halsbury's Law of England (Vol.16) 958. The examples of common law principle of election.

22. Per contra, the learned counsel for the plaintiff/respondent argued that the defendant had given different reasons at different stages and had not taken a consistent stand. The defendant, by issuing the legal notice in Ex.A10, has claimed that <https://www.mhc.tn.gov.in/judis> the stamp papers were given in respect of the purchase of plot, which was in the name of his wife, for which, he had handed over the original documents, and thereafter, he has claimed that for the loan transaction, he had executed and he had even signed the stamp papers for security.

23. The learned counsel further argued that the plaintiff examined himself as P.W.1 and has given entire details of the transactions including time fixed and later, extended, but nowhere in the evidence, the defendant disputed the plaintiff's readiness and willingness. Further, the plaintiff had examined the attester as P.W.2, who has clearly spoken about the transaction and thereby, passing of the consideration of the sale agreement stands proved. The learned counsel further argued that merely because D.W.2 has stated that 10 persons had given the complaint to the District Collector as against the plaintiff, which is not proved by other materials, would not, in any way, go against the claim of the <https://www.mhc.tn.gov.in/judis> plaintiff in the present suit.

24. The learned counsel further contended that the Trial Court has only on assumptions doubted Ex.A1/sale agreement, when the money dealing as claimed by the defendant, has not been proved. When the defendant evaded the transaction and tried to cheat the plaintiff, the police complaint was lodged and since the defendant agreed to complete the transaction, the same was closed and the mere lodging of the police complaint and closing of the same, cannot, in any way, be put stand against the relief of specific performance claimed by the plaintiff. Further, when the defendant had not honoured the terms of the closure of complaint, it is not for him to say that the plaintiff cannot

file the suit for specific performance. The learned counsel further argued that there is no evidence or pleadings on the part of the defendant in respect of the abandonment of the sale agreement by the plaintiff. The learned counsel further argued that the sale agreement in Ex.A1 is in <https://www.mhc.tn.gov.in/judis> respect of immovable property and the time is not the essence of the contract and the plaintiff had issued the notice with the extended period of 20 months after the initially fixed period of 15 months and he has also filed the suit within the period of 3 years. Therefore, the Lower Appellate Court, by rightly considering all these aspects, has arrived at the finding that the sale agreement in Ex.A1 is true and genuine and has decreed the suit. The learned counsel contended that no substantial question of law arises for consideration of this Court in this Second Appeal and sought for dismissal of this Second Appeal.

25. The learned counsel relied on the following decisions in support of his contentions:

1. Kuncha Ramakrishnayya vs. Kondamudi Sreeramulu and another (Appeal No.178 of 1935, decided on 25.01.1939),
2. A.R.Madana Gopal ETC vs. M/s.Ramnath <https://www.mhc.tn.gov.in/judis> Publications Pvt. Ltd and another reported in 2021 SCC 300,
3. Govindasamy Gounder vs. Annamalai (S.A.No.1150 of 1997, decided on 08.02.2011),
4. Vairavan vs. K.S.Vidyanandam and others reported in AIR 1996 Mad 353;1995 (2) LW 50,
5. Ferrodous Estates (Pvt) Ltd vs. P.Gopirathnam (died) and others reported in 2020 SCC 825,
6. G.Kuppusamy vs. M.V.Kannabiran (A.S.No.237 of 2007, decided on 23.11.2010),
7. Balasaheb Dayandeo Naik (died) through LRs and others vs. Appasaheb Dattatraya Pawar (Civil Appeal No.647 of 2008, decided on 24.01.2008).

26. Heard the counsel on either side and perused the materials available on record.

<https://www.mhc.tn.gov.in/judis> Analysis of the submissions:

27. The plaintiff filed the suit for specific performance based on the sale agreement dated 05.03.2004 in Ex.A1. A perusal of the sale agreement shows that a sum of Rs.3,00,000/- has been fixed as total sale consideration and a sum of Rs.2,50,000/- has been paid as advance on the same day and for the payment of balance sale consideration of Rs.50,000/-, a period of 15 months has been fixed for completing the sale. As such, the sale ought to have been completed on or before 05.06.2005. The plaintiff contended that the defendant had met him and requested for additional time and by an oral understanding, the period was extended by another 20 months i.e., 35 months,

for the payment of the balance consideration of Rs.50,000/-.

28. It is seen that the defendant had initially issued the legal notice in Ex.A10 on 14.05.2005, for which, the plaintiff had issued the reply in Ex.A2 dated 19.05.2005. Thereafter, legal notice <https://www.mhc.tn.gov.in/judis> was issued by the plaintiff in Ex.A5 on 18.12.2006, pursuant to which, the plaintiff has filed the suit on 12.01.2007.

29. It is the claim of the plaintiff that the sale agreement in Ex.A1 has been entered into between him and the defendant in respect of the sale of the suit property. However, the defendant denied the execution of the sale agreement and contended that it is only a loan transaction and the plaintiff used the stamp papers, which was given for security purpose.

30. From the admission of the plaintiff, it could be seen that he was a partner in Vinayaga Finance along with his brother and also he had filed cases for recovery of money in respect of other parties. When the plaintiff was a professional money lender and also had legal knowledge and when the defendant issued the legal notice in Ex.A10 stating that the plaintiff is a money lender and that he had collected the stamp papers for the purchase of plot, the <https://www.mhc.tn.gov.in/judis> plaintiff, without approaching the Court seeking for specific performance of the agreement, had gone to the Suramangalam Police Station and lodged the complaint on 11.05.2005, which was registered in C.S.R.No.232 of 2005 and the complaint has been received mentioning as a dispute in money transaction. It is also admitted that pursuant to enquiry, the complaint was closed by the police, after obtaining the signature from the parties on 15.05.2005. Thereafter, the plaintiff had issued a reply notice dated 19.05.2005 in Ex.A2 for the notice issued by the defendant in Ex.A10. The plaintiff, after admitting that he and his brother are partners and are jointly running Vinayaga Finance Company, has narrated the fact what had happened in the police station and what consensus was arrived at.

31. Paragraph 13 of the reply notice in Ex.A2 is extracted hereunder:

“13. As a part of legal proceedings, initially my <https://www.mhc.tn.gov.in/judis> client lodged a complaint against your client on 11.05.2005 before the Suramangalam Police. The complaint was registered as 232/2005 and after enquiry of both sides, your client admitted the said sale agreement liability and agreed to return the advance amounts of my client within 150 days, by consenting both parties, the police closed the matter and obtained the signatures of both parties.”

32. The above averments show that the defendant had admitted the sale agreement liability and agreed to return the advance amount within 150 days. As both the parties had consented for the return of the amount within 150 days, the police had closed the matter. When the plaintiff had issued the above reply notice and in no uncertain terms, had clearly expressed that he consented to receive the advance amount back within 150 days, it can only be presumed that the plaintiff did not intend to go about the sale <https://www.mhc.tn.gov.in/judis> transaction, but, had consented to take back his advance. As such, the plaintiff was not ready and willing to perform his part of contract to get the sale deed executed by paying the balance advance amount of Rs.50,000/-.

33. On the contrary, in the same notice in Ex.A2, the plaintiff had called upon the defendant to be present in the Sub Registrar's Office on 27.05.2005. When the plaintiff admitted that the consensus was arrived at on 11.05.2005 in the Suramangalam Police Station, whereby, the defendant has to return the advance sale amount within 150 days, the issuance of the reply in Ex.A4 calling upon the defendant to be present in the Sub Registrar's Office on 27.05.2005 to complete the sale and further that he had withdrawn the amount, kept himself ready and was waiting in the Sub Registrar's Office for the whole day, but, the defendant did not turn up, are completely contrary to the consensus arrived at and reply.

<https://www.mhc.tn.gov.in/judis>

34. In spite of the same, the plaintiff, after issuing the notice in Ex.A2 calling upon the defendant to be present in the Sub Registrar's Office on 27.05.2005 and was ready with balance sale consideration of Rs.50,000/- to complete the sale and the defendant did not turn up or replied, has not approached the Court and filed the suit. On the contrary, the plaintiff claims that the defendant had met in person and had sought for further time extension of 20 months, for which, the plaintiff obliged. When the issue in respect of the sale transaction in Ex.A1 has been denied by the defendant even on 14.05.2005 by issuance of the notice in Ex.A10 and when the defendant did not turn up to the Sub Registrar's Office on 27.05.2005 to complete the sale, as per the reply notice issued by the plaintiff and further, the plaintiff had approached the police that the defendant was trying to cheat, it is amply clear that the defendant disputed the sale agreement and evaded the completion of the sale. Even if the defendant had requested for further time of <https://www.mhc.tn.gov.in/judis> 20 months as claimed by the plaintiff, there was no reason for the plaintiff to grant 20 more months time to complete the sale. When the plaintiff has not filed any document to show that there was an understanding, by which, the agreement was extended by another period of 20 months, it is clear that actually, there was no such extension and the plaintiff was not ready and willing to perform his part of the contract.

35. More particularly, when the plaintiff had admitted in his evidence that even for the payment of the sale advance amount, he had availed loan from the bank and sold the jewels of his wife and he had paid a sum of Rs.2,50,000/- out of the total sale consideration of Rs.3,00,000/-, no ordinary prudent man will fix a time period of 15 months for the balance payment of a meagre sum of Rs.50,000/- to complete the sale. Even assuming that the defendant evaded to execute the sale, after the issuance of the legal notice and the plaintiff, being ready with the balance consideration <https://www.mhc.tn.gov.in/judis> and was waiting in the Sub Registrar's Office for the whole day, the claim of the plaintiff that on the oral request of the defendant, the time was extended by another period of 20 months, beyond 15 months, originally fixed, would amply establish the fact that the plaintiff was not ready and willing to complete the sale by performing his part of the contract.

36. Further, the plaintiff had admittedly purchased the stamp papers as early as on 17.10.2002 and after the period of 15 months, had used the stamp papers in the execution of the sale agreement in Ex.A1. There was no reason for the plaintiff to purchase the stamp papers and keep the same for a period of 15 months and thereafter, execute the sale agreement in Ex.A1. It only probabilises the fact that the plaintiff, being a money lender, had purchased the stamp papers and the stamp papers in

Ex.A1 had been given by the defendant in the year 2002 in respect of the loan availed by him and when there was some dispute in respect of the <https://www.mhc.tn.gov.in/judis> settlement of the loan amount, the plaintiff had approached the police station and since the amount was not settled, he has come up with the suit for specific performance based on the sale agreement in Ex.A1 entered in the stamp papers.

37. The learned counsel for the respondent, in his arguments, mainly stressed that since the defendant has taken inconsistent stand in respect of sale transaction in Ex.A1, the evidence adduced by the plaintiff has to be taken into account and therefore, the agreement in Ex.A1 stands proved, through P.W.1 and P.W.2 and such submissions did not persuade this Court. As a defendant, he is entitled to take different stands but de hors the same, it is for the plaintiff to prove his case for the relief of specific performance. When the plaintiff has approached the Court for discretionary relief, the plaintiff has to satisfy the requirements contained under Section 16(c) of the Specific Relief Act, 1963. <https://www.mhc.tn.gov.in/judis>

38. Section 16(c), *ibid*, is extracted hereunder for easy reference:

“16. Personal bars to relief.— Specific performance of a contract cannot be enforced in favour of a person— (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.”

39. Therefore, in view of Section 16(c) *ibid*, only when the plaintiff pleads and proves his readiness and willingness to perform his part of contract, the plaintiff will be entitled to the discretionary relief to enforce the agreement as against the defendant.

40. At this juncture, it is useful to refer to the decision of the Hon’ble Supreme Court in the case of *J.P.Builders and anothers vs. A.Ramadas Rao and another* reported in (2011) 1 <https://www.mhc.tn.gov.in/judis> SCC 429.

For ready reference, paras 22 to 27 are extracted hereunder:

“22) 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.

23) In *N.P. Thirugnanam vs. Dr. R. Jagan Mohan Rao & Ors.*, (1995) 5 SCC 115 at para 5, this Court held:

".....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 <https://www.mhc.tn.gov.in/judis> material and relevant and is required to be considered by the court while granting or refusing to grant the relief. If the plaintiff fails to either aver or prove the same, he must fail. To adjudge whether the plaintiff is ready and willing to perform his part of the contract, the court must take into consideration the conduct of the plaintiff prior and subsequent to the filing of the suit alongwith other attending circumstances. The amount of consideration which he has to pay to the defendant must of necessity be proved to be available. Right from the date of the execution till date of the decree he must prove that he is ready and has always been willing to perform his part of the contract. As stated, the factum of his readiness and willingness to perform his 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 always ready and willing to perform his part of the contract."

<https://www.mhc.tn.gov.in/judis>

24) In P.D'Souza vs. Shondrilo Naidu, (2004) 6 SCC 649 paras 19 and 21, this Court observed:

"19. It is indisputable that in a suit for specific performance of contract the plaintiff must establish his readiness and willingness to perform his part of contract. The question as to whether the onus was discharged by the plaintiff or not will depend upon the facts and circumstance of each case. No strait-jacket formula can be laid down in this behalf....

21.....The readiness and willingness on the part of the plaintiff to perform his part of contract would also depend upon the question as to whether the defendant did everything which was required of him to be done in terms of the agreement for sale."

25) Section 16(c) of the Specific Relief Act, 1963 mandates "readiness and willingness" on the part of the plaintiff and it is a condition precedent for obtaining relief of grant of specific performance. It is also clear that in a suit for specific performance, the plaintiff must allege and prove a continuous "readiness and willingness" to perform the contract on his part from the date of the contract. The onus is on the <https://www.mhc.tn.gov.in/judis> plaintiff.

26) It has been rightly considered by this Court in R.C. Chandiok & Anr. vs. Chuni Lal Sabharwal & Ors., (1970) 3 SCC 140 that "readiness and willingness" cannot be treated as a straight jacket formula. This has to be determined from the entirety of the facts and circumstances relevant to the intention and conduct of the party concerned.

27) It is settled law that even in the absence of specific plea by the opposite party, it is the mandate of the statute that plaintiff has to comply with Section 16(c) of the Specific Relief Act and when there

is non-compliance with this statutory mandate, the Court is not bound to grant specific performance and is left with no other alternative but to dismiss the suit. It is also clear that readiness to perform must be established throughout the relevant points of time. "Readiness and willingness" to perform the part of the contract has to be determined/ascertained from the conduct of the parties."

41. It is also useful to refer to the decision of the Hon'ble Supreme Court in the case of His Holiness Acharya Swami <https://www.mhc.tn.gov.in/judis> Ganesh Dassji vs. Shri Sita Ram Thapar reported in (1996) 4 SCC 526, wherein, it is held that readiness means capacity of the plaintiff to perform his part of contract, which would include the financial position to pay the purchase price and willingness means the conduct of the plaintiff to get the sale completed. As such, the expression "readiness and willingness" means financial capacity of the plaintiff and his conduct.

42. From the above decisions, it is clear that both the capacity of the plaintiff, to pay the balance sale consideration and his conduct regarding his willingness to get the sale deed executed, are relevant to satisfy the provisions of Section 16(c) of the Specific Relief Act, 1963.

43. In the instant case, even though a sum of Rs.2,50,000/- has been paid as advance, for the balance payment of Rs.50,000/-, a period of 15 months was fixed and no reason has been given in the <https://www.mhc.tn.gov.in/judis> agreement for such a long time. Even after the expiry of the period of 15 months, as stipulated in the agreement, it is the claim of the plaintiff that the defendant orally requested him for an additional period of 20 months and there was an oral understanding between the parties for extending the period of the agreement from 15 months to 35 months. As the plaintiff is not able to establish the fact that there was any such oral extension, the time period fixed in the agreement had expired as on 05.06.2005 itself. Even though the plaintiff had also issued the legal notice in Ex.A2 calling upon the defendant to be present in the Sub Registrar's Office on 27.05.2005 to complete the sale and the defendant had evaded either appearing in the office or by issuing any reply, the silence on the part of the plaintiff by not filing the suit for specific performance, but on the contrary, claim that there was an oral extension for another period of 20 months, would go to show that the plaintiff was not willing to perform the contract for getting the sale completed. The above conduct of the plaintiff will bar the plaintiff from getting the relief <https://www.mhc.tn.gov.in/judis> of specific performance, as the plaintiff has not fulfilled his readiness and willingness, as required in Section 16(c), *ibid*. In such circumstances, in view of the above findings, the substantial questions of law 1 and 3 are answered in favour of the defendant/appellant and against the plaintiff/respondent.

44. The plaintiff, on issuance of the notice by the defendant in Ex.A10, has approached the Suramangalam Police Station and has lodged the complaint, which was registered in C.S.R.No.232 of 2005 as a dispute in money transaction. Pursuant to the consensus arrived at, the police has closed the complaint. The consensus arrived at, was stated by the plaintiff in the notice in Ex.A2, which has been referred to earlier. Even when the plaintiff has filed the suit, the plaintiff has specifically averred that on 11.05.2005, the police conducted an enquiry, on the complaint given by him and the defendant admitted the sale agreement liability and agreed to return the advance amount to the plaintiff within 150 days. It is the case of <https://www.mhc.tn.gov.in/judis> the

plaintiff that the defendant having accepted his liability, neither returned the amount nor acted as per the agreement in Ex.A1. When even the plaintiff has admitted that he has agreed to receive the advance amount within a period of 150 days, it amply establishes the fact that the plaintiff was not willing to go ahead and complete the sale and on the contrary, consented for receiving back the advance sale amount. When the same has been agreed to by the plaintiff that the advance amount shall be returned within 150 days, contrary to his own stand, he issued a notice in Ex.A2 calling upon the defendant to come to the Sub Registrar's Office to complete the sale. Even after all these happened and exchange of notices, the plaintiff did not proceed to file the suit, but, has waited and has filed the suit just before the expiry of the limitation period.

45. The facts that the stamp papers had been purchased as early as in the year 2002 and have been used for the sale agreement in Ex.A1 after the period of 16 months; the complaint lodged by the <https://www.mhc.tn.gov.in/judis> plaintiff in the Police Station and a consensus was arrived at that the defendant shall return the amount within 150 days; even though an advance amount of Rs.2,50,000/- has been paid even on the date of agreement, the period of 15 months was fixed for the balance payment of Rs.50,000/- and in spite of issuance of notice in Ex.A2 and the defendant refused to complete the same; the claim of the plaintiff that on the oral understanding, the agreement was extended by another 20 months, will all go to show that the plaintiff, admittedly, being a money lender, had given loan to the defendant in respect of which, the documents was given by the defendant as security towards the loan transaction. Hence, the agreement in Ex.A1 is not proved.

46. Further, the evidence of D.W.2 also goes to show that around 10 persons have lodged a complaint before the District Collector in respect of the economic offence committed by the plaintiff. The plaintiff has also admitted that in respect of recovery <https://www.mhc.tn.gov.in/judis> of money from other parties, he had also filed 3 cases before the District Munsif Court, Omalur and also he had entered into sale agreements with two other persons and had filed the suit for specific performance. When the plaintiff, being a professional money lender, has arrived at a consensus with the defendant to receive the money and has also admitted that since the money was not repaid, the suit for specific performance was filed, the plaintiff's claim is not sustainable.

47. In view of the above findings, the second substantial question of law is also answered in favour of the defendant/appellant and against the plaintiff/respondent.

48. The judgments relied on by the learned counsel for plaintiff/respondent are not relevant for the facts of the present case. The judgment of the Lower Appellate Court, by merely relying on Ex.A10 and holding that since the defendant has taken a <https://www.mhc.tn.gov.in/judis> different stand, the agreement in Ex.A1 has been proved and therefore the plaintiff is entitled to the decree for specific performance, is against the legal provisions and the materials available on record and perverse. In view of the same, the judgment and decree of the Lower Appellate Court are liable to be interfered with.

49. In the suit, the plaintiff sought for alternative relief to refund the advance amount with 12% interest from the date of the plaint till the date of realisation. As the defendant has categorically

admitted in his written statement that a sum of Rs.60,000/- is due and payable to the plaintiff towards the loan availed by him, but, however, since the parties have arrived at a consensus for returning the advance amount as has been referred above, the plaintiff is entitled to the alternative relief of refund of advance amount.

50. As such, this second appeal stands allowed and the <https://www.mhc.tn.gov.in/judis> judgment and decree of the Lower Appellate Court are set aside. However, the suit is decreed in respect of the alternative prayer and the defendant is directed to pay a sum of Rs.2,50,000/- along with interest at the rate of 9% p.a. from the date of plaint till the date of realisation, within a period of 3 months from the date of receipt of copy of this judgment, failing which, the judgment and decree of the Lower Appellate Court shall automatically stand restored. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

19.03.2024.

Internet : Yes Index : Yes/No Speaking order/Non-speaking order apd To

1. The I Additional District Judge, Salem.

2. The I Additional Subordinate Judge, Salem.

3. The Section Officer, V.R. Section, High Court, Madras. <https://www.mhc.tn.gov.in/judis> G.ARUL MURUGAN, J apd 19.03.2024 <https://www.mhc.tn.gov.in/judis>