M/S.Ramnath Publications vs A.R.Madana Gopal on 25 July, 2008

Equivalent citations: AIR 2009 (NOC) 549 (MAD.), 2009 (2) AKAR (NOC) 334 (MAD.)

Author: M.Chockalingam

Bench: M.Chockalingam

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 25-7-2008
CORAM
THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM
AND
THE HONOURABLE MR.JUSTICE K.VENKATARAMAN
O.S.A.Nos.381 to 384 of 2003
and
CMP Nos.17330 to 17333 of 2003
1.M/s.Ramnath Publications
Pvt. Ltd.,
represented by its
Managing Director
K.Natarajan
2.K.Natarajan .. Appellants in all appeals

vs

A.R.Madana Gopal .. Respondent in OSA 381/2003

K.Rajendran .. Respondent in OSA 382/2003

A.R.Ravichandran .. Respondent in OSA 383/2003

A.R.Venkatesh .. Respondent in OSA 384/2003

Original side appeals preferred under Order XXXVI Rule 1 of O.S. Rules read with

For Appellants : Mr.A.L.Somayaji,

Senior Counsel
for Mr.M.Balasubramanian

For Respondent in
OSA 381/2003 : Mr.M.Venkatachalapathy
Senior Counsel
for Mr.M.Sriram

For Respondents in
OSA 382 to 384/2003 : Mr.AR.L.Sundaresan
Senior Counsel
for Mr.M.Murali

COMMON JUDGMENT

(Judgment of the Court was delivered by M.CHOCKALINGAM, J.) This judgment shall govern these four appeals in OSA Nos.381 to 384 of 2003.

2.These appeals challenge a common judgment of the learned Single Judge of this Court made in C.S.Nos.826 and 983 of 2000 and 111 and 112 of 2001.

3.The plaint averments in C.S.No.826 of 2000 are as follows:

(a) The suit property belonged to the first defendant, a firm, which was being represented by the second defendant. They offered to sell the property to the plaintiff. The price fixed was Rs.9,25,000/-. The suit property is 1/4th undivided share of land situated at Door No.325, Arcot Road, Vadapalani, Chennai 600 026. A written agreement was entered into between the plaintiff and the first defendant on 20.3.1991, and a sum of Rs.25,000/- was paid to the first defendant as advance. As per the agreement, the sale shall be concluded within a period of four months, and the vendors shall deliver all relevant title deeds to the purchaser at the time of the payment of the 2nd advance of Rs.2,75,000/-. The vendors also agreed for the demolition of the building and for removal of the material contained in the building. The plaintiff paid amounts to the extent of Rs.8,50,000/- on different dates, and the balance due was Rs.75,000/-. The plaintiff's two brothers and father also entered into separate agreement on 20.3.1991 with the first defendant for the purchase of 1/4th undivided share of land in the said property. The sale consideration for each agreement was fixed at Rs.9,25,000/-. Thus, the entire property was agreed to be purchased by the plaintiff, his father and brothers.

(b) The first defendant had applied to the Income Tax Authorities to issue permission in order to facilitate execution of the sale deed to the plaintiff and other agreement holders. The said authorities initiated proceedings for compulsory acquisition of property. An order was passed by the authorities holding that the said property was fit to be purchased by the Central Government under the provisions of the Income Tax Act, and final order was passed on 22.2.1993. The department wanted to take possession of the property. The first defendant filed WP No.4588/93 and challenged the order passed on 22.2.1993. The plaintiff, his brothers and father also filed writ

petitions in this regard. On 11.9.1998, this Court has passed an order holding that the provision permitting compulsory purchase was inapplicable in respect of the suit property, and the writ petition was allowed. Because of these proceedings, the plaintiff and the first defendant voluntarily entered into a Memorandum of Understanding on 24.1.1994 in continuation of the agreement dated 20.3.1991, as per which the first defendant was permitted to keep the original title deeds with them until completion of the sale by registration of the sale deed, and it also refers the payment made towards sale consideration.

(c) After the disposal of the said writ petition, the plaintiff has been requesting the first defendant to receive the balance of consideration and execute the sale deed. The first defendant has been telling that the Income Tax Department have taken steps for filing an appeal against the decision rendered in the writ petition. The first defendant filed a suit against the plaintiff's father in O.S.No.3400/98 on the file of the XVIII Assistant City Civil Judge, Chennai, and it was resisted by him. For reasons best known, the defendants have been postponing the execution of the sale deed. The plaintiff has been ready and willing to perform his part of the contract. The plaintiff is ready to pay or deposit the balance of sale consideration to the first defendant at any time. On account of default or inaction and delay on the part of the first defendant alone, the sale could not be completed. The first defendant is free to remove the superstructure before delivery of possession of suit property, but not afterwards. The plaintiff had to approach the first defendant directly and through his men for the fulfillment of the contract. The defendants are also attempting to encumber the property to defraud the plaintiff's rights. Hence, the plaintiff sought for a decree for specific performance of the agreement of sale, a direction to the plaintiff to deposit the balance amount of Rs.75,000/- within the time fixed by the Court, a direction to the defendants to execute a sale deed and to deliver vacant possession of the suit property to the plaintiff and a decree for permanent injunction restraining the defendants from alienating or encumbering the suit property.

4.The averments in the other plaints in C.S.Nos.983 of 2000 and 111 and 112 of 2001 are in the same lines. The plaintiffs therein paid Rs.9,00,000/-, Rs.8,50,000/- and Rs.8,00,000/- respectively on different dates.

5.The suit in C.S.No.826 of 2000 was contested by the defendants by stating that apart from the 2nd defendant, there are five other Directors of the first defendant company, and they have not been impleaded as parties. The other five Directors are neither inclined nor had given any consent for selling the suit property at any point of time. Thus, the suit is barred for non-joinder of necessary parties. In the year 1999, the market value of the property in that area was Rs.25 lakhs per ground. The suit property consists of 3 grounds and 1950 sq. ft. with ground and first floor building. The suit agreement dated 20.3.1991 had been superseded by a memorandum of understanding on 24.1.1994. But, the suit has been filed only in the year 2000, after a lapse of 9 years from the date of agreement. The plaintiff entered into the memorandum of understanding agreeing to get the refund of the advance amount with interest at 9% per annum. This is nothing but a novation of contract. Any

purported attempt made by the plaintiff to enforce the pre-existing, but a time barred contract which is 10 years old, is hopelessly time barred and non-est in the eye of law. Hence, the question of relying on the clauses in the defunct agreement of sale will be of no use. The plaintiff deliberately undervalued the suit property. The decision rendered by this Court as has been cited by the plaintiff, has been recently overruled by the Supreme Court of India besides confirming the view taken on this aspect by the Bombay High Court in similar matters. The parties herein originally agreed that time is the essence of the contract. The sale shall be concluded within a period of four months. Subsequently, the said agreement has been rescinded by a memorandum of understanding between the parties on 24.1.1994 which is nothing but a novation of contract. A mere pendency of the writ petition will not prevent the plaintiff herein from enforcing the agreement of sale in a court of law. The writ petition filed by the parties cannot be considered as a 'lis'. Admittedly, the suit has been filed after a period of more than 9 years from the date of agreement of sale, after 6 years and 9 months from the date of memorandum of understanding and after 2 years and 1 month from the order passed by this Court in the writ petition. The plaintiff has miserably failed to establish that he was always ready and willing to perform his part of the contract. Therefore, he is not entitled to the reliefs prayed for in the plaint. The plaintiff is not at all interested in enforcing the contract and he allowed the same to become time barred. The suit agreement of sale and the memorandum of understanding lapsed by efflux of time, and the same cannot be pressed into service. The plaintiff as a partner entered into a lease agreement with the defendants on 10.2.1994 in respect of the entire first floor as well as the godown at the ground floor. The plaintiff committed willful default in payment of rents. The defendants filed a petition in RCOP No.248/99 for eviction, and the same is pending on the file of the Rent Controller, Chennai. The key of the entire ground floor portion is with the Indian Bank, Kodambakkam Branch. The Indian Bank filed a suit for recovery against the defendants. The plaintiff and family members made an attempt to trespass into the ground floor. The defendants and the Indian Bank complained the matter before the local police station. The defendants also filed a suit in O.S.No.3400/98 on the file of the City Civil Court, Madras, seeking a permanent injunction restraining the plaintiff and his family members from interfering with the peaceful possession of the ground floor of the suit property. Hence, the suit was liable to be dismissed.

6.The allegations made in the written statements in C.S.Nos.983 of 2000 and 111 and 112 of 2001 are in the same lines.

7.On the above pleadings, nine issues were framed. The parties went on trial. One Madanagopal was examined as P.W.1, and 27 documents were marked on the side of the plaintiff. The second defendant was examined as D.W.1 and no documents were marked on the defendants' side. The learned trial Judge after hearing the submissions made and looking in to the evidence, decreed all the suits as prayed for. Hence, these appeals at the instance of the defendants.

8.The points that would arise for consideration are:

(i) Whether the plaintiffs are entitled for the relief of specific performance?

(ii) To what relief the parties are entitled?

9.Advancing the arguments on behalf the appellants, the learned Senior Counsel would submit that the suit agreements were entered into between the parties on 20.3.1991; that the plaintiffs in all the suits belonged to one and the same family; that the suits were filed by the plaintiffs in October and December 2000 respectively, and thus, it would be quite clear that the suits were filed after a period of 9 years; that the memorandums of understanding were entered into between the parties on 24.1.1994; that the plaintiffs have filed the suits 6 years after the memorandums of understanding; that the writ petition filed by the appellants challenging the acquisition proceedings, was disposed of on 11.9.1998, and thus, the suits were filed after 2 years from the date of the disposal of the writ proceedings.

10.Placing reliance on the judicial pronouncements, the learned Senior Counsel would urge that the plaintiff in a suit for specific performance should prove the readiness and willingness to perform his part of the contract from the date of agreement till the date of filing of the suit, and only then, he would be entitled to get the equitable relief of specific performance; that in the instant case, except the bald averments in the plaints that the plaintiffs were ready and willing to perform their part of the contract all along, no proof was adduced to accept the same; that mere averment in the plaint would not be sufficient; but, there must be proof to accept the same; that P.W.1 has categorically admitted that he had not produced any proof for the alleged breach; that all along these period, the plaintiffs never sent even one letter or notice informing their readiness and willingness to perform their part of the contract as contemplated under Sec.16(c) of the Specific Relief Act; that the plaintiffs have averred that they approached the defendants in 2000 and wrote some letters; but, no scrap of paper was produced before the trial Court; and that on the point of readiness and willingness, on the basis of mere pleadings in the plaints without any proof whatsoever, the trial Court has accepted that the plaintiffs were ready and willing to perform their part of the contract.

11.Added further the learned Senior Counsel that the memorandums of understanding were entered into in the year 1994 wherein it has been clearly and categorically admitted by the parties that immediately after the disposal of the writ petitions, the sale deed should be executed; that the writ petitions were disposed of by this Court on 11.9.1998; that due to the filing of the suits in 2000, there was an interregnum period of 2 years and 3 months; but, neither steps were taken by the plaintiffs, nor even any notice or letter was issued, and thus, there was no proof at all; that the entire first floor of the suit property was in the occupation of the plaintiffs; that it was not in part performance of the contract, but as a tenant; that they have committed willful default in payment of rent which constrained the respondents to file a petition in RCOP 248/99 as could be seen under Ex.P27; that even prior to the agreements entered into between the parties, a branch of the Indian Bank was occupying the ground floor; that the plaintiffs attempted to interfere with the possession of the bank; that both Indian Bank and the defendants gave complaint to the jurisdictional police; that the defendants also filed O.S.No.3400 of 1998 for a permanent injunction before the City Civil Court to restrain the plaintiffs from trespassing into the ground floor of the suit property, and thus, it would be quite clear that the relationship between the parties became strained; that if to be so, the contention put forth by the plaintiffs' side that they were making demand personally and through their men was an utter falsehood which should have been rejected by the trial Court; that the said conduct would be indicative of the recalcitrant attitude and inaction on the part of the plaintiffs; that the trial Court has placed reliance on the interested testimony of P.W.1 which was self serving also;

that the same was not corroborated by any independent evidence either oral or documentary; and that the circumstances would clearly indicate that the evidence of P.W.1 that he made demand on the defendants to execute the sale deed; but, they did not perform their part was false.

12.The learned Senior Counsel would further submit that all the suits were filed in October and December 2000 respectively alleging that the defendants were about to alienate the suit property which impelled the plaintiffs to file the suits in 2000; that it is pertinent to point out that the suits were filed after 9 years from the original agreements and 6 years from the date of memorandums of understanding; that there was nothing to indicate that the defendants committed any breach of the agreements in 2000 or it gave rise to the cause of action for filing the suits; that the trial Court has come to the said conclusion without any material whatsoever; and that the plaintiffs have not whispered any breach of the agreements by the defendants.

13.Advancing his arguments further, the learned Senior Counsel would submit that the crucial legal aspect which has to be appreciated is that for the non-performance of the part of the contract by the plaintiffs under Sec.16(b) of the Specific Relief Act, the plaintiffs were disentitled to enforce the defunct agreements; that as per the agreements, the plaintiffs agreed to purchase 1/4th undivided share of the land and the defendants should demolish the superstructure and hand over the land to the plaintiffs; that P.W.1 has categorically admitted that the plaintiffs were in physical possession of the first floor and a portion in the ground floor; that Ex.P27 was the document to establish the same, and hence, the defendants could not demolish the building without the vacation of the plaintiffs from the suit property; that the trial Judge proceeded with the finding as if the defendants were in possession and enjoyment of the entire property and they were to hand over possession, but factually not so; and that it is not a case where the plaintiffs were put in possession of the property as a part performance of the contract under Sec.53A of the Transfer of Property Act; but, they were in occupation only as tenants and committed willful default also.

14.Added further the learned Senior Counsel that it was a case where the suits were not only filed beyond the period of limitation, but also the laches on the part of the plaintiffs would disentitle them to get the equitable relief of specific performance; that to obtain the relief of specific performance on the strength of an agreement for sale, the plaintiff should approach the Court with clean hands apart from proving his readiness and willingness throughout under Sec.16(c) of the Specific Relief Act; that in the instant case, the plaintiffs have neither proved that they were ready and willing to perform their part of the contract throughout which is mandatory under Sec.16(c) of the Specific Relief Act, and also the conduct would clearly indicate that they were not entitled to even ask for the relief; that the suit agreements have stipulated four months' time to complete the transaction; but, admittedly, the suits were filed after 9 years from the time of agreements; that the memorandums of understanding were only novation of the earlier agreements; that even under the memorandums of understanding, it was agreed that the sale deed should be executed immediately on the disposal of the writ petition; but, for a period of 2 years, the plaintiffs have not taken any steps whatsoever; that it is also to be considered that during the relevant point of time i.e., in 1991, the guideline value of Kodambakkam High Road was Rs.20 lakhs per ground; but, the entire property measuring 3 grounds and 1950 sq. ft. was valued at Rs.38 lakhs; that it was a case of deliberate under valuation of the suit property; that the Income Tax Department also inclined to purchase the same at that time;

that the said fact was admitted by P.W.1 in evidence; that it is pertinent to point out that the plaintiffs were never prevented in law from instituting the suits at the earliest point of time seeking the relief of specific performance; that P.W.1 has categorically admitted that the conditions stipulated in all the agreements were to demolish the building, get income tax clearance and hand over original documents after payment of the first instalment of Rs.2.25 lakhs; but, the plaintiffs were in possession of the entire first floor even during the time of filing the suits; that under the circumstances, the question of complying with the conditions stipulated in the agreements did not arise; that P.W.1 has categorically admitted that the appropriate authority wanted to acquire the property, and the first defendant who undervalued the purchase value, filed the writ petition in the Court; that it would be quite clear that the plaintiffs have not adduced any proof that they were ready and willing to perform their part of the contract from the time of agreements till the time of the suits; that apart from that, the conduct of the plaintiffs would clearly indicate that they were not also entitled for the relief; that under the circumstances, the trial Court should have rejected their claim, and hence, all the appeals have got to be allowed by dismissing the suits.

15.In support of his contentions, the learned Senior Counsel relied on the following decisions:

(i) (1997) 3 SUPREME COURT CASES 1 (K.S.VIDYANADAM AND OTHERS V. VAIRAVAN);

(ii) (2002) 9 SUPREME COURT CASES 582 (PUSHPARANI S. SUNDARAM AND OTHERS V. PAULINE MANOMANI JAMES AND OTHERS);

(iii) (2005) 6 SUPREME COURT CASES 243 (UMABAI AND ANOTHER V. NILKANTH DHONDIBA CHAVAN AND ANOTHER) and

(iv) (2006) 2 SUPREME COURT CASES 496 (H.P.PYAREJAN V. DASAPPA AND OTHERS).

16.Contrary to the above contentions, the learned Senior Counsel for the respondent in OSA No.381 of 2003 would contend that it is true that the plaintiffs in those four suits have entered into agreements with the defendants who are the owners of the property, as found under Exs.P4 to P7; that it was clearly agreed that the total consideration covered under all these four agreements for the sale of the property was Rs.37 lakhs, out of which the plaintiff in CS 826 of 2000 paid Rs.8.5 lakhs; the plaintiff in CS 983/2000 paid Rs.9 lakhs; the plaintiff in CS 111/2001 paid Rs.8.5 lakhs and the plaintiff in CS 112/2001 paid Rs.8 lakhs, and thus, they have paid Rs.34 lakhs out of Rs.37 lakhs consideration; that what was remaining was only Rs.3 lakhs; that it is not the case of the defendants/appellants that they did not have sufficient funds to pay or they were unable to pay; that the defendants in order to avoid the agreements for sale and also the subsequent memorandums of understanding, took all defence pleas which were vexatious and unfounded to their knowledge; that admittedly, after the agreement was entered into between the parties, permission was sought for by the first defendant; that the income tax authorities initiated acquisition proceedings in March 1993 which necessitated the defendants to file WP No.12449/93; that considering the situation, the parties entered into memorandums of understanding as could be seen from Exs.P15 to P18 on

24.1.1994; that a reading of the memorandums of understanding would clearly reveal that they desired to continue the original agreements; and that nowhere it was stated that the memorandums of understanding were the substitution of the original agreements; but, on the contrary.

17.Added further the learned Senior Counsel that the final orders came to be passed only in the year 1998; that it is pertinent to point out that out of the total consideration of Rs.37 lakhs, Rs.34 lakhs was paid from March 1991 the time of the agreements till January 1994, the time of the memorandums of understanding; that in the instant case, the contention put forth by the appellants' side that the plaintiffs were never ready and willing to perform their part of the contract was to be discountenanced; that it has been rightly done by the trial Court; that out of the sale consideration of Rs.37 lakhs, Rs.34 lakhs was paid in between 1991 and 1994; that if the plaintiffs were actually not ready and willing to perform their part of the contract, they would not have paid the major part of the sale consideration leaving only Rs.3 lakhs; that it is pertinent to point out that the writ proceedings were initiated pursuant to the acquisition proceedings and final orders came to be passed in September 1998; that till the time, the sale deed could not be executed; that from 1998 onwards, the plaintiffs were personally and through their men also insisting for the execution of the sale deed for which it was replied by the defendants that the income tax department have taken steps to prefer an appeal from the orders passed in the writ petitions; that even after waiting for a period of 2 years, they could not accept the evasive answers of the defendants, and under such circumstances, they filed the instant suits.

18.Added further the learned Senior Counsel that it is true that at the time when the agreements were entered into between the parties, the possession of the first floor of the property was not handed over to the plaintiffs; but, after the memorandums of understanding were entered into between the parties on 24.1.1994, the plaintiffs were actually put in possession of the first floor and not as tenants, but pursuant to the memorandums of understanding, and hence, the defendants who filed the RCOP seeking eviction on the ground of willful default against the plaintiffs, allowed it to be dismissed for non-prosecution; that the defendants as agreed, have never obtained NOC or clearance certificate from the Income Tax department and also they have not vacated the Indian Bank who had its branch in the ground floor, and thus, they did not perform their part of the contract; that the defendants have also not cancelled the agreements or the memorandums of understanding entered into between the parties; that the defendants who have not performed their part of the contract, cannot be allowed to say that the plaintiffs were never ready and willing; that the plaintiffs have brought to the notice of the trial Court all the circumstances indicating their readiness and willingness; that it is true that the notice was not issued; but, it did not mean that there was no demand; that the plaintiffs who have parted with a huge sum of Rs.34 lakhs which would represent the major part of the consideration of Rs.37 lakhs, would not be keeping quiet, and they have been pressurizing for the execution of the sale deed; and that since the defendants did not perform their part of the contract, the plaintiffs were compelled to file the suits before the Court, and accordingly, they have done.

19.It is further submitted by the learned Senior Counsel that P.W.1 has categorically admitted that even at the time of Exs.P4 to P7 entered into between the parties, the defendants have created equitable mortgage, and the documents were actually in the hands of the mortgagee; but, those facts

were actually suppressed, and nowhere it is found in the agreements; that under the circumstances, the plaintiffs are entitled for the relief of specific performance, and hence, the appeals have got to be dismissed.

20.In support of his contention, the learned Senior Counsel relied on the following decisions:

(i) AIR 1986 SUPREME COURT 1912 (ROJASARA RAMJIBHAI DAHYABHAI V. JANI NAROTTAMDAS LALLUBHAI AND ANOTHER);

(ii) 2007 (11) SCALE (SC) 626 (SITA RAM & OTHERS V. RADHEY SHYAM);

(iii) (2008) 2 MLJ 750 (SC) (BALASAHEB DAYANDEO NAIK AND OTHERS V. APPASAHEB DATTATRAYA PAWAR) and

(iv) (2008) 3 MLJ 951 (SC) (SILVEY AND OTHERS V. ARUN VARGHESE AND ANOTHER).

21.The learned Senior Counsel for the respondents in OSA Nos.382 to 384 of 2003 would submit that the plaintiffs and the first defendant decided to conclude the contract after disposal of the writ petitions; that the plaintiffs have made payments to the defendants pending the writ petitions, under the sale agreements; that it is quite evident that the plaintiffs have performed their part of the contract by paying major part of the sale consideration and also continuously expressing their readiness and willingness to perform their part of the contract; but, the defendants did not perform their part of the contract; that the learned trial Judge was justified in granting a decree in favour of the plaintiffs; that the defendants had no intention to complete their part of contract even after receiving the huge sale consideration from the plaintiffs; that under such circumstances, the defendants were bound to execute the sale deed on receiving the balance amount, and the plaintiffs were entitled to get the document executed by them; that if the pleadings manifest that the conduct of the plaintiffs entitles them to get the relief on perusal of the plaint, they should not be denied the relief; that in a given case like this, the burden of proving whether time was of the essence is upon the person alleging it, thus giving an opportunity to the other side to rebut such a presumption; that if such evidence is led and not rebutted, the Court is bound to accept the plaintiff's plea; that in the instant case, the plaintiffs have proved their case, and hence, the judgment of the learned trial Judge has got to be sustained, and the appeals be dismissed. In support of his contention, the learned Senior Counsel relied on the decisions reported in (2004) 8 SUPREME COURT CASES 689 (SWARNAM RAMACHANDRAN AND ANOTHER V. ARAVACODE CHAKUNGAL JAYAPALAN) and in (2005) 7 SUPREME COURT CASES 534 (ANIGLASE YOHANNAN V. RAMLATHA AND OTHERS).

22.From the pleadings of the parties and evidence adduced on both sides oral and documentary, the following are noticed as admitted facts:

The plaint schedule property belonged to the second defendant who is the Managing Director of the first defendant company. Pursuant to the offer to sell the said

property, the plaintiffs in all the four suits entered into four sale agreements as found in Exs.P4 to P7, whereby it was agreed that each sale agreement was in respect of 1/4th undivided share in the said property, and the consideration for the same was fixed at Rs.9.25 lakhs. Out of the sale consideration, including the advance paid at the time of said agreements, the plaintiff in CS 826/2000 paid Rs.8.5 lakhs; the plaintiff in CS 983/2000 paid Rs.9 lakhs; the plaintiff in CS 111/2001 paid Rs.8.5 lakhs; and the plaintiff in CS 112/2001 paid Rs.8 lakhs. Thus, out of the sale consideration of Rs.37 lakhs as found in the agreements, Rs.34 lakhs was actually paid commencing from the time of agreements till August 1994. The balance of consideration that was payable by the plaintiffs was Rs.3 lakhs. The first defendant applied to the Income Tax authorities to accord permission in order to facilitate execution of the sale deed to the plaintiffs. The Income Tax authorities initiated proceedings for compulsory acquisition of the said property, and orders came to be passed by the appropriate authority namely the Income Tax Department, holding that the said property was fit to be purchased by the Central Government under the provisions of the Income Tax Act, and final orders were passed on 22.2.1993. The department decided to take possession of the property. The said proceedings were challenged by the first appellant/first defendant in WP No.12449/91. The said writ petition was filed on 3.9.1993. Pending the writ proceedings, the parties entered into memorandums of understanding on 24.1.1994 in continuation of the agreements dated 20.3.1991 referred to above. The writ petitions pertaining to the compulsory acquisition were disposed of by this Court on 11.9.1998 as could be seen from Ex.P19. The Corporation of Madras issued demolition order under Ex.P26 on 3.10.1989. The appellants filed a suit for permanent injunction against the plaintiff on the file of the City Civil Court in O.S.No.3400 of 1998 and also filed RCOP No.248/99 against the plaintiff seeking eviction on the ground of willful default. All the four suits were filed by the respective plaintiffs in October and December 2000 respectively.

23.As could be seen above, the deliberations made though elaborate, center round upon three aspects namely (1) Time as the essence of the contract; (2) Readiness and willingness of the plaintiffs and (3) Conduct of the parties.

24.According to the plaintiffs, time was not the essence of the contract, and though recitals stipulating the period were found in Exs.P4 to P7, the agreements, and also Exs.P15 to P18, the memorandums of understanding, it was not understood so, and apart from that, since they were agreements for sale of immovable properties, time cannot be the essence of the contract. In support of their contentions, the learned Senior Counsel relied on the decisions reported in AIR 1986 SUPREME COURT 1912 (ROJASARA RAMJIBHAI DAHYABHAI V. JANI NAROTTAMDAS LALLUBHAI AND ANOTHER); (2008) 2 MLJ 750 (SC) (BALASAHEB DAYANDEO NAIK AND OTHERS V. APPASAHEB DATTATRAYA PAWAR) and (2004) 8 SUPREME COURT CASES 689. On the contrary, the specific stand of the appellants/defendants before the trial Court and equally here also is that time was the essence of the contract as found in the agreements for sale and also for memorandums of understanding; that the plaintiffs have not performed their part of the contract within the stipulated time, and hence they were not entitled for the relief.

25.Concededly, the agreements for sale were entered into between the parties under Exs.P4 to P7. Clause 4 reads that the Sale shall be concluded within a period of 4 months from this day, i.e. the date of the agreement. In view of the fact that the income Tax Authorities/appropriate Authority instead of granting permission sought for by the defendants, initiated proceedings for compulsory acquisition of the property, which necessitated the defendants to file W.P.No.12449 of 1991. Pending the same, the parties have entered into Memorandums of understanding on 24.1.1994 which were marked as Exs.P15 to P18 respectively. It was contended by the defendants that by entering into memorandums of Understanding, the earlier agreements were given up, and it was a new one. But that contention was rightly rejected by the learned trial Judge, since it was found in those documents that those Memorandums of Understanding were in addition to and not in substitution of the agreements dated 20.3.1991 between the parties, and thus, it would be quite clear that the parties were bound by the agreements for sale. It can be well stated that the agreements for sale originally entered into between the parties under Exs.P4 to P7 would continue to bind the parties. Though a period of 4 months for completion of sale was incorporated in Exs.P4 to P7, in view of the acquisition proceedings and consequent writ petitions, there arose a necessity to include a Clause stipulating the period for completion of sale.

26.Clause 3 of memorandums of understanding reads as follows:

> "3.The purchaser further pays a sum of Rs.1,50,000/- ..... and the balance of the sale price amounting to Rs.75,000/- (Rupees Seventy Five Thousands only) will be paid to the Vendor at the time of Registration of Sale deed immediately when the writ petition is disposed of upholding the sale agreement between the Vendor and the Purchaser."

27.In the instant case, it is an admitted position that the writ petitions were disposed of on 11.9.1998, but the instant suits were filed between October and December, 2000 after a period of nearly two years and three months from that date. It remains to be stated that the agreements for sale were entered into between the parties on 20.3.1991 which stipulated 4 months' period for execution of the sale, and under the Memorandums of Understanding dated 24.1.1994, it was specifically agreed that the balance of consideration should be paid at the time of registration of the sale deed immediately after the disposal of the writ petition. As stated above, the writ petition was disposed of on 11.9.1998. Thus, it would be quite clear that the sale deed could not be executed for the reasons beyond the control of the parties till the disposal of the writ petitions. But, it was clearly understood in the Memorandums of Understanding that the vendee should make the payment of balance of consideration immediately on the disposal of the writ petition.

28.Placing emphasis on the word "immediately" as found in the memorandums of understanding, the learned Senior Counsel for the appellants would submit that the time was expressly understood as the essence of the contract. On the contrary, the learned Senior Counsel for the respondents would submit that though it was found that the balance of consideration should be paid immediately after the disposal of the writ petition, it was not understood that the time should be the essence of the contract, and apart from that, even assuming time limit was stipulated in the agreements and also in the memorandums of understanding which were only in addition to the original agreements

in respect of the sale of the immovable property, time cannot be the essence of the contract. In order to solve the above controversies between the parties, it would be more apt and appropriate to look into the different decisions relied on by them. An occasion arose before the Apex Court on the identical factual events in a case reported in (1997) 3 SCC 1 (K.S.VIDYANADAM AND OTHERS VS. VAIRAVAN). Their Lordships have held as follows:

> "9. Article 54 of the Limitation Act prescribes three years as the period within which a suit for specific performance can be filed. The period of three years is to be calculated from the date specified in the agreement for performance or in the absence of any such stipulation, within three years from the date the performance was refused.
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> 10. It has been consistently held by the courts in India, following certain early English decisions, that in the case of agreement of sale relating to immovable property, time is not of the essence of the contract unless specifically provided to that effect. The period of limitation prescribed by the Limitation Act for filing a suit is three years. From these two circumstances, it does not follow that any and every suit for specific performance of the agreement (which does not provide specifically that time is of the essence of the contract) should be decreed provided it is filed within the period of limitation notwithstanding the time-limits stipulated in the agreement for doing one or the other thing by one or the other party. That would amount to saying that the time-limits prescribed by the parties in the agreement have no significance or value and that they mean nothing. Would it be reasonable to say that because time is not made the essence of the contract, the time-limit(s) specified in the agreement have no relevance and can be ignored with impunity? It would also mean denying the discretion vested in the court by both Sections 10 and 20. As held by a Constitution Bench of this Court in Chand Rani v. Kamal Rani: (SCC p.528, para 25) "... it is clear that in the case of sale of immovable property there is no presumption as to time being the essence of the contract. Even if it is not of the essence of the contract, the Court may infer that it is to be performed in a reasonable time if the conditions are (evident?): (1) from the express terms of the contract; (2) from the nature of the property; and (3) from the surrounding circumstances, for example, the object of making the contract."

In other words, the court should look at all the relevant circumstances including the time-limit(s) specified in the agreement and determine whether its discretion to grant specific performance should be exercised. Now in the case of urban properties in India, it is well-known that their prices have been going up sharply over the last few decades particularly after 1973*. In this case, the suit property is the house property situated in Madurai, which is one of the major cities of Tamil Nadu. The suit agreement was in December 1978 and the six months period specified therein for completing the sale expired with 15-6-1979. The suit notice was issued by the plaintiff only on 11-7-1981, i.e., more than two years after the expiry of six months period. The question is what was the plaintiff doing in this interval of more than two years? The plaintiff says that he has been calling upon Defendants 1 to 3 to get the tenant vacated and execute the sale deed and that the defendants were postponing the same representing that the tenant is not vacating the building. The defendants

have denied this story. According to them, the plaintiff never moved in the matter and never called upon them to execute the sale deed. The trial court has accepted the defendants story whereas the High Court has accepted the plaintiff s story. Let us first consider whose story is more probable and acceptable. For this purpose, we may first turn to the terms of the agreement. In the agreement of sale, there is no reference to the existence of any tenant in the building. What it says is that within the period of six months, the plaintiff should purchase the stamp papers and pay the balance consideration whereupon the defendants will execute the sale deed and that prior to the registration of the sale deed, the defendants shall vacate and deliver possession of the suit house to the plaintiff. There is not a single letter or notice from the plaintiff to the defendants calling upon them to get the tenant vacated and get the sale deed executed until he issued the suit notice on 11-7-1981. It is not the plaintiff s case that within six months , he purchased the stamp papers and offered to pay the balance consideration. The defendants case is that the tenant is their own relation, that he is ready to vacate at any point of time and that the very fact that the plaintiff has in his suit notice offered to purchase the house with the tenant itself shows that the story put forward by him is false. The tenant has been examined by the defendant as DW 2. He stated that soon after the agreement, he was searching for a house but could not secure one. Meanwhile (i.e., on the expiry of six months from the date of agreement), he stated, the defendants told him that since the plaintiff has abandoned the agreement, he need not vacate. It is equally an admitted fact that between 15-12-1978 and 11-7-1981, the plaintiff has purchased two other properties. The defendants consistent refrain has been that the prices of house properties in Madurai have been rising fast, that within the said interval of 2 1/2 years, the prices went up three times and that only because of the said circumstance has the plaintiff (who had earlier abandoned any idea of going forward with the purchase of the suit property) turned round and demanded specific performance. Having regard to the above circumstances and the oral evidence of the parties, we are inclined to accept the case put forward by Defendants 1 to 3. We reject the story put forward by the plaintiff that during the said period of 2 1/2 years, he has been repeatedly asking the defendants to get the tenant vacated and execute the sale deed and that they were asking for time on the ground that tenant was not vacating. The above finding means that from 15-12-1978 till 11-7-1981, i.e., for a period of more than 2 1/2 years, the plaintiff was sitting quiet without taking any steps to perform his part of the contract under the agreement though the agreement specified a period of six months within which he was expected to purchase stamp papers, tender the balance amount and call upon the defendants to execute the sale deed and deliver possession of the property. We are inclined to accept the defendants case that the values of the house property in Madurai town were rising fast and this must have induced the plaintiff to wake up after 2 1/2 years and demand specific performance."

29.It is to be pointed out that in the instant case, though the writ petition was disposed of on 11.9.1998, till the time when suits were filed between October and December, 2000, the plaintiffs have not issued even a single letter or notice to the defendants calling upon them to get the balance of consideration thereby getting the sale deed executed. It is not the plaintiffs' case that they purchased stamp papers or offered to pay the balance of consideration. Even P.W.1 has admitted that he has not issued any communication or letter. On the contrary, he would state that many a demand was made personally and also through messengers after the disposal of the writ petitions, and since the defendants did not pay heed to the request, there arose the necessity to file the suits. Except the testimony of P.W.1, an interested and self serving one, no material was placed before the

trial Court. Thus, no evidence either oral or documentary was placed before the trial court to accept the said contention. On the other hand, the conduct of the defendants after the disposal of the writ petition in not canceling the agreements of sale would be indicative of the fact that no fault could be attributed to them. It is not the case of the plaintiffs that the defendants made any higher demand in view of the price raise which would be indicative of the fact that they continued to have the agreement in force. For a period of nearly 2 years and 3 months, the plaintiffs were sitting quiet without taking any steps to perform their part of the contract under the agreements, though it was specifically agreed under the Memorandums of Understanding that they should pay the balance of consideration immediately after the disposal of the writ petition. It is not the case of the plaintiffs that they either purchased stamp papers or tendered balance of consideration to the defendants.

30.In the instant case, the agreements were entered into in the year 1991, wherein the time stipulated for execution of the sale deed was 4 months, but in view of the acquisition proceedings and the writ petition till September, 1998, the sale deed could not be executed. Needless to say, the value of the property found in the agreements, in the city of Madras would have risen many times in these 9 or 10 years. In the case reported in (2004) 8 SCC 689 (SWARNAM RAMACHANDRAN AND ANOTHER VS. ARAVACODE CHAKUNGAL JAYAPALAN), the Apex Court has held thus:

> "12. That time is presumed not to be of essence of the contract relating to immovable property, but it is of essence in contracts of reconveyance or renewal of lease. The onus to plead and prove that time was the essence of the contract is on the person alleging it, thus giving an opportunity to the other side to adduce rebuttal evidence that time was not of essence. That when the plaintiff pleads that time was not of essence and the defendant does not deny it by evidence, the court is bound to accept the plea of the plaintiff. In cases where notice is given making time of the essence, it is duty of the court to examine the real intention of the party giving such notice by looking at the facts and circumstances of each case. That a vendor has no right to make time of the essence, unless he is ready and willing to proceed to completion and secondly, when the vendor purports to make time of the essence, the purchaser must be guilty of such gross default as to entitle the vendor to rescind the contract."

31.From the very reading of the above decision, it would be quite clear that in a case where time was the essence of the contract, the burden of proof was upon the person alleging it, by giving an opportunity to the other side to rebut such a presumption. On application of the above decision to the present facts of the case, it would be quite clear that the burden was on the defendants to show that the time was the essence of the contract which, in the opinion of this Court, has been proved by the appellants under the above circumstances, but that presumption is rebuttable. Despite the availability of the opportunity, the plaintiffs have miserably failed to rebut that presumption. 32.The decision relied on by the respondents and reported in AIR 1986 SUPREME COURT 1912 (ROJASARA RAMJIBHAI DAHYABHAI V. JANI NAROTTAMDAS LALLUBHAI AND ANOTHER) cannot be applied to the present facts of the case, since the question that arose before the Apex Court was whether the Contract between the parties was one contingent or specifically enforceable and whether the suit for specific performance could be filed within 3 years after obtaining permission. Factual events noticed in the instant case, are neither identical nor similar.

33.The respondents relied on another decision of the Supreme Court reported in (2008) 2 MLJ 750 (SC) (BALASAHEB DAYANDEO NAIK AND OTHERS V. APPASAHEB DATTATRAYA PAWAR) for the legal proposition that in the case of sale of immovable property, there is no presumption as to time being the essence of the contract and even where the parties have expressly provided that time is the essence of the contract, such a stipulation will have to be read along with other provisions of the contract. There cannot be any quarrel on the legal proposition put forth by the respondents' side. It is true that mere fixation of time within which the contract was to be performed, did not make the stipulation as to the time as the essence of the contract. But, in a given case, the Court has to read along with the other provisions of the contract and also look into all other circumstances attendant. If done in the instant case, it would be clear that it was not a mere delay, but of total inaction on the part of the plaintiffs for 2 years and 3 months in clear violation of the terms of the Memorandums of Understanding, which required them to pay the balance of consideration immediately after the disposal of the writ petition. The said delay was also coupled with the substantial raise in price between the date of agreements and Memorandums of Understanding and the date of disposal of the writ petition and filing of the suit. In the opinion of this Court, it would be inequitable to give the relief of specific performance to the plaintiffs.

34.True it is, it was specifically averred in each plaint that the plaintiff emphatically states that ever since the date of agreement, he has been ready and willing to perform his part of the contract, and the plaintiff is ready to pay or deposit the balance of sale consideration to the first defendant at any time. On the contrary, the defence plea was that the last payment was made in March, 1994 immediately after the memorandums of understanding, and the plaintiffs had not shown their readiness and willingness all along these period, and thus, though the averments are found in the plaints, there was no proof to show that they were ready and willing to perform their part of the contract by making payment of balance of consideration at any point of time. On the question of readiness and willingness, the Law is well settled. What is readiness and willingness to perform the terms of the contract as understood in Section 16(c) of the Specific Relief Act came up for consideration by the Apex Court in a decision reported in (2002) 9 SCC 582 (PUSHPARANI S.SUNDARAM AND OTHERS VS. PAULINE MANOMANI JAMES(DECEASED) AND OTHERS. The Supreme Court has held as follows:

> "4. The only question raised before the High Court, which it considered, to which we are called upon for consideration is, whether the appellants were always ready and willing to perform their part under the contract. The High Court came to the conclusion that willingness and readiness is no doubt pleaded but they led no evidence to prove it. Thus held, that the plaintiff is not entitled to the decree of specific performance. The submission by the learned counsel for the appellants is that the plaintiff was always willing and ready to perform his part under the contract but mere non-leading of any evidence is not sufficient to reject it. Inference of readiness and willingness could be drawn by the conduct of the plaintiff, the circumstances in a particular case in other words to be gathered from the totality of circumstances.

5. For this, the appellants rely on two circumstances, one, that immediately after the exemption was given by the Ceiling Authorities on 31-3-1982, the present suit was filed in April 1982, and the other the tendering of a further sum of Rs.5000 to the defendant after execution of the agreement of sale. He also reiterates with reference to para 11 of the plaint which pleads that the appellant was and is ready and willing to perform his part under the contract. So far these being a plea that they were ready and willing to perform their part of the contract is there in the pleading, we have no hesitation to conclude, that this by itself is not sufficient to hold that the appellants were ready and willing in terms of Section 16(c) of the Specific Relief Act. This requires not only such plea but also proof of the same. Now examining the first of the two circumstances, how could mere filing of this suit, after exemption was granted be a circumstance about willingness or readiness of the plaintiff. This at the most could be the desire of the plaintiff to have this property. It may be for such a desire this suit was filed raising such a plea. But Section 16(c) of the said Act makes it clear that mere plea is not sufficient, it has to be proved.

6. Next and the only other circumstance relied upon is about the tendering of Rs.5000, which was made on 2-3-1982 which was even prior to the grant of the exemption. Such small feeder to the vendor is quite often made to keep a vendor in good spirit. In this case the only other payment made by the plaintiff was Rs.5000 at the time of execution of the agreement of sale. Thus, the total amount paid was insignificantly short of the balance amount for the execution of the sale deed. Thus in our considered opinion the said two circumstances taken together, is too weak a filament to stand even to build an image of readiness and willingness. Section 16(c) of the Specific Relief Act requires that not only there be a plea of readiness and willingness but it has to be proved so. It is not in dispute that except for a plea there is no other evidence on record to prove the same except the two circumstances. It is true that mere absence of a plaintiff coming in the witness box by itself may not be a factor to conclude that he was not ready and willing in a given case as erroneously concluded by the High Court. But in the present case, not only the plaintiff has not come in the witness box, but not even sent any communication or notice to the defendant about his willingness to perform his part of the contract. In fact no evidence is led to prove the same."

35.In a case reported in (2005) 6 SCC 243 (UMABAI AND ANOTHER VS. NILKANTH DHONDIBA CHAVAN AND ANOTHER), the Apex Court has held thus:

"30.It is now well settled that the conduct of the parties, with a view to arrive at a finding as to whether the plaintiff-respondents were all along and still are ready and willing to perform their part of contract as is mandatorily required under Section 16(c) of the Specific Relief Act must be determined having regard to the entire attending circumstances. A bare averment in the plaint or a statement made in the examination-in-chief would not suffice. The conduct of the plaintiffs/respondents must be judged having regard to the entirety of the pleadings as also the evidences

brought on records.

....

38."Inference of readiness and willingness could be drawn by the conduct of the plaintiffs, the circumstances in a particular case in other words to be gathered from the totality of the circumstances.""

36.From the above decisions, it would be quite clear that in order to satisfy the requirements of Section 16(c) of the Specific Relief Act, mere plea though specifically made in the suit for specific performance, that the plaintiffs were ready and willing would not be sufficient. But, that must be proved by acceptable evidence. In the instant case, even the statement of P.W.1 in the box that the plaintiffs were all along ready and willing to perform their part of the contract by paying the balance of consideration would not be sufficient. According to P.W.1, he had not issued any notice for nearly 2 = years after the disposal of the writ petition and before filing the suit. Not even a scrap of paper has been filed to indicate that the plaintiffs were ready and willing. The contention put forth by the respondents' side that the plaintiffs have specifically averred in the plaints and in order to prove the same, P.W.1 was examined would not satisfy, in the considered opinion of the Court, the requirement of Section 16(c) of the Specific Relief Act. The Court can even comment that the evidence of P.W.1 cannot be accepted at all.

37.Admittedly, the first defendant has filed the suit against the plaintiffs in O.S.No.3400 of 1998 on the file of the City Civil court, Madras for permanent injunction not to interfere with the peaceful possession and enjoyment of the ground floor of the suit property, wherein a branch of the Indian Bank was being run. Apart from that, the defendants have also filed RCOP No.248 of 1999 against the plaintiffs seeking eviction on the ground of willful default. Thus, it would be quite clear that those legal proceedings were initiated by the defendants against the plaintiffs, and they were pending during the interval of 2 years, i.e. after the disposal of the writ petition and before the filing of the instant suits. Naturally, it would indicate the strained relationship of the parties. In such circumstances, the contentions put forth by the respondents' side that after the disposal of the writ petition, the plaintiffs personally and through messengers were going on making many a demand on the defendants to execute the sale deed by accepting the balance of consideration, cannot but be a ruse invented for the purpose of the case, and hence it cannot but be rejected as false. Thus, all would indicate that except the mere averments made in the plaints that the plaintiffs were ready and willing to perform their part of the contract and the self serving unacceptable testimony of P.W.1 as stated above, no material was available to accept the case. In a given case like this, when the plaintiff comes forward for the equitable remedy of specific performance, he must strictly plead and prove the mandatory provision under Section 16(c) of the Specific Relief Act, and in default, he is not entitled for the relief. On that ground also, the plaintiffs could not succeed.

38.As far as the conduct of the parties was concerned, one was complaining of the conduct of the other. On appraisal of the pleadings and the evidence both oral and documentary available, this Court is afraid whether it could accept or appreciate the conduct of the plaintiffs to grant the equitable remedy of specific performance. The agreements were entered into between the parties in

the year 1991 as could be seen from Exs.P4 to P7. It was not the case of the plaintiffs that they were put in possession of any part of the property that time. Admittedly, the property consists of two floors. At the time when the agreements were entered into, the ground floor was in the occupation of the Indian Bank branch as a tenant, and the first floor was in the occupation of the defendants. The memorandums of understanding were entered into between the parties in the month of January 1994. Even in the memorandums of understanding, there is nothing to indicate any term under which it was agreed that the possession of any part of the property should be given to the plaintiffs. It is quite clear from the evidence that at the time when the suits were filed, the plaintiffs were in possession of the first floor of the property. The defendants have filed RCOP 248/99 against the plaintiffs stating that the plaintiffs entered into the said agreement with the defendants on 10.2.1994 in respect of the entire first floor as well as the godown at the ground floor, and since the rent was not paid from the very commencement, they were to be evicted. It remains to be stated that the plaints were thoroughly silent in respect of the occupation of the first floor by the plaintiffs from 1994 till the time of the filing of the suits. A feeble stand was taken at the time of arguments by the respondents that the plaintiffs were put in possession immediately after the memorandums of understanding. At this juncture, no pleading or no evidence through P.W.1 was available. Though it is contended by the defendants side that the plaintiffs were given possession pursuant to the lease agreement, the plaintiffs have denied the lease. But, there is no corresponding clause for delivery of possession of any part of the property in the memorandums of understanding. No other material is also available to indicate that the plaintiffs were given possession. In such circumstances, a duty is cast upon the plaintiffs to plead and prove how they got into possession of the property.

39.The contention put forth by the learned Senior Counsel for the respondents that the possession of the first floor of the property by the plaintiffs is admitted by the defendants pursuant to a lease agreement, and hence, it need not be pleaded. But, this contention cannot be countenanced. In a suit for specific performance on the strength of an agreement for sale, where no part of the property was actually given to the plaintiff at the time of agreement, and during the pendency of the agreement, the plaintiff has got the possession of a part of the property, a duty was cast upon the plaintiff to specifically aver how he got possession of the said property. In the instant case, the plaintiffs have not even whispered in the plaints how they got possession of the first floor of the property, and hence it can be commented that the plaints in that regard were lacking.

40.Apart from the above, as per the agreements, the defendants must hand over vacant possession of the property. One of the complaints made by the plaintiffs against the defendants was that they did not keep the property vacant nor deliver possession at the time of the execution of the document, and hence, the plaintiffs at the time of the filing of the suits felt the mentioning of their possession in the property as an impediment. Since the plaintiffs who are in possession of a part of the property, cannot complain the other side, they have not removed the superstructure. This would speak about the conduct of the plaintiffs.

41.It is pertinent to point out that the plaintiffs during the currency of the agreements and after the disposal of the writ petition have attempted to trespass into the ground floor of the property where Indian Bank was running its office. The Indian Bank and the defendants have made a complaint to the jurisdictional police. The defendants have also filed the suit in O.S.No.3400/1998 for permanent

injunction to restrain the respondents/plaintiffs from interfering with the peaceful possession and enjoyment of the ground floor by the Indian Bank branch. Thus, it would be quite clear that the plaintiffs instead of making the payment of balance of consideration and demanding for the execution of the sale deed, have attempted to vacate the Indian Bank by forcible method which would speak of the conduct of the plaintiffs during the relevant time, which, in the opinion of this Court, would disentitle them to the equitable relief of specific performance. The lack of pleading in respect of the possession of the plaintiffs in respect of the first floor of the property and the attempted trespass of the plaintiffs into the ground floor of the property where Indian Bank was being run, in the opinion of the Court, would be adding factors to refuse the relief of specific performance, an equitable remedy. All put together would go to show that the plaintiffs were not entitled for the relief, and hence, all the suits have got to be dismissed.

42.It is well settled proposition of law that the grant of decree of specific performance lies in the discretion of the Court, and it is always not necessary to grant specific performance simply for the reason that it is legally to do so. The Court in its discretion can direct either of the party to make an additional payment to the other while granting or refusing the decree of specific performance. In the instant case, though the Court has held that the plaintiffs are not entitled to the equitable remedy of specific performance, it is a fit and proper case where the defendants should be directed to return the respective amounts paid by the plaintiffs, along with interest at 9% per annum from the date of respective payments till realisation. The defendants/respondents are in possession of the first floor of the property and also the godown pursuant to the agreements and the memorandums of understanding. Since the relief of specific performance on the basis of the agreements is denied, the plaintiffs are liable to hand over possession to the appellants/defendants.

43.In the result, all these original side appeals are allowed setting aside the judgment and decree of the trial Court. The appellants/defendants are directed to return the respective amounts paid by the plaintiffs, along with interest at 9% per annum from the date of respective M.CHOCKALINGAM, J.

AND K.VENKATARAMAN, J.

nsv/ payments till realisation. Three months' time is given for payment from this day. On such payment, the respondents/plaintiffs should hand over possession to the appellants/defendants. Both namely payment and handing over possession, should be done simultaneously. The parties are directed to bear their costs.

(M.C.,J.) (K.V.,J.) 25-7-2008 Index: yes Internet; yes nsv/ of 2003