

Smt. Veena Singh vs Shri Azad Singh Meena on 13 June, 2023

Author: Arun Kumar Sharma

Bench: Arun Kumar Sharma

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IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE ARUN KUMAR SHARMA

FIRST APPEAL No. 362 of 2014

BETWEEN: -

SMT. VEENA SINGH W/O RITURAJ SINGH R/O J-3/504
GULMOHAR COLONY, BHOPAL, (MADHYA
PRADESH)).

(BY SHRI PRANAY CHOUBEY- ADVOCATE)

AND

1. SHRI AZAD SINGH MEENA S/O LATE SHRI
BHAWARJI MEENA R/O GRAM BARAI TAH.
HUZUR DISTT. BHOPAL (MADHYA PRADESH)
2. SHRI RAMESH SINGH S/O LATE SHRI
BHAWARJI MEENA R/O. GRAM BARAI,
TAHSIL HUZUR, DISTRICT BHOPAL
(MADHYA PRADESH)
3. BHAIYALAL MEENA S/O LATE BHAWARJI
MEENA, R/O. GRAM BARAI, TAHSIL HUZUR,
DISTRICT BHOPAL (MADHYA PRADESH).
4. THE STATE OF MADHYA PRADESH (MADHYA
PRADESH)

(SHRI ASHISH GIRI- ADVOCATE FOR RESPONDENTS NO. 1 TO 3 AND SHRI
VERMA - PANEL LAWYER FOR RESPONDEN NO. 4 / STATE)

Reserved on : 11-05-2023

Signature Not Verified
Signed by: JITENDRA
KUMAR PAROUHA
Signing time: 6/13/2023
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Pronounced on : 13-06-2023

This appeal having been heard and reserved for order,
pronouncement this day, the court pronounced the following:
JUDGMENT

With the consent of the parties, the matter is finally heard.

2. Feeling aggrieved and dissatisfied with the impugned judgment and decree dated 28.01.2014 passed in R.C.S.No.203-A/2011 by learned First Additional District Judge, Bhopal, whereby the suit instituted by the appellant / plaintiff for specific performance of contract has been dismissed.

3. The facts leading to the present appeal in a nutshell are that the appellant as plaintiff instituted a civil suit against the respondents no. 1 to 3 being the defendants, before the First Additional District Judge, Bhopal, for grant of decree of specific performance of the contract / agreement in respect of the suit schedule property bearing Khasra No.271/1-K, area 2 acre i.e. 0.810 hectare situated in village Barai, Patwari Halka No.43, Vikas Khand Fanda, Tahsil Huzur, District Bhopal and a relief of permanent injunction was also sought against the respondents no. 1 to 3 to the effect that they be restrained from alienating / selling the suit property to a third party and they be also restrained from interfering in the possession of the plaintiff. In the plaint, the plaintiff alleged that on 29.09.2006 the original defendants appointed Keshav Vajpayee as power of attorney for selling the disputed property within a period of one year from the date of alleged agreement dated 29.09.2006. As per the plaint averment, initially on 29.09.2006 defendants no. 1 to 3 entered into an agreement to sell the suit schedule property to one Vivek Kumar Soni for a sale consideration of Rs.7,00,000/- and on the date of agreement, the defendants received three cheques of Krishna Mercantile Cooperative Bank Limited for Rs.7,00,000/-. According to the agreement, sale deed was only remained to be done. As Vivek Kumar Soni was later-on not interested to purchase the suit schedule property, therefore, Keshav Vajpayee, power of attorney holder executed an agreement to sell the schedule property to the plaintiff on 28.08.2007 with due consent of Vivek Kumar Soni. As Vivek Kumar Soni had paid full consideration of sale to the defendants, therefore, it was agreed to between the parties that the plaintiff would pay the aforesaid amount to Vivek Kumar Soni. According to the

agreement dated 28.8.2007 Ex.P/2, the plaintiff paid Rs.2,50,000/- to Vivek Kumar Soni through cheques no.2584284 dated 7.8.2007 and remaining amount was agreed to be paid within eight months from the date of agreement.

4. According to the plaintiff, she was ready and willing to perform her part of contract. The defendants agreed to execute the sale deed on 31.3.2008 in favour of the plaintiff, and balance amount of Rs.4,50,000/- through cheque dated 5.10.2007 was paid to Vivek Soni. As such, the entire sale consideration was paid to Vivek Soni as per the agreement dated 28.8.2007 Ex.P/2. The plaintiff also purchased stamp of Rs.51,000/-. On 31.03.2008 the defendants and Vivek Soni handed over the possession of the disputed property to the plaintiff and they also agreed to execute the sale deed in favour of the plaintiff in the office of Dy. Registrar. But only defendant no. 1 appeared in the office and the defendants no. 2 and 3 did not turn up. On asking by the plaintiff, they informed that they are busy in some other works. As per the plaintiff, the defendants started resilience and the conduct of the respondents no. 2 and 3 had been dilly dally. The plaintiff sent a registered notice to the defendants on 22.3.2011 making a request therein for remaining present before the office of Registrar on 28.3.2011 for execution of the sale deed in the terms and conditions of the agreement. As per the plaint averments, the plaintiff was always ready and willing to perform her part of contract but the defendants no. 2 and 3 were intentionally avoiding to execute the agreement and they were not interested to perform their part of contract and avoided to execute the agreement.

5. Since defendants no. 2 and 3 did not appear in the office of the Registrar for execution of the sale deed according to the agreement, the appellant herein / original plaintiff filed the civil suit for specific performance of contract / agreement and also for permanent injunction restraining the respondents / defendants no. 1 to 3 from transferring / alienating the suit land to other persons.

6. The respondents / defendant no.1 to 3 by filing their written statement denied the pleadings of the plaint and contended that the plaintiff had concocted and forged the documents with the help of influential person with a view to deceive the innocent persons like the defendants. They also specifically stated that there was no agreement with Vivek Kumar Soni and they had not received any amount from Vivek Kumar Soni and from the appellant also. They also raised other objections. The State was a formal party.

7. The trial Court on the basis of the pleadings of the parties, framed as many as 11 issues, recorded the evidence of the parties and after appreciating the evidence, dismissed the suit vide impugned judgment and decree dated 28.1.2014.

8. The learned counsel appearing on behalf of the appellant has contended that the trial court has committed grave error of law and facts in holding that the plaintiff failed to perform her part of contract in terms of agreement dated 28.8.2007 (Ex.P/2). Trial court has also failed to appreciate the affidavit sworn by Rituraj Singh (PW-1) filed on 5.9.2012 and remaining amount was not paid to the defendants no. 2 and 3. Further, contended that sale deed dated 31.3.2008 marked as Ex.P/1 contains the details of the payment made to Vivek Kumar Soni. In clause 3 of the said sale deed, it is clearly mentioned that amount of sale consideration has already been paid by the purchaser.

Further contended that learned trial court while deciding the issue no. 5 has rightly held that the sale deed dated 31.03.2008 has been executed by the respondents no. 1 / defendant no. 1 Azad Singh in favour of the plaintiff. In support of the said contentions, learned counsel appearing on behalf of the appellant cited the judgment of the Hon'ble Supreme Court in the case of Smt. Sanata Bala Debnath and others reported in 1971 AIR (SC) 1028 wherein it has been held in para 7 of the judgment that when the sale deed contains the recital that payment has been even if before execution of sale deed and there is no other documentary evidence to prove payment, the burden of proving that the consideration was not received by the vendor lay on vendor or seller. Further, in the case of Shanti Bai vs. Amarchand reported in 1979 (1) MPWN 169 this court has held in para 2 of the judgment that decree for specific performance of contract should be passed when full consideration has been paid and the possession of the land has already been obtained by purchaser. Reliance has also been placed in Koushal Bai v. Nathulal, 1978 (1) MPWN 12, this court has held in para 2 of the judgment that unless the defendant or seller established fraud the sale deed should have been accepted ex-facie correct and honest in its recitals regarding payment of sale consideration and possession and Rajendra Prasad Dwivedi vs. Atul Kumar , 2005 (5) MPHT 383, this court has held in para 10 of the judgment that prima facie there is no material to show that the sale deed was executed in the state of intoxication by defendant no.2 without understanding or without receiving consideration. Further reliance is placed in judgment of Hon'ble the Supreme Court in the case of UN Krishnamurthy (Thr. LRs) v. AM Krishnamurthy in civil appeal no.4703/22 (para 43); and prayed that the appeal be allowed by passing a decree for specific performance of contract and permanent injunction in favour the appellant.

9. Per contra, learned counsel for the respondents no. 1 to 3 has argued that the time was of the essence of the contract as a specific period was mentioned for the deposit of the remaining sale consideration and in fact the consequences of the failure to deposit the remaining sale consideration have also been explicitly spelled out in the agreement to sale dated 29.09.2006. However, learned counsel for the respondents has supported the findings of the impugned judgment and decree and submitted that the learned trial court has not committed any illegality and perversity in passing the impugned judgment and decree which is based on proper appreciation of pleadings, documents and evidence available on record and submitted that the interference is not warranted in the well reasoned impugned judgment and decree. To buttress his contentions, learned counsel has relied upon the cases of the Supreme Court in Jagjit Singh vs. Amarjit Singh (2018) 9 SCC 805 {paras 3 to 5}; J.P. Builders and anr. v. A. Ramadas Rao and another (2011) 1 SCC 429 {paras 25 to 27}; Man Kaur vs. hartar Singh Sangha (2010) 10 SCC 512 {paras 17, 23}, Thiruvengadam Pillai vs. Navaneethammal and another (2008) 4 SCC 530 {para 19}; Ayithi Appalanaldu v. Petla papamma, 2011 SCC Online AP 130 {para 38 to 42}; Rami Bai vs. Life Insurance Corporation of India, 1981MPLJ 192 { para 11}; Satish Kumar Gupta and others vs. State of Haryana and other (2017) 4 SCC 760 {para 19 to 20} and Pramod Kumar Jain and others vs. Kushum Lashkari and others (2020) 2 MPLJ 357 and contended that the relief of specific performance is an equitable relief and weighing the entire facts and circumstances, the trial Court dismissed the suit.

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

11. On perusal of the agreement dated 28.08.2007 (Ex.P/2) it is found that defendant no. 1 Azad Singh had only made signature and no other defendants had made signature on the agreement in question and therefore, the defendant no.1 Azad Singh had only executed the sale deed in favour of the plaintiff. However, in his written statement, he denied any agreement to be done with Vivek Soni. Thus, it is clear that agreement was only done with defendant no.1 and not with the defendants no. 2 and 3. Moreover, on perusal of the agreement dated 29.09.2006 it is found that power of attorney was done for a fixed period of one year. The sale deed alleged to have been executed by defendant no.1 does not contain stipulations regarding the execution of two agreement dated 29.9.2006 and 28.8.2006. It is also gathered from the record that no attesting witness or vendee entered into witness box to testify the execution of the alleged sale deed. No efforts were made by the plaintiff for getting the sale deed executed from the defendants no. 2 and 3 as she was not ready and willing to get the contract performed in her favour. Thus, the finding given by the trial court in respect of issue no. 5 is correct and hereby affirmed.

12. Further, on perusal of the agreement to sale date 20/8/2007 (somewhere it is mentioned 28.8.2007) it is found that the plaintiff entered into an agreement with the defendants through power of attorney holder Keshav Vajpayee and Vivek Soni who before the plaintiff was interested to purchase the schedule property had also accorded consent in favour of the plaintiff. Thus, it is also gathered from the record that the finding given by the trial court in respect of issue no. 1 is correct and is hereby affirmed.

13. So far as the others issues are concerned, it is alleged in the plaint that initially the defendants entered into an agreement to sell the suit property with one Vivek Soni for valuable sale consideration of Rs.7,00,000/- (Rs. Seven Lacs only) through power of attorney holder and it is also alleged that the said consideration were paid through three cheques and the date and cheque numbers are also mentioned in the plaint. But, no evidence with regard to payment of the sale consideration has been brought on record nor Vivek Soni was called for entering into witness box for adducing his evidence. It is also not out of record to place here that Vivek Soni has not been made party in the civil suit while he was a necessary party. Thus, the plaint also suffers from non-joinder of the necessary party and on this point alone; the suit could have been dismissed. Vivek Singh was a star witness who could have very well divulged the actual facts of the case. Keshav Singh (PW-2) power of attorney holder has averred in his statement that at the time of agreement, the plaintiff had given two cheques to Vivek Soni but he showed ignorance about their payment. He also stated that he does not know whether the plaintiff had made payment to Vivek Soni or not. It is also not evident from the record that the plaintiff to fortify the payment had ever filed any bank account, pass-book and statement of account or any other document from which it can be gathered that the plaintiff had made payment to Vivek Soni. However, Rituraj, husband of the plaintiff, has deposed in his statement that the payment was made to the respondents in terms of the agreement in question but from the record it is axiomatic that defendant no. 1 Azad Singh who is said to have executed the sale deed in favour of the plaintiff and the witnesses of the sale deed namely Satish S/o. Sakharam and Shankerlal S/o. Hariram have been brought in the witness box in respect of the payment in question. The plaintiff has further failed to give explanation as to why the aforesaid persons have not been enlisted in the list of witnesses. It is gathered from the record that no payment in respect of the agreement has been made either by the plaintiff or Vivek Soni to the respondents. Since the

payment as per the terms and conditions of the agreement is not proved then in such circumstances, the respondents were not bound to execute the sale deed in favour of the plaintiff. However, there was a condition precedent in the agreement that after payment of full consideration, execution in terms of the agreement to sale shall be made.

14. Further, there is no evidence and even pleading in respect of the date, on which, the appellant / plaintiff had approached the respondents no. 2 and 3 for payment of residuary amount in compliance of conditions mentioned in the agreement. On perusal of the plaint it is found that the plaintiff in her plaint had assigned three cause of action in her favour, firstly on 31.3.2008 when the defendants no. 2 and 3 did not appear in the office of Registrar for execution of the sale deed in compliance of the agreement and secondly on 19.4.2008, when sale deed was not executed after lapse of eight months from the agreement dated 20.8.2007. The plaintiff had also assigned third cause of action to be arisen on 28.3.2011 when after giving notice to the defendants no. 2 and 3 calling upon for execution of the sale deed. From the plaint averments it is crystal clear that the plaintiff had given information to the defendants no. 2 and 3 for execution of the sale deed as per the agreement on 28.3.2011 that too almost three years after the second cause of action to be arose on 19.4.2008. The plaintiff had not explained why she remained silent for a period of three years. From the conduct of the plaintiff it is candidly evident that since beginning the plaintiff had done subterfuge with the defendants and also made chicanery on them for not executing the sale deed in terms of the agreement. In fact, the entire case of the plaintiff is based on prevarication.

15. On perusal of the entire evidence of the case and the material available on record, it is found that the plaintiff had failed to make the payment as per the terms and conditions of the agreement and she had also not fulfilled the conditions ascribed in the agreement. The plaintiff had not made any concrete efforts for getting the sale deed executed from the defendants no. 2 and 3. Thus, a conclusion can very well be drawn that the plaintiff was neither ready nor willing to perform her part of the contract. Since, there is a breach of condition on the part of the plaintiff then certainly, the appellant / plaintiff has no right to lie a suit for specific performance of contract and thus, the learned trial Court has rightly given finding in this regard. In fact, the plaintiff has no legs to stand on her own. Thus, the findings arrived at by the trial Court in this regard is hereby affirmed.

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

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

Explanation.-For the purposes of clause (c),-

(i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court;

(ii) the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction.

17. The plaintiff is under an obligation to plead and prove her readiness and willingness to perform her part of the contract. I find force in the submission made by learned counsel for the respondents as the Supreme Court in the case of Kalawati (dead) Through Lrs and others vs. Rakesh Kumar and others, (2018) 3 SCC 658 in paragraph-18 relying upon a judgement reported in (1996) 4 SCC 526 parties being Acharya Swami Ganesh Dasji Vs. Sita Ram Thapar, has observed as under :-

"18. In Acharya Swami Ganesh Dassji v. Sita Ram Thapar-(1996) 4 SCC 526 this Court drew a distinction between readiness to perform the contract and willingness to perform the contract. It was observed that by readiness it may be meant the capacity of the plaintiff to perform the contract which would include the financial position to pay the purchase price. As far as the willingness to perform the contract is concerned, the conduct of the plaintiff has to be properly scrutinised along with the attendant circumstances. On the facts available, the Court may infer whether or not the plaintiff was always ready and willing to perform his part of the contract. It was held in para 2 of the Report: (SCC p. 528).

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

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

"15. Coming to the facts of the present case, the sole document relied upon by the appellant to prove her readiness and willingness is the approval of loan on 30-7-2004 by ICICI. Such approval was subject to two conditions viz. furnishing of income tax documents of the appellant and the property documents. M/s ICICI has sent an

email on 12-5-2005 to the husband of the appellant requiring an agreement to sell on a stamp paper of Rs 50 to be executed between the parties, as per the legal opinion sought from the empanelled lawyer, without which ICICI will not be able to disburse the loan. Admittedly, no agreement was executed on stamp paper, therefore, the appellant could not avail loan of Rs 50 lakhs from ICICI. Independent of such loan, there is mere statement that the appellant and her husband have income of Rs 80 lakhs per annum unsupported by any documentary evidence. Such statement will be in the nature of ipse dixit of the appellant and/or her husband and is without any corroborating evidence. Such self-serving statements without any proof of financial resources cannot be relied upon to return a finding that the appellant was ready and willing to perform her part of the contract. The appellant has not produced any income tax record or the bank statement in support of her plea of financial capacity so as to be ready and willing to perform the contract. Therefore, mere fact that the bank has assessed the financial capacity of the appellant while granting loan earlier in respect of another property is not sufficient to discharge of proof of financial capacity in the facts of the present case to hold that the appellant was ready and willing to perform her part of the contract. Such is the finding recorded by both the courts below as well."

19. In the present case also, the plaintiff did not produce any evidence except the oral evidence to substantiate her readiness and willingness to pay the remaining sale consideration. In absence of any cogent evidence and also taking note of the fact that the plaintiff had not paid remaining sale consideration and she also appeared indifferent for getting the sale deed executed.

20. The Supreme Court in the case of Surinder Kaur (dead) Through Lrs Jasinderjit Singh (Dead) through Lrs vs. Bahadur Singh (Dead) through Lrs (2019) 8 SCC 575, has observed as under:-

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

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

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

9. The first issue is whether the promises were reciprocal promises or promises independent of each other. There can be no hard-and-fast rule and the issue whether promises are reciprocal or not has to be determined in the peculiar facts of each case.

As far as the present case is concerned, the vendor, who was a lady received less than 20% of the sale consideration but handed over the possession to the defendant, probably with the hope that the dispute would be decided soon, or at least within a year. Therefore, Clause 3 provided that if the case is not decided within one year, then the second party shall pay to the first party the customary rent for the land. It has been urged by the respondents that the High Court rightly held that this was not a reciprocal promise and had nothing to do with the sale of the land. One cannot lose sight of the fact that the land had been handed over to Bahadur Singh and he had agreed that he would pay rent at the customary rate. Therefore, the possession of the land was given to him only on this clear-cut understanding. This was, therefore, a reciprocal promise and was an essential part of the agreement to sell.

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

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

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

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

14. A perusal of Section 20 of the Specific Relief Act clearly indicates that the relief of specific performance is discretionary. Merely because the plaintiff is legally right, the court is not bound to grant him the relief. True it is, that the court while exercising its

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

21. In view of the above, it is clear that a person who seeks a decree of specific performance of contract then the same cannot be enforced in her favour unless she proves that she was always ready to perform the essential terms of the contract which was to be performed by her. Here, in this case, the plaintiff did not give any notice to the defendants showing that she had an arrangement to pay remaining sale consideration. The plaintiff in her plaint has clearly averred that she had only paid Rs.2,50,000/- through cheque no.2584284 dated 7.8.2007 to one Vivek Soni and the remaining amount was agreed to be paid within 8 months to Vivek Soni at the time of execution of the sale deed. In the present case, the appellant / plaintiff did not fulfill the conditions of the agreement dated 20.8.2007 and 29.09.2006 inasmuch as the agreement for sale of the suit property had been taken place between the appellant and the defendants for a sum of Rs.7,00,000/-. Hence, the plaintiff had already violated the terms and conditions of the agreement dated 28.8.2007. Further, the plaintiff did not produce any evidence except the oral evidence to substantiate her readiness and willingness to pay the remaining sale consideration. Accordingly, I am of the opinion that the trial Court was right in holding and deciding the issues No. 2 and 4.

22. The Supreme Court in the case of Syed Dastagir vs. T. R. Gopalkrishna Setty (1999) 6 SCC 337 has observed as under:-

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

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

(a)-(b) * * *

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

Explanation.-For the purposes of clause (c),-

(i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court;

(ii) the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction."

It is significant that this explanation carves out a contract which involves payment of money as a separate class from Section 16(c). Explanation (i) uses the words "it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court". (emphasis supplied) This speaks in a negative term what is not essential for the plaintiff to do. This is more in support of the plaintiff that he need not tender to the defendant or deposit in court any money but the plaintiff must [as per Explanation (ii)] at least aver his performance or readiness and willingness to perform his part of the contract. This does not mean that unless the court directs the plaintiff cannot tender the amount to the defendant or deposit in the Court. The plaintiff can always tender the amount to the defendant or deposit it in court, towards performance of his obligation under the contract. Such tender rather exhibits the willingness of the plaintiff to perform his part of the obligation. What is "not essential" only means need not do but does not mean he cannot do so. Hence, when the plaintiff has tendered the balance amount of Rs 120 in court even without the Court's order it cannot be construed adversely against the plaintiff under Explanation (i). Hence, we do not find any merit in the submission of the learned counsel for the respondents."

[Emphasis Supplied]

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

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

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

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

25. In view of the aforesaid discussion and in the facts and circumstances of the case, so far as the reliance placed on the decisions by learned Advocate appearing on behalf of the appellant / plaintiff, are concerned, none of the decisions shall be applicable to the facts of the case on hand; and more particularly the findings recorded by the learned trial court, this court also confirms. Apart from above, it would be profitable to mention here that the plaintiff herself in the suit has not sought any alternative relief that if execution of agreement to sale is not possible due to any legal obstacle, then the respondents be directed to refund of the amount which was paid at the time of agreement to sale. One glaring aspect of the matter is that initially the plaintiff filed the suit against the defendants seeking execution of ratification deed in her favour and permanent injunction which was later on amended seeking relief of specific performance of contract. Thus, from the conduct of the plaintiff it is evident that she was not ready and not always willing to perform her part of the contract and only to give rise a cause of action she sent a notice dated 28.3.2011 to the defendants, otherwise there was no occasion to wait for a period of three years from 19.4.2008. The court helps those who are vigilant and do not slumber over their rights.

26. Learned counsel for the appellant has tried to bring on record additional documents by filing IA No.7355/2023 under Order 41 Rule 27 CPC. By the said additional documents, the appellant inclined to bring on record the evidence showing that she had paid the sale consideration to one Vivek Soni who prior to the plaintiff had entered into an agreement to purchase the schedule property.

27. Hon'ble the Supreme Court in *Satish Kumar Gupta and others vs. State of Haryana and others* (2017) 4 SCC 760 has observed in para 19 and 20 which read as under :-

19. The other part of the impugned order permitting additional evidence and remanding the case for fresh decision is uncalled for. No case was made out for permitting additional evidence on settled principles under Order XLI Rule 27 of CPC.

The provision is reproduced below:-

"27. Production of additional evidence in Appellate Court.- (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if -

(a) the court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or (aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, The Appellate Court may allow such evidence or document to be produced, or witness to be examined. (2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission."

20. It is clear that neither the Trial Court has refused to receive the evidence nor it could be said that the evidence sought to be adduced was not available despite the exercise of due diligence nor it could be held to necessary to pronounce the judgment. Additional evidence cannot be permitted to fill-in the lacunae or to patch-up the weak points in the case. There was no ground for remand in these circumstances.

28. Similar view has also been taken by this Court in Pramod Kumar Jain and others vs. Kushum Lashkari and others, reported in 2020 (2) MPLJ

358. Relevant paragraphs no. 35 and 37 are quoted herein below :-

35. Even otherwise Even otherwise, through this application, appellants have not successfully demonstrated the due diligence factor and it appears that these documents are not helpful for reaching at just conclusion of litigation. It appears to be a dilatory tactics. Those documents are not such material documents which may change the fate of litigation conclusively therefore, documents are rejected to be taken on record. Provisions of Order 41 Rule 27 of CPC do not authorize any lacuna or gaps in evidence to be filled up at the stage of appeal. It is the duty of the litigating party to show due diligence. (See: N. Kamalam (Dead) and Another Vs. Ayyasamy and Another, (2001) 7 SCC 503 and Basayya I. Mathad Vs. Rudrayya S. Mathad and Others, (2008) 3 SCC (120) and recent pronouncement of the Hon'ble Apex Court in the case of Jagdish Prasad Patel (D) Thr. Lrs. Vs. Shivnath and Others, (2019) 6 SCC 82.

37. This Court in the case of Rama Rao and Others Vs. Shantibai and Others, 1979 JLJ 383 has held that appreciation of evidence by the trial Court ought not be interfered casually because the trial Court has the advantage of seeing and hearing the witnesses while recording evidence.

29. Apart from above, on the perusal of the aforesaid IA, it is found that this application for taking additional documents on record has been filed on 10.5.2023 at the time of final hearing of this appeal while the suit was instituted in the year 2011, meaning thereby, after a period of almost 12 years, the aforesaid application has been filed. Further, no sufficient and bona fide reason has been assigned in this application. From the conduct of the plaintiff it appears that the plaintiff was not inclined to bring on record the documents in time. Under these circumstances, IA No.7355/2023 is hereby rejected.

30. Ex consequenti, this Court is of the considered view that the court below has rightly passed the impugned judgment and decree. Hence, the judgment of the trial Court is to be upheld. The first appeal fails and is hereby dismissed.

The judgment and decree dated 28.01.2014 passed in R.C.S. No.203-A/2011 stands confirmed. Accordingly, the order granting stay on 19.06.2014 stands vacated. However, in the facts and circumstances of the case, there shall be no order as to costs. Decree be drawn accordingly.

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

(ARUN KUMAR SHARMA) JUDGE JP/-