

Veena Rani vs Suraj Bansal on 8 April, 2025

Author: Pankaj Jain

Bench: Pankaj Jain

Neutral Citation No:=2025:PHHC:048821

RSA No.5027 of 2017 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Reserved on 5th of April, 2025
Pronounced on 8th of April, 2025

RSA No.5027 of 2017 (O&M)

Veena Rani

....Appellant

Versus

Suraj Bansal

....Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Sanjiv Gupta, Advocate
for the appellant.

Mr. Aakash Singla, Advocate
for the respondent.

PANKAJ JAIN, J. (ORAL)

Defendent-Vendor is in appeal.

2. For convenience, the parties hereinafter are referred to by their original position before the Court of the First instance i.e. appellant as defendant and respondent as plaintiff.

3. Plaintiff filed suit seeking decree of possession by way of specific performance of agreement to sell dated 03.02.2006 qua residential house constructed on 215 Square Yards as described in the plaint.

4. Plaintiff claimed that defendant agreed to sell the suit property in his favour for a valuable consideration of Rs.30,51,000/- on 03.02.2006 and received earnest money of Rs.7,50,000/-. Parties agreed to get the sale 1 of 27 Neutral Citation No:=2025:PHHC:048821 deed executed on the payment of balance sale consideration of Rs.23,01,000/- on or before 03.05.2006. Plaintiff claimed to have remained present in the office of Sub Registrar, Sirsa on the target date i.e., 03.05.2006 with the balance sale consideration. Defendant failed to come present.

Thereafter, he made repeated requests to the defendant to execute the sale deed and finally served legal notice on her through his counsel on 12.08.2008 calling upon her to fix any date within 15 days from the receipt of the notice and execute the sale deed in his favour. Defendant having failed to respond to the same, plaintiff is entitled for decree of possession by way of specific performance.

5. Suit was contested by the defendant. On facts, defendant admitted execution of agreement to sell in favour of the plaintiff qua the suit property for total sale consideration of Rs.30,51,000/-. Receipt of Rs.7,50,000/- as earnest money was also admitted. Defendant however claimed that she remained present along with her husband on the agreed date in the office of Sub Registrar, Sirsa, upto 5:00 PM. She got her presence marked by swearing an affidavit. It was duly executed/attested by Executive Magistrate, Sirsa. It was further pleaded by the defendant that after she entered into agreement to sell in favour of the plaintiff, her husband Mohari Ram entered into an agreement to purchase a residential house for a consideration of Rs.19,65,000/-. Her husband paid Rs.4,00,000/- to the vendor. Sale deed was to be executed on or before 15.05.2006 on payment of balance consideration. It was to be paid out of the sale consideration 2 of 27 Neutral Citation No:=2025:PHHC:048821 received from the plaintiff on 03.05.2006. Thus time was the essence of the agreement to sell. Plaintiff having failed to perform his part on 03.05.2006, defendant and her husband could not purchase the other property. Defendant further claimed that several requests were made to the plaintiff to get the sale deed executed and registered. However, he refused to perform his part as there was dip in the rates of the property. Defendant thus pleaded that it is the plaintiff who was neither ready nor willing to perform his part and is thus not entitled for relief of specific performance.

6. Court of the First Instance put suit to trial, framing following issues:

"1. Whether the plaintiff is entitled to get the possession of the suit land by way of specific performance of sale agreement dated 03.02.2006?

2. Whether the suit is not maintainable? OPD

3. Whether the plaintiff has got no cause of action and locus-

standi to file the present suit? OPD

4. Whether the plaintiff is estopped by his own act and conduct to file the present suit? OPD

5. Relief."

7. While deciding issue No.1, Trial Court came to the conclusion that both the parties proved their presence. Their respective affidavits attested by the Sub Registrar were proved as Exhibit P-2 and Exhibit D-1.

Plaintiff was required to prove his readiness and willingness. It was held that there being two probable views, the plaintiff is entitled only for alternate relief i.e. for decree of recovery of earnest money along with interest @ 6% 3 of 27 Neutral Citation No:=2025:PHHC:048821 per annum from the date of its payment till the date of actual realization and not for the main relief of specific performance.

8. Dissatisfied, plaintiff approached Lower Appellate Court.

9. Lower Appellate Court after analysing the evidence came to the conclusion that in the absence of there being any register called from the office of Sub Registrar, no inference can be drawn on the basis of the respective affidavits by the appellant and the defendant. The readiness and willingness of the appellant needs to be considered keeping in view the other evidence adduced by the parties. Lower Appellate Court held that the plaintiff proved service of notice, dated 12.08.2008, Exhibit PW4/A. The present suit was filed on 25.04.2009. 25% of the total sale consideration was paid by the plaintiff. There is no evidence on behalf of defendant that she was ready and willing to perform her part of the contract. Her conduct is not appreciable. Time is not the essence of the contract as defendant failed to prove that agreement (Exhibit D-2) was in the knowledge and notice of the appellant. Lower Appellate Court held that it is proved on file that the appellant is and was ready to perform his part of the contract as he had already paid 25% of the total sale consideration and had served legal notice prior to the filing of the suit and held plaintiff entitled for decree of specific performance.

10. Ld. Counsel for the appellant while assailing the impugned judgment and decree passed by the Lower Appellate Court submits that the Lower Appellate Court erred in reversing the burden w.r.t. readiness and 4 of 27 Neutral Citation No:=2025:PHHC:048821 willingness upon the defendant whereas law contemplates that it is the plaintiff, who is required to prove readiness and willingness. He submits that agreement to sell propounded by the plaintiff, is dated 03.02.2006.

Agreed date for sale deed was 03.05.2006. Legal notice was issued on 12.08.2008. Civil Suit was filed on 24.04.2009 just few days prior to expiry of the limitation period. The conduct of the plaintiff itself shows that he was neither ready nor willing to get the sale deed executed. Thus, Lower Appellate Court erred in reversing findings recorded by the Trial Court and in granting main relief to the plaintiff. He submits that it was proved on record by the defendant that her husband further entered into an agreement to purchase the property and thus time was the essence of the contract.

Plaintiff having failed to perform his part on the agreed date, defendant suffered loss. Trial Court thus rightly exercised discretion to deny plaintiff the main relief. The same has been reversed by the Lower Appellate Court without there being any reason. He relies upon law laid down in the case of

M/s Delhi Bhiwani Transport Company Pvt. Ltd. Delhi vs. Ram Niwas Surekha and others, 1980 PLR 249, Sher Singh vs. Gurdial Singh, 1993(3) R.R.R. 258, K.S. Vidyanadam vs. Vairavan (1997) 3 SCC 1, Bismillah Begum (Dead) by LRs vs. Rahmatullah Khan (Dead) by LRs, (1998) 2 SCC 226, A.C. Arulappan vs. Smt. Ahalya Naik, (2001) 6 SCC 600, V. Muthusami (dead) by LRs vs. Angammal (2002) 3 SCC 316, Subedar (Minor) vs. Usman and others, 2005 (3) R.C.R. (Civil) 120, Saradamani Kandappan vs. S. Rajalakshmi and others (2011) 12 SCC 5 of 27 Neutral Citation No:=2025:PHHC:048821 18, Jeet Singh vs. Gursewak Singh and others, 2015(3) R.C.R.(Civil) 82, Alagammal and others vs. Ganesan and another, (2024) 3 SCC 232, P. Ravindranath and another vs. Sasikala and others, 2024(3) R.C.R. (Civil) 542 and Tara Chand (Deceased) through LRs. vs. Krishan Gopal and others - RSA No.919 of 2023 decided on 08.01.2025

11. Per contra, counsel for the respondent/plaintiff has supported the findings recorded by the Lower Appellate Court, contending that mere delay alone in filing the suit for specific performance, cannot be a ground for refusing the main relief when the civil suit has been filed within the statutory period of limitation. He further relies upon ratio of law laid down by the Supreme Court in the case of 'Narinderjit Singh vs. North State Estate Promoters Limited', (2012) 5 SCC 712 to submit that escalation, if any, in the price of land could not be a ground for denying the relief of specific performance. It has been submitted that after grant of decree by the Appellate Court, the plaintiff has already deposited the entire money with the Executing Court thus denial of specific performance at this stage will not be equitable. It has been further contended by Mr. Aakash Singla, Advocate that letter sent to the very address of the vendor, on which the vendor received legal notice, shows that the notice was served upon the vendor. He further submits that the plaintiff having proved affidavit qua his presence before the Sub Registrar, the same shall suffice to prove his readiness and willingness to perform his part. The affidavit should be taken as explicit proof of the fact that the plaintiff/vendee was ready and willing to perform 6 of 27 Neutral Citation No:=2025:PHHC:048821 his part and had necessary funds. He is not required to wave off cash to demonstrate his readiness. He relies upon law laid down in the case of Mademsetty Satyanarayana vs. G. Yelloji Rao and others, 1965 AIR (Supreme Court) 1405, Sukhbir Singh and others vs. Brij Pal Singh and others - Spl. Leave Petition (C) No.11140 of 1996 decided on 10.05.1996, Narinderjit Singh vs. North Star Estate Promoters Limited, (2012) 5 SCC 712, R. Lakshamikantham vs. Devaraji, (2019) 8 SCC 62, P. Daivasigamani vs. S. Sambandan, 2022 AIR Supreme Court 5009 and Pushap Lata vs. Varun Singla, 2025 AIR Punjab and Haryana 17.

12. I have heard counsel for the parties and have gone through records of the case.

13. Before adverting to the merits of the case, it needs to be noticed that the regular second appeal before this Court is to be treated as an appeal under Section 41 of the Punjab Courts Act, 1918 and not under Section 100 of the Code of Civil Procedure, 1908, as held by Five Judges Bench of Supreme Court in the case of 'Pankajakshi vs. Chandrika' (2016) 6 SCC

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14. Thus, the Court is required to examine 'whether question of law arises in the appeal or not?'

15. In the present case, the primary issue that falls for consideration before this Court is:

"a) Whether Lower Appellate Court erred in reversing 7 of 27 Neutral Citation No:=2025:PHHC:048821 burden to prove readiness and willingness upon the defendant?

b) Whether the Appellate Court rightly exercised the discretion in reversing the findings recorded by the Trial Court and was right in granting main relief of specific performance to the plaintiff?"

16. The execution of the agreement to sell is not in dispute. There is no dispute w.r.t. consideration or regarding agreed date or that of the amount of earnest money paid by the plaintiff. The issue relates to readiness and willingness of the plaintiff.

17. Section 16 of the Specific Relief Act, 1963 reads as under:

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

2[(a) who has obtained substituted performance of contract under section 20; or]

(b) who has become incapable of performing, or violates any essential term of, the contract that on his part remains to be performed, or acts in fraud of the contract, or wilfully acts at variance with, or in subversion of, the relation intended to be established by the contract; or

(c) 3[who fails to 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;

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(ii) the plaintiff 4[must prove] performance of, or readiness and willingness to perform, the contract according to its true construction.

The same was considered by the Supreme Court in the case of 'J.P. Builders vs. A. Ramadas Rao' (2011) 1 SCC 429, observed as under:

"XXXXX XXXXX XXXXX

21. Among the three clauses, we are more concerned about clause (c). "Readiness and willingness" is enshrined in clause (c) which was not present in the old Act of 1877. However, it was later inserted with the recommendations of the 9th Law Commission's Report. This clause provides that the person seeking specific performance must prove that he has performed or has been ready and willing to perform the essential terms of the contract which are to be performed by him.

22. The words "ready" and "willing" imply that the person was prepared to carry out the terms of the contract. The distinction between "readiness" and "willingness" is that the former refers to financial capacity and the latter to the conduct of the plaintiff wanting performance.

Generally, readiness is backed by willingness.

23. In *N.P. Thirugnanam v. Dr. R. Jagan Mohan Rao* [(1995) 5 SCC 115] at SCC para 5, this Court held: (SCC pp. 117-18) "5.... Section 16(c) of the Act envisages that the plaintiff must plead and prove that he had performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than those terms the performance of which has been prevented or waived by the defendant. The continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of specific performance. This circumstance is material and relevant and is required to be proved. 9 of 27 Neutral Citation No.: 2025:PHHC:048821 considered by the court while granting or refusing to grant the relief. If the plaintiff fails to either aver or prove the same, he must fail. To adjudge whether the plaintiff is ready and willing to perform his part of the contract, the court must take into consideration the conduct of the plaintiff prior and subsequent to the filing of the suit along with other attending circumstances. The amount of consideration which he has to pay to the defendant must of necessity be proved to be available. Right from the date of the execution till date of the decree he must prove that he is ready and has always been willing to perform his part of the contract. As stated, the factum of his readiness and willingness to perform his part of the contract is to be adjudged with reference to the conduct of the party and the attending circumstances. The court may infer from the facts and circumstances whether the plaintiff was ready and was always ready and willing to perform his part of the contract."

24. In *P. D'Souza v. Shondrilo Naidu* [(2004) 6 SCC 649] this Court observed: (SCC p. 654, paras 19 and 21) "19. It is indisputable that in a suit for specific performance of contract the plaintiff must establish his readiness and willingness to perform his part of contract. The question as to whether the onus was discharged by the plaintiff or not will depend upon the facts and circumstances of each case. No straitjacket formula can be laid down in this behalf.....

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

25. Section 16(c) of the Specific Relief Act, 1963 mandates "readiness and willingness" on the part of the plaintiff and it is a 10 of 27 Neutral Citation No:=2025:PHHC:048821 condition precedent for obtaining relief of grant of specific performance. It is also clear that in a suit for specific performance, the plaintiff must allege and prove a continuous "readiness and willingness" to perform the contract on his part from the date of the contract. The onus is on the plaintiff.

26. It has been rightly considered by this Court in R.C. Chandiok v. Chuni Lal Sabharwal [(1970) 3 SCC 140] 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.

27. It is settled law that even in the absence of specific plea by the opposite party, it is the mandate of the statute that the plaintiff has to comply with Section 16(c) of the Specific Relief Act and when there is non-compliance with this statutory mandate, the court is not bound to grant specific performance and is left with no other alternative but to dismiss the suit. It is also clear that readiness to perform must be established throughout the relevant points of time. "Readiness and willingness" to perform the part of the contract has to be determined/ascertained from the conduct of the parties.

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xxxxxx"

(emphasis supplied)

18. Applying the aforesaid parameters to the present case, the Lower Appellate Court held that the affidavits propounded by both the parties do not exhibit their willingness, yet decreed the suit filed by the plaintiff. If affidavit propounded by the plaintiff is ignored, his presence on the appointed date before the Sub Registrar, is not proved. The only evidence which is left, is in form of a legal notice sent after two years of the 11 of 27 Neutral Citation No:=2025:PHHC:048821 appointed date. The civil suit was filed almost a year thereafter. Thus, willingness of the plaintiff is also under cloud. Mr. Singla is right in contending that the plaintiff was not required to flash cash to prove his readiness, but once defendant asserted that the plaintiff was neither ready nor willing to perform his part, the plaintiff was atleast required to prove on record that he had capacity to pay the balance sale consideration of more than Twenty Three Lacs of rupees on 03.05.2006. Plaintiff failed to bring on record any cogent evidence. This Court finds that the Lower Appellate Court erred in law in holding that the plaintiff remained ready and willing to perform his part by observing that defendant failed to prove her readiness and willingness. Onus was on the plaintiff.

19. The other issue raised is time being essence of the agreement to sell and delay in filing suit.

20. Supreme Court in the case of 'Mademsetty Satyanarayana v.

G. Yelloji Rao', 1964 SCC OnLine SC 33 observed as under:

"7. The following are cases in which the court may properly exercise a discretion not to decree specific performance:

I. Where the circumstances under which the contract is made are such as to give the plaintiff an unfair advantage over the defendant, though there may be no fraud or misrepresentation on the plaintiff's part. Illustrations *** II. Where the performance of the contract would involve some hardship on the defendant which he did not foresee, 12 of 27 Neutral Citation No:=2025:PHHC:048821 whereas its non-performance would involve no such hardship on the plaintiff.

Illustrations *** The following is a case in which the court may properly exercise a discretion to decree specific performance:

III. Where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.

*** The First Schedule to the Limitation Act Description of suit Period of Limitation Time from which period begins to run Article 113. For specific Three years The date fixed for the performance of a contract performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.

Under Section 22 of the Specific Relief Act, relief of specific performance is discretionary but not arbitrary : discretion must be exercised in accordance with sound and reasonable judicial principles. The cases providing for a guide to courts to exercise discretion one way or other are only illustrative; they are not intended to be exhaustive. As Article 113 of the Limitation Act prescribes a period of 3 years from the date fixed thereunder for specific performance of a contract, it follows that mere delay without more extending up to the said period cannot possibly be a reason for a court to exercise its discretion against giving a relief of specific performance. Nor can the scope of the discretion, after excluding the cases mentioned in Section 22 of the Specific Relief Act, be confined to waiver, abandonment or estoppel. If one of these three circumstances is established, no question of discretion arises, for either there will be no subsisting right or there will be a bar against its assertion. So, there must be some discretionary field unoccupied by the three cases, otherwise the substantive section becomes otiose. It is really difficult to define that field. Diverse situations may arise which may induce a court not to exercise the 13 of 27 Neutral Citation No:=2025:PHHC:048821 discretion in favour of the plaintiff. It may better be left undefined except to state what the section says, namely, discretion of the court is not arbitrary, but sound and reasonable guided by judicial principles and capable of correction by a court of appeal.

8. Mr Lakshmaiah cited a long catena of English decisions to define the scope of a court's discretion. Before referring to them, it is necessary to know the fundamental difference between the two systems -- English and Indian -- qua the relief of specific

performance. In England the relief of specific performance pertains to the domain of equity; in India, to that of statutory law. In England there is no period of limitation for instituting a suit for the said relief and, therefore, mere delay -- the time lag depending upon circumstances -- may itself be sufficient to refuse the relief;

but, in India mere delay cannot be a ground for refusing the said relief, for the statute prescribes the period of limitation. If the suit is in time, delay is sanctioned by law; if it is beyond time, the suit will be dismissed as barred by time; in either case, no question of equity arises.

9. With this background let us look at the English text-books and decisions relied upon by the learned counsel for the appellant. In Halsbury's Laws of England, Vol. 36, at p. 324, it is stated:

"Where time is not originally of the essence of the contract, and has not been made so by due notice, delay by a party in performing his part of the contract, or in commencing or prosecuting the enforcement of his rights, may constitute such laches or acquiescence as will debar him from obtaining specific performance. The extent of delay which has this effect varies with circumstances, but as a rule must be capable of being construed as amounting to an abandonment of the contract. A much shorter period of delay, however, suffices if it is delay in declaring an option or exercising any other unilateral right; and if the other party has already given notice that he does not intend to perform the contract, the party aggrieved must take 14 of 27 Neutral Citation No:=2025:PHHC:048821 proceedings promptly if he desires to obtain specific performance."

In Fry on Specific Performance, 6th Edn., at p. 517, it is said:

"Where one party to the contract has given notice to the other that he will not perform it, acquiescence in this by the other party, by a comparatively brief delay in enforcing his right, will be a bar : so that in one case two years' delay in filing a bill after such notice, in another case one year's delay, and in a third (where the contract was for a lease of collieries) five months' delay was held to exclude the intervention of the Court."

Learned counsel cited many English decisions in support of his argument that there shall be promptitude and diligence in enforcing a claim for specific performance after a repudiation of the contract by the other party and that mere continual claim without any active steps will not keep alive the right which would otherwise be defeated by laches : see Clegg v. Edmondson [(1857) 114 RR 336] , Eads v. Williams [(1854) 43 ER Chan 671] , Lehmann v. McArthur [(1968) LR 3 Ch AC 496] , Watsoh v. Reid [(1830) 39 ER Chan 91] , and Emile Erlanger v. New Sombrero Phosphate Company [(1878) LR 3 AC 1218] . But as stated earlier, the English principles based upon mere delay can have no application in India where the statute prescribes the tune for enforcing the claim for specific performance. But another class of cases which dealt with the doctrine of laches have some bearing in the Indian context. In Lindsay Petroleum Company v. Prosper Armstrong Hurd, Abram Farewell, and John Kemp[(1874) LR 5 PCA 221, 239-240] Sir Barnes Peacock defined the doctrine thus:

"Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in 15 of 27 Neutral Citation No:=2025:PHHC:048821 a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material."

This passage indicates that either waiver or conduct equivalent to waiver along with delay may be a ground for refusing to give a decree for specific performance. In *Caesar Lamare v. Thomas Dixon* [(1873) 6 HLC 414, 423] Lord Chelmsford said:

"The conduct of the party applying for relief is always an important element for consideration."

The House of Lords in *Emile Erlanger v. New Sombrero Phosphate Company* [(1878) LR 3 AC 1218] approved the passage in *Lindsay Petroleum Company v. Prosper Armstrong Hurd, Abram Farewell, and John Kemp* [(1874) LR 5 PCA 221, 239-240] which we have extracted earlier.

10. It is clear from these decisions that the conduct of a party which puts the other party in a disadvantageous position, though it does not amount to waiver, may in certain circumstances preclude him from obtaining a decree for specific performance.

11. Now we shall consider some of the Indian decisions cited at the Bar. A Division Bench of the Allahabad High Court held in *Nawab Begum v. A.H. Creet* [(1905) ILR 27 All 678] that great delay on the part of the plaintiff in applying to the court for specific performance of a contract of which he claimed the benefit was of itself a sufficient reason for the Court in the exercise of its discretion to refuse relief. But it will be seen from the facts of that case that apart from the delay the conduct of the plaintiff was such that it induced the other party to change his position to his detriment. A Division Bench of the Patna High Court in *Rameshwar Prasad Sahi v. Mt. Anandi Devi* [(1960) ILR 39 Pat 79] held on the facts of that case that the delay in bringing the suit for specific performance was always fatal to a suit, and that it amounted to an abandonment of the contract and waiver of his rights to sue for specific performance. If the learned Judges meant 16 of 27 Neutral Citation No:=2025:PHHC:048821 to lay down that mere delay would amount to abandonment of a right, we find it difficult to agree with them. The decision of the Calcutta High Court in *Gosthe Behari v. Omiyo Prosad* [AIR 1960 Cal 361] recognized that mere delay was not sufficient to deny the relief of specific performance, but pointed out that though it was not necessary to establish that the plaintiff had abandoned his right, the Court may, in view of the conduct of the plaintiff coupled with his delay that had prejudiced the defendant, refuse to give the equitable relief. In *Chamarti Suryaprakasarayudu v. Arardhi Lakshminarasimha* [(1914) 26 MLJ 518, 521, 523], a Division Bench of the Madras High Court rightly pointed out that delay by itself was not a ground for refusing to give a decree in a suit for specific performance. Sadasiva Aiyar, J., observed:

"I think that it is an error of law to hold that mere delay amounts to a waiver or abandonment apart from other facts or circumstances or conduct of the plaintiff indicating that the delay was due to a waiver or abandonment of the contract on the plaintiffs part."

Seshagiri Aiyar, J., said much to the same effect, thus:

"There is nothing in the Specific Relief Act which says that laches in bringing a suit will by itself be a ground for refusing specific performance.... Having regard to the fact that a special period of limitation has been fixed for bringing a suit for specific performance, I think the legislature has not intended that mere laches should be one of the grounds for refusing specific performance."

We do not think, though the observations of Sadasiva Aiyar, J., are rather wide, that the learned Judges intended to lay down that unless there is a waiver or abandonment by the plaintiff of his rights to sue for specific performance, he should be non-suited, for if that was the law, as we have pointed out earlier, the substantive part of Section 22 of the Specific Relief Act would become nugatory. A Division Bench of the Calcutta High Court in *Jadu* 17 of 27 Neutral Citation No:=2025:PHHC:048821 *Nath Gupta v. Chandra Bhusan* [AIR 1932 Cal 493] again emphasized the fact that the English doctrine of delay and laches showing negligence in seeking relief in a court of equity cannot be imported into the Indian law in view of Article 113 of the Limitation Act. But it pointed out that where the conduct of the plaintiff was such that it did not amount to abandonment but showed waiver or acquiescence especially when inaction on his part induced the defendant to change his position, the plaintiff ought not to be allowed any relief. This case brings out not only the distinction between English and Indian law but also that waiver or abandonment of a right is not a pre-condition for refusing relief of specific performance.

12. The result of the aforesaid discussion of the case law may be briefly stated thus : While in England mere delay or laches may be a ground for refusing to give a relief of specific performance, in India mere delay without such conduct on the part of the plaintiff as would cause prejudice to the defendant does not empower a court to refuse such a relief. But as in England so in India, proof of abandonment or waiver of a right is not a pre-condition necessary to disentitle the plaintiff to the said relief, for if abandonment or waiver is established, no question of discretion on the part of the Court would arise. We have used the expression "waiver" in its legally accepted sense, namely, "waiver is contractual, and may constitute a cause of action : it is an agreement to release or not to assert a right"; see *Dawson's Bank Ltd. v. Nippon Menkwa Kabushiki Kaisha* [(1935) LR 62 IA 100, 108] . It is not possible or desirable to lay down the circumstances under which a court can exercise its discretion against the plaintiff. But they must be such that the representation by or the conduct or neglect of the plaintiff is directly responsible in inducing the defendant to change his position to his prejudice or such as to bring about a situation when it would be inequitable to give him such a relief."

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21. Apex Court in the case of 'Saradamani Kandappan v. S. Rajalakshmi', (2011) 12 SCC 18 observed as under:

"40. The principle underlying the said decisions with reference to statutes, would on the same logic, apply to decisions of courts also.

41. A correct perspective relating to the question whether time is not of the essence of the contract in contracts relating to immovable property, is given by this Court in K.S. Vidyanadam v. Vairavan [(1997) 3 SCC 1] (by Jeevan Reddy, J. who incidentally was a member of the Constitution Bench in Chand Rani [(1993) 1 SCC 519]). This Court observed: (SCC pp. 7 & 9, paras 10-11) "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. ... 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. ...

11. ... We cannot be oblivious to the reality--and the reality is constant and continuous rise in the values of urban properties--fuelled by large-scale migration of people from rural areas to urban centres and by inflation. ... Indeed, we are inclined to think that the rigor of the rule evolved by courts that time is not of the essence of the contract in the case of immovable properties--evolved in times when prices and values were stable and inflation was unknown-- requires to be relaxed, if not modified, particularly in the case of urban immovable properties. It is high time, we do so."

(emphasis supplied) 19 of 27 Neutral Citation No:=2025:PHHC:048821

42. Therefore there is an urgent need to revisit the principle that time is not of the essence in contracts relating to immovable properties and also explain the current position of law with regard to contracts relating to immovable property made after 1975, in view of the changed circumstances arising from inflation and steep increase in prices. We do not propose to undertake that exercise in this case, nor referring the matter to a larger Bench as we have held on facts in this case that time is the essence of the contract, even with reference to the principles in Chand Rani [(1993) 1 SCC 519] and other cases. Be that as it may.

43. Till the issue is considered in an appropriate case, we can only reiterate what has been suggested in K.S. Vidyanadam [(1997) 3 SCC 1] :

(i) The courts, while exercising discretion in suits for specific performance, should bear in mind that when the parties prescribe a time/period, for taking certain steps or for completion of the transaction, that must have some significance and therefore time/period prescribed cannot be ignored.

(ii) The courts will apply greater scrutiny and strictness when considering whether the purchaser was "ready and willing" to perform his part of the contract.

(iii) Every suit for specific performance need not be decreed merely because it is filed within the period of limitation by ignoring the time-limits stipulated in the agreement. The courts will also "frown" upon suits which are not filed immediately after the breach/refusal. The fact that limitation is three years does not mean that a purchaser can wait for 1 or 2 years to file a suit and obtain specific performance. The three-year period is intended to assist the purchasers in special cases, as for example, where the major part of the consideration has been paid to the vendor and possession has been delivered in part-performance, where equity shifts in favour of the purchaser." "

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22. In the case of 'Motilal Jain v. Ramdasi Devi', (2021) 6 SCC 420, Supreme Court held as under:

"6. The first ground which the High Court took note of is the delay in filing the suit. It may be apt to bear in mind the following aspects of delay which are relevant in a case of specific performance of contract for sale of immovable property:

(i) delay running beyond the period prescribed under the Limitation Act;

(ii) delay in cases where though the suit is within the period of limitation, yet:

(a) due to delay the third parties have acquired rights in the subject-matter of the suit;

(b) in the facts and circumstances of the case, delay may give rise to plea of waiver or otherwise it will be inequitable to grant a discretionary relief.

Here none of the above-mentioned aspects applies. That apart factually also, the High Court proceeded on an incorrect assumption with regard to cause of action. Ext. 2 was executed on 20-2-1977 and under it the sale deed was to be executed on or before 19-7-1977. The last notice was issued on 26-11-1978 and from that date the suit was filed only after nine months and not after more than a year as noted by the High Court. Therefore on the facts of this case the ground of delay cannot be invoked to deny relief to the plaintiff.

9. That decision was relied upon by a three-Judge Bench of this Court in Syed Dastagir case [(1999) 6 SCC 337] wherein it was held that in construing a plea in any pleading, courts must keep in mind that a plea is not an expression of art and science but an expression through words to place fact and law of one's case for a relief. It is pointed out that in India most of the pleas are drafted by counsel and hence they inevitably differ from one to the other; thus, to gather the true spirit behind a plea it

should be read as a 21 of 27 Neutral Citation No:=2025:PHHC:048821 whole and to test whether the plaintiff has performed his obligations, one has to see the pith and substance of the plea. It was observed: (SCC Headnote) "Unless a statute specifically requires a plea to be in any particular form, it can be in any form. No specific phraseology or language is required to take such a plea. The language in Section 16(c) of the Specific Relief Act, 1963 does not require any specific phraseology but only that the plaintiff must aver that he has performed or has always been and is willing to perform his part of the contract. So the compliance of 'readiness and willingness' has to be in spirit and substance and not in letter and form."

It is thus clear that an averment of readiness and willingness in the plaint is not a mathematical formula which should only be in specific words. If the averments in the plaint as a whole do clearly indicate the readiness and willingness of the plaintiff to fulfil his part of the obligations under the contract which is the subject- matter of the suit, the fact that they are differently worded will not militate against the readiness and willingness of the plaintiff in a suit for specific performance of contract for sale."

23. Further, in the case of 'P. Daivasigamani v. S. Sambandan', (2022) 14 SCC 793, Supreme Court held as under:

"15. It cannot be gainsaid that even though time is not considered as the essence of the contract in case of immovable property and that the suit could be filed within three years as provided in Article 54 of the Limitation Act, the respondent- plaintiff had to perform his part of the contract within the reasonable time having regard to the term of the agreement prescribing the time-limit. The time-limit prescribed in the agreement cannot be ignored on the ground that time was not made the essence of the agreement or that the suit could be 22 of 27 Neutral Citation No:=2025:PHHC:048821 filed within three years from the date fixed for performance or from the date when the performance is refused by the vendor. Nonetheless, as discussed above, the suit having been filed by the respondent well within the prescribed time-limit under Article 54 of the Limitation Act, the respondent could not have been non-suited on the ground of the suit being barred by limitation as sought to be submitted by the learned counsel for the appellant.

16. As regards the delay in filing the suit, it is very pertinent to note that the rule of equity that exists in England, does not apply in India, and so long as a suit for specific performance is filed within the period of limitation, delay cannot be a ground to refuse the relief of specific performance to the plaintiff. In *Mademsetty Satyanarayana v. G. Yelloji Rao* [*Mademsetty Satyanarayana v. G. Yelloji Rao*, 1964 SCC OnLine SC 33 : AIR 1965 SC 1405] it has been observed as under : (AIR p. 1409, para 7) "7. Mr Lakshmaiah cited a long catena of English decisions to define the scope of a court's discretion. Before referring to them, it is necessary to know the fundamental difference between the two systems--English and Indian--qua the relief of specific performance. In England the relief of specific performance pertains to the domain of equity; in India, to that of statutory law. In England there is no period of

limitation for instituting a suit for the said relief and, therefore, mere delay -- the time lag depending upon circumstances -- may itself be sufficient to refuse the relief; but, in India mere delay cannot be a ground for refusing the said relief, for the statute prescribes the period of limitation. If the suit is in time, delay is sanctioned by law; if it is beyond time, the suit will be dismissed as barred by time; in either case, no question of equity arises."

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

31. There is a distinction between limitation and delay and laches. Limitation is a ground for dismissing a suit even if the plaintiff is otherwise entitled to specific performance, while delay operates to determine the discretion and exercise under Section 20 of the Specific Relief Act, even if the suit is not dismissed on account of limitation. However, not one but several aspects have to be considered when the court, in terms of Section 20 of the Specific Relief Act, exercises discretion, guided by judicial principles, sound and reasonable.

33. Though much reliance was placed by the learned counsel for the appellant on the decisions of this Court in *Ritu Saxena v. J.S. Grover* [*Ritu Saxena v. J.S. Grover*, (2019) 9 SCC 132 : (2019) 4 SCC (Civ) 302], in *Abdullakoya Haji v. Rubis Tharayil* [*Abdullakoya Haji v. Rubis Tharayil*, (2019) 17 SCC 216 : (2020) 3 SCC (Civ) 399], and other cases, to submit that the respondent had failed to establish his financial capacity to pay the balance amount of consideration at the relevant time and had also failed to deposit the said amount in the court at the time of filing of the suit, he was not entitled to the discretionary relief of specific performance as granted by the Court, we do not find any substance in any of the said submissions. As per the ratio of judgment laid down by the three-Judge Bench in *Syed Dastagir v. T.R. Gopalakrishna Setty*, (1999) 6 SCC 337] , the compliance of "readiness and willingness" has to be in spirit and substance and not in letter and form, while making averments in the plaint. As per Explanation (i) to Section 16(c), he need not tender to the defendant or deposit the amount in the court, but he must aver performance of, or readiness and willingness to perform the contract according to its true construction.

34. Having regard to the facts and circumstances of the case and to the conduct of the parties, we have no hesitation in holding 24 of 27 Neutral Citation No:=2025:PHHC:048821 that there was due compliance of Section 16(c) read with its Explanation on the part of the respondent and that it was the appellant who had failed to perform as per the terms of the agreement, though called upon by the respondent to perform. The High Court also had rightly held that the plaintiff had complied with the requirements of Section 16(c) of the said Act by making a specific pleading with regard to his readiness and willingness and also proving the same by reliable evidence. This Court does not find any illegality or infirmity in the impugned judgment [*S. Sambandam v. P. Daivasigamani*, 2010 SCC OnLine Mad 3459] passed by the High Court. We, therefore confirm the same, so far as granting of

decree for specific performance of the agreement in question is concerned."

24. Thus, the plaintiff though need not wait for last day of prescribed limitation to file suit, but delay in filing suit alone is not enough to non-suit the plaintiff provided he exhibits continuous readiness and willingness and has parted with major part of consideration.

25. In view of above proposition of law, this Court finds that post agreed date i.e. 03.05.2006, there is no evidence adduced by the plaintiff to prove his willingness till legal notice dated 12.08.2008. The contents of the legal notice also exhibit that plaintiff was in no hurry to get the agreement performed. Reference can be made to the relevant extract of the legal notice which reads as under:

"xxx xxx xxx"

Therefore, I on behalf of my client, through this legal notice inform and approach you to get the sale deed executed and registered in favour of my aforesaid client after receiving the sale 25 of 27 Neutral Citation No:=2025:PHHC:048821 price/balance amount from my client as per the terms and conditions of the said agreement and after receiving this notice you may fix any date within 15 days and intimation of the same be given to me or to my client in writing at least 15 days prior to the date so fixed for registration of the sale deed, otherwise failing which my client shall be constrained to launch legal proceedings against you in the court of law for specific performance of the contract of sale and if such a situation arises you will be held liable and responsible for all the expenses and consequences of such litigation.

xxx xxx xxx"

26. The present suit was thereafter instituted on 24.04.2009 i.e. eight months after service of legal notice.

27. In view of law laid down by Supreme Court in the case of 'K.S. Vidyadnam vs. Vairavan', (1997) 3 SCC 1, in such circumstances, the Court is required to test the claim of the plaintiff on the touchstone of the fact 'whether major amount stands paid or not?'

28. In the present case, only 25% of the total sale consideration was paid as earnest money on the date of agreement to sell which cannot be held to be major part of the consideration. Admittedly, possession was never delivered to the plaintiff in part performance. In view thereof, this Court finds that the Lower Appellate Court erred in granting discretionary relief to the plaintiff decreeing his suit for possession by way of specific performance. Hence, the judgment and decree passed by the Lower Appellate Court cannot be sustained. The same is thus hereby set aside.

29. Judgment and decree passed by the Trial Court is restored.

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30. Appeal stands allowed in aforesaid terms.

31. Pending application(s), if any, shall also stand disposed off.

April 08, 2025

Dpr

(Pankaj Jain)

Judge

Whether speaking/reasoned : Yes

Whether reportable : Yes

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