

**R. Shama Naik**

**v.**

**G. Srinivasiah**

(Special Leave Petition (Civil) No. 13933 of 2021)

28 November 2024

**[J.B. Pardiwala and R. Mahadevan, JJ.]**

### **Issue for Consideration**

Whether plaintiff failed to establish that he was always ready and willing to perform his part of the contract.

### **Headnotes<sup>†</sup>**

**Specific Relief Act, 1963 – s.16(c) – Petitioner-original plaintiff instituted a suit for specific performance of contract based on agreement to sale dated 03.03.2005 – It is the case of the petitioner that he was always ready and willing to perform his part of the contract – The trial court allowed the suit and passed a decree for specific performance – However, the High Court held that the plaintiff has failed to establish that he was always ready and willing to perform his part of the contract – Interference required or not:**

**Held:** Section 16(c) of the Specific Relief Act, 1963 (prior to amendment w.e.f. 1.10.2018) bars the relief of the specific performance of a contract in favour of a person who fails to aver readiness and willingness to perform his part of the contract – The law is well settled – The plaintiff is obliged not only to make specific statement and averments in the plaint but is also obliged to adduce necessary oral and documentary evidence to show the availability of funds to make payment in terms of the contract in time – There is a fine distinction between readiness and willingness to perform the contract – Both the ingredients are necessary for the relief of specific performance – While readiness means the capacity of the plaintiff to perform the contract which would include his financial position, willingness relates to the conduct of the plaintiff – The High Court in first appeal upon appreciation of the evidence on record both oral and documentary has arrived at the conclusion that the plaintiff has failed to establish that he

## Digital Supreme Court Reports

was always ready and willing to perform his part of the contract – This being a finding of fact and cannot be termed as perverse, there is no good reason to interfere with the impugned judgment. [Paras 8, 10, 12, 13, 14]

### List of Acts

Specific Relief Act, 1963

### List of Keywords

Section 16(c) of Specific Relief Act, 1963; Readiness and willingness to perform his part of the contract; Availability of funds; Oral and documentary evidence.

### Case Arising From

EXTRAORDINARY APPELLATE JURISDICTION : Special Leave Petition (Civil) No. 13933 of 2021

From the Judgment and Order dated 01.07.2021 of the High Court of Karnataka at Bengaluru in RFA No. 1017 of 2013

### Appearances for Parties

Mrs. Vijayanthi Girish, Girish Ananthamurthy, Advs. for the Petitioner.

Manjunath Meled, Sandeep Sharma, Mrs. Vijayalaxmi Udupudi, Ganesh Kumar R., Advs. for the Respondent.

### Judgment / Order of the Supreme Court

#### Order

1. This petition arises from the judgment and order passed by the High Court of Karnataka at Bengaluru in Regular First Appeal No. 1017 of 2013 dated 01-07-2021 by which the Regular First Appeal filed by the original defendant came to be allowed thereby quashing and setting aside the judgment and decree of specific performance passed by the trial court in favour of the petitioner herein-original plaintiff.
2. It appears that the petitioner herein original plaintiff instituted a suit for specific performance of contract based on agreement of sale dated 3rd March 2005.

**R. Shama Naik v. G. Srinivasiah**

3. The total sale consideration fixed in the Agreement of sale is Rs.30,00,000/- (Rupees Thirty lakh only). Rs.12,50,000/- (Rupees Twelve lakh fifty thousand only) came to be paid by the petitioner herein towards earnest money at the time of execution of the agreement of sale.
4. It is the case of the petitioner that he was always ready and willing to perform his part of the contract but it is the respondent herein original-defendant who was not inclined to execute the sale deed despite accepting the amount of Rs.12,50,000/- (Rupees Twelve lakh fifty thousand only) towards earnest money.
5. In such circumstances, referred to above, the petitioner herein instituted Original Suit No.1101 of 2008 praying for a relief of specific performance or in the alternative for refund of the earnest money.
6. The trial court allowed the suit and passed a decree for specific performance. The defendant went in appeal before the High Court. The High Court allowed the appeal of the defendant on the issue of readiness and willingness on the part of the plaintiff in performing his part of the contract.
7. We have heard the learned counsel appearing for the parties and have also perused the materials on record.
8. Section 16(c) of the Specific Relief Act, 1963 (prior to amendment w.e.f. 1.10.2018) bars the relief of the specific performance of a contract in favour of a person who fails to aver readiness and willingness to perform his part of the contract.
9. There is a legion of precedents on the subject of readiness and willingness.
10. The law is well settled. The plaintiff is obliged not only to make specific statement and averments in the plaint but is also obliged to adduce necessary oral and documentary evidence to show the availability of funds to make payment in terms of the contract in time.
11. There is a fine distinction between readiness and willingness to perform the contract. Both the ingredients are necessary for the relief of specific performance.
12. While readiness means the capacity of the plaintiff to perform the contract which would include his financial position, willingness relates to the conduct of the plaintiff.

**Digital Supreme Court Reports**

13. The High Court in first appeal upon appreciation of the evidence on record both oral and documentary has arrived at the conclusion that the plaintiff has failed to establish that he was always ready and willing to perform his part of the contract.
14. This being a finding of fact and cannot be termed as perverse, there is no good reason for us to interfere with the impugned judgment.
15. In the result, the petition fails and is hereby dismissed.
16. Pending application(s), if any, stand disposed of.

*Result of the case:* Petition dismissed.

*<sup>†</sup>Headnotes prepared by:* Ankit Gyan