

IN THE COURT OF SH. ABHITOSH PRATAP SINGH RATHORE
DISTRICT JUDGE-05, SOUTH WEST DISTRICT,
DWARKA COURTS, NEW DELHI.

CS DJ No. 292/2024
CNR No. DLSW01-002898-2024

IN THE MATTER OF:

Pratap Singh

R/o: DDA Flat No. 244
Pocket-1, Sector-9
Dwarka, New Delhi-110077

.....Plaintiff

Versus

Santosh Kumar Tripathi

R/o: DDA Flat No. 381
Pocket-1, Sector-9
Dwarka, New Delhi-110077

.....Defendant No.1

Jyotishma Tripathi

R/o: DDA Flat No.381
Pocket-1, Sector-9
Dwarka, New Delhi-110077

.....Defendant No.2

Date of Institution : 22.03.2024
Date of Final Arguments : 18.03.2026
Date of Judgment : 30.03.2026

SUIT FOR SPECIFIC PERFORMANCE OF THE AGREEMENT TO

SELL & PURCHASE DATED 04.02.2024

JUDGMENT

PLAINT

1. The case of the plaintiff in brief is as following:

Plaintiff, considering his age circulated his requirement for a suitable ground floor property within the society among the various members of the society. A property dealer Mr. Rajkumar approached the plaintiff, offering to sell the suit property to them. The sale consideration was quoted by the defendants and plaintiff immediately developed interest in purchasing the suit property for Rs. 1,57,00,000/-.

Rs.1 lakh was paid as token money in cash to the defendants on 26 January 2024. There after, parties entered into an agreement to sell and purchase dated 4th February 2024. Copy of agreement is filed with the plaint. As per the agreement to sale, the total sale consideration was Rs.1,57,00,000/- and plaintiff was to pay Rs 21 lakhs as advance.

The remaining part of the sale consideration was to be paid on or before 15th April 2024. It was agreed that upon receipt of the balance sale consideration, defendants would deliver the actual and physical possession of the property. Defendants were obligated to clear all statutory charges, property tax, electricity bills, water & sewerage bills, RWA maintenance charges. Defendants paid Rs. 20 lakhs vide cheque to the defendants. The cheque was cleared on 13.02.2024. Plaintiff made arrangement for the remaining funds and contacted defendants to finalize the date of execution of sale deed. Defendants responded by saying that he would do it on some later date. However, thereafter defendant no.1, in blatant breach of the

terms of agreement, returned the Rs. 21 lakh into the account of the plaintiff. Plaintiff aggrieved by the actions of defendant approached the property dealer who had brokered the deal between the parties. However, despite persuasion, defendants refused to execute the agreement to sell. Plaintiff was compelled to issue a legal notice dated 21st February 2024 through his counsel. Since defendant failed to honour the terms of the agreement to sale, plaintiff was compelled to file the suit.

WRITTEN STATEMENT

2. Joint written statement was filed by both the defendants. Defendants took preliminary objection that the suit is a gross abuse of power and process of the Court. It is stated that plaintiff has not come to the court with clean hands. It is stated that breach was from the side of the plaintiff and it was plaintiff who had told defendant that he will not be able to manage amount of Rs.1,36,00,000/- and had asked for a return of the money. In the WS, the factum of agreement to sale was not denied. Defendant admitted that he returned the money to the Plaintiff through RTGS.

REPLICATION

3. In the Replication contents of the Plaint were reiterated and it was denied that it was the Plaintiff who asked for the refund of the 21,00,000/-.

ISSUES

4. From the pleadings of the parties, following issues were framed on 18.12.2024:-

1. **Whether earnest money was returned by defendants at request of plaintiff? OPD.**

2. **Whether defendants have committed breach of terms of agreement to sell and purchase dt. 04.02.2024? OPP**
3. **Whether plaintiff is entitled for decree of specific performance of agreement to sell and purchase as prayed for? OPP**
4. **Whether plaintiff is entitled for the cost of the suit? OPP.**
5. **Relief.**

PLAINTIFF'S EVIDENCE

5. Plaintiff examined himself as PW-1. He exhibited legal notice sent by him as Mark A. The speed post receipts as Ex-PW1/2 and tracking report as Mark B. Copy of agreement to sell and purchase dated 04.02.2024 which is already Ex.D/P1 was admitted.

Shri Raj Kumar was examined as PW-2.

Both the witnesses were cross-examined by the defendants.

DEFENDANT'S EVIDENCE

6. Defendant examined four witnesses.

Defendant No.1 Santosh Kumar Tripathi was examined as DW-1.

Defendnat No2.Jyotshna Tripathi was examined as DW-2.

Sh. Shubham Tripathi was examined as DW-3. Sh.Pankaj Kumar was examined as DW-4.

All the witnesses were cross examined by the plaintiff.

MY ISSUE WISE FINDINGS ARE GIVEN BELOW:

1. **Whether earnest money was returned by defendants at request of plaintiff? OPD.**

2. Whether defendants have committed breach of terms of agreement to sell and purchase dt. 04.02.2024? OPP

7. Both the issues are taken up together as being interconnected in nature.

8. Plaintiff's case, in short, is that the defendant had entered into an agreement of sale with him, and it was decided between the parties that the sale deed would be executed within 2 months. However, before the due date, the defendant, in clear breach of the agreement, refunded all the money that he had received in advance from the plaintiff into the account of the plaintiff.

9. The plaintiff, to prove his case, has produced a copy of the agreement to sell and legal notice that was sent by him to the defendant. The defendant, on the other hand, has taken the stand that it was at the request of the plaintiff that the amount was refunded. Hence, there was no breach on his part.

10. Defendant has throughout taken the stand that the plaintiff came to his home and requested an extension, however, as he was not in a position to grant any extension, Plaintiff demanded refund. To avoid any controversy, he simply refunded the entire amount to the plaintiff.

11. So, the main issues in controversy in the present matter are:

- (i) whether the plaintiff expressed his inability to arrange the funds for the sale deed by the due date and asked for a refund of the money
- (ii) whether the defendant's act of refunding the money amounted to a breach of the agreement entered into between the parties.

12. The plaintiff, to prove his version, has examined two witnesses, including himself. He has stated in his evidence affidavit, almost repeating the contents of the plaint, that the defendant refunded the money on his own and there was no request on his part for the same. He has further stated that he had merely gone to the defendant's home to decide about the future date of execution of the sale deed. He has admitted in his cross-examination that the same is not mentioned in his legal notice. He has admitted that he has not filed any document to prove that he had requisite funds available. He has stated that he had calculated the stamp duty to be approx.10,00,000/- however the same is not mentioned in his notice or plaint.

13. It is important to note that Plaintiff, during his cross-examination, has denied the suggestion that he didn't have requisite funds however he has not produced anything to show that he had requisite funds at the relevant time. It is equally important to note that plaintiff, despite defendant taking the plea of Plaintiff having insufficient funds, has not produced anything to show the contrary.

14. Notice dated 21.02.2024 nowhere talks about the alleged meeting dated 18.02.2024 between plaintiff and defendant. Whereas in the cross examination plaintiff has categorically admitted that there was meeting between him and defendant on 18.02.2024.

15. PW 2 is Sh.Raj Kumar. He has stated in para 6 of his affidavit that roughly after a couple of weeks of signing of the Agreement to Sell, the Plaintiff approached him stating that the Defendants have backed away from executing the sale of the Suit Property and had returned the part sale consideration of Rs. 21,00,000/- (Rupees Twenty-One Lakhs Only). During his cross examination he has stated that after sometime of the agreement he went to the flat of Santosh Tripathi at the request of Pratap Singh. The same is not mentioned in his affidavit. In the affidavit he has stated that he was informed about the fact that defendants had backed out by the plaintiff only. This is a material contradiction in his testimony and it also suggests that whatever transpired between the plaintiff and defendant couldn't have been in the presence of Raj Kumar.

16. Defendant's case is that the plaintiff had visited him on 17.02.2024 and expressed his inability to arrange the balance consideration amount by the stipulated date for execution of the sale deed. Plaintiff allegedly sought extension of time, which the defendant was not in a position to grant, and therefore plaintiff demanded refund of the advance amount.

17. In his evidence affidavit, the defendant has stated in paragraph 5 that on 17.02.2024, the plaintiff visited his flat and requested extension of time till August or September 2024, which was declined. It is further stated that upon such refusal, the plaintiff requested refund of the advance amount, expressing his inability to comply with the terms of the agreement, particularly to pay the remaining consideration amount on or before 15.04.2024. Considering their prior acquaintance, the defendant refunded the entire advance amount of ₹21,00,000/- on 20.02.2024.

18. The aforesaid version is also reiterated in the evidence affidavit of DW-2, Ms. Jyotshima Tripathi, as well as by DW-3, Mr. Shubham Tripathi, and DW-4, Mr. Pankaj Kumar.

19. DW-1, in his cross-examination, has stated that he had decided not to sell the suit property on 17.02.2024.

20. Now, at this point it is evident that there is a variation with respect to the date of alleged meeting between the parties. As per the plaintiff's version, the meeting took place on 18.02.2024, whereas according to the defendant, it took place on 17.02.2024. Counsel for defendant during his final arguments has stressed upon this aspect to put forth the point that defendant had decided not to sell the property even before the date of meeting between plaintiff and defendant.

21. However, if the examination of defendant is seen holistically it is evident that he had stated he had decided not to sell the property on the very date on which the plaintiff allegedly visited him at the suit property and expressed his inability to arrange funds by the due date. Similarly, Defendant No. 2, Ms. Jyoshima Tripathi (DW-2), has deposed that she also changed her mind regarding the sale of the suit property on 17.02.2024, after the plaintiff visited the suit property and sought extension of time for payment of the remaining sale consideration. DW-3, Mr. Shubham Tripathi, has also stated to the same effect in his evidence affidavit; however, he was not cross-examined on this aspect.

22. DW-4 was Mr. Pankaj Kumar, a Chartered Accountant. In his cross-examination, he has stated that he had visited the suit property on 17.02.2024, where the plaintiff was seeking extension of time to make payment of the remaining sale consideration. He further stated that the plaintiff did not assign any reason for his inability to make the said payment.

23. All four witnesses' testimony remained unimpeached on two points.

- i. The date of meeting being 17.02.2024.
- ii. The plaintiff seeking extension of time.

24. Despite the issue of his financial capacity, being directly in question, no documentary evidence such as bank statements or proof of availability of funds has been placed on record by the Plaintiff.

25. Further, the plaintiff's version regarding the alleged meeting dated 18.02.2024 remained unsubstantiated. No independent witness has been examined to corroborate this version. PW-2 presence itself is doubtful due to material contradiction in his testimony. On the other hand, the defendant's case finds support from the testimonies of DW-1, DW-2, DW-3 and DW-4.

26. It is a settled principle that civil cases are to be decided on the touchstone of preponderance of probabilities. In civil cases, the standard of proof is of a lighter shade than the one in criminal matters.

27. Hon'ble Supreme Court of India in ***Dr. N.G Dastane Vs. Ms. S. Dastane (1975) 2 SCC 326*** in para 24 observed;

“The normal rule which governs civil proceedings is that a fact can be said to be established if it is proved by a preponderance of probabilities. This is for the reason that under the Evidence Act, Section 3, a fact is said to be proved when the court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it

exists. The belief regarding the existence of a fact may thus be founded on a balance of probabilities. A prudent man faced with conflicting probabilities concerning a fact- situation will act on the supposition that the fact exists, if on weighing the various probabilities he links that the preponderance is in favour of the existence of the particular fact. As a prudent man, so the court applies this test for finding whether a fact in issue can be said to be proved. The first step in this process is to fix the probabilities, the second to weigh them, though the two may often intermingle. The impossible is weeded out at the first stage, the improbable at the second. Within the wide range of probabilities the court has often a difficult choice to make but it is this choice which ultimately determines where the preponderance of probabilities lies. Important issues like those which affect the status of parties demand a closer scrutiny than those like the loan on a promissory note : "the nature and gravity of an issue necessarily determines the manner of attaining reasonable satisfaction of the truth of the issue" Per Dixon, J. in Wright v. Wright (1948) 77 C.L.R. 191 at p. 210; or as said by Lord Denning, "the degree of probability depends on the subject-matter. In proportion as the offence is grave, so ought the proof to be clear" Blyth v. Blyth [1966] 1 A.E.R. 534 at 536. But whether the issue is one of cruelty or of a

loan on a pronote, the test to apply is whether on a preponderance of probabilities the relevant fact is proved. In civil cases this, normally, is the standard of proof to apply for finding whether the burden of proof is discharged. 25. Proof beyond reasonable doubt is proof by a higher standard which generally governs criminal trials or trials involving inquiry into issues of a quasi-criminal nature. A criminal trial involves the liberty of the subject which may not be taken away on a mere preponderance of probabilities. If the probabilities are so nicely balanced that a reasonable, not a vacillating, mind cannot find where the preponderance lies, a doubt arises regarding the existence of the fact to be proved and the benefit of such reasonable doubt goes to the accused. It is wrong to import such considerations in trials of a purely civil nature”.

28. Hon’ble Supreme Court of India in ***Govt of Goa Through the Chief Secretary Vs. Maria Julieta D’souza 2024 SCC Online SC 104*** in para 8 observed;

“On law, the position is as follows. There is a clear distinction between burden of proof and standard of proof. This distinction is well-known to civil as well as criminal practitioners in common law jurisprudence. What Ms. Ruchira sought to point out is that the documents relied on

by the plaintiff did not point out the existence of title at all. She is right to the extent that no single document in itself concludes title in favour of the plaintiff, but this is not an issue of burden of proof. This is a matter relating to the sufficiency of evidence. While inquiring into whether a fact is proved, the sufficiency of evidence is to be seen in the context of standard of proof, which in civil cases is by preponderance of probability. By this test, the High Court has correctly arrived at its conclusion regarding the existence of title in favour of the plaintiff on the basis of the evidence adduced”.

29. In the present case, the plaintiff has failed to establish that he possessed sufficient financial capacity at the relevant time to perform his part of the contract. No cogent documentary evidence has been produced to demonstrate availability of funds. On the contrary, the defendant has been able to prove through 'preponderance of probabilities' that the advance amount was refunded at the request of the plaintiff and it was the plaintiff who sought refund after expressing his inability to arrange the balance consideration amount.

30. The testimonies of DW-1, DW-2, DW-3, and DW-4 on this aspect have remained unimpeached. No material contradictions have been found in their cross-examination. All four witnesses have consistently deposed that (i) the plaintiff visited the defendants on 17.02.2024, and (ii) the

plaintiff sought extension of time on account of lack of funds for execution of the sale deed.

31. On the first aspect, the defendants' version stands on firm footing, whereas the plaintiff's version appears unreliable as it is suffering from material inconsistencies. On the second aspect, the plaintiff has failed to demonstrate his financial readiness despite his 'financial inadequacy' being the backbone of the defendant's case.

32. In these circumstances, this Court is of the considered view that the defendant has successfully established that the amount was refunded at the request of the plaintiff. The act of refund does not amount to breach of contract. On the contrary, it reflects a bona fide and considerate approach adopted by the defendant to avoid further dispute between the parties as both were known to each other.

Accordingly, Issue Nos. 1 and 2 are decided against the plaintiff and in favour of the defendants.

ISSUE NO. 3 &4

3. Whether plaintiff is entitled for decree of specific performance of agreement to sell and purchase as prayed for? OPP

4. Whether plaintiff is entitled for the cost of the suit? OPP.

33. Apart from the inconsistency regarding the date of the alleged meeting between the parties, and the finding that the defendant has successfully established that the amount was refunded at the request of the plaintiff, the plaintiff's case suffers from another fundamental legal infirmity. The material placed on record by the plaintiff is insufficient to entitle him to the relief of specific performance, even if the findings on Issue Nos. 1 and 2 are glossed over for a moment. Even assuming that a valid and subsisting agreement existed and that no refund had taken place, the plaintiff was still required to prove his continuous readiness and willingness to perform his part of the contract, as mandated under law. While the averments in the plaint and the mere institution of the present suit may indicate willingness, the plaintiff has failed to produce any substantive evidence to establish his readiness, particularly his financial capacity to pay the balance consideration amount. No documentary evidence, such as bank statements, has been brought on record to demonstrate that the plaintiff was in a position to fulfil his contractual obligations within the stipulated time. This omission goes to the root of the matter and is fatal to the plaintiff's suit. It is well settled by the Hon'ble Supreme Court of India through a catena of judgments that readiness and willingness must be proved through cogent and credible evidence and cannot be inferred merely from pleadings.

34. In *Kamal Kumar vs. Premlata Joshi and Ors.*, (2019) 3 SCC 704 which has been followed in *P. Daivasigamani vs. S. Sambandan*, (2022) 14 SCC 793, Hon'ble Supreme Court of India framed material questions which require consideration prior to grant of relief of specific

performance. The relevant portion of the judgment in *Kamal Kumar* (supra) is reproduced hereinbelow:

“7. It is a settled principle of law that the grant of relief of specific performance is a discretionary and equitable relief. The material questions, which are required to be gone into for grant of the relief of specific performance, are:

7.1. First, whether there exists a valid and concluded contract between the parties for sale/purchase of the suit property.

7.2. Second, whether the plaintiff has been ready and willing to perform his part of contract and whether he is still ready and willing to perform his part as mentioned in the contract.

7.3. Third, whether the plaintiff has, in fact, performed his part of the contract and, if so, how and to what extent and in what manner he has performed and whether such performance was in conformity with the terms of the contract;

7.4. Fourth, whether it will be equitable to grant the relief of specific performance to the plaintiff against the defendant in relation to suit property or it will cause any kind of hardship to the defendant and, if so, how and in what manner and the extent if such relief is eventually granted to the plaintiff;

7.5. Lastly, whether the plaintiff is entitled for grant of any other alternative relief, namely, refund of earnest money, etc. and, if so, on what grounds.

35. In ***Gomathinayagam Pillai and Ors. vs. Palaniswami Nadar, (1967) 1 SCR 227***, it has been held as under:-

“6. But the respondent has claimed a decree for specific performance and it is for him to establish that he was, since the date of the contract, continuously ready and willing to perform his part of the contract. If he fails to do so, his claim for specific performance must fail.

36. In ***J.P.Builders and Another vs. A. Ramadas Rao and Another, (2011) 1 SCC 429***, it has been held as under:-

“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.”

37. In *Sangita Sinha Vs Bhawana Bhardwaj And Ors (2025 INSC 450)* Hon'ble Supreme Court of India observed as follows:-

17. It is trite law that 'readiness' and 'willingness' are not one but two separate elements. 'Readiness' means the capacity of the Respondent No.1- buyer to perform the contract, which would include the financial position to pay the sale consideration. 'Willingness' refers to the intention of the Respondent No.1-buyer as a purchaser to perform his part of the contract, which is inferred by scrutinising the conduct of the Respondent No.1-buyer /purchaser, including attending circumstances.

18. Continuous readiness and willingness on the part of the Respondent No.1-buyer /purchaser from the date of execution of Agreement to Sell till the date of the decree, is a condition precedent for grant of relief of specific performance. This Court in various judicial pronouncements has held that it is not enough to show the readiness and willingness up to the date of the plaint as the conduct must be such as to disclose readiness and willingness at all times from the date of the contract and throughout the pendency of the suit up to the decree.

38. In the present case, the plaintiff has failed to produce any bank statement or other documentary evidence to demonstrate his financial

capacity to perform his part of the contract. Mere averments in the plaint and reiteration in the evidence affidavit that he possessed the requisite capacity and was ready and willing to perform his obligations are not sufficient in the eyes of law. This omission assumes greater significance in view of the specific defence taken by the defendant. The defendant has, consistently and at all stages namely in the written statement, in the evidence affidavit, and also during cross-examination has taken the plea that the plaintiff was seeking time to arrange funds and, upon refusal of extension, demanded refund of the advance amount. Despite such a categorical stand, the plaintiff has failed to produce any documentary evidence to counter the defendant's version. Plaintiff has produced nothing to show that the plaintiff has been ready and willing to perform his part of contract and whether he is still ready and willing to perform his part as mentioned in the contract. This failure to produce evidence, which was within exclusive knowledge of the plaintiff, gives rise to an adverse inference against him. In these circumstances, the omission on the part of the plaintiff to show his financial readiness goes to the root of the matter and proves fatal to his suit.

Issue No. 3 and 4 are decided against the plaintiff.

RELIEF AND COSTS:

In view of finding of issue no. 1, 2 and 3, plaintiff is held not entitled to any relief.

Suit of the Plaintiff is dismissed.

Parties to bear their own Cost.

Decree sheet be prepared accordingly.

File be consigned to Record Room thereafter.

Typed to the dictation directly,
corrected and pronounced in the
open Court on 30.03.2026.

(Abhitosh Pratap Singh Rathore)
District Judge-05, South West District
Dwarka Courts, New Delhi