



2025:CGHC:39766-DB



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AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

FA No. 88 of 2022

Arising out of judgment and decree dated 12.04.2022 passed in Civil Suit No. 7A/2015 by the 3rd Additional District Judge, Bastar, at Jagdalpur, Chhattisgarh.]

1. Ramshankar Rao S/o Late V. Suryanarayan Rao, aged about 71 years, R/o Balaji Ward, Jagdalpur, Tehsil Jagdalpur, District Bastar, Chhattisgarh.
2. Vijay Kumar Rao S/o Late V. Suryanarayan Rao, aged about 67 years, R/o Balaji Ward, Jagdalpur, Tehsil Jagdalpur, District Bastar, Chhattisgarh.

... Appellants/Defendants

versus

- Nandlal Occhwani S/o Hungraj Occhwani, aged about 71 years, R/o Sun City, Lalbag, Jagdalpur, District Bastar, Chhattisgarh.

... Respondent/Plaintiff

For Appellants	:- Mr. Manoj Paranjpe, Senior Advocate, with Ms. Shivangi Agrawal, Advocate.
For Respondent	:- Mr. Varun Sharma, Advocate.

**Division Bench**

**Hon'ble Shri Justice Sanjay K. Agrawal &
Hon'ble Shri Justice Deepak Kumar Tiwari**

Judgment On Board
(08.08.2025)

Sanjay K. Agrawal, J

1. Invoking Civil Appellate Jurisdiction of this Court under Section 96 of the Civil Procedure Code (for brevity “CPC”) the appellants herein/defendants, who are brothers, have filed this appeal calling in question the legality, validity, and correctness of judgment and decree dated 12.04.2022 passed by the 3rd Additional District Judge, Bastar at Jagdalpur, Chhattisgarh (hereinafter called as ‘trial Court’) by which the plaintiff’s suit for specific performance of contract and permanent injunction has been decreed and the trial Court has directed the defendants to execute the sale deed in favour of the plaintiff within six months from the date of judgment.

(Parties hereinafter will be referred as per the ranking given and status shown in the suit before the trial Court)

Brief facts:-

2. The respondent/plaintiff Nanadlal Ochhwani filed a suit for specific performance of contract and permanent injunction stating *inter alia* that the suit land bearing Sheet No.93, Plot



No.52/1 of the area 2116 sq.ft. is recorded in the name of the defendants and out of which the defendants have offered and proposed to sell 911.76 sq.ft. of land along with the structure standing therein as per map shown in the plaint Schedule A, which ultimately plaintiff agreed to purchase on 28th March, 2013 for a sale consideration amount of ₹15,90,000/- and gave two cheques each of ₹5,00,000/- and registered agreement to sale was executed between them on 28.03.2013 vide Ex.P/1. It was agreed between the parties that defendants will provide the Nazul records, maintenance Khasara and 22 points report to the plaintiff and thereafter demarcation will be done and within six months from that date sale deed will be executed by the defendants in favour of the plaintiff. In furtherance of the said agreement, out of 911.76 sq.ft., 600 sq.ft. with whole structure standing therein, the possession of the suit property was handed over to the plaintiff and till then the plaintiff is the possession holder of the suit land. It was further pleaded that the plaintiff from the beginning was ready and willing to perform his part of contract for making payment of the remaining amount of sale consideration and for execution of sale deed and, therefore, after 28.03.2013, the plaintiff contacted the defendants several times for providing necessary Nazul records and



getting the demarcation done, but the defendants always avoided it and could not execute the sale deed.

3. In para 7 of the plaint it was also pleaded by the plaintiff that the plaintiff has been ready and willing to perform his part of contract and it was further pleaded that on coming to know that the defendants are trying to alienate the suit property somewhere else, issued legal notice dated 21.05.2015 vide Ex.P/4 of which the postal receipt acknowledgment is Ex.P/5, requesting them to perform their part of contract. However, despite receiving the said legal notice, they did not perform their part of contract leading to filing of suit on 09.11.2015 for execution of sale deed; for possession of 311.76 sq.ft. of the land and for permanent injunction restraining further alienation.
4. The appellants herein/defendants filed their written statement pleading *inter alia* that the registered agreement to sale Ex.P/2 is not the ideal agreement to sale, it was executed for security of loan which the defendants have taken for construction of house and for other works @ 1% per annum and, therefore, the same is void and illegal. As such, the suit deserves to be dismissed.

**Issues and findings therein:-**

5. The trial Court in paragraph No.7 of its judgment has framed as many as 9 issues and answered accordingly, which states as under:-

	वाद प्रश्न	निष्कर्ष
01	क्या वादी वाद-सम्पदा प्लॉट नं० 52/1 क्षेत्रफल 2116 वर्गफिट (भवन सहित) में से आंशिक क्षेत्रफल 911.76 वर्गफुट भूमि के प्रति, वादी के पक्ष में निष्पादित पंजीकृत विक्रय अनुबंध पत्र दिनांक 28/03/2013 के परिपालन में संविदा के विनिर्दिष्ट पालन हेतु विक्रय पत्र की पंजीयन कार्यवाही निष्पादन हेतु डिकी प्रदान किये जाने का अधिकारी है ?	"प्रमाणित"
02	क्या प्रतिवादीगण द्वारा विक्रय अनुबंध पत्र दिनांक 28/03/2013 के परिपालन में वादभूमि में से वादी को 600 वर्गफिट भूमि पर कब्जा प्रदान किया गया है ?	"प्रमाणित"
03	क्या वादी प्रतिवादीगण के विरुद्ध अनुसूचि "अ" में दर्शित वाद-सम्पदा को अन्यत्र किसी अन्य को किसी भी प्रकार का संव्यवहार/अंतरण पर रोक लगाने हेतु स्थायी निषेधाज्ञा प्राप्त करने का अधिकारी है ?	प्रतिवादीगण को अनुसूचि "अ" में दर्शित वाद सम्पदा को अन्यत्र अंतरण करने संबंधी किसी प्रकार के संव्यवहार से निषेधित किया जाता है।
04	क्या वादी द्वारा पंजीकृत विक्रय अनुबंध पत्र दिनांक 28 मार्च 2013 के पालन में प्रतिवादीगण को कुल 10,00,000/- प्रतिफल राशि प्रदान की गयी ?	"प्रमाणित"
05	क्या प्रतिवादीगण द्वारा वास्तविक रूप से वादी से 8,00,000/- रुपये प्रति०क० 01 को अपनी पुत्री के विवाह हेतु तथा मकान बनाने के लिए तथा प्रति०क० 02 को अपने व्यवसाय तथा घरेलू जरूरतों की पूर्ति एवं मकान बनाने के लिए वादी से एक प्रतिशत मासिक दर से उधार लिये थे ?	"प्रमाणित नहीं"



06	क्या प्रतिवादीगण द्वारा वादी के पक्ष में पंजीकृत विक्रय अनुबंध पत्र दिनांक 28/03/2013 को उधार दिए गये रकम की सुरक्षा के बदले में प्रतिवादीगण पर असम्यक असर का उपयोग करते हुए विधिविरुद्ध निष्पादित किया गया, जो प्रारंभ से शून्य एवं अवैध है ?	"प्रमाणित नहीं"
07	क्या वर्तमान वाद इस न्यायालय के आर्थिक क्षेत्राधिकार में है ?	"प्रमाणित"
08	क्या वाद अवधिबाधित है ?	"प्रमाणित नहीं"
09	सहायता एवं व्यय ?	निर्णय की कंडिका 34 के अनुसार

Finding of the trial Court:-

6. The trial Court upon appreciating oral and documentary evidence available on record held that there is a registered, valid and concluded contract between the parties for sale and purchase of the property vide Ex.P/1 and in pursuance of the agreement to sale deed dated 28.03.2013, possession of 600 sq.ft. land has also been delivered by defendant No.1 to plaintiff and the plaintiff has paid ₹10,00,000/- to the defendant on 28.03.2013 through two cheques and though the issue was not framed, but in paragraph No.22 of the judgment the trial Court has recorded a finding that the plaintiff is always ready and has been ready to perform his part of contract. Against the said judgment of the trial Court



the instant first appeal has been filed under Section 96 of the CPC.

Submissions of the parties:-

7. Mr. Manoj Paranjpe, learned counsel for the appellants/defendants, would submit that the trial Court has committed grave legal error in granting decree for specific performance of contract and permanent injunction as the plaintiff did not plead that he is ready and has been ready to perform his part of contract as required under Section 16(c) read with Explanation (ii) of the Specific Relief Act, 1963 (for brevity “Act of 1963”) as unamended prior to 01.10.2018. He would further submit that the plaintiff has also failed to establish that he had sufficient funds or was in a position to raise funds in time to discharge his obligations as per contract and the second part i.e. his willingness has also not been established as after the agreement to sale deed dated 28.03.2013 (Ex.P/2) for the first time after period of two years, the legal notice was issued on 21.05.2015 (Ex.P/4) and thereafter the suit was filed on 09.11.2015 and for the period of two years, the plaintiff had not shown his willingness to perform his part of contract and even no evidence has been brought on record by the plaintiff,



however, though the suit was within the period of limitation but there is a long and unexplained delay in filing the suit which disentitles the plaintiff to get the equitable relief of specific performance of contract and, as such, the impugned decree and judgment be set aside and the appeal be granted.

8. Mr. Varun Sharma, learned counsel for the respondent/plaintiff, would submit that the defendants after getting the money started delaying in official process including demarcation, collection of documents and despite several efforts attempted by the plaintiff, defendants are delaying the registration of sale deed. He would also submit that on account of price escalation, the defendants did not execute the sale deed and the relief being discretionary relief same has rightly been granted in favour of the plaintiff. He would rely upon the decision of the Supreme Court in the matter of **Kamal Kumar v. Premlata Joshi & Ors.**¹; **Beemaneni Maha Lakshmi v. Gangumla Appa Rao**² and lastly rely upon the decision of this Court in the matter of **Bhagchand Jain v. Parwati Sharma**³ in support of his submission.

¹ (2019) 3 SCC 704

² (2019) 6 SCC 233

³ 2022 SCC Online Chh 1693



9. We have heard learned counsel for the parties, considered their rival submissions made herein above and gone through the records meticulously.

Discussion and analysis:-

10. In order to consider the plea raised at the Bar, it would be appropriate to notice Section 16(c) along with Explanation (ii) of the Act of 1963, which bars the specific performance of a contract in favour of the plaintiff. Section 16(c) along with Explanation (ii) prior to its amendment dated 01.10.2018, states as under:-

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

(a) and (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 purpose of clause (c), –

(i) xxx xxx xxx

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

11. Section 16(c) along with Explanation (ii) suffered amendment w.e.f. 01.10.2018. In the amendment word



“aver” has been deleted. Section 16(c) along with Explanation

(ii) after amendment, states as under:-

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

(a) and (b)

(c) 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 purpose of clause (c), –

(i) xxx xxx xxx

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

12. The amended Section 16(c) and Explanation (ii) of the Act of 1963 came to be considered by the Supreme Court in the matter of **C. Haridasan v. Anappath Parakkattu Vasudeva Kurup and Others**⁴ in which it has been held that the deletion of words “who fails to aver” in Section 16 of the Act of 1963 does not bring about any real change in position of law as it stood prior to the amendment.

13. Thus, in terms of Section 16(c) read with Explanation (ii) as unamended in a suit for specific performance of a contract,

⁴ AIR 2023 SC (Civil) 949; AIR Online 2023 SC 64



the plaintiff should not only plead and prove the terms of the contract, but also plead and prove his readiness and willingness to perform his obligations under the contract, in terms of the contract.

14. Forms 47 and 48 of Appendix A of the CPC prescribe the manner in which the averments are required to be made by the plaintiff. For ready reference Forms 47 and 48 of Appendix A of the CPC have been reproduced as under:-

No. 47

SPECIFIC PERFORMANCE (No.1)

A. B., the above-named plaintiff, states as follows:-

1. By an agreement dated the day of and signed by the defendant, he contracted to buy of [or sell to] the plaintiff certain immovable property therein described and referred to, for the sum of rupees.

2. The plaintiff has applied to the defendant specifically to perform the agreement on is part, but the defendant has not done so.

3. The plaintiff has been and still is ready and willing specifically to perform the agreement on his part of which the defendant has had notice.

[As in paras 4 and 5 of Form No.1.]

6. The plaintiff claims that the Court will order the defendant specifically to perform the agreement and to do all acts necessary to put the plaintiff in full possession of the said property [or to accept a transfer and possession of the said property] and to pay the costs of the suit.

No. 48

SPECIFIC PERFORMANCE (No.2)

A. B., the above – named plaintiff, states as follows :-



1. On the day of 19...../20....., the plaintiff and defendant entered into an agreement, in writing, and the original document is hereto annexed. The defendant, was absolutely entitled to the immovable property described in the agreement.

2. On the day of 19.... /20....., the plaintiff tendered rupees to the defendant, and demanded a transfer of the said property by a sufficient instrument.

3. On the day of 19..... /20....., the plaintiff again demanded such transfer. [Or the defendant refused to transfer the same to the plaintiff.]

4. The defendant has not executed any instrument of transfer.

5. The plaintiff is still ready and willing to pay the purchase—money of the said property to the defendants

[As in paras 4 and 5 of Form No.1.]

8. The plaintiff claims—

(1) that the defendant transfers the said property to the plaintiff by a sufficient instrument [following the terms of the agreement];

(2) rupees compensation for withholding the same.

15. The mandatory provisions of Section 16(c) of the Act of 1963 came up for consideration before the Supreme Court in the matter of **Ouseph Varghese v. Joseph Aley**⁵ in which their Lordships of the Supreme Court have held that a suit for specific performance has to conform to the requirement prescribed in Forms 47 & 48 of the 1st Schedule in the CPC and observed as under:-

“9. The plaintiff did not plead either in the plaint or at any subsequent stage that he was ready and willing to perform the agreement pleaded in the

⁵ (1969) 2 SCC 539



written statement of defendant. A suit for specific performance has to conform to the requirements prescribed in Forms 47 and 48 of the First Schedule in the Civil Procedure Code. In a suit for specific performance it is incumbent on the plaintiff not only to set out agreement on the basis of which he sues in all its details, he must go further and plead that he has applied to the defendant specifically to perform the agreement pleaded by him but the defendant has not done so. He must further plead that he has been and is still ready and willing to specifically perform his part of the agreement. Neither in the plaint nor at any subsequent stage of the suit the plaintiff has taken those pleas. As observed by this Court in *Prem Rai v. D.L.F. Housing and Construction (P) (Ltd.)* [1968 SCC OnLine SC 151] that it is well-settled that in a suit for specific performance the plaintiff should allege that he is ready and willing to perform his part of the contract and in the absence of such an allegation the suit is not maintainable.”

16. Taking into consideration the principles of law laid down in **Ouseph Varghese** (supra) the Supreme Court in the matter of **Manjunath Anandappa urf Shivappa v. Tammanasa and others**⁶ has held that the plaintiff should not only plead that he is ready and willing to perform his part of contract from date of filing of the suit, but also prove his readiness and willingness to perform his part of contract and held as under:-

“27. The decisions of this Court, therefore, leave no manner of doubt that a plaintiff in a suit for specific performance of contract not only must raise a plea that he had all along been and even on the date of filing of

⁶ (2003) 10 SCC 390



suit was ready and willing to perform his part of contract, but also prove the same. Only in certain exceptional situation where although in letter and spirit, the exact words had not been used but readiness and willingness can be culled out from reading all the averments made by the plaintiff as a whole coupled with the materials brought on record at the trial of the suit, to the said effect, the statutory requirement of Section 16(c) of the Specific Relief Act may be held to have been complied with.”

17. Recently, in the matter of **P. Ravindranath and another v. Sasikala and others**⁷, the Supreme Court has held that the suit for specific performance based on bald and vague pleading must necessarily be rejected. It was further held by their Lordships that Section 16(c) of the Act of 1963 requires readiness and willingness to be pleaded and proved by plaintiff in a suit for specific performance of contract and said provision has been widely interpreted and held to be mandatory. Relying upon the earlier decisions, it has been held that it is the bounden duty of the plaintiff to prove his readiness and willingness to perform his part of contract by adducing evidence and this crucial facet has to be determined by adducing all circumstances including availability of funds and mere statement or averment in the plaint of readiness and willingness would not suffice, and held as under:-

⁷ 2024 SCC OnLine SC 1749



22. Having considered the submissions, our analysis is as follows:

(i) Relief of specific performance of contract is a discretionary relief. As such, the Courts while exercising power to grant specific performance of contract, need to be extra careful and cautious in dealing with the pleadings and the evidence in particular led by the plaintiffs. The plaintiffs have to stand on their own legs to establish that they have made out case for grant of relief of specific performance of contract. The Act, 1963 provides certain checks and balances which must be fulfilled and established by the plaintiffs before they can become entitled for such a relief. The pleadings in a suit for specific performance have to be very direct, specific and accurate. A suit for specific performance based on bald and vague pleadings must necessarily be rejected. Section 16(c) of the 1963 Act requires readiness and willingness to be pleaded and proved by the plaintiff in a suit for specific performance of contract. The said provision has been widely interpreted and held to be mandatory.

(a) xxx xxx xxx xxx

(b) In the case of *U.N. Krishnamurthy (Since Deceased) Thr. Lrs. v. A.M. Krishnamurthy*⁸, following was held in paragraph 46:-

“46. It is settled law that for relief of specific performance, the Plaintiff has to prove that all along and till the final decision of the suit, he was ready and willing to perform the part of the contract. It is the bounden duty of the Plaintiff to prove his readiness and willingness by adducing evidence. This crucial facet has to be determined by considering all circumstances including availability of funds and mere statement or averment in plaint of readiness and willingness, would not suffice.”

⁸ 2022 SCC OnLine 840



(c) In the case of *His Holiness Acharya Swami Ganesh Dassji v. Sita Ram Thapar*⁹, it was held under paragraph 2:-

“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. 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.

(ii) xxx xxx xxx xxx

(iii) xxx xxx xxx xxx

(iv) If the plaintiffs were actually keen, ready and willing to get the land transferred or get the agreement to sell enforced, they should have made an effort in that regard. Neither any specific date has been mentioned in the pleadings or in the evidence, on which date the plaintiffs tendered the balance amount with a request to the defendants 1 to 5 to get the land status changed and execute the sale deed, or otherwise also, request the defendants 1 to 5 to execute the sale deed with the same status of the land in suit.

(v) Even before filing a suit, there is no evidence forthcoming on behalf of the plaintiffs to show that they tendered the balance consideration or a draft sale deed to the defendants 1 to 5 and requested for execution and registration of the sale deed.

18. Furthermore, in the matter of **Janardan Das v. Durga Prasad Agrawal**¹⁰ their Lordships of the Supreme Court

⁹ (1196) 4 SCC 526

¹⁰ 2024 SCC OnLine SC 2937



while considering Section 16(c) of the Act of 1963 have held as under:-

“8. Section 16(c) of the Specific Relief Act, 1963, mandates that a plaintiff seeking specific performance of a contract must aver and prove that they have performed or have always been ready and willing to perform the essential terms of the contract which are to be performed by them. This requirement is a condition precedent and must be established by the plaintiff throughout the proceedings. The readiness and willingness of the plaintiff are to be determined from their conduct prior to and subsequent to the filing of the suit, as well as from the terms of the agreement and surrounding circumstances. The rationale behind this provision is to ensure that a party seeking equitable relief has acted equitably themselves. Specific performance is a discretionary relief, and the plaintiff must come to the court with clean hands, demonstrating sincerity and earnestness in fulfilling their contractual obligations. Any laxity, indifference, or failure to perform their part of the contract can be a ground to deny such relief. The importance of readiness and willingness for enforcement of specific performance has been summarized by this Court in *U.N. Krishnamurthy v. A.M. Krishnamurthy*¹¹, as follows:

“23. Section 16(c) of the Specific Relief Act, 1963 bars the relief of specific performance of a contract in favour of a person, who fails to aver and prove his readiness and willingness to perform his part of contract. In view of Explanation (i) to clause (c) of Section 16, it may not be essential for the plaintiff to actually tender money to the defendant or to deposit money in court, except when so directed by the Court, to prove readiness and willingness to perform the essential terms of a contract, which involves payment of money. However, Explanation (ii) says the plaintiff must aver

¹¹ (2023) 11 SCC 775



performance or readiness and willingness to perform the contract according to its true construction.

24. To aver and prove readiness and willingness to perform an obligation to pay money, in terms of a contract, the plaintiff would have to make specific statements in the plaint and adduce evidence to show availability of funds to make payment in terms of the contract in time. In other words, the plaintiff would have to plead that the plaintiff had sufficient funds or was in a position to raise funds in time to discharge his obligation under the contract. If the plaintiff does not have sufficient funds with him to discharge his obligations in terms of a contract, which requires payment of money, the plaintiff would have to specifically plead how the funds would be available to him. To cite an example, the plaintiff may aver and prove, by adducing evidence, an arrangement with a financier for disbursement of adequate funds for timely compliance with the terms and conditions of a contract involving payment of money.

XXXXXXXXXX

45. It is settled law that for relief of specific performance, the plaintiff has to prove that all along and till the final decision of the suit, he was ready and willing to perform his part of the contract. It is the bounden duty of the plaintiff to prove his readiness and willingness by adducing evidence. This crucial facet has to be determined by considering all circumstances including availability of funds and mere statement or averment in plaint of readiness and willingness, would not suffice.”

9. The Trial Court rightly concluded that the plaintiffs failed to demonstrate continuous readiness and willingness to perform their part of the contract. The agreement dated 06.06.1993 explicitly required the plaintiffs to ensure that Defendant Nos. 6 to 8 would come to Baripada within three months to execute the



sale deed. The plaintiffs, however, did not take any concrete steps to secure the consent or presence of the sisters within the stipulated period. They relied solely on Defendant No. 1 and late Soumendra to procure the sisters, despite knowing that the sisters were not signatories to the agreement and held a significant share in the property. The Trial Court observed that the plaintiffs did not issue any notices or correspondence to Defendant Nos. 6 to 8 during the three-month period, nor did they make any efforts to communicate with them directly to expedite the execution of the sale deed. This inaction on the part of the plaintiffs indicated a lack of diligence and earnestness in fulfilling their contractual obligations. Furthermore, the plaintiffs continued to operate their petrol pump on the suit land without taking proactive steps to complete the purchase, suggesting complacency and a lack of urgency.

10. The High Court, in contrast, summarily concluded that the plaintiffs were always ready and willing to perform their part of the contract. It stated that there was an abundance of evidence on record to establish the plaintiffs' financial capacity and willingness. However, the High Court did not delve into the specifics of the plaintiffs' conduct or address the Trial Court's findings regarding their inaction. The High Court's assessment on this crucial aspect was cursory and lacked a thorough examination of the evidence and circumstances that demonstrated the plaintiffs' lack of readiness and willingness.”

19. In the matter of **Abdul Khader Rowther v. P.K. Sara**

Bai¹² the Supreme Court in paragraph No.11 has held as under:-

“**11.** His plaint does not contain the requisite pleadings necessary to obtain a decree for specific performance. This equitable remedy recognised by the

¹² (1989) 4 SCC 313



Specific Relief Act cannot be had on the basis of such pleadings and evidence.”

20. In light of principles of law flowing from the aforesaid judgments (supra) of the Supreme Court, there is distinction between the terms “readiness” and “willingness”. “Readiness” is the capacity of the plaintiff to perform the contract which includes his financial position to pay the sale consideration, whereas, “willingness” is the conduct of the party. The plaintiff must plead and establish that he is ready and willing to perform his part of contract from the date of agreement to sale till the date of decision in the suit.

21. Now, we will discuss both the terms i.e. “readiness” and “willingness” in the context of present case one by one.

“Readiness”

22. In order to consider the “readiness” on the part of the plaintiff, we will first notice plaint averments in this regard of which paragraphs No.6 & 7 of state as under:-

6. यह कि उक्त विक्रय आधीन अचल सम्पदा के लिखित पंजीकृत विक्रय अनुबंध पत्र दिनांक 28 मार्च 2013 और संव्यवहार के उपरान्त वादी ने प्रतिवादीगण से अनेक बार सम्पर्क कर उक्त विक्रय आधीन अचल सम्पदा के नजूल अभिलेखों की प्रमाणित प्रतियों और सीमांकन कार्यवाही किये जाने हेतु अनेक बार निवेदन किया, परन्तु प्रतिवादीगण हमेशा असत्य और आधारहीन तथ्यों के आधार पर बारम्बार समय याचना कर हील-हवाला करते रहे और इस आधार पर समय याचना



करते रहे कि नजूल कार्यालय जगदलपुर से उन्हें अपेक्षित सहयोग नहीं मिल पा रहा है। विशेष रूप से उल्लेखनीय है कि वादी प्रारंभ से ही अवशेष प्रतिफल राशि प्रतिवादीगण को प्रदान करने और विक्रय पत्र के पंजीयन कार्यवाही करने तत्पर रहे, परन्तु प्रतिवादीगण के द्वारा ग्रहण किये गये और अधिरोपित दायित्वों के निर्वाह के अभाव में विक्रय पत्र की पंजीयन कार्यवाही को बारम्बार टालते रहे।

7. यह कि गत माह मई 2015 के द्वितीय सप्ताह से प्रतिवादीगण के द्वारा वादी को अन्य जन के माध्यम से बारम्बार इस आधार पर अनुचित दबाव और प्रभाव डाला जा रहा है कि वर्तमान समय में उक्त विक्रय आधीन अचल सम्पदा की मार्केट वेल्यू चूंकि बढ़ गई है, अतः प्रतिवादीगण उक्त लिखित पंजीकृत विक्रय अनुबंध पत्र दिनांक 28.03.2013 के अन्तर्गत और परिपालन में रजिस्ट्री बेनामा की कार्यवाही निष्पादित करने हेतु तैयार नहीं है, तथा प्रतिवादीगण उक्त विक्रय आधीन वाद सम्पदा को अन्यत्र उंची दर और मूल्य के लालच में सौदा करने हेतु प्रयासरत है, जबकि वादी प्रारंभ से प्रतिवादीगण को शेष प्रतिफल राशि अदा कर विक्रय पत्र की पंजीयन कार्यवाही हेतु तत्पर रहा है।

23. A careful perusal of the plaint averments would show that the pleading with regard to “readiness” on the part of the plaintiff to perform his part of contract is not in conformity with Section 16(c) read with Forms 47 & 48 of Appendix A of the CPC. There is no pleading on behalf of the plaintiff that he is still ready and willing to perform his part of contract and to make payment of remaining balance sale consideration or he has sufficient funds in his possession or is in position to raise funds in time to discharge his obligations under the contract. He has only pleaded that he has been ready to perform his part of the contract from the beginning but did not aver and proved that he is still ready to perform the part of the contract and did not specify any date on which he



tendered the amount and asked the defendants to execute the sale deed in his favour and also he did specifically said that on which date or dates he contacted the defendants for demarcating the land as promised in the sale agreement. He also did not specify the date on which he demanded the documents as per agreement to sale that are Nazul records, maintenance Khasra and other documents for execution of the sale deed. Even no date has been given by the plaintiff on which he tendered the amount with request to execute the sale deed to show his “continuous readiness”. As such, the plaintiff has miserably failed to specifically plead and prove that he was ready to perform his part of contract by showing that he was financially able and sound to make payment of the balance sale consideration.

“Willingness”

24. As per the recitals in agreement, naksha, maintenance khasra and 22 point report all were agreed to be provided by the defendants and the defendants were also required to get the suit land surveyed/demarcated and the land actually available was agreed to be sold as per proportionate sale price. However, no evidence has been adduced on behalf of the plaintiff to establish that at any point of time, demand was



made by the plaintiff from the defendants by calling them to get the suit land surveyed as agreed vide Ex.P/1 and for the first time, legal notice was issued on 21.05.2015 vide Ex.P/4 in which there is no mention that the plaintiff, in last two years, prior to issuance of notice, had requested the defendants to get the suit land surveyed and also there is no statement in the legal notice that at any point of time or on any date, the plaintiff has requested the defendants to get the suit land surveyed by Revenue Authorities in enforcing the agreement to sale, however, on that point, he remained silent. As such, qua the “willingness” on the part of the plaintiff to perform his part of contract, the following facts emerge from the records:-

- (i) The agreement to sale was executed on 28.03.2013 and the legal notice was issued only on 21.05.2015 vide Ex.P/4, after a period of two years from the date of agreement to sale.
- (ii) The plaintiff has not brought on record any evidence / document to establish that he contacted the defendants within a period of two years i.e. from the date of agreement till the date of issuance of legal notice to get the suit land surveyed and for production/supply of necessary documents as agreed. There was total



inaction on the part of the plaintiff from the date of agreement i.e. 28.03.2013 to till the date of issuance of legal notice i.e. 21.05.2015 and thereafter, after six months from the date of issuance of legal notice, the suit was filed on 09.11.2015, however, though the suit was filed within the period of limitation but, the delay from 28.03.2013 to 21.05.2015 and from 21.05.2015 to 09.11.2015 has not been explained by the plaintiff to show his willingness to perform his part of contract and plaintiff has also failed to explain steps taken by him from the date of agreement till the date of filing of the suit.

25. The Supreme Court in the matter of **Pydi Ramana @ Ramulu v. Davarasety Manmadha Rao**¹³ while considering the question of continuous “readiness” and “willingness” relying upon the decision of **Vijay Kumar v. Om Prakash**¹⁴ held that the continuous readiness and willingness is a condition precedent to grant specific relief and held that the steps taken by the plaintiff during the date of agreement till the date of filing of suit will have to be explained in the plaint and proved in the evidence, and held in paragraph No.20 as under:-

¹³ (2024) 7 SCC 515

¹⁴ (2019) 17 SCC 429



20. The long unexplained delay and silence on the part of the plaintiff in this regard while in the witness box would not entitle the plaintiff to a decree of specific performance and it is for this precise reason, the trial court as noticed supra has refused to grant the equitable relief which has been reversed by the appellate court without assigning proper and cogent reason and the one assigned are at tangent or in other words contrary to the facts. The resultant effect of filing the suit for specific performance on the verge of limitation coming to an end came to be examined by this Court in *Rajesh Kumar v. Anand Kumar* [*Rajesh Kumar v. Anand Kumar*, 2024 SCC OnLine SC 981] and held that the plaintiff would not be entitled to the equitable relief (vide paras 14, 15, 16, 17 and 18).

26. In sum and substance and in light of principles of law flowing from decisions of the Supreme Court with regard to Section 16(c) read with Explanation (ii) of the Act of 1963 as unamended, it is quite vivid that the agreement to sale was entered into between the parties on 28.03.2013 vide Ex.P/1, and for the first time, legal notice was issued on 21.05.2015 vide Ex.P/4, after more than two years and after six month of issuance of notice the plaintiff filed the suit on 09.11.2015. As such, though, the suit was within limitation, but the delay from 28.03.2013 to 21.05.2015 and from 21.05.2015 to 09.11.2015 has not been explained and the plaintiff remained totally silent which was required to be explained by him. Further, the plaintiff in his plaint only pleaded that the documents relating to Nazul records, maintenance Khasra, certified copy of 22 points report were provided to him by the defendants and the demarcation proceedings were not carried out as promised,



however, no details of the aforesaid documents i.e. Nazul records, maintenance Khasra and other documents, have been given. The plaintiff with regard to remaining balance amount ought to have pleaded in the plaint that he had sufficient funds or was in a position to raise funds to the extent of ₹5,90,000/- in time to discharge his obligation under the contract. As such, the plaintiff has failed to specifically not only plead, but also failed to prove his continuous readiness and willingness to perform his part of contract from the date of contract till the date of decision in the suit which was the bounden duty of the plaintiff by adducing evidence as the continuous readiness and willingness is a condition precedent to grant the relief of specific performance. In view of the aforesaid discussion, the decisions cited by learned counsel for the respondent i.e. **Kamal Kumar** (supra); **Beemaneni Maha Lakshmi** (supra) and **Bhagchand Jain** (supra) are clearly distinguishable to the facts of the present case.

Conclusion:-

27. In view of the aforesaid discussion and analysis, we are of the considered opinion that the plaintiff has failed to both aver and prove that he all around is ready and willing to perform the essential terms of the contract which were required to be performed by him. In that view of the matter, the trial Court



has committed grave legal error in granting decree for specific performance of contract. Accordingly, the impugned judgment is set aside and the appeal is allowed and suit is dismissed leaving the parties to bear their own cost(s).

28. A decree be drawn up accordingly.

Sd/-

(Sanjay K. Agrawal)
Judge

Ankit

Sd/-

(Deepak Kumar Tiwari)
Judge