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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 16th April, 2026
Pronounced on: 20th July, 2026

\+ RFA 246/2017 & CM APPL. 8298/2017

CHANDER PAL SINGH .....Appellant

Through: Ms. Jyotika Kalra, Mr. Inderdeep Singh, Mr. Arun Bir Singh Yadav and Mr. Vishal Baliyan, Advocates, along with appellant in person.
Mob: 7669959590
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versus

KAMLESH NAGPAL .....Respondent

Through: Ms. Shipra Choudhry, Advocate
Mob: 9811277443
Email: shiprachoudhry@gmail.com

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

JUDGMENT

I. INTRODUCTION

1. The present Regular First Appeal **("RFA")** has been filed under Section 96 of the Code of Civil Procedure, 1908 **("CPC")**, seeking setting aside of the judgment dated 15th September, 2016 **("impugned judgment")**, passed by the Court of Additional District Judge – 03 (East), Karkardooma Courts, Delhi **("Trial Court")** in *CS No. 2496/2008* (renumbered as *CS No. 2727/2016*), titled as *"Shri Chander Pal Singh Versus Smt. Kamlesh Nagpal"*, whereby, the Trial Court dismissed the suit of the

appellant/plaintiff, namely, Shri Chander Pal Singh. In the alternative, the appellant herein seeks refund for the earnest money of Rs. 10 Lacs, along with interest.

2. The aforesaid suit was filed seeking a decree of specific performance of the Agreement to Sell dated 19th June, 2008 **("subject ATS")**, executed on 20th June, 2008, thereby, directing the respondent/defendant, i.e., Smt. Kamlesh Nagpal to execute the regular sale deed, in favour of the appellant herein, for the built-up property bearing *No. 7, Gobind Park, Village Khureji Khas, Illaqa Shahdara, Delhi-51,* admeasuring 80 sq. yards **("suit property")**, by accepting the balance sale consideration of Rs. 35.5 Lacs.

3. Before delving into the facts of the present case, it is pertinent to note that this Court admitted the appeal *vide* order dated 04th September, 2017. By way of the said order, this Court had directed the respondent to maintain *status quo*, thereby, restraining her from selling, transferring, disposing of, parting with possession, or creating any third-party interest in respect of the suit property, as mentioned in the order dated 01st December, 2008, passed by this Court in the aforesaid suit.

4. Further, this Court *vide* the aforesaid order dated 04th September, 2017, also directed that the appellant's application being *C.M. 8298/2017*, preferred under Order XLI Rule 27, read with Section 151 of the CPC, be heard along with the main appeal at the time of final hearing.

5. The appellant, *vide* the aforementioned application, seeks to place on record, by way of additional evidence, the bank account statements of himself and his wife, purportedly to establish the availability of funds and his financial capacity as on the date of his cross-examination.

II. BRIEF FACTS OF THE CASE

6. The facts, relevant for the adjudication of the appeal, as culled out from the impugned judgment and the pleadings on record, are as follows:

a. Pre-filing of the suit

6.1. The appellant and the respondent herein entered into an Agreement to Sell dated 25th May, 2008 **("earlier ATS")**, in respect of the suit property, for a total sum of Rs. 55.5 Lacs. Out of the sale consideration, a sum of Rs. 05 Lacs was received by the respondent in advance towards earnest money, as acknowledged in the said ATS. It was further recorded in the said earlier ATS that the balance amount of Rs. 50.5 Lacs was to be paid by the appellant to the respondent, at the time of completion of the transaction, as full and final settlement of the suit property.

6.2. Thereafter, in substitution of the earlier ATS, the parties herein entered into the subject ATS dated 19th June, 2008, and a further sum of Rs. 15 Lacs was paid to the respondent by the appellant, in addition to the sum of Rs. 05 Lacs paid earlier, thereby, totalling the paid amount to Rs. 20 Lacs. The subject ATS acknowledged the fact that, out of the aforesaid sum of Rs. 20 Lacs, a sum of Rs. 10 Lacs was to be treated as earnest money and the remaining sum of Rs. 10 Lacs as part payment towards the total sale consideration.

6.3. Further, in accordance with the terms and conditions contained in the subject ATS, the balance sale consideration of Rs. 35.5 Lacs was to be paid by the appellant to the respondent at the time of execution of the sale deed. In terms of Clause 3 of the subject ATS, the respondent agreed to execute the said sale deed by 01st August, 2008, in the name of the appellant and/or in the name of his nominee(s).

6.4. As per Clause 4 of the subject ATS, it was agreed between the parties that if the respondent failed or refused to complete the transaction within the stipulated period, i.e., 01st August, 2008, then the appellant would be entitled to receive double the amount of earnest money. However, in the event of the appellant's failure to complete the transaction within the stipulated time, the earnest money paid by the appellant would stand forfeited.

6.5. On 01st August, 2008, being the date stipulated for the execution of the sale deed, the appellant reached the office of the Sub-Registrar, *Geeta Colony, Delhi,* and got his presence marked by obtaining the inspection/registration receipts, bearing *Nos. 62552* and *62543*, dated 01st August, 2008, marked as *Ex. PW-1/9* and *Ex. PW-1/10*, respectively. Further, the respondent also remained present in the Sub-Registrar's office, on the said date and obtained the receipt bearing *No. 62536*, marked as *Ex. PW-1/D-1*.

6.6. However, even though both the parties were present in the Sub-Registrar's office on 01st August, 2008, the sale deed in pursuance of the subject ATS, could not be executed on the stipulated date.

6.7. Consequently, the appellant issued a legal notice dated 02nd August, 2008 (marked as *Ex. P2*) to the respondent, stating that the appellant tried to contact the respondent in order to pay the balance sale consideration and execute the sale deed, however, the respondent repeatedly avoided the same, on one pretext or the other.

6.8. It was further stated in the aforesaid notice that the respondent failed to reach the Sub-Registrar's office, even though the appellant was present with the balance sale consideration. Thus, by way of the said notice, the appellant called upon the respondent to execute the sale deed with regard to the suit property, and to hand over the peaceful and vacant possession thereof within fifteen days, failing which, the appellant would be constrained to file a suit for specific performance and damages.

6.9. The respondent, *vide* her reply dated 13th August, 2008 to the aforesaid notice, stated that the appellant on 01st August, 2008 had reached the office of the Sub-Registrar to execute the sale deed, however, the appellant himself failed to bring the bank draft for the balance sale consideration of Rs. 35.5 Lacs.

6.10. In the aforesaid reply, the respondent had further stated that the earlier ATS dated 25th May, 2008 was destroyed, and in the subject ATS dated 19th June, 2008, the appellant had, by manipulation, recorded four floors, including the ground floor, instead of the three upper floors, i.e., first, second and third floors of the suit property. It was further stated therein that the value of the upper three floors of the suit property was approximately Rs. 75 Lacs as on 25th May, 2008. Thus, in view of the aforesaid, the respondent was constrained to state that under Clause 4 of the subject ATS, the earnest money paid by the appellant stood forfeited.

6.11. Subsequently, on 29th August, 2008, the appellant lodged a complaint with the office of the ACP, *Gandhi Nagar, Delhi*, against the respondent. However, no action was taken by the Police, with regard thereto. Thereafter, the appellant herein instituted the suit for specific performance of the subject ATS dated 19th June, 2008.

b. Post-filing of the suit

6.12. The suit bearing *CS No. 2496/2008* came to be filed by the appellant herein before this Court, along with an application being *I.A. 14610/2008* under Order XXXIX Rules 1 and 2 of the CPC, seeking to restrain the respondent from creating any third-party interest, in respect of the suit property.

6.13. This Court *vide* order dated 01st December, 2008, directed the respondent to maintain *status quo*, thereby, restraining her from selling, transferring, disposing of, parting with possession, or creating any third-party interest in respect of the suit property.

6.14. Subsequently, this Court *vide* order dated 23rd September, 2009, recorded that the respondent did not dispute the fact of receiving the earnest money of Rs. 10 Lacs, as well as the part payment of Rs. 10 Lacs.

6.15. By way of the order dated 27th October, 2009 passed in the suit, this Court recorded the submission that the respondent herein was ready and willing to refund a sum of Rs. 10 Lacs to the appellant herein, being the amount admittedly received towards part payment of the sale consideration. Accordingly, this Court directed the respondent to refund the said sum of Rs. 10 Lacs to the appellant on or before 10th November, 2009.

6.16. Further, *vide* the aforesaid order dated 27th October, 2009, this Court framed the issues in the suit, which are reproduced as under:

> *"xxx xxx xxx*
>
> *1. Whether the defendant had agreed to sell the entire building including the ground floor situate at property bearing no. 7, Gobind Park, Jagatpuri, Delhi? OPD.*
>
> *2. Whether the plaintiff was ready and willing at all times to perform his part of the obligations as contained in the agreement to sell dated*

19.06.2008? OPP.

3. Whether the plaintiff is entitled to a decree of specific performance in terms of the agreement to sell dated 19.06.2008? OPP.

4. Relief(s).

xxx xxx xxx"

6.17. As per the order dated 18th January, 2016, the suit in question, subsequent to the change in the pecuniary jurisdiction, was directed to be transferred from this Court to the subordinate Court, having competent jurisdiction. Consequently, the suit was transferred to the Karkardooma Courts, Delhi and renumbered as *CS No. 2727/2016*.

6.18. Thereafter, upon hearing the arguments of the parties, the Trial Court pronounced the impugned judgment, and decided issue no. 1 in favour of the appellant, and held that the respondent had agreed to sell the entire building, including, the ground floor and the upper three floors. However, issue nos. 2 and 3 were decided against the appellant, wherein, the Trial Court held that the plaintiff/appellant was not ready and willing, at all times, to perform his part of obligations, as contained in the subject ATS dated 19th June, 2008.

6.19. Additionally, the Trial Court observed that, since the appellant had not sought any relief of money decree in respect of the earnest money paid by him under the said ATS, he was not entitled to any relief, and accordingly dismissed the suit.

6.20. Aggrieved thereto, the present appeal has been filed challenging the impugned judgment passed by the Trial Court.

III. SUBMISSIONS OF THE APPELLANT

7. Before this Court, the appellant has raised the following contentions, seeking to set aside the impugned judgment:

7.1. The finding of the Trial Court on issue no. 1, passed in favour of the appellant herein, thereby, holding that the respondent herein agreed to sell the entire building, including, the ground floor of the suit property, had a bearing on the intention of the parties to perform the subject ATS, as well as on issue nos. 2 and 3. Thus, after deciding issue no. 1 in favour of the appellant, issue nos. 2 and 3 could not have been decided in isolation, and without considering the finding of issue no. 1.

7.2. The appellant's readiness and willingness to perform the agreement, at all relevant points of time, including, on the stipulated date, i.e., 01st August, 2008, stood duly averred, proved and established throughout the proceedings, both in the plaint and in evidence, and the Trial Court has erred in holding to the contrary.

7.3. The readiness and willingness of a party to comply with terms of an agreement depends on the facts of each case, and thus, there cannot be any straight-jacket formula for the same. Further, readiness and willingness would also depend on whether the respondent did everything, which it was required to do.

7.4. The appellant herein sold his freehold property in *Indirapuram, Ghaziabad* on 28th May, 2008, and signed the earlier ATS dated 25th May, 2008 and further paid Rs. 05 Lacs towards the earnest money for purchase of the suit property.

7.5. In furtherance of purchasing the suit property, the appellant agreed to substitute the earlier ATS dated 25th May, 2008 with the subject ATS dated 19th June, 2008, and thereby, placed himself at a greater risk, by enhancing the earnest money to Rs. 10 Lacs, paying a total of Rs. 20 Lacs (constituting approximately 37% of the total sale consideration). Additionally, the appellant and his wife withdrew amounts from the concerned bank for the purchase of stamp duty and the appellant also appeared before the Sub-Registrar, on the stipulated date, with cheques aggregating to the entire balance sale consideration of Rs. 35.5 Lacs.

7.6. Further, as the respondent did not visit the office of Sub-Registrar, the appellant sent a legal notice dated 02nd August, 2008, immediately, calling upon the respondent to perform his part of the contract. Despite the said notice, when the respondent failed to come forward to perform the contract, the appellant lodged a complaint dated 29th August, 2008 before ACP, *Gandhi Nagar, New Delhi*.

7.7. The Trial Court further erred by ignoring the appellant's Evidence Affidavit, marked as *Ex. PW-1/A*, wherein, he categorically affirmed that he was and is ready with the balance sale consideration of Rs. 35.5 Lacs, and was always keen to have the sale deed executed in accordance with the terms and conditions of the subject ATS.

7.8. The appellant, during his cross-examination, categorically denied the suggestion that he had not been able to prove any continuity of his willingness, and even stated that he had brought his statements of respective bank accounts, having sufficient funds, i.e., Rs. 9,87,115.83/- in his Oriental Bank of Commerce account, Rs. 34,30,599.90/- in his Syndicate Bank account and Rs. 2,47,724.68/- in his wife's State Bank of Hyderabad account.

7.9. The Trial Court ignored the fact that the respondent's counsel before the Trial Court did not cross-examine the appellant to discredit the aforesaid assertion, nor did the Trial Court allow the appellant to place on record the bank statements, in this regard.

7.10. It is well settled that it is not necessary for a plaintiff in a suit for specific performance to carry ready cash at all times, i.e., from the date of suit till the date of decree, and it is sufficient that he establishes his capacity to pay the sale consideration.

7.11. The Trial Court, while making the observation that the appellant lacked the financial capacity to pay the balance sale consideration, did not choose the date of transaction, i.e., 01st August, 2008, but wrongly chose the date, on which the evidence was recorded for checking the balance in the bank accounts.

7.12. In respect of the cheque for Rs. 04 Lacs, issued by Shri Rajesh Kumar (*Ex. PW-1/2*), the Trial Court, took the balance as on 26th August, 2008, being Rs. 62,407/-, whereas, the balance in the said account as on 01st August, 2008 was to the tune of Rs. 4,77,407/-.

7.13. Further, with respect to the cheque for Rs. 3.75 Lacs, issued by Shri Meer Singh Sehrawat (*Ex. PW-1/4*), the Trial Court took the balance as on 23rd September, 2008, being Rs. 2,04,142/-, whereas, the balance in the said account as on 01st August, 2008 was sufficient to honour the cheque. Each of the accounts, from which, the cheques were drawn held sufficient funds, as on the stipulated date, to honour the respective cheques.

7.14. Additionally, the finding of the Trial Court that the amount was coming from sources other than the appellant's own account, was misplaced. As a matter of fact, the sum of Rs. 24 Lacs out of the balance sale consideration of Rs. 35.5 Lacs (constituting approximately 68%) was lying in the appellant's own account, jointly held with his wife, Smt. Rekha.

7.15. Further, the appellant, in any event, had a right to tender third-party cheques towards the balance sale consideration, particularly, as the subject ATS itself contemplated the execution of the sale deed in favour of the appellant and/or his nominee.

7.16. The Trial Court failed to appreciate that this Court had, on the very first date of listing, i.e., 01st December, 2008, recorded that the appellant was ready and willing to pay the balance sale consideration of Rs. 35.5 Lacs and to have the sale deed executed, and that it was the respondent, who was categorically refusing to execute the same.

7.17. The Trial Court ignored the conduct of the respondent, who, despite having received a sum of Rs. 20 Lacs from the appellant, falsely claimed that she had lost the earnest money on account of the sale not having materialised, while in fact utilising the said amount to purchase another property in her own name.

7.18. The Trial Court failed to finally and completely adjudicate the suit, inasmuch as it did not decide the question of earnest money, i.e., whether the same was liable to be forfeited or to be returned to the appellant, even though, the said question was an integral part of the controversy between the parties and of the specific performance of the contract.

7.19. The forfeiture of earnest money cannot be claimed as a matter of right. It was incumbent upon the respondent to plead and prove that she had suffered a corresponding loss. The respondent, far from suffering any loss, in fact stood to gain, inasmuch as, by her own showing, the suit property was worth more than Rs. 75 Lacs, as against the agreed consideration of Rs. 55.5 Lacs, and she failed to plead or prove any loss whatsoever.

7.20. The respondent did not prove the loss, if any, suffered by her in not getting the sale deed executed. It is settled that wherever there is an absence of any loss, an aggrieved party cannot claim the forfeiture of the earnest money.

IV. SUBMISSIONS OF THE RESPONDENT

8. Rebutting the contentions of the appellant, the respondent has raised the following arguments before this Court:

8.1. The present appeal is liable to be dismissed, *inter alia*, for the reason that there was an absence of continuous readiness and willingness to perform in terms of the subject ATS, thus, disentitling the appellant for the relief of specific performance.

8.2. As mandated by Section 16(c) of the Specific Relief Act, 1963 **("Specific Relief Act")**, a plaintiff seeking specific performance needs to aver and prove that he has been continuously ready and willing to perform his part of the obligations, from the date of the contract, through the date of institution of the suit, and until the date of the decree. The appellant has failed to discharge the said *onus*, which is a *sine qua non* for obtaining a decree of specific performance.

8.3. The appellant failed to bring on record any evidence to establish his financial preparedness to show readiness to pay the balance sale consideration of Rs. 35.5 Lacs, as on 01st August, 2008.

8.4. The appellant failed to produce any bank accounts to establish the availability of funds from 19th June, 2008 (date of subject ATS) to 01st August, 2008 (date for execution of sale deed), and thereafter, including on the date of filing of the suit, i.e., 01st December, 2008 and at the time of the trial.

8.5. Additionally, the appellant has alleged that he had withdrawn cash for purchasing stamp papers. However, no evidence has been placed on record to show that the stamp papers were purchased by him, which further shows that he was neither ready, nor willing to perform his part of the subject ATS.

8.6. The appellant has placed on record a complaint dated 29th August, 2008 filed by him with the ACP, *Gandhi Nagar, Delhi*, as per which, the appellant claimed money back from the respondent, thereby, clearly showing that the appellant was neither ready, nor willing to perform his part of the subject ATS.

8.7. The appellant sought to rely upon cheques drawn from the accounts of third parties, namely, Smt. Rekha, Shri Rajesh Kumar and Shri Meer Singh Sehrawat, whereas, the subject ATS obligated the appellant, and not any third party, to pay the balance sale consideration. The respondent was under no obligation to accept the cheques issued by third parties, having no concern with the transaction between the parties.

8.8. *In arguendo*, the cheques, though not ready with the appellant, were not acceptable as they were drawn from the accounts of private individuals, which lacked any guarantee of encashment. Additionally, the said cheques could not, in any event, have been encashed on 01st August, 2008, in terms of the prevailing banking norms, making the appellant's readiness to pay questionable.

8.9. Further, without admitting that the respondent could have accepted the cheques from third parties, the accounts did not have sufficient balance to honour the cheques during their period of validity.

8.10. In this regard, the statement of bank account of Shri Rajesh Kumar, who had allegedly issued a cheque for Rs. 04 Lacs, reflected a balance of only Rs. 62,407/-, whereas, the account of Shri Meer Singh Sehrawat, who had allegedly issued a cheque for Rs. 3.75 Lacs, reflected a balance of Rs. 3,51,115.78/- as on 09th August, 2008. The said fact of insufficient funds in the bank accounts of Shri Rajesh Kumar and Shri Meer Singh Sehrawat was presented and confirmed by Shri Sanjay Kumar Rana *(PW-4)* and Shri R.P. Singh *(PW-5)*, respectively.

8.11. The relief claimed in the present appeal travels beyond the relief claimed in the suit.

8.12. It is a settled principle that an alternative relief of refund cannot be granted unless it is specifically claimed in the suit. The appellant, in the suit, did not claim the refund of the sum of Rs. 10 Lacs, paid as earnest money, or the sum of Rs. 10 Lacs paid towards the advance money for part payment. Thus, the Trial Court rightly held that, in the absence of any prayer for a money decree, the appellant was not entitled to any such relief.

8.13. The appellant has, in a clandestine manner and without the leave of this Court, sought the relief of refund of Rs. 10 Lacs, along with interest in the present appeal, which is impermissible.

8.14. In any event, during the pendency of the suit, the respondent has deposited Rs. 10 Lacs in terms of the order dated 27th October, 2009, and since there was no relief claimed for refund of earnest money, no order was passed for the same. Thus, to cover up the gap of claiming earnest money, the appellant herein has filed the present appeal.

8.15. The legal notice dated 02nd August, 2008, issued by the appellant, did not mention the alleged cheques or the purported readiness to pay the balance sale consideration, which indicates that the said cheques were manipulated subsequently, in order to fabricate a case of readiness and willingness.

8.16. There is no valid appeal in the eyes of law, inasmuch as the affidavits in support of the appeal and the application for stay are dated 19th January, 2017, whereas, the appeal and the application for stay, are themselves dated 20th January, 2017. Thus, the stay is also liable to be vacated and the appeal is liable to be dismissed on this ground alone.

V. ANALYSIS AND FINDINGS

9. This Court has heard the arguments put forth by the parties, and perused the documents and evidence on record.

10. In the present case, the appellant and the respondent entered into the earlier ATS, with respect to the sale of the suit property, i.e., built-up property bearing *No. 7, Gobind Park, Village Khureji Khas, Illaqa Shahdara, Delhi-51*, for a sale consideration of Rs. 55.5 Lacs, pursuant to which, the appellant paid an amount of Rs. 05 Lacs as earnest money.

11. Subsequently, the subject ATS dated 19th June, 2008, in substitution of the earlier ATS dated 25th May, 2008, was entered into between the parties, whereby, the appellant herein further paid another sum of Rs. 15 Lacs, thus, making the total amount paid by the appellant to the tune of Rs. 20 Lacs. It was agreed that Rs. 10 Lacs will be adjusted towards the earnest

money and Rs. 10 Lacs shall be towards the part payment of sale consideration. The balance consideration of Rs. 35.5 Lacs was agreed to be paid at the time of execution of the sale deed, i.e., on 01st August, 2008.

12. On 01st August, 2008, being the date stipulated for execution, the parties herein reached the office of the Sub-Registrar, *Geeta Colony, Delhi*, and got their presence marked, however, the sale deed was not executed, on account of each party attributing the default to the other. The appellant, thereafter, instituted the suit for specific performance of the subject ATS, seeking directions to the respondent to execute the sale deed upon acceptance of the balance consideration of Rs. 35.5 Lacs, along with possession.

13. The Trial Court *vide* the impugned judgment decided issue no. 1 in favour of the appellant, holding that the respondent had agreed to sell the entire building, including, the ground floor. However, issue nos. 2 and 3 were decided against the appellant, observing that the appellant was not ready and willing at all times to perform his part of the obligation, and the suit was accordingly dismissed. Aggrieved thereto, the appellant has preferred the present appeal.

14. At the outset, this Court notes that the present case relates to Clause (c) of Section 16 of the Specific Relief Act. It is to be noted that Section 16 of the Specific Relief Act was amended in the year 2018, whereby, in Section 16(c), the earlier expression *'who fails to aver and prove'* was substituted by *'who fails to prove'*.

15. However, since the aforesaid amendment of the year 2018 is prospective in nature, the same would not be applicable to the present case, which entails a transaction entered into prior to the said amendment. In this

regard, reliance is placed on the judgment passed in the case of ***Pydi Ramana Alias Ramulu Versus Davarasety Manmadha Rao, (2024) 7 SCC 515***, wherein, the Supreme Court has held as follows:

> *"xxx xxx xxx*
>
> ***11.** At the outset, **it requires to be clarified and made clear that in the instant case the amendment brought to the Specific Relief Act by Act 18 of 2018 would be inapplicable. The amendment is prospective in nature and cannot be applied to those transactions which took place prior to amendment**. [Katta Sujatha Reddy v. Siddamsetty Infra Projects (P) Ltd., (2023) 1 SCC 355 : (2023) 1 SCC (Civ) 201] **In order to prove** [Man Kaur v. Hartar Singh Sangha, (2010) 10 SCC 512 : (2010) 4 SCC (Civ) 239] **that the plaintiff is entitled to the specific performance as per the law existing prior to amendment, the plaintiff has to establish**:*
>
> > ***(a) That a valid agreement of sale was entered into by the defendant in his favour;***
> >
> > ***(b) That the defendant committed breach of the agreement; and***
> >
> > ***(c) That he was always ready and willing to perform his part of the obligations in terms of the agreement.***
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

16. It would further be fruitful to refer to the unamended Section 16 of the Specific Relief Act, which reads as under:

> *"**16. Personal bars to relief**.—Specific performance of a contract cannot be enforced in favour of a person—*
>
> *(a) who would not be entitled to recover compensation for its breach; 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) **who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.***

Explanation.—For the purposes of clause (c)—
(i) ***where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court****;*
(ii) ***the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction****."*

(Emphasis Supplied)

17. It is clear from a bare reading of the aforesaid that Section 16 of the Specific Relief Act provides certain bars to the relief of specific performance. These include, *inter alia*, a person 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.

18. The unamended Section 16(c) of the Specific Relief Act establishes that specific performance cannot be enforced in favour of a person, 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.

19. The term *readiness* pertains to the plaintiff's capacity to perform its part of the contract. As observed by the Supreme Court in the case of ***P. Daivasigamani Versus S. Sambandan (2022) 14 SCC 793***, readiness means the capacity of the plaintiff to perform the contract, which includes the financial position to pay the purchase price.

20. *Willingness*, on the other hand, relates to the plaintiff's conduct, showing his intention to complete the performance of an agreement. It is a manifestation of the plaintiff's desire to perform the contract and is judged by scrutinizing its conduct and the surrounding circumstances. The Supreme Court in the case of ***Shenbagam and Others Versus KK Rathinavel, 2022***

SCC OnLine SC 71, noted that willingness is ascertained by assessing the plaintiff's conduct throughout the transaction.

21. With respect to the aforesaid, the Supreme Court, in the case of ***Pydi Ramana (Supra)***, while dealing with the principle of readiness and willingness to perform the terms of the contract under Section 16(c) of the Specific Relief Act, held as follows:

> *"xxx xxx xxx*
>
> ***Readiness and willingness not proved***
>
> ***13. In order to obtain a decree for specific performance, the plaintiff must aver and prove that he has performed his part of the contract and has always been ready and willing to perform the terms of the contract which are to be performed by him. Section 16(c) of the Specific Relief Act mandates "readiness and willingness" of the plaintiff to be averred and proved and it is a condition precedent to obtain the relief of specific performance.***
>
> ***14. There is a distinction between the terms "readiness" and "willingness". [Acharya Swami Ganesh Dassji v. Sita Ram Thapar, (1996) 4 SCC 526] "Readiness" is the capacity of the plaintiff to perform the contract which includes his financial position to pay the sale consideration. "Willingness" is the conduct of the party.*** *In the instant case, even according to the concurrent findings recorded by the courts below, it would emerge that the plaintiff had been able to successfully prove the sale agreement dated 7-6-1993 Ext. A-1 on which date Rs 2005 was paid by the plaintiff to the defendant. The evidence on record tendered by the plaintiff came to be accepted by all the courts and judgments of courts below would also indicate that further amount towards sales consideration in a sum of Rs 17,000 was paid by the plaintiff to the defendant on 23-6-1993 and same was endorsed by him.*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

22. Further, such readiness and willingness must be "continuous", and the same must subsist not only on the date stipulated for performance, but from the date of the contract, through the date of institution of the suit, and until the date of the decree. A plaintiff, who is unable to establish such continuity,

is disentitled to the relief, notwithstanding, that he may have been ready or willing to perform the contract, at an isolated point of time. In addition, a reading of Section 16(c) of the Specific Relief Act further makes it clear that the *onus* is on the plaintiff to prove that he has "always" been ready to perform the essential terms of the contract.

23. It is also no longer *res integra* that relief of specific performance is a discretionary and equitable relief. The Court would be required to consider various material facts, pertaining to readiness and willingness of the plaintiff to perform the contract and whether it will be equitable to grant the relief of specific performance to the plaintiff. The factum of readiness and willingness of a plaintiff to perform the contract, is to be adjudged with reference to the conduct of such party and other attending circumstances. Reference in this regard may be made to the judgment of the Supreme Court in the case of ***Kamal Kumar Versus Premlata Joshi and Others, (2019) 3 SCC 704***, wherein, it has been held as follows:

> *"xxx xxx xxx*
>
> *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.***

8. *In our opinion, the aforementioned questions are part of the statutory requirements [See Sections 16(c), 20, 21, 22, 23 of the Specific Relief Act, 1963 and Forms 47/48 of Appendices A to C of the Code of Civil Procedure].* ***These requirements have to be properly pleaded by the parties in their respective pleadings and proved with the aid of evidence in accordance with law. It is only then the Court is entitled to exercise its discretion and accordingly grant or refuse the relief of specific performance depending upon the case made out by the parties on facts****.*

9. *In the case at hand, we find that* ***the two courts below have gone into these questions in the light of pleadings and evidence and recorded a categorical finding against the plaintiff holding that the plaintiff was neither ready nor willing to perform his part of the contract and, therefore, he was not entitled to claim the relief of specific performance of the contract against the defendants in relation to the suit land. It was also held that the plaintiff was not entitled to claim any relief of refund of earnest money because it was liable to be adjusted as agreed between them****.*

xxx xxx xxx"

(Emphasis Supplied)

24. Likewise, holding that readiness and willingness to perform the contract must be established throughout the relevant points of time, the Supreme Court in the case of ***J.P. Builders and Another Versus A. Ramadas Rao and Another, (2011) 1 SCC 429***, has held as follows:

"xxx xxx xxx

25. Section 16(c) of the Specific Relief Act, 1963 mandates "readiness and willingness" on the part of the plaintiff and it is a 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.

xxx xxx xxx

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.

xxx xxx xxx"

(Emphasis Supplied)

25. Thus, it is well established that a plaintiff seeking specific performance must plead, and continuously prove, readiness and willingness to perform his part of the contract from the date of its execution until the date of the decree. Reliance is placed on the judgment passed in the case of ***C.S. Venkatesh Versus A.S.C. Murthy (Dead) by Legal Representatives and Others, 2020 SCC OnLine SC 143***, wherein, the Supreme Court observed as under:

"xxx xxx xxx

16. The words "ready and willing" imply that the plaintiff was prepared to carry out those parts of the contract to their logical end so far as they depend upon his performance. The continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of performance. 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 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 which he has to pay the defendant must be of necessity to be proved to be available. Right from the date of the execution of the contract till the date of decree, he must prove that he is ready and willing to perform his part of the contract. The court may infer from the facts and circumstances whether the plaintiff was ready and was always ready to perform his contract.

17. In N.P. Thirugnanam v. R. Jagan Mohan Rao [N.P. Thirugnanam v. R. Jagan Mohan Rao, (1995) 5 SCC 115], it was held that continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant of the relief of specific performance. This circumstance is material and relevant and is required to be considered by the court while granting or refusing to

<u>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 to 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 necessarily be proved to be available.</u>

xxx xxx xxx"

(Emphasis Supplied)

26. Now, in the case in hand, the question arising is as to whether the appellant/plaintiff has performed or has always been ready and willing to perform his obligations in pursuance of the subject ATS.

27. This Court notes that the admitted case of the parties is that the transaction was to be completed by 01st August, 2008, and the entire payment in pursuance of the subject ATS was to be made by the said date. Further, there is no dispute as to the fact that, on 01st August, 2008, the appellant/plaintiff was present before the office of the Sub-Registrar for execution of the sale deed, and the same stands duly proved on record, by the inspection/registration receipts bearing *Nos. 62552* and *62543*. Further, the presence of the respondent before the office of the Sub-Registrar, on the said date, has also been duly proved, by the inspection/registration receipt bearing *No. 62536*.

28. It is to be noted that the appellant/plaintiff has alleged that at the office of the Sub-Registrar, he had come with four cheques issued by his friends and close relatives, marked as *Ex. PW-1/1* to *Ex. PW-1/4*, for making the payment of the balance sale consideration to the respondent/defendant. In this regard, a perusal of the account statements of the concerned banks brings forth the following facts:

I. For the cheque of Rs. 24 Lacs issued from Oriental Bank of Commerce, from the joint account of appellant and his wife, the bank statement from 01st June, 2008 to 01st October, 2008 shows that till 01st October, 2008, the amount was more than Rs. 24 Lacs.

II. For the cheque of Rs. 04 Lacs issued from the Delhi State Co-operative Bank Ltd., from the account of a third party, i.e., Shri Rajesh Kumar, the bank statement shows that even though during the period of 21st July, 2008 to 09th August, 2008, the amount in the bank account was more than 04 Lacs, however, as on 26th August, 2008, the amount was Rs. 62,407/-.

III. For the cheque of Rs. 3.75 Lacs issued from the State Bank of India, from the account of a third party, i.e., Shri Meer Singh Sehrawat, the said account had sufficient funds during the period of 30th July, 2008 to 29th August, 2008; the amount in the account was more than Rs. 04 Lacs, and even on the closest date of filing of the suit, the amount was Rs. 3,81,614/-.

IV. For the cheque of Rs. 3.75 Lacs issued from the Syndicate Bank, from the account of a third party, i.e., Shri Meer Singh Sehrawat, despite the fact that on 01st August, 2008, the amount was Rs. 4,26,315/- and till 09th August, 2008, it had more than Rs. 3.75 Lacs, the said account did not have requisite funds after the said date, and on 25th September, 2008, the account had Rs. 2,04,142/- as balance.

29. Moreover, during the cross-examination of the appellant, he has admitted to the fact that the aforesaid four cheques were *account-payee cheques* and not banker's cheques. Therefore, it is clear that the said cheques could not have been encashed as on 01st August, 2008, as per the banking

norms. Moreover, even otherwise, one important factum that has to be considered is that the bank accounts did not have sufficient funds to honour the cheques during the validity of those cheques.

30. The evidence in this regard was considered by the Trial Court and it was categorically held that the appellant/plaintiff did not have the requisite amount for payment of the balance sale consideration. The Trial Court accordingly held as follows:

> *"xxx xxx xxx*
>
> 9.4 Ex. PW-1/1 is a cheque issued for Rs. 24 Lacs on 01.08.2008 by Smt. Rekha (wife of the plaintiff) and the statement of account Ex. PW-1/5 shows that the balance amount in her account on 01.10.2008 was Rs. 24,21,062/-.
>
> 9.5 Ex. PW-1/2 is a cheque issued for Rs. 4 Lacs on 01.08.2008 by Sh. Rajesh Kumar, and the statement of account Ex. PW-1/6 shows that the balance amount in his account on 26.08.2008 was Rs. 62,407/-.
>
> 9.6 Ex. PW-1/3 is a cheque issued for Rs. 3,75,000/-dated 01.08.2008 by Sh. Meer Singh Sehrawat, and the statement of account Ex. PW-1/7 shows that the balance amount in his account on 13.09.2008 was Rs. 3,81,614/-.
>
> 9.7 Ex. PW-1/4 is a cheque issued for Rs. 3,75,000/-on 01.08.2008 by Sh. Meer Singh Sehrawat, and the statement of account Ex. PW-1/8 shows that the balance amount in his account on 03.09.2008 was Rs. 2,04,142/-.
>
> 9.8 From the evidence on record it is clear that the plaintiff did not have the requisite amount on the date of filing of the suit on 01.12.2008. It is further contended by Ld. Counsel for the defendant that the defendant entered into an agreement on 25.05.2008 and thereafter on 19.06.2008 with the plaintiff and not with Smt. Rekha, Sh. Rajesh Kumar and Sh. Meer Singh Sehrawat. So it was for the plaintiff to have made payment of the entire balance amount to the defendant from his own account and not through any other person. The defendant had nothing to do with the said persons and the defendant was not supposed to accept the cheques issued by the above said persons as they had no concern with the deal between the plaintiff and the defendant.
>
> *xxx xxx xxx*

9.22 From the evidence on record, it is proved that the plaintiff and the defendant entered into agreement to sell on 25.05.2008 which was superseded by another agreement dated 19.06.2008. The total consideration amount was Rs. 55,50,000/-, out of which Rs. 10 Lac was paid as an earnest amount and Rs. 10 Lac was paid as advance and the plaintiff was required to prove that he was ready and willing to perform his part of the agreement to sell. He was required to prove his financial capacity to pay the balance sale consideration at all points of time from the date on which the sale deed was executed till the time of final arguments. However, the documents proved on record by the plaintiff himself shows that the amount in his account or the amount in the account of the persons from whom he was seeking help, was not sufficient to pay the balance sale consideration on the date on which evidence was recorded. The amount was coming from other sources and not from the account of the plaintiff and that amount was also insufficient to prove the necessary financial capacity of the plaintiff. **Accordingly, I hold that the plaintiff was not ready and willing at all times to perform his part of obligations as contained in the agreement to sell dated 19.06.2008.** Inasmuch as the readiness and willingness is a necessary sine qua non for obtaining a decree for specific performance which the plaintiff has failed to meet, I hold that **the plaintiff is not entitled for a decree of specific performance in terms of the agreement to sell dated 19.06.2008.** Issue no. 2 and 3 are accordingly decided against the plaintiff and in favour of the plaintiff.

xxx xxx xxx"

31. Thus, the Trial Court was right in coming to the finding that the appellant herein has failed to establish "continuous" financial readiness. The entire case sought to be projected by him is confined to his alleged capacity as on 01st August, 2008. Even according to the materials relied upon by the appellant, there is no evidence demonstrating the availability of funds on the date of institution of the suit or during the pendency of the proceedings.

Significantly, no statement of the appellant's own bank account was produced to establish his continuing capacity to arrange the balance sale consideration.

32. Further, the appellant's case is founded upon the cheques, allegedly issued by his wife and relatives/close friends. The accounts from which such cheques, i.e., *account-payee* cheques, were drawn admittedly did not maintain the requisite balances even during the validity of the said cheques.

33. Accordingly, the fact that sufficient balances may have existed in the bank accounts on or about 01st August, 2008 does not establish continuous readiness, but rather demonstrates its transient nature.

34. It is also to be noted that the appellant had stated that he had withdrawn certain cash on 24th July, 2008 and 26th July, 2008, for purchasing the stamp duty. However, the appellant has not placed on record any evidence to show that the stamp papers were actually purchased for execution of the sale deed, thus, it cannot be said that the appellant was ready or willing to perform his part of the contract.

35. It is material to note that in the complaint dated 29th August, 2008 to the ACP, *Gandhi Nagar, Delhi*, the appellant has stated that the respondent *"denied to execute the sale deed of the above said property on the fixed date as per agreement to sale deed"*. Furthermore, it has been stated by the appellant that *"when we go to them and ask about my money, the husband and son of her used to misbehave with me"*. The fact that the appellant claimed back money from the respondent clearly shows the absence of continuous readiness and willingness on part of the appellant to perform the contract.

36. The settled proposition of law under Section 16(c) of the Specific Relief Act, as discussed in the preceding paragraphs, makes it manifestly clear that in order for the plaintiff to be entitled to a decree of specific performance, the plaintiff must aver and prove continuous readiness and willingness to perform the contract on his part from the date of the contract. However, if the plaintiff is unable to establish continuous readiness and willingness to perform, then specific performance of a contract cannot be enforced in favour of such a party.

37. Further, applying the aforesaid principle to the present factual matrix, it is to be noted that the cheques, as relied upon by the appellant, being drawn on the accounts of private individuals, and not being banker's cheques, carried no guarantee of encashment and could not, in any event, have been encashed on 01st August, 2008, i.e., the date stipulated for execution of sale deed, as per the banking norms. Even otherwise, as discussed hereinabove, the accounts on which the said cheques were drawn, did not hold sufficient balance to honour them even during the validity of the cheques.

38. Additionally, as noted hereinabove, the complaint dated 29th August, 2008, lodged by the appellant before the ACP, *Gandhi Nagar, Delhi*, assumes considerable significance in this regard to show the appellant's unwillingness to perform the contract, wherein, the appellant rather than seeking execution of the sale deed, sought return of the amounts paid by him to the respondent. Thus, the conduct of the appellant is inconsistent with an intention to complete the transaction. A purchaser who, within weeks of the stipulated date of performance, seeks refund of the sale consideration cannot

simultaneously claim to have remained continuously willing to perform the contract.

39. Further, the contention of the appellant that the respondent repeatedly avoided to take the balance sale consideration and to execute the sale deed, would not confer any benefit upon the appellant to seek relief of specific performance in his favour. Law is well established that even if the defendant had committed any breach, however if the plaintiff fails to aver or prove that he was always ready and willing to perform the essential terms of the contract which are required to be performed by him, no relief of specific performance can be granted in his favour. In this regard, reliance is placed upon the judgment passed in the case of ***Man Kaur (Dead) by Lrs. Versus Hartar Singh Sangha, (2010) 10 SCC 512,*** wherein, the Supreme Court has held as follows:

> *"xxx xxx xxx*
>
> ***12. Section 16(c) of the Specific Relief Act, 1963 ("the Act", for short) bars the specific performance of a contract in favour of a plaintiff***
>
> > ***"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 of the performance of which has been prevented or waived by the defendant".***
>
> *Explanation (ii) to Section 16 provides that for purposes of clause (c) of Section 16,*
>
> > *"the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction."*
>
> ***Thus, in a suit for specific performance, the plaintiff should not only plead and prove the terms of the agreement, but should also plead and prove his readiness and willingness to perform his obligations under the contract in terms of the contract****. (See N.P. Thirugnanam v. Dr. R. Jagan Mohan Rao [(1995) 5 SCC 115: AIR 1996 SC 116]; Pushparani S. Sundaram v. Pauline Manomani James [(2002) 9 SCC*

582] and Manjunath Anandappa v. Tammanasa [(2003) 10 SCC 390].)

***13.** In the first case, this Court held: (N.P. Thirugnanam case [(1995) 5 SCC 115: AIR 1996 SC 116], SCC p. 118, para 5)*

> *"5. ... **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 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."*
>
> *xxx xxx xxx*

40.** This contention has no merit. There are two distinct issues. **The first issue is the breach by the defendant vendor which gives a cause of action to the plaintiff to file a suit for specific performance. The second issue relates to the personal bar to enforcement of a specific performance by persons enumerated in section 16 of the Act. A person 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 the terms the performance of which has been prevented or waived by the defendant) is barred from claiming specific performance. Therefore, even assuming that the defendant had committed breach, if the plaintiff fails to aver in the plaint or prove that he was always ready and willing to perform the essential terms of contract which are required to be performed by him (other than the terms the performance of which has been prevented or waived by the plaintiff), there is a bar to specific performance in his favour. Therefore, the assumption of the respondent that readiness and willingness on the part of the plaintiff is something which need not be proved, if the plaintiff is able to establish that the defendant refused to execute the sale deed and thereby committed breach, is

not correct. *Let us give an example.* ***Take a case where there is a contract for sale for a consideration of Rs. 10 lakhs and earnest money of Rs. 1 lakh was paid and the vendor wrongly refuses to execute the sale deed unless the purchaser is ready to pay Rs. 15 lakhs. In such a case there is a clear breach by the defendant. But in that case, if the plaintiff did not have the balance Rs. 9 lakhs (and the money required for stamp duty and registration) or the capacity to arrange and pay such money, when the contract had to be performed, the plaintiff will not be entitled to specific performance, even if he proves breach by the defendant, as he was not "ready and willing" to perform his obligations.***

xxx xxx xxx"

(Emphasis Supplied)

40. Thus, as a *sequitur* to the aforesaid, the appellant has failed to establish "continuous" readiness and willingness, as mandated under Section 16(c) of the Specific Relief Act, in terms of financial capacity to pay the pending sale consideration as per the subject ATS, as well as the intent to perform the obligations thereto, i.e., through conduct. The finding of the Trial Court rejecting the claim for specific performance is, therefore, well founded and calls for no interference.

41. Furthermore, this Court notes that no relief for refund of earnest money was claimed by the appellant/plaintiff in the suit. However, in the present appeal, in the alternative to the relief of specific performance, the appellant has claimed for refund of the earnest money.

42. In this regard, this Court notes that the two sums, namely, Rs. 10 Lacs towards earnest money and Rs. 10 Lacs towards advance/part payment, have been admittedly paid by the appellant.

43. It is pertinent to note that *vide* order dated 27th October, 2009, the respondent/defendant informed this Court, when the suit was pending before this Court for trial, that she was ready and willing to refund Rs. 10 Lacs received as part payment, and accordingly, the Court directed the

respondent/defendant to refund the same. The order dated 27th October, 2009, passed by this Court, reads as under:

> *"xxx xxx xxx*
>
> ***In terms of the last order dated 23.09.2009, counsel for the defendant was directed to seek instructions as to whether the defendant would be willing to refund to the plaintiff Rs 10 lacs, which according to even the defendant was paid as part payment towards the entire sale consideration. Mr C L Sharma, the learned counsel for the defendant, on instructions of the husband of the defendant, who is present in Court submits that they are ready and willing to refund of Rs 10 lacs to the plaintiff. Mr Sharma, on instructions seeks two weeks to do the needful.***
>
> ***The defendant is accordingly directed to refund Rs 10 lacs to the plaintiff on or before 10.11.2009.***
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

44. Accordingly, Rs. 10 Lacs, towards the advance payment, already stands refunded to the appellant/plaintiff herein.

45. Further, it is pertinent to note that *vide* order dated 16th April, 2026 passed in the present appeal, this Court has recorded the statement made by learned counsel for the respondent, that the respondent was ready to refund the amount of Rs. 10 Lacs lying with the respondent as earnest money/security. The order dated 16th April, 2026 reads as under:

> *"xxx xxx xxx*
>
> *2.* ***During the course of arguments, on a pointed query of this Court, learned counsel appearing for the respondent submitted that the respondent is ready to refund the sum of Rs. 10,00,000/- (Rupees Ten Lacs Only), which is still lying with the respondent, as security****.*
>
> *3.* ***Learned counsel appearing for the respondent submits that this statement has been made without prejudice to the rights and contentions****.*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

46. Thus, in view of the aforesaid statement made on behalf of the respondent, the amount of Rs. 10 Lacs paid as earnest money/security, is directed to be refunded by the respondent to the appellant. Let the needful be done within a period of four weeks.

47. Additionally, it is to be noted that in the present proceedings, this Court *vide* order dated 04th September, 2017, directed that the appellant's application bearing *C.M. No. 8298/2017*, preferred under Order XLI Rule 27 read with Section 151 of the CPC, be heard along with the main appeal at the time of final hearing.

48. The appellant, *vide* the said application, seeks to place on record by way of additional evidence, the bank account statements of himself and his wife, purportedly to establish the availability of funds and his financial capacity as on the date of his cross-examination, i.e., 08th December, 2011.

49. It is to be noted that, as per the documents sought to be placed on record by the appellant, the available balances in the respective bank accounts as on 07th December, 2011, are as follows:

Sl. No.	**Account**	**Bank**	**Statement Period**	**Balance as on 07.12.2011**
1.	Joint a/c of Chander Pal Singh & Smt. Rekha	Oriental Bank of Commerce	01st April, 2011 to 07th December, 2011	Rs. 9,87,115.83/-
2.	Sh. Chander Pal Singh	Syndicate Bank	01st August, 2011 to 07th December, 2011	Rs. 34,30,599.90/-

3.	Smt. Rekha	State Bank of Hyderabad	01st August, 2011 to 07th December, 2011	Rs. 2,47,724.68/-

50. In this regard, the appellant has relied upon the judgment passed by the Supreme Court in the case of ***Sanjay Kumar Singh Versus State of Jharkhand, (2022) 7 SCC 247***. It is to be noted that the Supreme Court has held that admissibility of additional evidence under Order XLI Rule 27 of the CPC does not depend upon the relevancy of the issue on hand, or whether the applicant had an opportunity for adducing such evidence at an earlier stage or not, but it depends upon whether or not the Appellate Court requires the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause, i.e., whether such additional evidence has a direct bearing on pronouncement of the judgment. The relevant portions of the aforesaid judgment are extracted as below:

> *"xxx xxx xxx*
>
> ***5.*** *The High Court has rejected the said application by observing that the application does not satisfy the requirement of Order 41 Rule 27 read with Section 96 CPC. The High Court has also observed that the appellant has failed to establish that notwithstanding exercise of due diligence, such additional evidence was not within his knowledge and could not after exercise of due diligence be produced before the courts below.*
>
> ***6. However, the High Court while considering the application for additional evidence has not appreciated the fact that the documents which were sought to be produced as additional evidence might have a bearing on determination of the fair market value of the acquired land.*** *It is to be noted that except the sale deed dated 29-12-1987, which was rejected by the courts below, no further evidence was on record to determine the fair market value of the acquired land. It was a case of awarding of fair compensation to the landowner whose land has been acquired for public purpose. It cannot be disputed that the*

claimant whose land is acquired is entitled to the fair market value of his land.

*7. **It is true that the general principle is that the appellate court should not travel outside the record of the lower court and cannot take any evidence in appeal. However, as an exception, Order 41 Rule 27 CPC enables the appellate court to take additional evidence in exceptional circumstances. It may also be true that the appellate court may permit additional evidence if the conditions laid down in this Rule are found to exist and the parties are not entitled, as of right, to the admission of such evidence. However, at the same time, where the additional evidence sought to be adduced removes the cloud of doubt over the case and the evidence has a direct and important bearing on the main issue in the suit and interest of justice clearly renders it imperative that it may be allowed to be permitted on record, such application may be allowed. Even, one of the circumstances in which the production of additional evidence under Order 41 Rule 27 CPC by the appellate court is to be considered is, whether or not the appellate court requires the additional evidence so as to enable it to pronounce judgment or for any other substantial cause of like nature.***

8. As observed and held by this Court in A. Andisamy Chettiar v. A. Subburaj Chettiar [A. Andisamy Chettiar v. A. Subburaj Chettiar, (2015) 17 SCC 713 : (2017) 5 SCC (Civ) 514], the admissibility of additional evidence does not depend upon the relevancy to the issue on hand, or on the fact, whether the applicant had an opportunity for adducing such evidence at an earlier stage or not, but it depends upon whether or not the appellate court requires the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause. It is further observed that the true test, therefore is, whether the appellate court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced.

xxx xxx xxx"

(Emphasis Supplied)

51. Further, it is equally true that additional evidence under Order XLI Rule 27 of the CPC can be admitted only in exceptional circumstances, and the Court shall exercise the power sparingly. Reliance is placed on the judgment of this Court in the case of ***Rahul Associates, Through its Partner, Mr. Rahul Mathur and Another Versus BMS Enterprises and***

Others, 2024 SCC OnLine Del 9274, wherein, this Court has held as follows:

> *"xxx xxx xxx*
>
> *22. **Under Order 41 Rule 27 of CPC, the Appellate Court is empowered to admit additional evidence only in exceptional circumstances. The provision does not confer an absolute right upon the parties to introduce such evidence. Additional evidence may not be permitted if, on the basis of the evidence already on record, the Appellate Court is in a position to deliver a satisfactory judgment.** It is a well-settled principle that the Appellate Court should ordinarily refrain from allowing new evidence to be adduced solely to enable a party to raise a new point in appeal. Factors such as inadvertence, inability to comprehend legal issues, reliance on erroneous legal advice, or negligence on the part of a pleader do not constitute sufficient grounds to invoke the provisions of this rule. **Furthermore, the mere importance of certain evidence does not, by itself, justify its admission in appeal.***
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

52. Bearing the aforesaid principle in mind, this Court notes that the proposed bank statements do not establish the appellant's readiness and willingness to perform the contract, particularly, when the appellant lacked the requisite funds on the stipulated date of performance, and even thereafter. As per the established law discussed hereinabove, the plaintiff has to establish that he had been ready and willing to perform his part of the contract. However, as per the evidence on record in the present case, it is apparent that the appellant/plaintiff has failed to establish his "continuous" readiness and willingness, as mandated under Section 16(c) of the Specific Relief Act.

53. Thus, it is clear that the additional evidence as sought to be adduced by the appellant would have no direct bearing on pronouncing the judgment or for any other substantial cause. It is apparent that this Court is able to

pronounce the judgment on the issues before this Court, on the basis of materials before it, without taking into consideration the additional evidence sought to be adduced. The additional evidence would have no bearing on the finding of this Court.

54. Accordingly, no merit is found in the said application and the prayer made therein, is accordingly rejected.

55. Considering the detailed discussion hereinabove, the present appeal is disposed of in the aforesaid terms.

MINI PUSHKARNA
(JUDGE)

JULY 20, 2026
KR