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

Date of decision: 22nd APRIL, 2025

IN THE MATTER OF:

+ **CS(OS) 659/2011**

ANAND PRAKASH BANSAL

.....Plaintiff

Through: Mr. Mayank Goel and Mr. Diganta Das, Advocates.

versus

NARESH BATRA

.....Defendant

Through: Mr. Raman Kapur, Senior Advocate with Mr. Aviral Tiwari, Advocate.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The present suit is one for specific performance with possession wherein the Plaintiff has prayed for the following reliefs:-

"i) For specific performance of agreement to sell dated 17/9/2010 read with agreement to sell dated 13/12/2010 directing the Defendant to perform his part of agreement and register the sale deed in favour of Plaintiff and his two nominees i.e. his brother Sh. S.K. Bansal to the extent of 1/2 share and in the name of his wife Smt. Bimla Devi to the extent of rest of the half share, jointly in respect of suit property i.e. free hold builtup property No.169, Pocket-H-19, Sector-7, Rohini, Delhi measuring 91.81 sq. meter, situated at Rohini Residential Scheme, Delhi; AND

ii) The Defendant be directed further to put the Plaintiff and his nominees in possession to give vacant and peaceful possession of the said property to the Plaintiff and his abovesaid nominees;



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iii) Costs of litigation may also be awarded with special exemplary costs in favour of the Plaintiff and against the Defendant."

2. The facts leading to the present suit are as follows:

- a. The Plaintiff, Mr. Anand Prakash Bansal, has instituted the present suit seeking specific performance of an agreement to sell in respect of a freehold immovable property bearing number 169, Pocket-H-19, Sector-7, Rohini, Delhi, admeasuring approximately 91.81 square metres. The total sale consideration agreed between the parties was ₹2,69,00,000/-.
- b. It is stated that the parties first entered into an agreement to sell on 17.09.2010. On the date of execution of this agreement, the Plaintiff claims to have paid a sum of ₹30,00,000/- in cash to the Defendant, Mr. Naresh Batra, which was duly acknowledged through a signed receipt. The agreement stipulated that the balance amount would be paid at the time of execution and registration of the sale deed.
- c. It is further stated that a revised understanding was subsequently reached between the parties regarding the timeline and structure of the transaction, pursuant to which a second agreement to sell was executed on 13.12.2010. The total sale consideration under the second agreement remained the same, i.e., ₹2.69 crores. This agreement recorded the receipt of ₹51,00,000/- by the Defendant as part-payment up to that date.
- d. The Plaintiff states that, on the same date, 13.12.2010, he handed over an additional cheque for ₹25,00,000/-, drawn on Axis Bank,



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in favor of the Defendant. This cheque was subsequently encashed. The Plaintiff has placed on record the receipts and relevant documents evidencing that the total amount paid to the Defendant as on that date was ₹1,06,00,000/-. This figure includes the ₹30 lakhs paid in cash at the time of the first agreement, ₹21 lakhs paid in parts prior to 13.12.2010, and ₹25 lakhs paid by cheque on 13.12.2010.

- e. It is stated that, under the terms of the agreement dated 13.12.2010, the balance sale consideration of ₹1,63,00,000/- was to be paid by the Plaintiff on or before 31.01.2011 at the time of execution and registration of the sale deed before the office of the concerned Sub-Registrar. The Plaintiff states that he remained ready and willing to perform his part of the contract in accordance with the agreed timeline.
- f. It is further stated that clauses 2 and 10 of the second agreement contain certain handwritten insertions. According to the Plaintiff, these handwritten clauses were inserted by the Defendant himself, in his own handwriting, in the presence of the Plaintiff and a common witness, Mr. Vipul Gupta. It is also stated that the Defendant also signed near these handwritten insertions, thereby indicating his agreement to the modified terms. These additions, according to the Plaintiff, were intended to clarify that no encumbrance existed on the property and that the balance payment would be made at the time of registration. The Defendant, however, has denied having written or consented to these clauses.



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- g. It is further stated that, in compliance with the terms of the agreement, the Plaintiff arranged for the balance payment, obtained the requisite stamp duty papers, prepared the draft sale deed, and presented himself on 31.01.2011 at the office of the Sub-Registrar for execution and registration of the sale deed. However, it is alleged that the Defendant failed to appear on the appointed date, despite repeated assurances, thereby preventing the completion of the transaction.
- h. The Plaintiff thereafter issued a legal notice dated 01.02.2011, calling upon the Defendant to perform his part of the agreement and execute the sale deed. The notice was duly served, but no reply was received from the Defendant. In light of the Defendant's alleged non-compliance and continued failure to perform the contract, the Plaintiff has approached this Court seeking a decree for specific performance of the agreement dated 13.12.2010, along with possession of the suit property, and a permanent injunction restraining the Defendant from creating any third-party rights in the property.
- i. During the pendency of the suit, this Court, by way of an interim order dated 18.03.2011, restrained the Defendant from alienating, encumbering, or creating third-party interest in the suit property. In compliance with the interim directions, the Plaintiff deposited the balance consideration amount of ₹1,63,00,000/- with the Registry of this Court.
- j. Subsequently, by order dated 03.11.2016, this Court permitted the release of the said amount to the Plaintiff, subject to his furnishing



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an undertaking by way of affidavit to re-deposit the same along with interest as and when directed by the Court. The Plaintiff accordingly filed the requisite undertaking, and the amount was released.

k. The matter was referred for mediation before the Delhi High Court Mediation and Conciliation Centre on more than one occasion, but the efforts at settlement remained unsuccessful, and the case was directed to be listed for adjudication on merits.

3. The Defendant, Mr. Naresh Batra, in his written statement, does not dispute that an agreement to sell was executed between himself and the Plaintiff, Mr. Anand Prakash Bansal, on 17.09.2010, in respect of the suit property for a total sale consideration of, ₹2,69,00,000/-. The Defendant admits receiving an initial part-payment of, ₹30,00,000/- under the said agreement.

4. The Defendant submits that as per the terms of the first agreement, the Plaintiff was under an obligation to pay the remaining sale consideration within a stipulated time. However, despite repeated oral assurances, the Plaintiff failed to make the required payments within the agreed period, thereby committing a fundamental breach of the agreement. As a result, the contractual arrangement stood frustrated.

5. The Defendant states that he was compelled to sell the suit property to the Plaintiff in order to repay outstanding bank loans and to secure alternative accommodation. The Plaintiff's failure to fulfil his part of the bargain caused substantial financial and personal hardship to the Defendant and his family.



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6. The Defendant categorically denies the validity and enforceability of the second agreement to sell dated 13.12.2010, which is relied upon by the Plaintiff in the present proceedings. It is his case that the said agreement was not voluntarily entered into and does not reflect a genuine meeting of minds. The Defendant asserts that on the date of the alleged agreement, the Plaintiff, along with 2-3 property brokers, including Vipul Gupta, came to his residence and compelled him to sign the document without giving him an opportunity to read or understand its contents.

7. The Defendant further submits that he signed the document in a state of duress and undue pressure, and that he had no intention to vary or novate the earlier agreement, which had already failed due to non-performance by the Plaintiff. He contends that the agreement dated 13.12.2010 was not executed with free will, consent, or full understanding of its terms.

8. In particular, the Defendant disputes the handwritten additions made in clauses 2 and 10 of the second agreement. He denies that the said insertions were made by him or with his consent. He further asserts that he did not sign adjacent to the handwritten portions and that such insertions were neither discussed nor brought to his attention at the time of signing the document.

9. The Defendant states that the Plaintiff has misrepresented these insertions as binding terms of the contract in order to create a false impression of mutual agreement. He submits that the Plaintiff's version regarding the handwritten clauses is false, and the document is, to that extent, not worthy of reliance.

10. The Defendant denies the Plaintiff's claim that he was ready and willing to pay the balance sale consideration and to present himself at the



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office of the Sub-Registrar on 31.01.2011. On the contrary, the Defendant asserts that he himself was present at the Sub-Registrar's office on the appointed date, but the Plaintiff failed to appear. As such, the Defendant states that it was the Plaintiff who defaulted in fulfilling the essential terms of the alleged contract.

11. The Defendant further alleges that on 01.02.2011, a day after the scheduled date for execution of the sale deed, the Plaintiff, along with brokers Vipul Gupta and others, visited the Defendant's home and attempted to threaten and intimidate him and his wife. It is submitted that this incident, witnessed by neighbors, evidences the coercive tactics employed by the Plaintiff and his associates.

12. The Defendant has taken the plea that the agreement dated 13.12.2010 does not constitute a valid, binding, and enforceable contract in law. He contends that the same lacks essential mutuality and was neither executed voluntarily nor acted upon. He denies any liability to execute the sale deed on the basis of such a disputed and allegedly fabricated agreement.

13. The Defendant submits that the Plaintiff is not entitled to the relief of specific performance, which is an equitable remedy and cannot be granted where the Plaintiff himself is in breach of material obligations or has not acted with good faith. He further contends that the Plaintiff has not approached this Court with clean hands, having suppressed material facts and attempted to enforce an agreement obtained through coercion.

14. On these grounds, the Defendant prays for dismissal of the suit with costs, asserting that the Plaintiff is not entitled to any relief under the Specific Relief Act, 1963, and that the purported agreement relied upon is void, unenforceable, and inequitable.



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15. In response to the written statement filed by the Defendant, the Plaintiff, Mr. Anand Prakash Bansal, filed a replication wherein he has denied all material allegations and averments raised by the Defendant which are inconsistent with or contrary to the assertions made in the plaint. The Plaintiff has reiterated that the Defendant is attempting to avoid his legal obligations under a valid and enforceable agreement to sell dated 13.12.2010, and that the suit is based on true and lawful entitlement.

16. The Plaintiff categorically denies that the agreement dated 13.12.2010 was executed under duress, coercion, or undue influence, and reiterates that it was signed by both parties with full knowledge and consent. The Plaintiff specifically asserts that the handwritten additions in clauses 2 and 10 of the agreement were made by the Defendant himself, in his own handwriting, in the presence of the Plaintiff and the witness Mr. Vipul Gupta, and that the Defendant had signed near the said additions, thereby accepting them as binding.

17. The Plaintiff denies the Defendant's assertion that he was not ready or willing to perform his part of the contract. It is stated that the Plaintiff had arranged for the balance sale consideration well in advance of the stipulated date of execution, and presented himself at the office of the Sub-Registrar on 31.01.2011 along with the requisite pay order and non-judicial stamp paper. The Plaintiff asserts that the Defendant failed to turn up at the Sub-Registrar's office, and that this conduct amounts to breach of contractual obligations on the part of the Defendant.

18. In response to the Defendant's claim regarding the alleged misuse of an overdraft facility to create the pay order of ₹1.23 crores, the Plaintiff submits that the source of funds is immaterial so long as the capacity and



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arrangement to pay existed. It is asserted that the pay order was validly drawn, was in the name of the Defendant, and was encashed on 01.02.2011, thereby demonstrating the Plaintiff's financial capability and intention to perform.

19. The Plaintiff further disputes the Defendant's claim that he appeared before the Sub-Registrar on 31.01.2011. It is asserted that no credible evidence has been brought on record by the Defendant to prove his presence, whereas the Plaintiff has filed supporting documents, including a receipt issued by the Sub-Registrar and the pay order, evidencing his presence and readiness.

20. The Plaintiff also denies the Defendant's allegation of any threat, harassment or undue pressure being exerted by the Plaintiff or his associates. It is asserted that such allegations are fabricated and intended only to mislead the Court. The Plaintiff has maintained that he at all times acted in good faith and within the bounds of law.

21. The replication reiterates that the agreement dated 13.12.2010 was not merely an extension of time under the earlier agreement dated 17.09.2010, but a fresh agreement that recorded updated terms, including acknowledgement of payments made, and mutually agreed timeline for execution and registration.

22. The Plaintiff has also taken exception to the Defendant's contention that the Plaintiff sought repeated extensions and had no funds to complete the transaction. It is asserted that these averments are not supported by documentary evidence and are contrary to the Plaintiff's contemporaneous actions, including deposit of balance sale consideration in Court as per interim directions dated 18.03.2011.



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23. In conclusion, the Plaintiff submits that the pleas raised by the Defendant are afterthoughts and devoid of substance. It is reiterated that the Plaintiff is entitled to a decree of specific performance, having satisfied all legal and equitable requirements under the Specific Relief Act, 1963.

24. Issues were framed in the present suit vide order dated 29.07.2013 and read as under:

- a. Whether the Plaintiff has concealed material facts and played fraud upon the Defendant?
- b. Whether the Plaintiff induced/forced the Defendant to sign the Agreement to Sell dated 13th December 2010?
- c. Whether time was essence of the Agreement to Sell dated 13th December 2010?
- d. Whether the Plaintiff was ready and willing to perform his part of obligations under the Agreement to Sell dated 13th December 2010?
- e. Whether the Plaintiff is entitled to a decree of specific performance of agreement to sell dated 17th September 2010 read with agreement to sell dated 13th December 2010?

25. The Plaintiff mainly examined two witnesses, PW-1 being the Plaintiff himself, tendered his affidavit in evidence affirming that two agreements to sell were executed between him and the Defendant for the sale of the suit property; one dated 17.09.2010 and the other dated 13.12.2010. He deposed that under the latter agreement, the total sale consideration remained fixed at ₹2.69 crores, and that he had made cumulative payments of ₹1.06 crores to the Defendant by 13.12.2010, including ₹30 lakhs in cash and ₹25 lakhs by cheque on the date of execution. He further stated that the balance amount of ₹1.63 crores was



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agreed to be paid at the time of execution and registration of the sale deed, scheduled for 31.01.2011.

26. In relation to the handwritten insertions in clauses 2 and 10 of the 13.12.2010 agreement, the Plaintiff testified that these were made by the Defendant himself, in the Plaintiff's presence, and that the Defendant signed adjacent to the insertions to indicate agreement.

27. In his cross-examination, the Plaintiff admitted that ₹30 lakhs was paid in cash and that the source of such funds was not withdrawn from a bank loan. He was unable to confirm whether the Defendant personally appeared before the notary for notarisation of the second agreement. He maintained that he was present at the Sub-Registrar's office on 31.01.2011, along with the prepared sale deed, stamp paper, and pay order of ₹1.23 crores (adjusted to reflect remaining balance after TDS).

28. The Plaintiff could not recall his bank balance on 31.01.2011 but denied the suggestion that he lacked financial capacity to conclude the transaction. He denied all allegations of coercion or undue pressure.

29. Mr. Vipul Gupta, PW-2, a property broker who facilitated the transaction, was also examined. He affirmed that both agreements were executed in his presence and that the handwritten portions in the agreement dated 13.12.2010 were written by the Defendant himself, who also signed near them. He further stated that the agreement was executed voluntarily and without pressure.

30. During cross-examination, PW-2 confirmed that an oral agreement was reached on 15.09.2010 and that both parties were involved in drafting the agreement. He stated that the deed writer was arranged by the Defendant, and that title document copies were shown to the Plaintiff. He



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denied that the document was ever modified or created unilaterally by the Plaintiff.

31. The testimony of PW-2 substantially corroborates the Plaintiff's case on the key issue of the authenticity and voluntariness of the second agreement and supports the Plaintiff's version of events.

32. The Defendant examined 5 witnesses, DW-1 being the Defendant himself, he admitted to executing the first agreement dated 17.09.2010 but disputed the validity of the subsequent agreement dated 13.12.2010. He alleged that the second agreement was signed under coercion and in the presence of brokers who came to his house, and that he was not given sufficient time to read or understand its contents. He categorically denied writing or agreeing to the handwritten clauses and claimed that the document was manipulated after he signed it.

33. DW-1 also deposed that he was present at the office of the Sub-Registrar on 31.01.2011, but that the Plaintiff failed to appear, thereby breaching the agreement.

34. In his cross-examination, DW-1 admitted that he knew the brokers, including PW-2 and his father, and that he had taken a loan against the suit property. He was unable to produce any documentary evidence such as income tax returns or payment receipts to substantiate his financial distress or the alleged coercion. No independent witness or contemporaneous complaint was brought on record to support his allegation that the second agreement was involuntarily signed.

35. DW-2, Mr. Navdeep Bhatia, a neighbour of the Defendant, deposed that on 01.02.2011, he witnessed the Plaintiff, along with property dealers, visit the Defendant's residence and allegedly threaten and push the



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Defendant's wife. He claimed the group left after creating a commotion. He further stated that the Defendant told him the Plaintiff had not appeared at the Sub-Registrar's office on 31.01.2011.

36. While DW-2's evidence is directed at establishing coercive conduct by the Plaintiff, it is based in part on hearsay, and no independent corroboration of the alleged confrontation has been brought on record. His testimony, therefore, carries limited probative value in relation to the validity of the agreement itself.

37. The Defendant also examined three other witnesses, being DW-3, Assistant manager from Axis bank, to bring on record statement of account of the Plaintiff. DW-4, UDC from the office of Sub-registrar, to prove the documents of the Defendant. And DW-5, who is a stamp vendor, to prove the documents of the Defendant.

38. Learned Counsel for the Plaintiff contends that he is entitled to a decree of specific performance in respect of the agreement to sell dated 13.12.2010, executed between him and the Defendant for the sale of the suit property for a total sale consideration of ₹2,69,00,000/-. It is submitted that the present suit is based on a valid, subsisting, and enforceable agreement, and that the Plaintiff has at all times remained ready and willing to perform his part of the contract, in accordance with the requirements under Section 16(c) of the Specific Relief Act, 1963.

39. It is the case of the Plaintiff that an earlier agreement dated 17.09.2010 had also been executed between the parties for the same transaction, under which ₹30,00,000/- was paid as an advance. However, the second agreement dated 13.12.2010 was a reiterated and updated expression of contractual intent, executed voluntarily by both parties in the presence of



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a common witness, Mr. Vipul Gupta. The said agreement acknowledged a total part-payment of ₹51,00,000/-, and further payment of ₹25,00,000/- by cheque on the same day, which was duly encashed by the Defendant. The cumulative payment of ₹1,06,00,000/- was thus admitted and evidenced on the face of the agreement.

40. The Plaintiff further contends that the agreement dated 13.12.2010 clearly stipulated that the balance sale consideration of ₹1,63,00,000/- would be paid at the time of execution and registration of the sale deed, to take place on or before 31.01.2011. The agreement was duly notarized and signed by both parties. Importantly, handwritten additions were made in clauses 2 and 10 of the agreement, expressly stating the mode of final payment and confirming that the sale deed would be executed upon full payment. The Plaintiff asserts that these handwritten additions were made by the Defendant himself in his own handwriting and were signed by him near the insertions, which were witnessed by Mr. Vipul Gupta.

41. The Plaintiff also contends that he took all necessary steps to comply with his obligations under the contract. In anticipation of the closing date, he arranged the balance consideration, obtained non-judicial stamp paper worth ₹13,45,000/-, prepared the sale deed, and secured a pay order of ₹1,23,00,000/- in the name of the Defendant. On 31.01.2011, the Plaintiff, along with the attesting witness and brokers, appeared before the Sub-Registrar's office, ready to conclude the transaction. However, the Defendant failed to appear, despite repeated calls and messages, and thereby defaulted on his obligation to execute the sale deed.

42. The Plaintiff further submits that in support of his performance, the Plaintiff relies upon various documentation, including:



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- a. The agreement dated 13.12.2010;
- b. Payment receipts evidencing ,₹1.06 crores paid;
- c. The pay order of ,₹1.23 crores;
- d. The stamp paper purchase receipt;
- e. The receipt from the Sub-Registrar's office confirming attendance;
- f. And the legal notice dated 01.02.2011, calling upon the Defendant to execute the sale deed.

43. It is further submitted that the Plaintiff thereafter filed the present suit and, in compliance with the interim direction of this Court, deposited the balance consideration of ₹1.63 crores with the Registry, further demonstrating his bona fides and financial capacity. The argument raised by the Defendant regarding the source of funds, i.e., that the amount was sourced through an overdraft or loan, is immaterial. What is relevant in law is the Plaintiff's capacity and actual arrangement of funds, which stands established on record. In support of this proposition, the Plaintiff relies on the judgments of the Apex Court in Indira Kaur v. Sheo Lal Kapoor (1988) 2 SCC 488 and Basavaraj v. Padmavathi (2009) 2 SCC 310, which affirm that ready and willingness must be seen from the conduct and not the source of money.

44. The Plaintiff further contends that the allegations of coercion, fraud, and undue influence are false, frivolous, and afterthoughts. No complaint, FIR, or contemporaneous objection was ever lodged by the Defendant at the time of execution of the agreement. The Defendant encashed the cheque of ₹25,00,000/- given on 13.12.2010 and remained silent until the legal notice was issued, which indicates that the agreement was acted upon and acknowledged. Moreover, the testimony of PW-2, Mr. Vipul Gupta, has



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clearly established that the Defendant voluntarily executed the agreement, authored the handwritten additions, and signed in the presence of witnesses.

45. The Plaintiff submits that the oral assertions made by the Defendant regarding threats, intimidation, and post-contractual altercations are not supported by independent evidence, and that DW-2, who is a neighbor of the Defendant, merely offers hearsay and speculative statements. Such testimony does not rebut the overwhelming contemporaneous documentary record.

46. The Plaintiff furthermore contends that specific performance is an equitable remedy which he is entitled to, having complied with both the letter and spirit of the agreement. The Defendant's conduct reflects an unjustified attempt to wriggle out of a binding contract, and no equity lies in favor of the Defendant who has accepted substantial payments, participated in the agreement, and then resiled without cause.

47. Per contra the learned counsel for the Defendant contends that the present suit for specific performance is liable to be dismissed as it is based on false averments, concealment of material facts, and a deliberate misrepresentation of the contractual dealings between the parties. It is submitted that the Plaintiff has not approached the Court with clean hands and is not entitled to the equitable relief of specific performance.

48. The Defendant states that he is the owner of the suit property which is a freehold property located on a mixed land use road under MPD 2021. The Defendant intended to shift to a purely residential locality and was introduced to the Plaintiff through Mr. Rajinder Gupta, a local property broker who also promised to assist the Defendant in securing alternative accommodation.



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49. Pursuant to discussions facilitated by the said broker, the Defendant entered into an agreement to sell dated 17.09.2010 with the Plaintiff for a total consideration of ₹2.69 crores, receiving ₹30 lakhs in cash as earnest money. It was expressly agreed that the transaction would be completed by 14.12.2010, by which date the Plaintiff was required to pay the balance amount and the Defendant would execute the sale deed.

50. The Defendant asserts that the Plaintiff failed to perform his obligation under the first agreement by not paying the balance sale consideration within the agreed period. The Defendant, in anticipation of timely payment, had entered into an agreement to purchase another property and paid ₹20 lakhs in advance. However, due to the Plaintiff's default, the alternate arrangement collapsed, causing serious inconvenience and financial strain.

51. With respect to the second agreement dated 13.12.2010, the Defendant emphatically submits that it was executed under coercion, undue influence, and misrepresentation. He alleges that the Plaintiff and 2–3 property brokers visited his home and made him sign a document under the pretext that only the date was being changed, without giving him the opportunity to read or understand the altered terms.

52. The Defendant specifically denies the authenticity and validity of the handwritten additions in clauses 2 and 10 of the agreement dated 13.12.2010. He denies having written or signed near the insertions and submits that these clauses were fraudulently inserted by the Plaintiff to create a false impression of mutual agreement.

53. The Defendant further contends that the Plaintiff was never ready and willing to perform his part of the contract. He asserts that the Plaintiff



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neither notified him of any readiness nor served any prior communication to meet at the Sub-Registrar's office on 31.01.2011. On the contrary, the Defendant claims he was present at the Sub-Registrar's office from 10 a.m. to 2:30 p.m., and no one from the Plaintiff's side appeared. No call or SMS was received from the Plaintiff during that period.

54. The Defendant submits that the purported pay order of ₹1.23 crores, prepared on the date of performance, was sourced from an overdraft account of M/s Kumar Electronics, a business entity in which the Plaintiff's brother had a stake. He contends that this pay order was created solely for litigation purposes, particularly as it was cancelled the very next day on 01.02.2011. Likewise, the stamp paper of ₹13.45 lakhs was purchased jointly in the names of the Plaintiff and two unrelated individuals, further showing that the Plaintiff had not independently arranged funds.

55. It is contended that the Plaintiff's financial incapacity and speculative intent are evident from the manner in which the Plaintiff delayed payments, used third-party accounts, and sought financing through intermediaries. The Plaintiff, it is argued, was attempting to secure a resale or alternate funding by manipulating the agreement and not through direct performance of contractual obligations.

56. The Defendant further alleges that on 01.02.2011, the Plaintiff and a group of over 20 individuals, including brokers, came to his residence and threatened and intimidated him and his wife, demanding refund of the amounts paid. The incident, as per the Defendant, was witnessed by neighbours and corroborated by DW-2. This, the Defendant argues, indicates not an intention to complete the transaction, but to coerce the Defendant into repayment.



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57. The Defendant submits that there is no subsisting agreement between the parties capable of enforcement. The first agreement was terminated due to breach by the Plaintiff. The second agreement was not validly executed due to lack of free consent. Therefore, no cause of action survives in favour of the Plaintiff.

58. The Defendant affirms that specific performance being an equitable and discretionary remedy, cannot be granted in favour of a party who has failed to prove continuous readiness and willingness, or who approaches the Court with tainted hands. It is further submitted that the Plaintiff has failed to prove critical documents such as the original pay order, demand draft, and stamp papers through appropriate witnesses in accordance with law.

59. Lastly, the Defendant asserts that the legal notice dated 01.02.2011 issued by the Plaintiff was replied to on 10.02.2011, denying all allegations and pointing out that the breach lay entirely with the Plaintiff. The publication of public notices and initiation of litigation was, according to the Defendant, only a pressure tactic to extort refund of payments that were liable to be forfeited due to breach.

60. In view of the above, the Defendant prays that the present suit be dismissed with costs, as the Plaintiff is neither entitled to specific performance nor has he established any enforceable right in equity or law.

61. Heard the learned counsels for the Plaintiff and the Defendant and perused the material on record.

62. This Court is first considering the Issue No.4 i.e., Whether the Plaintiff was ready and willing to perform his part of obligations under the Agreement to Sell dated 13th December 2010. The onus to prove the said issue is on the Plaintiff. It is well settled that readiness and willingness must



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be proved by the Plaintiff through conduct and not merely through pleadings. Oral and documentary evidence has been led by the Plaintiff. Material on record indicates that

- a) Made advance payments totaling ₹1.06 crores
- b) Arranged a pay order of ₹1.23 crores on 31.01.2011 (Exhibit P-7)
- c) Purchased non-judicial stamp paper worth ₹13.45 lakhs
- d) Prepared a draft sale deed
- e) Appeared before the Sub-Registrar on the appointed date along with witnesses.

While the Defendant has questioned the source of funds used to obtain the pay order, alleging it was from an overdraft account of a third party, this Court finds such objection to be legally immaterial. The capacity is to arrange funds. The source in the facts of the present case is not relevant criterion under law. The Plaintiff has deposited the entire balance consideration of ₹1.63 crores in the Registry pursuant to Court directions which further reinforces his bona fides. The Plaintiff's version is also supported by contemporaneous documents, including the legal notice dated 01.02.2011 and the testimony of PW-2, who confirmed his presence at the Sub-Registrar's office. In contrast, the Defendant's claim that he was present at the Sub-Registrar's office was not substantiated by any independent evidence such as entries, photographs, or third-party confirmation. His bare assertion does not displace the Plaintiff's documented and corroborated actions.



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63. The Plaintiff and the Defendant were known to each other as the Defendant is the neighbour of the Plaintiff. The total sale consideration of the property was fixed at Rs.2.69 crores. A sum of Rs.30 lakhs was paid on the very first date i.e., on 17.09.2010 and a separate receipt was executed by the Defendant. The date of execution of Sale Deed was fixed on 14.12.2010 and a further sum of Rs.51 lakhs was paid, thereby making a total payment of Rs.81 lakhs by the Plaintiff. Since the Sale Deed was not being executed, a second Agreement to Sell was entered into and the Sale Deed was to be executed on 13.12.2010. On 13.12.2010 when the second Sale Deed was to be executed, a further sum of Rs.25 lakhs was paid, thereby the Plaintiff has paid a sum of Rs.1.06 crores out of the total amount Rs.2.69 crores which is roughly 40% of the total consideration.

64. What is interesting to note that in the Agreement to Sell, there is nothing mentioned about the property being mortgaged to the bank. The fact that the property was mortgaged to the bank was revealed to the Plaintiff for the first time in the written statement which gives an impression to this Court that since the bank loan was not secured, the Defendant was not in a position to execute the Sale Deed.

65. There has been a lot of debate regarding the capacity of the Plaintiff and the readiness and willingness of the Plaintiff to make the payment. The Apex Court in Beemaneni Maha Lakshmi v. Gangumalla Appa Rao, (2019) 6 SCC 233 has held that the fact that the vendee has deposited the amount into the Court, the amount payable as per the Sale Deed demonstrates that the purchaser was having sufficient money with him to pay the balance consideration. The Apex Court in the said Judgment has observed as under:



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"9. We have perused and considered in depth the impugned judgment and order [Beemaneni Mahalakshmi v. Gangumalla Apparao, 2007 SCC OnLine AP 541 : (2008) 1 ALD 375] passed by the High Court as well as the judgment and decree passed by the learned trial court. At the outset, it is required to be noted that as such there are concurrent findings of fact by both, the learned trial court as well as the High Court that it was the appellant vendor who did not perform her part of the contract. **The learned trial court also observed and held that as the respondent vendee deposited into Court the amount payable by him as per Ext. A-1, which was as per the order of the trial court, and therefore his failure to "demonstrate" that he was having sufficient money with him to pay the balance sale consideration under Ext. A-1 by the date of his evidence is not much of consequence and the contention of the appellant vendor that the respondent vendee was not ready and willing to perform his part of the contract cannot be believed or accepted. The aforesaid finding has been confirmed by the High Court.**" (emphasis supplied)

66. It is now well settled that failure to produce the books of account is not sufficient for this Court to draw an adverse interference regarding the capacity to make the payment.

67. The Apex Court in Ramrati Kuer v. Dwarika Prasad Singh, (1967) 1 SCR 153 has observed as under:

"9. Fourthly, it is urged that the respondents did not produce any accounts even though their case was that accounts were maintained and that Basekhi Singh used to give maintenance allowance to the widows who were messing separately. **It is urged that adverse inference should be drawn from the fact accounts were not produced by the respondents and that if they**



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*had been produced that would have shown payment not of maintenance allowance but of half share of the income to the widows by virtue of their right to the property. It is true that Dwarika Prasad Singh said that his father used to keep accounts. But no attempt was made on behalf of the appellant to ask the court to order Dwarika Prasad Singh to produce the accounts. An adverse inference could only have been drawn against the plaintiffs-respondents if the appellant had asked the court to order them to produce accounts and they had failed to produce them after admitting that Basekhi Singh used to keep accounts. But no such prayer was made to the court, and in the circumstances no adverse inference could be drawn from the non-production of accounts. **But it is urged that even so the accounts would have been the best evidence to show that maintenance was being given to the widows and the best evidence was withheld by the plaintiffs and only oral evidence was produced to the effect that the widows were being given maintenance by Basekhi Singh.** Even if it be that accounts would be the best evidence of payment of maintenance and they had been withheld, all that one can say is that the oral evidence that maintenance was being given to widows may not be acceptable; but no adverse inference can be drawn (in the absence of any prayer by the appellant that accounts be produced) that if they had been produced they would have shown that income was divided half and half in accordance with the title claimed by the appellant."* (emphasis supplied)

68. The aforesaid judgment was referred to and followed by the Apex Court in Indira Kaur v. Sheo Lal Kapoor, (1988) 2 SCC 488 wherein the Apex Court after considering the observations in Ramrati Kuer (supra) has set aside the findings recorded by the three Courts which had drawn an adverse interference against the Plaintiff therein for not producing pass



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books and held that the Plaintiff therein was not willing to perform his part of the Agreement.

69. The argument raised by the learned Counsel for the Defendant as to whether pay order was purchased on 31.01.2011 or was it purchased before the office of the Registrar was closed or not etc. poses insignificance in light of the aforesaid judgments passed by the Apex Court. Material on record does indicate that the pay order was prepared by utilising the overdraft facility of the brother of the Plaintiff and that the overdraft was to be used only for the business of the brother of the Plaintiff and, therefore, the argument of the learned Counsel for the Defendant does not cut any ice as to whether the Plaintiff was in a position to arrange the funds or not. This Court is of the opinion that the fact that the amount has been deposited in this Court when this Court asked the Plaintiff to deposit the amount, this does show the capacity of the Plaintiff to make the necessary payment. The argument of the learned Counsel for the Plaintiff that the draft Sale Deed had not been shown to the Defendant also does not cut any ice. The Plaintiff has paid a substantial amount of money being Rs.1.06 crores which is not a small amount. Moreover, there is a pay order on the date when the Sale Deed was to be executed and the brother of the Plaintiff was in a position to take the money from the bank which is sufficient for this Court to come to a conclusion regarding the capacity of the Plaintiff to make the payment and, therefore, the contention of the Defendant regarding the readiness and willingness of the Plaintiff to perform his part of the agreement cannot be accepted. Coupled with this, the fact as admitted in the written statement is that the property had been mortgaged with the bank, the Defendant has not been able to substantiate that this fact was not known to the Plaintiff and



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therefore, this Court proceeded with the assumption that the Plaintiff did not know that the property stood mortgaged to the bank and probably the Defendant was not in a position to execute the Sale Deed as he did not have the documents of the property in his hand to execute the same.

70. This Court has considered the pleadings of the parties, the evidence led, the documents placed on record, and the written submissions filed by both sides. The findings on each issue are as follows:

71. The issue No.1 is as to whether the Plaintiff has concealed material facts and played fraud upon the Defendant. The onus to prove this issue was on the Defendant. The burden of proving concealment or fraud lies on the Defendant. In the present case, the Defendant has alleged that the Plaintiff misrepresented facts regarding his readiness and willingness to pay the balance sale consideration, and falsely portrayed the second agreement as voluntarily executed. No complaint, protest, or legal notice has been placed on record by the Defendant at the time of execution of the agreement dated 13.12.2010. The Plaintiff has led oral and documentary evidence to show that ₹1.06 crores had already been paid prior to or on the date of the agreement, including ₹25 lakhs through cheque on 13.12.2010, which was admittedly encashed by the Defendant. The Plaintiff has also placed on record the agreement itself, the receipt of payments, the pay order dated 31.01.2011, and the purchase of stamp paper, supported by witness testimony. The Defendant, on the other hand, has failed to substantiate with credible evidence that any material fact was concealed or that the agreement was fabricated.

72. The defendant has failed to demonstrate that the Plaintiff has misrepresented facts or that any fraud was played on the Plaintiff. In fact the



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material to the contrary is that the property had been mortgaged. A fact which the material on record demonstrates that the Plaintiff was not aware that the property had been mortgaged, a fact which was revealed for the first time only in the written statement.

73. The second issue that has been framed is as to whether the Plaintiff induced/forced the Defendant to sign the agreement dated 13.12.2010? Onus to Prove this issue was on the Defendant.

74. The Defendant has contended that he was coerced into signing the agreement dated 13.12.2010 by the Plaintiff and a group of property brokers. He further claims that the handwritten additions in clauses 2 and 10 were inserted without his consent and after the agreement was signed. The Plaintiff has refuted these allegations and led the testimony of PW-2, Mr. Vipul Gupta, a neutral witness and broker common to both parties, who categorically stated that the agreement was signed voluntarily by the Defendant, that the handwritten clauses were written by the Defendant himself, and that the Defendant himself signed near those clauses. The Defendant did not file any concurrent complaint or legal notice alleging coercion. His explanation that he signed the agreement without reading it, despite being an educated person and having already executed a prior agreement, is unconvincing. Moreover, no independent witness was examined by the Defendant to corroborate the plea of coercion or undue influence. While DW-2, a neighbour, deposed to witnessing an alleged confrontation on 01.02.2011, his testimony is largely hearsay and post-dated the execution of the agreement in question. No FIR or legal proceeding was initiated by the Defendant with respect to either the alleged coercion or the post-agreement incident.



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75. The Court finds that the Defendant has failed to discharge the burden of proving coercion or inducement. The agreement dated 13.12.2010 appears to be voluntarily executed.

76. The third issue that has been framed is as to whether time was the essence of the agreement dated 13.12.2010? Onus to Prove this issue was on the Defendant.

77. The agreement dated 13.12.2010 stipulated that the balance consideration of ₹1.63 crores would be paid on or before 31.01.2011 at the time of execution and registration of the sale deed. There is no clause in the agreement that expressly makes time the essence of the contract. However, given that the parties had previously executed an agreement with a timeline of 14.12.2010, and subsequently extended it to 31.01.2011, the repeated emphasis on time is relevant. Nevertheless, the Plaintiff has demonstrated that he made preparations for completion of the transaction on the appointed date. He obtained a pay order of ₹1.23 crores, prepared the sale deed and stamp paper, and presented himself before the Sub-Registrar's office. His conduct, including the deposit of the balance amount in Court, supports a finding of diligence and readiness. The law on specific performance, including the decision in Citadel Fine Pharmaceuticals v. Ramaniyam Real Estates (2011) 9 SCC 147, recognizes that time is not ordinarily of the essence in contracts for immovable property unless expressly stated or clearly implied.

78. There is no stipulation of time in the agreement at the time of entering into the agreement. The material on record shows that time was of no essence to the contract. The evidence suggests that the Plaintiff acted within



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a reasonable time and with serious intent. The Apex Court in the said judgment has observed as under:

"33. The settled law seems to be that in a case for specific performance of contract relating to immovable property, time is not normally of the essence. However, this is not an absolute proposition and it has several exceptions.

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40. In a case where time is of the essence of the contract, the consequence of non-performance of such term has been very succinctly explained by Chitty on Contracts (Vol. 1, 13th Edn., Sweet & Maxwell, p. 1410, Para 21-015) and the same is set out:

"21-015. Consequences of time being 'of the essence'.—In determining the consequences of a stipulation that time is to be 'of the essence' of an obligation, it is vital to distinguish between the case where both parties agree that time is to be of the essence of the obligation and the case where, following a breach of a non-essential term of the contract, the innocent party serves a notice on the other stating that time is to be of the essence. In the former case the effect of declaring time to be of the essence is to elevate the term to the status of a 'condition' with the consequences that a failure to perform by the stipulated time will entitle the innocent party to: (a) terminate performance of the contract and thereby put an end to all the primary obligations of both parties remaining unperformed; and (b) claim damages from the contract-breaker on the basis that he has committed a fundamental breach of the contract ('a breach going to the root of



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the contract') depriving the innocent party of the benefit of the contract ('damages for loss of the whole transaction')."

41. Fry in his Treatise on the Specific Performance of Contracts (6th Edn.) has dealt with this aspect at p. 502, Para 1075:

"1075. Time is originally of the essence of the contract, in the view of a court of equity, whenever it appears to have been part of the real intention of the parties that it should be so, and not to have been inserted as a merely formal part of the contract. As this intention may either be separately expressed, or may be implied from the nature or structure of the contract, it follows that time may be originally of the essence of a contract, as to any one or more of its terms, either by virtue of an express condition in the contract itself making it so, or by reason of its being implied...."

42. In Para 1079, the learned author has explained the position further by saying that time may be implied as essential in a contract from the nature of the subject-matter with which the parties are dealing. The learned author explained this by saying: (Fry at p. 504)

"1079. Time may be implied as essential in a contract, from the nature of the subject-matter with which the parties are dealing. 'If, therefore,' said Alderson B., 'the thing sold be of greater or less value according to the effluxion of time, it is manifest that time is of the essence of the contract: and a stipulation as to time must then be literally complied with in equity as well as in law...."



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43. At Para 1081, p. 505, the learned author made it very clear that in a contract relating to commercial enterprise the court is strongly inclined to hold time to be essential, whether the contract is for the purchase of land or for such purposes or more “directly for the prosecution of trade”. The elaboration of this point by the learned author is as follows: (Fry, Treatise on the Specific Performance of Contracts)

“1081. And so, again, where the object of the contract is a commercial enterprise, the court is strongly inclined to hold time to be essential, whether the contract be for the purchase of land for such purposes, or more directly for the prosecution of trade. This principle has been acted on in the matter of a contract respecting land which had been purchased for the erection of mills, also in relation to a sale of pasture lands, required by the purchaser, as the vendor knew, for stocking, and in several cases of contracts for the sale of public houses as going concerns....”

44. The aforesaid principles squarely apply to the facts of the present case. Here the purchaser is admittedly in the business of building construction and is entering into the agreement for purchasing the plot on commercial basis.

45. Gareth Jones and William Goodhart in their Treatise on Specific Performance (2nd Edn., Butterworths) expressed similar views by saying: (p. 74)

“If the parties have expressly agreed that time is to be of the essence, the courts will generally if not



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always give effect to that stipulation. An intention that a stipulation as to time should be of the essence may be implied from the circumstances. In the absence of agreement to the contrary, time will generally be considered of the essence in mercantile contracts and in contracts for the sale of a business or of property which has a fluctuating or speculative value....”

46. The instant case obviously relates to a contract in commercial transaction and the Court can take judicial notice of the fact that in the city of Chennai the price of real estate is constantly escalating and the clear intention of the parties, as it appears from the stipulations of the agreement, was to treat time as the essence of the contract.

47. Having regard to the aforesaid principles the Court cannot attribute a different intention to the parties and cannot specifically enforce the contract at the instance of the plaintiff purchaser who has failed to perform its part of the obligation within the time stipulated.

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55. On a combined reading of Section 9 of the Specific Relief Act and Section 55 of the Contract Act it is clear that in this case the vendor as a promisee, was within its right to terminate the contract by sending the letter dated 4-9-1996 in terms of Clause 9 of the contract while returning the advance money of Rs 10,00,000. It is clear that the plaintiff has not discharged its burden within the time specified and is not entitled to a specific performance of the contract."



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(emphasis supplied)

79. The last of the issue is as to whether the Plaintiff is entitled to a decree of specific performance of agreement to sell dated 17th September 2010 read with agreement to sell dated 13th December 2010? The Onus to Prove this issue was on the Plaintiff.

80. Section 20 of the Specific Relief Act as applicable at the time of filing the present suit i.e., prior to the amendment in 2018 reads as under:

20. Discretion as to decreeing specific performance.—

(1) The jurisdiction to decree specific performance is discretionary, and the court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal.

(2) The following are cases in which the court may properly exercise discretion not to decree specific performance—

(a) where the terms of the contract or the conduct of the parties at the time of entering into the contract or the other circumstances under which the contract was entered into are such that the contract, though not voidable, gives the plaintiff an unfair advantage over the defendant; or

(b) where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff; or

(c) where the defendant entered into the contract under circumstances which though not rendering the



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contract voidable, makes it inequitable to enforce specific performance.

Explanation I.—Mere inadequacy of consideration, or the mere fact that the contract is onerous to the defendant or improvident in its nature, shall not be deemed to constitute an unfair advantage within the meaning of clause (a) or hardship within the meaning of clause (b).

Explanation II.—The question whether the performance of a contract would involve hardship on the defendant within the meaning of clause (b) shall, except in cases where the hardship has resulted from any act of the plaintiff, subsequent to the contract, be determined with reference to the circumstances existing at the time of the contract.

(3) The court may properly exercise discretion to decree specific performance in any case where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.

(4) The court shall not refuse to any party specific performance of a contract merely on the ground that the contract is not enforceable at the instance of the other party."

81. The Specific Relief Act, 1963, mandates that specific performance is a discretionary remedy which may be granted when:

- a) There exists a valid and concluded contract
- b) The Plaintiff has performed or is ready and willing to perform his part



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- c) The contract is not rendered void, inequitable, or impossible to perform.

82. In the present case, the contract dated 13.12.2010 is found to be valid and voluntarily executed. The Plaintiff has shown substantial performance and financial commitment, as well as readiness to conclude the transaction. The Defendant has not been able to prove fraud, coercion, or any overriding hardship that would render specific performance inequitable. Furthermore, the Defendant has accepted over ₹1 crore from the Plaintiff without returning it or initiating legal steps to cancel the agreement. The equities, therefore, lie in favor of the Plaintiff, who has demonstrated his willingness to perform from the outset and had even deposited the balance amount in Court.

83. The parameters under Section 20 of the specific Relief Act have been laid down by the Apex Court in a number of Judgments. The Apex Court in K. Narendra v. Riviera Apartments (P) Ltd., (1999) 5 SCC 77 has observed as under:

"29. Section 20 of the Specific Relief Act, 1963 provides that the jurisdiction to decree specific performance is discretionary and the court is not bound to grant such relief merely because it is lawful to do so; the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal. Performance of the contract involving some hardship on the defendant which he did not foresee while non-performance involving no such hardship on the plaintiff, is one of the circumstances in which the court may properly exercise discretion not to decree specific performance. The doctrine of comparative hardship has been thus statutorily recognized in India. However,



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*mere inadequacy of consideration or the mere fact that the contract is onerous to the defendant or improvident in its nature, shall not constitute an unfair advantage to the plaintiff over the defendant or unforeseeable hardship on the defendant. The principle underlying Section 20 has been summed up by this Court in *Lourdu Mari David v. Louis Chinnaya Arogiaswamy* [(1996) 5 SCC 589 : AIR 1996 SC 2814] by stating that the decree for specific performance is in the discretion of the Court but the discretion should not be used arbitrarily; the discretion should be exercised on sound principles of law capable of correction by an appellate court.*

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35. In our opinion, there has been a default on the part of the respondents in performing their obligations under the contract. The period lost between 25-7-1972 (the date of the agreement) and the years 1979 and 1980 when the litigation commenced, cannot be termed a reasonable period for which the appellant could have waited awaiting performance by the respondents though there was not a defined time-limit for performance laid down by the agreement. The agreement contemplated several sanctions and clearances which were certainly not within the power of the parties and both the parties knew it well that they were the respondents who were being depended on for securing such sanctions/clearances. Part of the land forming the subject-matter of the agreement was excess land within the meaning of ULCRA and hence could not have been sold. Part of the land has been acquired by the State and to that extent the agreement has been rendered incapable of performance. The feasibility of a multi-storeyed complex as is proposed and planned by the respondents appears to be an impracticality. If the respondents would not be able to



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construct and deliver to the appellant some of the flats as contemplated by the novated agreement how and in what manner the remaining part of the consideration shall be offered/paid by the respondents to the appellant is a question that defies answer on the material available on record. Added to all this is the factum of astronomical rise in the value of the land which none of the parties would have forecontemplated at the time of entering into the agreement. We are not in the least holding that the consideration agreed upon between the parties was inadequate on the date of the agreement. We are only noticing the subsequent event. Possession over a meagre part of the property was delivered by the appellant to the respondents, not simultaneously with the agreement but subsequently at some point of time. To that extent, the recital in the agreement and the averments made in the plaint filed by the respondents are false. On a major part of the property, the appellant has continued to remain in possession. As opposed to this, the respondents have neither pleaded nor brought material on record to hold that they have acted in such a way as to render inequitable the denial of specific performance and to hold that theirs would be a case of greater hardship over the hardship of the appellant. Upon an evaluation of the totality of the circumstances, we are of the opinion that the performance of the contract would involve such hardship on the appellant as he did not foresee while the non-performance would not involve such hardship on the respondents. The contract though valid at the time when it was entered, is engrossed in such circumstances that the performance thereof cannot be secured with precision. The present one is a case where the discretionary jurisdiction to decree the specific performance ought not to be exercised in favour of the respondents. During the course of hearing the learned Senior Counsel for the respondents time and again emphasized and appealed to the Court



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that the respondents were builders of repute and in the event of the specific performance being denied, they run a grave risk of losing their reputation as their proposed building plan “Girnar” would not materialise and they will not be able to show their face to their prospective flat-buyers. This is hardly a consideration which can weigh against the several circumstances which we have set out hereinabove. If a multi-storeyed complex cannot come up on the suit property, the respondents' plans are going to fail in any case.

84. The Apex Court in Nirmala Anand v. Advent Corpn. (P) Ltd., (2002)

8 SCC 146 has observed as under:

"6. It is true that grant of decree of specific performance lies in the discretion of the court and it is also well settled that it is not always necessary to grant specific performance simply for the reason that it is legal to do so. It is further well settled that the court in its discretion can impose any reasonable condition including payment of an additional amount by one party to the other while granting or refusing decree of specific performance. Whether the purchaser shall be directed to pay an additional amount to the seller or converse would depend upon the facts and circumstances of a case. Ordinarily, the plaintiff is not to be denied the relief of specific performance only on account of the phenomenal increase of price during the pendency of litigation. That may be, in a given case, one of the considerations besides many others to be taken into consideration for refusing the decree of specific performance. As a general rule, it cannot be held that ordinarily the plaintiff cannot be allowed to have, for her alone, the entire benefit of phenomenal increase of the value of the property during the pendency of the litigation. While balancing the equities, one of the considerations to be kept in view is



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as to who is the defaulting party. It is also to be borne in mind whether a party is trying to take undue advantage over the other as also the hardship that may be caused to the defendant by directing specific performance. There may be other circumstances on which parties may not have any control. The totality of the circumstances is required to be seen."

85. The Apex Court in K. Prakash v. B.R. Sampath Kumar, (2015) 1 SCC 597 has observed as under:

"18. Subsequent rise in the price will not be treated as a hardship entailing refusal of the decree for specific performance. Rise in price is a normal change of circumstances and, therefore, on that ground a decree for specific performance cannot be reversed.

19. However, the court may take notice of the fact that there has been an increase in the price of the property and considering the other facts and circumstances of the case, this Court while granting decree for specific performance can impose such condition which may to some extent compensate the defendant owner of the property..."

86. The Apex Court in Nanjappan v. Ramasamy, (2015) 14 SCC 341 has observed as under:

"11. Under Section 20 of the Specific Relief Act, grant of specific performance of contract is discretionary. Though the decree for specific performance is discretionary, yet the court is not bound to grant such a relief merely because it is lawful to do so. But the discretion of the court is not arbitrary, but sound and reasonable, guided by judicial principles of law and capable of correction by a court



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of appeal and should be properly exercised keeping in view the settled principles of law as envisaged in Section 20 of the Act. The jurisdiction of decreeing specific performance is a discretion of the court and it depends upon facts and circumstances of each case. The court would take into consideration circumstances of each case, conduct of the parties, recitals in the sale agreement and the circumstances outside the contract have to be seen.

12. In Sardar Singh v. Krishna Devi [(1994) 4 SCC 18] , this Court observed that as the court has to see the totality of the circumstances, conduct of the parties and respective interests under the contract while granting/refusing such relief.

13. The first sale agreement was executed on 30-9-1987 about twenty-seven years ago. The property is situated in Coimbatore City and over these years, value of property in Coimbatore City would have considerably increased. In Saradamani Kandappan v. S. Rajalakshmi [(2011) 12 SCC 18 : (2012) 2 SCC (Civ) 104] , this Court has held that the value of the property escalates in the urban areas very fast and it would not be equitable to grant specific performance after a lapse of long period of time. In the instant case, the first agreement was executed on 30-9-1987 i.e. twenty-seven years ago. In view of passage of time and escalation of value of the property, grant of specific relief of performance would give an unfair advantage to the respondent-plaintiffs whereas the performance of the contract would involve great hardship to the appellant-defendant and his family members."



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87. The Apex Court in Ferrodous Estates (Pvt.) Ltd. vs. P. Gopirathnam (Dead) and Others, **2020 SCC OnLine SC 825** has observed as under:

"40. Section 20, as it then stood, makes it clear that the jurisdiction to decree specific performance is discretionary; but that this discretion is not arbitrary but has to be exercised soundly and reasonably, guided by judicial principles, and capable of correction by a court of appeal - see section 20(1). Section 20(2) speaks of cases in which the court may properly exercise discretion not to decree specific performance. Significantly, under clause (a) of sub-section (2), what is to be seen is the terms of the contract or the conduct of the parties at the time of entering into the contract. Even "other circumstances under which the contract was entered into" refers only to circumstances that prevailed at the time of entering into the contract. It is only then that this exception kicks in - and this is when the plaintiff gets an unfair advantage over the defendant. Equally, under clause (b) of subsection (2), the hardship involved is again at the time of entering into the contract which is clear from the expression "which he did not foresee". This is made clear beyond doubt by Explanation II of section 20 which states that the only exception to the hardship principle contained in clause (b) of sub-section (2) is where hardship results from an act of the plaintiff subsequent to the contract. In this case also, the act cannot be an act of a third party or of the court - the act must only be the act of the plaintiff. Clause (c) of sub-section (2) again refers to the defendant entering into the contract under circumstances which makes it inequitable to enforce specific performance. Here again, the point of time at which this is to be judged is the time of entering into the contract."



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88. This Court in Sanghi Bros (Indore) Pvt. Ltd. vs. Kamendra Singh, 2023 SCC OnLine Del 5528 has observed as under:

"101. In view of the above-mentioned judgments, it is apparent that the view taken by the Court is applicable to the instant Suit. The MOU in the instant Suit was executed in the year 1998. Since then, almost 25 years have elapsed. The performance of the contract would involve considerable hardship on the parties. The same is being said considering that a third-party interest has been created to such an extent that the revocation of that contract would lead to an increase in hardships warranting unjustified litigations.

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112. In view of the material which has been placed on record, it is indicated that a third-party interest has been created in the property against which the plaintiff is seeking specific performance. Such a circumstance makes it inequitable to grant and enforce the specific performance decree. The said observation is made to balance the interests of justice and equity for the parties involved. Hence, the decree for specific performance is not to be granted.

113. This Court is further of the view, that there will be undue hardship caused to the defendant as well as to the third party who purchased the property in dispute, in case the plaintiff is granted specific performance. Taking into consideration the facts of the case, this Court is of the view that the plaintiff may have been entitled to the relief as claimed for specific performance in the year 2004. However, presently, the plaintiff cannot be granted the relief of specific performance by this Court due to the defendant's conduct of not adhering to the terms of the MOU entered into between him and the plaintiffs, creation of



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third-party interests and the other factors involved, as discussed hereinabove."

89. In view of the findings on the issues above, this Court is satisfied that:-

- a. The agreement to sell dated 13.12.2010 is a valid and binding contract voluntarily executed between the parties
- b. The Plaintiff has proved his readiness and willingness to perform his part of the contract
- c. The Defendant has failed to establish coercion, fraud, or any other ground that would render the contract void or unenforceable
- d. The equities favor the Plaintiff, who has made substantial part-payments, prepared to conclude the transaction, and has deposited the balance amount in this Hon'ble Court.

90. Accordingly, the suit is liable to be decreed.

91. The suit is decreed in favor of the Plaintiff and against the Defendant. The Defendant is directed to execute the sale deed in favor of the Plaintiff in respect of the suit property bearing No. 169, Pocket H-19, Sector-7, Rohini, Delhi, within a period of 8 weeks from the date of this judgment, upon the Plaintiff tendering the balance sale consideration of ₹1,63,00,000/- (Rupees One Crore Sixty-Three Lakhs only) which the Plaintiff has withdrawn during the pendency of the suit.

92. In the event of failure by the Defendant to execute the sale deed within the stipulated time, the Plaintiff shall be entitled to have the sale deed executed through the process of this Court at the cost of the Defendant.

93. The Plaintiff shall also be entitled to possession of the suit property upon execution and registration of the sale deed.



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94. The Defendant is permanently restrained from alienating, transferring, or creating any third-party rights or interests in the suit property.

95. The Defendant shall bear the costs of the suit. The Plaintiff is entitled to recover the costs as per the schedule under the Delhi High Court (Original Side) Rules.

SUBRAMONIUM PRASAD, J

APRIL 22, 2025

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