

Reserved On :18/03/2026
Pronounced On : 23/04/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 2516 of 1999

**With
R/FIRST APPEAL NO. 2776 of 1999**

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE J. C. DOSHI

Approved for Reporting	Yes	No
	Yes	

**MISKINBANU JAHIDKHAN PATHAN & ORS.
Versus
ALISHER SUBHANALI ANSARI & ANR.**

Appearance:

JENIL M SHAH(7840) for the Appellant(s) No. 1.1,1.2,1.3,1.4,1.5
MR MEHUL S SHAH(772) for the Appellant(s) No. 1
MR AFTABHUSEN ANSARI(5320) for the Defendant(s) No. 1
MR. MAYUR V DHOTARE(7019) for the Defendant(s) No. 2

CORAM:HONOURABLE MR. JUSTICE J. C. DOSHI

CAV JUDGMENT

1. This common judgment governs the disposal of the captioned appeals as they arise from the judgment and decree dated 09.04.1999 passed by the learned City Civil Court, Ahmedabad in Civil Suit No.4584 of 1986.

1.1 In Civil Suit No.4584 of 1986, the learned 16th Judge, City Civil Court, Ahmedabad *vide* judgment and decree dated 24.04.1999 decreed the suit in favour of the plaintiff directing that defendant no.1 to executed the sale-deed in favour of the plaintiff in respect of the suit property on the plaintiff making

payment of remaining amount of sale consideration as per the agreement dated 01.10.1985 with interest @ 9% per annum from the date of agreement i.e. 01.10.1985 till the date of payment and to handover vacant and peaceful possession of the suit property to the plaintiff, after taking possession of the suit property from the defendant no.2. Consequently, the sale-deed (Exh.127) dated 23.12.1993 executed by the defendant no.1 in favour of defendant no.2 during the pendency of proceedings of the suit is declared illegal, null and void. The defendant no.2 was directed to handover peaceful and vacant possession of the suit property to defendant no.1, who in turn, is directed to handover the peaceful and vacant possession of the suit property to the plaintiff.

1.2 The defendant no.1 is also held guilty for violation of injunction order dated 11.11.1987 and he was directed to undergo one day's imprisonment.

1.3 Thereby, the judgment and decree whereby the defendant no.1 was directed defendant no.1 to execute the sale-deed in favour of plaintiff and handover peaceful and vacant possession as well as cancellation of sale-deed executed by defendant no.1 in favour of defendant no.2 are challenged by way of captioned appeals by defendant no.1 and defendant no.2 respectively, under the provisions of Section 96 of the Code of Civil Procedure, 1908 ('the Code', for short).

1.4 The judgment and order directing the defendant no.1 to undergo one day's imprisonment for disobedience of the injunction order is accepted and whereof, defendant no.1 has

undergone one day's imprisonment.

2. These appeals are filed by the defendant nos.1 and 2 whereas the respondent is plaintiff. For convenience and brevity, they are referred to herein as per their original status as that of before the learned trial Court.

3.1 Briefly states, the plaintiff instituted suit against the defendant no.1 seeking prayer for specific performance of agreement to sale dated 01.10.1985 ('ATS', for short) and seeking execution of the sale deed. In the alternative, the plaintiff prayed for damages. During the pendency of the suit proceedings, the plaint was amended by joining defendant no.2 as he is the purchaser of the suit property pending the suit. The prayer was also amended for relief of setting aside the registered sale-deed dated 23.12.1993 executed by the defendant no.1 in favour of defendant no.2 in violation of injunction order passed below Notice of Motion.

3.2 In the aforesaid factual background, the case of the plaintiff is that the defendant no.1 is exclusive owner of immovable property bearing Survey No.141-1 Part-191, M.C. No.50981 situated at Parmanand Patel Chawl, Near Shah Hamid Roza, Sherkotda Ward, Ahmedabad ('the suit property', for short) for sale consideration of Rs.16,000/-. The defendant no.1 agreed to sell the suit property to plaintiff after accepting Rs.2,000/- as advance money being part of the sale consideration. The ATS was registered with Sub-registrar Office vide Entry No.11109 on 01.10.1985.

3.3 The plaintiff further pleaded that on 14.10.1985, he paid Rs.300/- on 17.10.1985 he paid Rs.100/- and on 12.10.1985, he paid Rs.6,000/- to the defendant no.1 and during the pendency of ATS, he pleaded that plaintiff was ever ready and willing to get executed the sale-deed as a part of specific performance of the ATS in his favour. Time and again he approached the defendant no.1 to get execute the sale-deed however, the defendant no.1 did not do so. The plaintiff, therefore, filed the suit for relief of specific performance as although he was ready and willing to perform his part of agreement, defendant no.1 since was not reciprocating to perform his part of the contract. The plaintiff also preferred injunction application (Notice of Motion) under Order 39 Rules 1 and 2 read with Section 151 of 'the Code'. The injunction was granted in favour of the plaintiff which the defendant no.1 did not challenge the said order passed below Notice of Motion.

3.4 Pending the suit, the defendant no.1, in violation of injunction order, executed the registered sale-deed in favour of defendant no.2 on 23.12.1993 with respect to the suit property. The plaintiff, therefore, filed an application for amendment in the plaint to join defendant no.2 - the subsequent purchaser and also to amend relief to cancel the said sale-deed dated 23.12.1993 and to declare the same as not binding to the plaint so also to quash and set aside the said sale-deed dated 23.12.1993.

3.5 The plaintiff also moved an application Exh.34 seeking action against the defendant no.1 for dis-obedience of

injunction order under Order 39 Rule 2A of the Code. That application was also heard along with the suit.

3.6 The summons was served upon defendant no.1. He filed written statement vide Exh.16 denying the allegations made in the plaint by the plaintiff and contending therein *inter alia* that the ATS in question has been cancelled by the defendant no.1 and hence the suit is not maintainable. The defendant no.1 admitted execution of the ATS dated 01.10.1985. It was further contended that the time was essence of the contract. The sale-deed was to be executed within six months from the date of agreement as per the terms and conditions of the ATS, however, plaintiff did not perform his part of contract by obtaining necessary permission to sell the property. According to defendant no.1, since the plaintiff did not act as per the terms and conditions of the ATS and did not adhere to time limit specified in terms and conditions of the agreement, it compelled the defendant no.1 to cancel the ATS by issuing Notice dated 21.07.1986 and, therefore, plaintiff now is not entitled to get any relief for specific performance.

3.7 The amended plaint was confronted by filing written statement at Exh.71 whereby defendant no.1 contended that he has not executed any sale-deed in favour of defendant no.2 and had never gone to the office of Sub Registrar to register the sale deed, not had committed any disobedience of any injunction order. Defendant no.2 being joined subsequently filed written statement at Exh.73. As usual, defendant no.2 denied allegations and averments made in the amended plaint and contended that therein *inter alia* that the suit property

was in joint possession of defendant no.1 and his brother Prabhudas and their father Kalaji. Some disputes had arisen between defendant no.1 and his brother Prabhudas for which some litigations were filed and thereafter some settlement had taken place between two brothers whereby title of the suit property was recognised in favour of defendant no.1 and the possession was lying with his brother Prabhudas.

3.8 It is further contended by defendant no.2 that he is *bona fide* purchaser and he was not put to notice as regards pendency of any suit either by defendant no.1 or his brother Prabhudas. They had not informed him about pendency of the suit or injunction order. He has paid sale consideration of Rs.80,000/- of which Rs.40,000/- each was paid to defendant no.1 and his brother Prabhudas. Therefore, he is *bona fide* purchaser and without notice of earlier pendency of the suit or injunction order and thus it is contended that plaintiff cannot claim any relief against defendant no.2.

3.9 The learned City Civil Court framed issues at Exh.26 and permitted both the parties to lead the evidence. After analysing the evidence on record, learned City Civil Court decreed the suit in favour of plaintiff in aforesaid terms.

3.10 Being aggrieved by and dissatisfied with the impugned judgment and decree, the defendant no.1 filed First Appeal No.2776 of 1999 and defendant no.2 filed First Appeal No.2516 of 1999. Upon request of learned advocates appearing for respective parties, First Appeal No.2516 of 1999 has been treated as lead matter and, therefore, the facts are taken from the said First Appeal No.2516 of 1999.

4.1 Learned advocate Ms.Mayur Dhotare appearing for defendant no.1 refers to registered agreement executed on 01.10.1985 (Exh.105) and mainly argued that admittedly as per clause:6, the time period of ATS was six months which expired on 31.03.1986. He would submit that during time period of ATS, plaintiff did not remain ready and willing to perform his part of contract. He would further submit that consequently on 21.07.1986, the defendant no.1 cancelled the ATS and forfeited earnest money paid by the plaintiff. He would submit that since it is on record that ATS was cancelled by the vendor - defendant no.1, the plaintiff was required to file suit for declaratory relief seeking cancellation / termination of the ATS as bad in law, without asking such relief, the suit for specific performance is not maintainable. In support of this submissions, learned advocate Mr.Dhotare referred to judgment of Hon'ble Supreme Court in the case of *I.S.Sikandar vs. K. S. Subramaniam and others* reported in **2013 (15) SCC 27** as well as in case of *Sangita Sinha vs. Bhavna Bhardwaj* reported in **AIR 2025 SC 1806** and submitted that in absence of prayer for declaratory relief that termination / cancellation of agreement is bad in law, suit for specific performance is not maintainable.

4.2 Mr.Dhotare, learned advocate for the defendant no.1 further submits that issue of maintainability of suit can be raised at any stage and even during the First Appeal as it has been legal issue, he submits that though the specific contention was not raised by defendant no.1 in written statement about maintainability of the suit, it was openly contended that defendant no.1 vendor has cancelled the ATS

and forfeited earnest money and in presence of that pleading it was mandatory upon the trial Court to frame the issue as regard to maintainability of the suit, that whether in absence of declaratory relief to declare the termination of ATS as bad in law, the suit is maintainable. However, learned trial Court did not frame this issue of maintainability of the suit and thereby materially erred. He would further submit that the defendant vendor is entitled to raise the issue in First Appeal and can insist for framing of such issue and remand the matter for fresh consideration. In support of this submission, learned advocate Mr.Dhotre referred to judgment of the Hon'ble Supreme Court in case of *State of Rajasthan vs. Rav Raja Kalyan Singh* reported in **1972 (4) SCC 165** as well as in case of *Shivalaya Co. Operative Housing Society Ltd. vs. Santaben T. Patel & Ors.* reported in **2002 (1) GLR 426**.

4.3 The next contention raised by learned advocate Mr.Dhotare that the ordinarily time is not the essence of the contract in Agreement to Sale for immovable property but in the present case Clause:6 of ATS specifies the time of six months and the agreement thus could be survived only for six months, plaintiff who is expected to perform his part of contract within six months did not come forward even did not call the defendant no.1 - vendor to execute the sale deed during the time period of ATS, which specifies that the plaintiff was not ready and wiling to perform his part of the contract.

4.4 Learned advocate Mr.Dhotare would also submit that, in view of Section 16(c) of the Specific Relief Act, in the suit for

specific performance plaintiff must allege and prove continuous readiness and willingness to perform his part of contract from the date of contract and must remain ready and willing throughout the contract period. The readiness and willingness of the plaintiff to perform his part of the contract must be established right from the date of contract till the date of the hearing of the suit. He would submit that in the present case plaintiff, after executing the ATS on 01.10.1985, did nothing within the time period of the contract which establishes and proves that he was never ready and willing to perform his part of the contract.

4.5 learned advocate Mr.Dhotare having referred to ATS at Exh.105 submits that the sale consideration fixed for Rs.60,000/- and the plaintiff paid barely Rs.2000/- and did not pay the balance amount within the six months from the date of execution of ATS which itself sufficiently displays that plaintiff was never ready and willing to perform his part of contract. Yet the learned trial Court overlooked this statutory requirement to decree the suit. In support of his submissions, he referred to and relied upon the judgment of the Hon'ble Supreme Court in the case of *Shenbagam and others vs. KK Rathinavel* reported in **2022 SCC Online 71** and the judgment rendered in the case of *Vijay Kumar & Ors. Vs. Om Prakash* reported in **2019 (17) SCC 429**.

4.6 In regard to contention that 'time is the essence of contract', more particularly when the time period is specified in the ATS, learned advocate Mr.Dhotare submits that since plaintiff failed to adhere to the time limit stated in the ATS,

and did not perform his part of contract within six months from the date of ATS it could be presumed that plaintiff being a vendee was not ready and willing to perform his part of contract and such conduct disentitles plaintiff from getting relief of specific performance, yet learned trial Court granted relief of specific performance ignoring the very conduct of the plaintiff **and thereby committed patent error**. In support of this submission, he referred to and relied upon the Constitution Bench judgment in the case of *Chand Rani (Smt.) (Dead by Lrs.) vs. Kamal Rani (Smt.) (Dead) by Lrs.* reported in **(1993) 1 SCC 519**.

4.7 Upon aforesaid submissions and arguments, learned advocate Mr.Dhotare submitted that since learned City Civil Court committed manifest error in decreeing the suit ignoring the settled principles of law and Section 16(c) of the Specific Relief Act, as well as when the time became essence of the contract and thirdly in absence of prayer seeking declaratory relief that termination of agreement was bad in law the impugned judgment and decree deserves to be quashed and set aside by allowing these appeals.

5. Learned advocate Mr.Jenil Shah appearing for defendant no.2 - subsequent purchaser, after adopting aforesaid argument canvassed by learned advocate Mr.Dhotare, mainly argued that defendant no.2 was not aware of pendency of the suit or injunction order. The defendant no.2 did what he was required to do before purchasing the immovable property. He has paid full consideration and, therefore, defendant no.2 has to be declared as *bona fide* purchaser with value, without

notice of pendency of the suit. He would further submit that in view of provisions of Section 19 of Specific Relief Act, the defendant no.2 proved himself to be a *bona fide* purchaser. He would further submit that defendant no.1, in his deposition, admitted that he has not informed the defendant no.2 about the pendency of the suit or existence of the injunction order and, therefore, the judgment and decree passed against him cancelling his sale-deed, and ignoring the aforesaid factual aspects, is bad in law and requires to be quashed and set aside and, therefore, he also submits to allow this appeal filed by defendant no.2 and to quash and set aside impugned judgment and decree passed by the learned trial Court.

6.1 *Per contra*, learned advocate Ms.Lakshya Bhavnani for learned advocate Mr.Aftab Ansari, appearing for the plaintiff, referred to the judgment of Hon'ble Supreme Court in the case of *K.S.Manjunath and Ors. vs. Moorasavirappa alias Muttanna Chennappa Batil, since Deceased by His Lrs. and others* reported in **2025 SCC OnLine SC 2378** and submitted that the arguments canvassed by learned advocate for the defendants is squarely answered in the judgment of Hon'ble Supreme Court. She firstly would submit that merely some time period stated in the ATS, would not *ipso facto* governs that the time is essence of the contract. She would further submit that surrounding circumstances, conduct of the party and the clauses in the ATS, in its entirety, has to be considered while deciding the issue whether time is essence of the contract or not. She would further submit that, in the facts of the present case, learned trial Court believed the entry in diary made by defendant no.1, while accepting

Rs.6,000/- in furtherance of sale consideration (produced at Exh.108) which is sufficient to say that plaintiff was ready and willing to perform his part of contract and actually he has performed his part of contract by paying further amount of Rs.6,000/- towards sale consideration.

6.2 Learned advocate Ms.Bhavnani would further submit that principle of 'readiness and willingness' has to be weighed considering the conduct of the defendant who has been though repeatedly urged to perform his part of contract and to execute sale deed since denied and later on unilaterally cancelled ATS. Thus this act can be treated that he is not ready and willing to perform his part of contract which is rightly being held by the learned City Civil Court. She would further submit that the ATS executed between the parties did not contain any clause about termination of ATS; does not give defendant the right to terminate the contract unilaterally and forfeit the earnest money. She would further submit that in absence of any clause regarding terminability of contract between the parties, such termination of contract by defendant no.1 must be treated to be breach of contract and thus for such unilateral termination of the contract, plaintiff is not required to seek a declaratory relief that the termination of agreement was bad in law as it covers under the issue that whether plaintiff is entitled to specific performance of contract or not. She would further submit that otherwise every vendor, after executing ATS, would unilaterally terminate the contract and get away from the performance of the contract. As far as applicability of principle that whether time is essence of contract or not, she would submit that

conduct of the party did not specify that time was the essence of the contract. She also referred to the notice exchanged between the parties and submits that defendant no.1 came out within seven months of execution of sale deed to cancel the same unilaterally by issuing notice, in reply of such notice (Exh.145), the plaintiff came out with specific case that plaintiff begs to continue to execute sale-deed during the ATS. In furtherance plaintiff pleaded his case that at different intervals of time, plaintiff paid different amounts to the defendant no.1 as he was required and in total of Rs.8400/- was paid before filing of the suit in addition to earnest money of Rs.2,000/-. Therefore, large amount of sale consideration was already paid to the defendant before filing of the suit. She would further submit that learned trial Court believed that defendant no.1 obtained Rs.6000/- on 12.12.1985 from the plaintiff, by making entry in the plaintiff's diary on his own handwriting (Exh.108).

6.3 In view of the above submissions, learned advocate Ms.Bhavnani would submit that if the plaintiff was not ready to perform his part of contract, he would not have paid such big amount towards sale consideration without execution of sale-deed. She would submit that in reply to the notice, it is specifically contended by plaintiff that no clause of ATS permits defendant no.1 to cancel the ATS or to forfeit earnest money. She submits that reply to notice was immediately given on receipt of notice. She would further submit that defendant no.1 even replied notice given by the plaintiff and immediately thereafter since the plaintiff found the intention of defendant no.1 not to perform his part of ATS, filed the suit

on 02.09.1986. Therefore, the conduct of plaintiff, in first place, is that plaintiff was ever ready and willing to perform his part of contract and even during pendency of the suit till hearing of the suit, plaintiff was ready and willing to perform his part of contract. She would further submit that when defendant himself turned away from performing his part of contract and cancelled the ATS, without being permitted to do so, in first seven months of the contract / ATS, cannot come out and say that plaintiff since was not ready and willing to perform his part of contract, specifies performance of contract could not be attracted.

6.4 Learned advocate Ms. Lakshya Bhagnani would submit that since defendant no.1 breached the injunction order and sold the suit property to defendant no.2, defendant no.2, who was in obligation to make necessary inquiry, as per Section 3 of the Transfer of Property Act, 1986, since had not done needful, he cannot claim shelter of 'bona fide purchaser' by invoking Section 41 of the Transfer of Property Act, 1986 or Section 19 of the Specific Relief Act, 1963. In support of this submission, she relies upon the judgment rendered by the Hon'ble Supreme Court in the case of *K.S.Manjunath and Ors. vs. Moorasavirappa alias Muttanna Chennappa Batil, since Deceased by His Lrs. And others (supra)*. In addition thereto, she refers to judgment in the case of *Annamalai vs. Vasanthi and others* reported in **2025 SCC OnLine SC 2300**.

6.5 Making the above submissions, learned advocate Ms.Lakshya Bhavnani submit to dismiss both the appeals and to confirm the impugned judgment and decree.

7. Heard learned advocate Mr.Dhotare for defendant no.1, Mr.Jenil Shah, learned advocate for defendant no.2 and Ms.Lakshya Bhavnani for Mr.Ansari, learned advocate for the plaintiff and also gone through the records and proceedings as well as the paper-book placed on record by the respective parties.

7.1 Having heard learned advocates for both the sides, at the outset, following questions arise for consideration in these appeals.

(i) Whether suit for specific performance filed by the plaintiff, in absence of declaratory relief for termination or cancellation of agreement was bad in law, is maintainable ?

(ii) Whether plaintiff proved that he was ready and willing to perform his part of contract and proved his readiness and willingness throughout the time period of the contract as well as the suit ?

(iii) Whether in facts and circumstances of the case, time was essence of the contract or not ?

(iv) Whether defendant no.2 proves that he is *bona fide* purchaser and, therefore, not bound by the decree ?

7.2 Certain facts which need to be noticed before arriving to the conclusion that;

(i) the execution of the ATS between the plaintiff and defendant no.1, dated 01.10.1985 is undisputed.

Secondly, on the same day, plaintiff has paid Rs.2,000/- towards earnest money is also undisputed.

(ii) Pending the suit proceedings, learned City Civil Court has issued injunction below notice of motion and restrained the defendant no.1 from changing hands of the suit property. The order is not carried to challenge but rather accepted by defendant no.1 is also not disputed.

(iii) In violation of injunction order, the defendant no.1 has sold the suit property to defendant no.2 and thereby has committed violation of injunction order under Section 39 Rule 2A of 'the Code' is also undisputable as defendant no.1 has not challenged the said order.

(iv) The defendant no.1, for violation of injunction order, faced and undergone one day simple imprisonment.

7.3 Learned City Civil Court framed issues at Exh.26 and subsequent to amendment in the plaint added Issue Nos.7 and 8. The issues framed by the learned City Civil Court read as under:

“1. Whether the plaintiff prove that he is entitled to recover the amount claimed from the defendant?

2. Whether the plaintiff is entitled to interest? If yes, at what rate of interest?

3. Whether the plaintiff is entitled to the damages

sought?

4. What are orders and decrees?"

7.4 To prove his case, plaintiff produced the documents Exh.138 which includes the original ATS (Exh.105), the entry of the payment made by the defendant no.1 in the diary belongs to plaintiff at Exh.108, a copy of the Index in receipt of the sale of suit property by the defendant no.1 to defendant no.2 at Exh.106. The defendant has produced documentary evidence along with list Exh.114 and 143 which include the certified copy of the plaint at Exh.144 and the notice given by the defendant no.1 to plaintiff at Exh.113, reply of plaintiff at Exh.117 and the reply at Exh.145. Defendant no.1 entered witness box at Exh.116. Defendant no.2 produced documentary evidence along with the list at Exh.52 and 124 including the copy of the sale-deed executed by defendant no.1 in favour of defendant no.2 of 23.12.1993 at Exh.107 and another document. The Power of Attorney Holder of defendant no.2 entered into witness box at Exh.125.

7.5 After analysing the aforesaid oral and documentary evidence, learned City Civil Court pleased to answer the issue nos.1, 2 and 8 in affirmative, issue no.3 to 5 in negative and issue no.6 held to be 'does not survive' and issue no.7 was answered in affirmative pointing out that execution of sale deed by defendant no.1 to defendant no.2 is not binding to the plaintiff and Issue No.9 is answered in favour of plaintiff decreeing the suit in aforesaid terms.

7.6 Having noticed aforesaid undisputed facts, let first refer

the relevant terms of the Agreement to Sale (ATS) executed between the parties. The relevant conditions of the ATS, in translated version from Gujarat to English, are extracted herein below.

“This Agreement for Sale is written on this date: 1-10-1985 by me-the executant to you-the executee:

1. The property situated opposite to Parmanand Patel's Chawl bearing Survey No. 141-1 paiki 191 and Muni. Sur. No: 509-81, situated opposite meter-gauge Railway Station, near Shah Hameed Roza, in the Saher-Kotda ward of Ahmedabad city; District-Sub-District Ahmedabad, detailed description of which is annexed herewith. The said property is of sole and Independent ownership of myself-the executant, and hereinafter, the said property shall be addressed as property in the deed.

2. Land of the property of the said deed is held on lease and there is an old and dilapidated structure on the land. It has been decided by this agreement to sell that property to you, the purchaser, by means of an absolute sale.

3. The land of the property mentioned in this document was originally in the full and independent possession of Saiyed Mahemudmiya Badamiya, Yasinmiya Badamiya, and Hamidmiya Badamiya. Of this, the land of Survey No. 141 of this Chawl, adadmeasuring 3 Acres and 20 Gunthas, was taken on lease by Patel Govindbhai Panachand, Nagori Harilal Mulchand, and Jagjivandas Shamjibhai. This lease commenced and accrued from July 8, 1919, and was fixed for a term ending on July 8, 2019, at an annual rent of ₹900.00 (Rupees Nine Hundred Only), and the Lease Deed of that time, to the extent of the rights of Mahemudmiya and Yasinmiya, was registered in the office of the Ld. Sub-Registrar of Ahmedabad on the date 29-09-1919, which is recorded vide Serial Number 3536 in Book Number One; and the second Lease Deed, to the extent of the rights of Saiyed Hamidmiya

Badamiya, was registered in the office of the Sub-Registrar, Ahmedabad on 07/10/1919, which is recorded at Serial Number 3743. In this manner, by way of these Lease Deeds, Govindlal, Harilal, and Jagjivandas mutually agreed upon an oral partition and each party has transferred the land falling to their respective shares into their own names. By virtue of that partition, the land of Survey Number 141-1 admeasuring 1 Acre and 08 Gunthas came into the possession and occupancy of Jagjivandas Shamjibhai. Thereafter, said Jagjivandas Shamjibhai built a *Chawl*, and from then on, said property of *Chawl* remained in the possession of Jagjivandas Shamjibhai. Upon his death, it came into the possession and occupancy of his son, Parmananddas Jagjivandas. After the death of Parmananddas Jagjivandas, as heirs, Parsotamdas Parmanand Patel himself, and as the guardian of the minor Prakash Parsotamdas, and Godavari Bai, the widow of Patel Parmananddas Jagjivandas, became the owners and they all became the co-owners of said property. It was in their possession and occupancy by way of inheritance. Thereafter, Parsotamdas Parmananddas Patel himself, and as the guardian and administrator of his minor son Prakash Parsotamdas, and Godavari Bai, the widow of Parmananddas Jagjivandas, through her Power of Attorney holder, Mr. Parsotamdas have sold the property of said document and another property for ₹2900-00 on the date 16/07/1959 along with leasehold rights and the superstructure to one Mr. Indrasinh Chhatrasinh Raol. The said sale deed was registered at serial number-4472 in the office of Sub-Registrar, Ahmedabad. It was registered in book number one on the same day and thereafter, the said Indrasinh Chatrasinh sold the said registered property to me-the executant on 08/01/1985 and the said sale-deed has been registered in the office of Sub-Registrar, Ahmedabad at serial number 351. Since then, I-the executant became the sole independent owner of the said registered property. Before buying the said property, I-the executant was living in the said property as tenant and was in possession of it. But, after buying the said property, I-the executant have become the sole independent owner

of the said property and I-the executant have the possession as a owner. In the said property, Prior to this there was no tenancy right or any other right of any kind of any person other than me-the executant, nor was any such right ever created. I-the executant alone used to enjoy the tenancy rights and have become an owner after buying it and in sole independent possession as an owner and I am competent to hand over such a title clear possession.

4. I-the executant have agreed to convey the property to you-the executee against consideration of Rs. 16,000-00 (Rupees Sixteen thousand only) and I have received in cash an earnest money of Rs. 2,000-00 (Rupees Two Thousand only) from you-the executee, which I shall adjust in the sale consideration at the time of executing the sale-deed in your favour.

5. The rights and title of the said property are clear and marketable. Furthermore, no person other than me, the executant, has any kind of right, interest, share, claim, or attachment in the said property and I-the executant has neither created any kind of mortgage, charge, or encumbrance on the said property, nor I have taken any loan against it. Also, there is no stay order or prohibitory order of any court regarding the said property. The property is in the sole, full, and independent possession and occupancy of me-the executant. Furthermore, I, the executant, give a firm assurance to you, the executee, that I am fully competent to sell the said property to you. The possession of the said property is to be handed over to you at the time of the execution of the sale deed.

6. The time limit of the said earnest money deed is fixed at six months.

7. I, the executant, is to obtain all necessary permissions regarding the said property from the Urban Land Ceiling Act and other government offices as required by law and in this regard, I, the executant, shall provide signatures and acknowledgments to you, the executee, wherever and whenever necessary.

8. If you, the executee, are willing and ready to take the property according to the terms of the said agreement, but I, the executant, am not willing and ready to give the sale of the said property, then you, the executee, are entitled to have the sale of the said property executed through the Court; and for that, you are entitled to recover all expenses and losses incurred by you from me, the executant."

7.7 The first contention of learned advocate Mr.Dhotare that in absence of declaration decree that termination of cancelling the contract was bad in law for suit for specific performance would not be maintainable which is an issue touches maintainability of the suit and can be permitted at any stage including First Appeal is concerned, having referred to the aforesaid terms and condition of the agreement executed between the parties none of the clause thereof permits the defendant no.1 to terminate the contract unilaterally and to forfeit earnest money. Rather the condition no.8 specifies that even if the vendor is not ready and willing to perform his part of contract, vendee would be entitled to file a civil suit before the court for the specific performance of the contract and to get sale deed registered. In absence of any condition authorising or permitting the defendant no.1 - vendor to terminate the contract, act of terminating the contract itself is bad rather in breach of terms and condition of the contract.

7.8 For the purpose of determinability of the contract, the contract can be bifurcated in several categories. Firstly, the contracts that are unilaterally and inherently revocable or capable of being dissolved such as licenses and partnership at will; secondly contracts that are terminable unilaterally on a

“without cause” or “no fault” basis, thirdly – contracts that are terminable forthwith for cause or that cease to subsist “for cause”, without a provision for remedying the breach; fourthly – the contracts which are terminable for cause subject to a breach notice being issued and an opportunity to cure the breach being given and fifthly, contracts without a termination clause, which could be terminated for breach of a condition but not a warranty, as per applicable common law principles.

7.9 In case of *A Murugan vs. Rainbow Foundation Ltd.* reported in **2019 SCC OnLine Mad 37961**, the Madras High Court, in para:17, held as under:

"17. On examining the judgments on Section 21(d) of SRA 1877 and section 14(c) of the Specific Relief Act, as applicable to this Case, ie. before Act 18 of 2018, I am of the view that Section 14(c) does not mandate that all contracts that could be terminated are not specifically unenforceable. If so, no commercial contract would be specifically enforceable. Instead, Section 14(c) applies to contracts that are by nature determinable and not to all contracts that may be determined. If one were to classify contracts by placing them in categories on the basis of ease of determinability, about five broad categories can be envisaged, which are not necessarily exhaustive. Out of these, undoubtedly, two categories of contract would be considered as determinable by nature and, consequently, not specifically enforceable: (i) contracts that are unilaterally and inherently revocable or capable of being dissolved such as licences and partnerships at will; and (ii) contracts that are terminable unilaterally on "without cause" or "no fault" basis. Contracts that are terminable forthwith for cause or that cease to subsist "for cause" without provision for remedying the breach would constitute a third category. In my view, although the Indian Oil case referred to clause 27 thereof, which provided for termination forthwith "for cause", the

decision turned on clause 28 thereof, which provided for "no fault" termination, as discussed earlier. Thus, the third category of contract is not determinable by nature, nonetheless, the relative determinability may be a relevant factor in deciding whether to grant ease of specific performance as regards this category. The fourth category would be of contracts that are terminable for cause subject to a breach notice and an opportunity to cure the breach and the fifth category would be contracts without a termination clause, which could be terminated for breach of a condition but not a warranty as per applicable common law principles. The said fourth and fifth categories of contract would, certainly, not be determinable in nature although they could be terminated under specific circumstances. Needless to say, the rationale for Section 14(c) is that the grant of specific performance of contracts that are by nature determinable would be an empty formality and the effectiveness of the order could be nullified by subsequent termination. (Emphasis Supplied)"

7.10 The Bombay High Court in case of *Narendra Hirawat & Co. vs. Sholay Media Entertainment Pvt Ltd.* reported in **2020 SCC OnLine Bom 391** observed that phrase “ *a contract which is in its nature determinable*” would mean a contract which is determinable at the sweet will of a party to it, without reference to the other party or without reference to any breach committed by the other party or without any eventuality or circumstances. In other words, the phrase would contemplate a *unilateral right* in a party to a contract to determine the contract without assigning any reason. The relevant observation is as under:-

“48. In *Narendra Hirawat & Co. v. Sholay Media Entertainment Pvt. d.*, 2020 SCC OnLine Bom 391, the Bombay High Court observed that the phrase "a contract which is in its nature determinable" would mean a contract which is determinable at the sweet will of a

party to it, without reference to the other party or without reference to any breach committed by the other party or without any eventuality or circumstance. In other words, the phrase would contemplate a *unilateral right* in a party to a contract to determine the contract without assigning any reason. The relevant observation is as under:-

“8. [...] When the relevant provision [section 14(d) of the Specific Relief Act] uses the words “a contract which is in its nature determinable”, what it means is that the contract is determinable at the sweet will of a party to it, that is to say, without reference to the other party or without reference to any breach committed by the other party or without reference to any eventuality or circumstance. In other words, it contemplates a unilateral right in a party to a contract to determine the contract without assigning any reason or, for that matter, without having any reason. The contract in the present case is not so determinable; it is determinable only in the event of the other party to the contract committing a breach of the agreement. In other words, its determination depends on an eventuality, which may or may not occur, and if that is so, the contract clearly is not “in its nature determinable”. (Emphasis Supplied).

7.11 Section 14 of the Specific Relief Act, 1963 set out certain classes of contracts which are not specifically enforceable. Section 14 (i)(d) specifies that contract which needs continuous supervision of the Court for its performance is not specifically enforceable. Aptly clause (d) of Section 21 of Specific Relief Act, 1877 expressly provided that the contracts which are in their nature of revocable are not enforceable. The said statute was repealed and replaced by Specific Relief Act, 1963. Clause (c) of 14(i) of the Specific Relief Act, 1963 which replace the Clauses (d) of Section 21 of

Specific Relief Act, 1877 expressly provided that contracts, which are in nature of determinable were not specifically enforceable. The word “revocable” as used in clause (d) of Section 21 of the Specific Relief Act, 1877 was replaced by word “determinable” in the new Act. The reason for excluding such contract from the category of being enforceable are that the contract itself is in nature of being “determinable”. This would be of little purpose in granting relief of specific performance of contract which the parties were entitled to terminate or otherwise determine. Apt to note that relief of specific performance is equitable relief. It is founded on principle that the parties to the contract must be entitled to the benefit from the contract entitle to by them, however, if the terms or nature of contract entitles the party to terminate contract, there would be no purpose in directing specific performance of that contract. In another words, no such relief can be granted in equity. Viewed from this aspect, if it establishes that the contract is in its nature determinable if the same can be terminated or its specific performance can not be awarded to the parties, thus the contract that can be terminated by parties on will or in respect of relationship which either party can terminate would be a contract that in nature are determinable if a party can rescind the contract at its own will, it is obvious that same cannot be enforceable for the same party, but if party cannot terminate the contract as long as the other party willing to perform its obligation the contract cannot be considered as determinable and it would be in equity that the contract to be enforced against the party that fails to perform. There can hardly be any contract which

cannot be terminated by the party if the other party fails to perform its obligation. However, such contract cannot be said to be determinable solely because it is or it can be terminated by the party, the party to the contract who is not in default would in equity be entitled to seek performance of that contract. In such circumstances, it cannot be lying in the mouth of the parties breached the contract that other party is not entitled to specific performance of the contract. Therefore, the unilateral termination of contract would not disentitle the plaintiff from filing the suit for specific performance even without asking for declaratory relief that the termination of the ATS is bad in law, more particularly, when no such determinable conditions are enclosed in the ATS or no such determinable nature of the contract is forceable.

7.12 In the case of K. S. Manjunath (**supra**), the Supreme Court has examined the issue in detail. Paras:42, 43, 44 and 45 are relevant paras, which read thus:

“42. In addition to the views expressed by various High courts, as discussed above, this Court, in the recent decision of Annamalai v. Vasanthi, 2025 SCC OnLine SC 2300, wherein one of us, J.B. Pardiwala, J., was a member of the Bench, had the occasion to consider whether a suit for specific performance is maintainable without seeking a declaration that the termination of the agreement was invalid in law. This Court held that where a contract confers upon a party the right to terminate it under certain conditions, and if such right is exercised, then the continued subsistence of the contract becomes doubtful. In such cases, the plaintiff must first obtain a declaration that the termination is invalid before seeking specific performance. However, where no such contractual right

to terminate exists, or where the right has been waived, and a party nevertheless proceeds to terminate the contract unilaterally, such termination would amount to a repudiatory breach, in which event the non-terminating party can directly seek specific performance without first seeking a declaration as aforesaid. The relevant observation is as under:

"Issues for consideration

12. Upon consideration of the rival submissions and having regard to the facts of the case, in our view, following issues arise for our consideration:

A. Whether the High Court was justified in interfering with the finding of the first appellate court qua payment of additional amount of Rs. 1,95,000 by the plaintiff-appellant? If receipt of additional payment by D-1 and D-2 is proved, as found by the first appellate court, whether it could be held that plaintiff was not ready and willing to perform its part under the contract?

B. Whether the suit for specific performance was maintainable without seeking a declaration that termination of the agreement was invalid in law?

C. Whether in the facts of the case the plaintiff was entitled to the discretionary relief of specific performance?

When a declaratory relief is essential

25. A declaratory relief seeks to clear what is doubtful, and which is necessary to make it clear. If there is a doubt on the right of a plaintiff, and without the doubt being cleared no further relief can be granted, a declaratory relief becomes essential because without such a declaration the consequential relief may not be available to the plaintiff. For example, a doubt as to plaintiff's title to a property may arise because of existence of an instrument relating to that property. If plaintiff is privy to that instrument, Section 31 of Specific Relief Act, 1963 enables him to institute a suit

for cancellation of the instrument which may be void or voidable qua him. If plaintiff is not privy to the instrument, he may seek a declaration that the same is void or does not affect his rights. When a document is void ab initio, a decree for setting aside the same is not necessary as the same is non est in the eye of law, being a nullity. Therefore, in such a case, if plaintiff is in possession of the property which is subject matter of such a void instrument, he may seek a declaration that the instrument is not binding on him. However, if he is not in possession, he may sue for possession and the limitation period applicable would be that as applicable under Article 65 of the Limitation Act, 1963 on a suit for possession. Rationale of the aforesaid principle is that a void instrument/transaction can be ignored by a court while granting the main relief based on a subsisting right. But, where the plaintiff's right falls under a cloud, then a declaration affirming the right of the plaintiff may be necessary for grant of a consequential relief. However, whether such a declaration is required for the consequential relief sought is to be assessed on a case-to-case basis, dependent on its facts.

26. A breach of a contract may be by non-performance or by repudiation, or by both. In Anson's Law of Contract (29 Oxford Edn.), under the heading "Forms of Breach Which Justify Discharge", it is stated thus:

"The right of a party to be treated as discharged from further performance may arise in any one of three ways: the other party to the contract (a) may renounce its liabilities under it; (b) may by its own conduct make it impossible to fulfill them, (c) may fail to perform what it has promised. Of these forms of breach, the first two may take place not only in the course of performance but also while the contract is still wholly executory Le., before either party is entitled to demand a performance by the other party of the other's promise. In such a case the breach is usually termed an anticipatory breach. The last can only take place at or during the time for performance of the contract."

27. Ordinarily, for a breach of contract, a party aggrieved by the breach. i.e.. failure on the part of the other party to perform its part under the contract can claim compensation or damages by accepting the breach as a termination of the contract, or/and, in certain cases. obtain specific performance by not recognizing the breach as termination of the contract. In a case where the contract between the parties confers a right on a party to the contract to unilaterally terminate the contract in certain circumstances, and the contract is terminated exercising that right, a mere suit for specific performance without seeking a declaration that such termination is invalid may not be maintainable. This is so, because a doubt/cloud on subsistence of the contract is created which needs to be cleared before grant of a decree enforcing contractual obligations of the parties to the contract.

28. Now we shall consider few decisions of this Court where the question of grant of relief of specific performance of a contract in teeth of termination of the contract without seeking a declaration qua subsistence of the contract was considered. In I.S. Sikandar v. K. Subramani, the agreement for sale stipulated sale within a stipulated time frame; on failure of the plaintiff to respond to the notice seeking execution of sale, the agreement was terminated. In that context, this Court held:

"36. Since the plaintiff did not perform his part of contract within the extended period in the legal notice referred to supra, the agreement of sale was terminated as per notice dated 28-3-1985 and thus, there is termination of the agreement of sale between the plaintiff and defendants 1-4 w.e.f. 10-4-1985

37. As could be seen from the prayers sought for in the original suit, the plaintiff has not sought for declaratory relief to declare the termination of agreement of sale as bad in law. In the absence of such prayer by the plaintiff the original suit filed by him before the trial court for grant of decree for specific performance in respect of the suit scheduled

property on the basis of agreement of sale and consequential relief of decree for permanent injunction is not maintainable in law.

38. Therefore, we have to hold that the relief sought for by the plaintiff for the grant of decree for specific performance of execution of sale deed in respect of the suit scheduled property in his favor on the basis of non-existing agreement of sale is wholly unsustainable in law."

29. In A. Kanthamani (supra), the decision in 1.5. Sikandar (supra) was considered, and it was held:

"30.3. Third, it is a well settled principle of law that the plea regarding the maintainability of suit is required to be raised in the first instance in the pleading (written statement) then only such plea can be adjudicated by the trial court on its merits as a preliminary issue under Order 14 Rule 2 CPC. Once the finding is rendered on the plea, the same can be examined by the first or/and second appellate court. It is only in appropriate cases, where the court prima facie finds by mere perusal of plaint allegations that the suit is barred by any express provision of law or is not legally maintainable due to any legal provision; a judicial notice can be taken to avoid abuse of judicial process in prosecuting such suit. Such is, however, not the case here.

30.4. Fourth, the decision relied on by the learned counsel for the appellant in 1.5. Sikandar turns on the facts involved therein and is thus distinguishable."

30. In R. Kandasamy (since dead) v. T.R.K. Sarawathy, this Court considered both I.S. Sikandar (supra) and A. Kanthamani (supra), and clarified the law by observing as under:

"47. However, we clarify that any failure or omission on the part of the trial court to frame an issue on maintainability of a suit touching jurisdictional fact by itself cannot trim the powers of the higher court to

examine whether the jurisdictional fact did exist for grant of relief as claimed, provided no new facts were required to be pleaded and no new evidence led."

31. From the aforesaid decisions what is clear is that though a plea regarding maintainability of the suit, even if not raised in written statement, may be raised in appeal, particularly when no new facts or evidence is required to address the same, the issue whether a declaratory relief is essential or not would have to be addressed on the facts of each case.

32. In our view, a declaratory relief would be required where a doubt or a cloud is there on the right of the plaintiff and grant of relief to the plaintiff is dependent on removal of that doubt or cloud. However, whether there is a doubt or cloud on the right of the plaintiff to seek consequential relief, the same is to be determined on the facts of each case. For example, a contract may give right to the parties, or any one of the parties, to terminate the contract on existence of certain conditions. In terms thereof, the contract is terminated, a doubt over subsistence of the contract is created and, therefore, without seeking a declaration that termination is bad in law, a decree for specific performance may not be available. However, where there is no such right conferred on any party to terminate the contract, or the right so conferred is waived, yet the contract is terminated unilaterally, such termination may be taken as a breach of contract by repudiation and the party aggrieved may, by treating the contract as subsisting, sue for specific performance without seeking a declaratory relief qua validity of such termination.
(Emphasis Supplied)

43. Thus, in view of the above discussion, the following principles of law are discernible:

(1). Unilateral termination of the agreement to sell by one party is impermissible in law except in cases where the agreement itself is determinable in nature in terms of Section 14 of the Act of 1963;

(ii). If such unilateral termination of a non-determinable agreement to sell is permitted as a defence, then virtually every suit for specific performance can be frustrated by the defendant by placing an unfair burden on the plaintiff, who despite performing his part of the obligations and having showcased readiness and willingness, would require to also seek a separate declaration that the termination was bad in law. In such cases, the burden cannot be casted upon the plaintiff to challenge the alleged termination of agreement;

(iii). Where a party claims to have valid reasons to terminate or rescind a non-determinable agreement to sell, with a view to err on the side of caution, it should be such terminating party, if at all, who ideally should approach the court and obtain a declaration as to the validity of such termination or rescission, and not the non-terminating party. However, this must not mean that the defendant (the terminating party) in such cases would mandatorily be required to seek a declaration because Sections 27 and 31 of the Act of 1963 respectively, while using the phrase "may sue" merely give an option to any person to have the contract rescinded or adjudged as void or voidable;

(iv). Once the alleged termination of a non-determinable agreement in question is found to be not for bona fide reasons and being done in a unilateral manner on part of the defendant, it cannot be said that any declaration challenging the alleged termination was required on part of plaintiff;

(v). If a contract itself gives no right to unilaterally terminate the contract, or such right has been waived, and a party still terminates the contract unilaterally then that termination would amount to a breach by repudiation, and the non-terminating party can directly seek specific performance without first seeking a declaration; and

(vi). In the event it is found that the termination of agreement to sell by the defendant was not valid, then such an agreement to sell will remain subsisting and

executable.

44. Before applying the aforesaid principles of law to the facts of the present case, and bearing in mind that unilateral termination of an agreement to sell by one party is impermissible in law except where the agreement is by its very nature determinable, it is, as a necessary corollary, essential to also determine whether the ATS dated 28.04.2000 was determinable in nature or not.

(b) Whether the ATS dated 28.04.2000 determinable? was in nature determinable ?

45 The Commentary on the Indian Contract Act and Specific Relief et authored by Pollock & Mulla (17th Edition) states that determinable contracts derive their existence from the determination clause envisaged in the contract and there are essentially three types of determination clauses, viz. (i) termination for cause that allows a party to terminate the contract if the other party breaches a specific term or if a specified event occurs, (ii) termination for convenience that allows a party to end the contract without having to give a reason and (iii) termination upon expiry of the term of the contract."

7.13 In view of above and applying settled principles of law to the facts of the present case, the first contention that raised by learned advocate that the plaintiff's suit for specific performance is not maintainable without asking declaratory relief that termination of the contract is bad in law, cannot be accepted.

7.14 Whether the time is essence of the contract and whether plaintiff was ready and willing throughout the contract till hearing of suit are the issues intermingle with each other. Section 16(c) of the Specific Relief Act, 1963 mandates that in a suit for specific performance of plaintiff must allege and

prove continuous readiness and willingness to perform his contract on his part on the date of contract and the onus is lying upon the plaintiff. The relief of specific performance under Section 20 of Specific Relief Act, 1963 cannot be granted unless and until plaintiff proves that he was ever ready and willing to perform his part of contract. It is settled principle of law that factum of readiness and willingness to perform the part of contract is to be adjudged with reference to the conduct of the party and attending and surrounding circumstances. The Court may infer from the facts and circumstances whether plaintiff was ready and always ready and willing to perform his part of contract.

7.15 In *JP Builders and others vs. Ramdas* reported in **2011 (1) SCC 421**, it has been held by Hon'ble Supreme Court as under :

"27. It is settled law that even in the absence of specific plea by the opposite party, it is the mandate of the statute that the plaintiff has to comply with Section 164c) 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 of the parties." (emphasis supplied) willingness" to perform the part of the contract has to be determined/ascertained from the conduct of the parties." (emphasis supplied)"

7.16 In the case of *C.S.Venkatesh vs A.S.C.Murthy (D) By Lrs.* reported in **(2023) 3 SCC 280**, Hon'ble the Supreme Court has held as under:

"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.

7.17 Yet in another judgment in case of *N.P.Thirugnanam vs. R. Jagan Mohan Rao*, reported in **(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 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 with other attending circumstances. The amount of consideration which he has to pay to the defendant must necessarily be proved to be available.

7.18 The readiness refers to the financial capacity and willingness refers to conduct of the plaintiff pointing the performance. In the evidence recorded before the learned court below, it comes on record that the plaintiff had paid Rs.2000/- towards the earnest money at the time of execution of ATS. Although as per term of ATS, he was not required to pay any other amount towards sale consideration till sale deed is executed, has proved that he has paid Rs.6000/- more as he has proved vide entry in defendant no.1's handwriting in Diary at Exh.108 which was not seriously disputed by other side at the time when the said entry was exhibited.

7.19 The learned City Civil Court has discussed the evidence in paras:15 to 17 of its judgment. The relevant discussion of the learned trial Court on the issue of readiness and willingness and time is essence of the contract are in paras:15 to 17, which reads thus :

"15. It appears from the pleadings, oral and documentary evidence produced by the parties and from the respective submissions made by the learned advocates for the parties that the initial prayer of the plaintiff against the defendant no. 1 for specific performance of the agreement dt. 1/10/83 was required to be amended and the defendant no. 2 was required to be joined as party defendant as during the pendency of the suit, the defendant no. had sold out the suit property to the defendant no. 2 inspite of the operation of the interim injunction restraining the defendant no.1 from transferring or selling the suit property. It appears that the agreement dt. 1/10/85 produced at exh. executed between the plaintiff and the defendant no. under which it was agreed by the defendant no. I to sell the suit property to the plaintiff for Rs. 16,000/- out which the plaintiff had paid Rs.2000/- by way of earnest money to the defendant no. of 1. It has been

specifically mentioned in the said agreement that the defendant no. 1 was the exclusive owner of the suit property and had clear and marketable title in respect of the suit property. It is true that as per the condition the conditi 6 of the said agreement, the time limit was fixed to no. be six months and as per condition no. 7, the defendant no. 1 had agreed to co operate the plaintiff for getting necessary permission from the Government offices as and when found necessary. Now, Mr.Pathan relying upon the said condition nno. 6 of the agreement has submitted that the time was the essence of the contract and hence the plaintiff was not entitled to the specific performance of the said agreement after the expiry of six months from the date of agreement. I find no substance in the said submission of Mr. Pathan inasmuch as mere fixing the time limit in the agreement would not make the time essence of the contract, all the other conditions of the agreement also have to be taken into consideration for deciding as to whether the parties had intended the time to be made the essence of the contract or not. As such there is no correspondence ensued between the parties prior to the filing of the suit except that the defendant 1 had issued the notice on 21/7/86 produced at exh. 113 cancelling the said agreement dt. 1/10/85. Hence it is difficult to gather the intention of the parties whether at the time of execution of the said agreement dt. 1/10/85, the time was made essence of the contract or not. At this juncture, it is necessary to refer to the ratio of judgment laid down by the Hon'ble Supreme court in A.1.R. 1977, S.C. 1005 which reads as under:

"The fixation of contract has to be the period within which the performed does not make the stipulation as to time the essence of the contract. When a contract relates to sale of immoveable property it will normally be presumed that the time is not the essence of the contract. The intention to treat time as the essence of the contract may be evidenced by circumstances which should be sufficiently strong to displace the normal presumption that in a contract of sale of land stipulation as to time is not the essence of the contract."

16. In the instant case also Mr.Pathan for the defendant no. 1 has failed to displace the normal presumption that the time was not the essence of contract as the contract related to sale of immoveable property. In that view of the matter, I hold that the time was not made the essence of contract at the time of execution of the agreement dt. 1/10/85, exhh, 105.

17. So far as readiness and willingness of the plaintiff in performing his part of the contract is concerned, the plaintiff's deposition is required to be read in the light of notice given by the defendant no. 1 at exh. 113 and also the reply dt. 12/8/86 produced at mark 3/2 of the plaintiff. It is pertinent to observe at this stage that the said reply produced at mark 3/2 has not been exhibited during the oral evidence of the plaintiff as the plaintiff had failed to produce the original acknowledgment receipt showing the receipt of the said reply by the defendant no.1. However, subsequently, the defendant no.1 having produced his list of documents in which he has also produced the reply Ut 3/9/86 at exh. 117 which is reply to the said notice dt. 12/8/96 of the plaintiff and hence the said reply produced at mark 3/2 treated as proved and is now exhibited as exh. 145. It clearly transpires from the reply dt. 3/9/80 of the defendant no. 1 produced at exh. 117 that the defendant no. 1 had received the reply dt. 12/8/86 of the plaintiff now exhibited as exh.145 in which the plaintiff had categorically stated that he was ready and willing to get the sale deed executed from the defendant no. 1 but the defendant no. 1 was avoiding the execution by giving false excuses. The plaintiff has also pleaded in his plaint and stated i his oral evidence that he was ready and willing to make payment of agreed sale consideration and to perform his part of the contract. As against that, if the deposition of defendant no. I is seen, it clearly transpires that the defendant no. 1 has changed his version from time to time to suit his own purpose. In the entire deposition he has gone on making inconsistent statements and the statements contrary to his pleadings. Even the court had to warn him orally number of time and had also made a note to the effect that the witness is being warned for giving correct deposition on oath in the court. However, the defendant no. 1 has not chosen to put

correct Jacks before the court It also appears that the defendant no. 1 had also accepted Rs. 6000/- as per the entry made in the diary of the plaintiff produced at exh. 108. of course Mr. Pathan has seriously disputed the receipt of the said amount and has also given the application exh. 112, Mr. Pathan has also requested the court to de exhibit exh. 107 given to the copy of sale deed produced by the defendant no. 2. Mr. Pathan has also relied upon A.I.R. 1979 S.C. 14 and submitted that the court should ot take upon itself the task of comparing the admitted signatures with the disputed one! It is true that as held in the said judgment ordinarily it is not proper for the court to compare the admitted signature with the disputed one to lind out whether the two agree with each other or not and the prudent course is to obtain the opinion and assistance of an expert. However, it has also been held" since even where proof of handwriting which is in natural comparison, exists, a duty is cast on the Court to use its own eyes and mind to compare the admitted writing with the disputed one too verify and reach its own conclusion it will not be wrong to say that when a court seized of a case, directs an accused person present before it to write down a sample writing. such direction in the ultimate analysis, is for the purpose for enabling the court to compare" the writing so written with the writing alleged to have been written by such person, within the contemplation of Section 73 such, in the instant case there is no question of the court comparing the disputed signature with the admitted Signature of the defendant, no. 1. The entry made in the diary of the plaintiff exh. 108 has been exhibited treating the same as proved on the plaintiff stating in his oral evidence that the said entry was made by the defendant no.1 on his making payment of Rs. 6,000/- to him. It is true that normally, the receipt of payment has to be on a piece of paper. However, thefe is no bar in making entry in the diary of the person acknowledging the receipt of payment as has been done in the instant case. 1, therefore, find no force in the argument of Mr. Pathan that the entry exh. 108 should be de exhibited. There is also no force in the argument of Mr. Pathan for de exhibiting exh. 107 as the original already

been produced by the defendant no. 127 and the document produced at exh. 107 is only the copy of the said sale deed produced at exh. 127. that view of the matter, the application given by Mr. Pathan at exh. 112 which was directed to be heard and decided alongwith the final disposal of the suit is hereby dismissed. In that view of the matter, I hold that the plaintiff has proved by producing oral and documentary evidence that he was ready and willing to perform his part of the contract as per the terms and conditions of the sale agreement, whereas the defendant has failed to prove that he was ready and will execute the sale deed in favour of the plaintiff prior to his notice dt. 21/2/86. As rightly submitted by Mr. Ahmadi, there being no condition contained in the said agreement dt. 1/10/85 entitling the defendant to cancel the agreement if the plaintiff did not perform his part of the contract within the time limit fixed therein, the defendant no. 1 could not have cancelled the said agreement and forfeited the amount paid by the plaintiff towards the earnest money."

7.20 Taking exception to the aforesaid findings, learned advocate Mr.Dhotare submitted that learned trial COURT ignored notices exchanged between the parties whereby the defendant no.1 rescinded the contract and secondly plaintiff did not perform his part of contract within stipulated time of six months indicates that the plaintiff was not ready and willing to perform his part of contract. The submission found in contrast to the terms and conditions of the ATS as well as evidence on record. Firstly the evidence of the defendant no.1 which comes out by way of cross-examination of the plaintiff as well as he entered the witness box does not suggest, specify or establishes that plaintiff was not ready and willing to perform his part of contract. Apt to note that the terms and condition of the contract does not specify plaintiff to pay anything more than Rs.2,000/- during the execution of the

ATS the plaintiff successfully proved that he has paid Rs.6,000/- more to the defendant no.1 during the currency of the contract. Plaintiff further pleaded that he was continuously bagging to the defendant to execute sale deed by accepting remaining amount of sale consideration. Plaintiff's such action has been supported by the fact that within seven months of execution of sale-deed, defendant unilaterally rescinded the contract and forfeited earnest money although he had no such right.

7.21 According to condition no.4 of the contract, plaintiff was required to pay balanced amount of the sale consideration at the time of execution of sale deed and not prior to it. As observed herein-above, yet plaintiff paid Rs.6000/- more on demand of defendant no.1. This act of the plaintiff sufficiently establishes that plaintiff was ever ready and willing to perform his part of the contract and he never denied to perform his part of the contract. The conduct of the defendant no.1 *vis-a-vis* shows that despite having no right or authority to terminate the contract, he terminated the contract (ATS) by issuing notice and further dared to forfeit the earnest money and thereafter pending the suit sold suit property to defendant no.2 in violation of prohibitory injunction order. This conduct itself is sufficient to mark that plaintiff is entitled to get specific performance of the ATS, because the defendant was not complying with the terms and conditions of the ATS rather has breached the same and was not ready to perform his part of ATS.

7.22 Next argument was that 'time was the essence of

contract' and non-adherence of it, makes plaintiff disentitled to claim relief of specific performance. The submission that the condition no.3 of the contract specifies the time period of the contract was six months and thereby time is essence of the contract. It is apt to note that merely stating some time period to execute the contract, by itself would not be condition to apply the doctrine of "time is essence of contract". There is no other condition which specifies that if the contract has not been specifically performed within six months, it shall be terminated or the defendant would be entitled to rescind or get away from the contract. In other words, absence of any condition in ATS, stating consequential action or result of not adhering time limit stated in contract, would make clear that it was not intention of the party to contract to make "time as essence of contract". The condition no.7 specifies that some permission from the Government office in regard to Urban and Land Ceiling Act was required to be taken. Condition No.8 states that even if defendant no.1 vendee is not ready and willing to perform his part of the contract, plaintiff would be entitled to file suit for specific performance to get registered sale deed. These three conditions stated in the contract, in harmonious and entirety perusal, infer or intend that putting up of time limit of six months was not the intention of the party to contract to make it rigid and inflexible, non-adherence of which *ipso facto* rescind the contract, or contract becomes non existent. In absence of aforesaid intention, in that circumstances of the case, time cannot be considered to be 'an essence of contract'.

7.23 Ordinarily time is not of the contract as far as it relates to sell of the immovable property. The Constitution Bench of the Supreme Court in the case of *Chand Rani (Smt.) (Dead by Lrs.) vs. Kamal Rani (Smt.) (Dead) by Lrs.* (**supra**) discussed the applicability of the principle after referring to Section 55 of the Contract Act. PARAS:19 to 23 and 25 read as under:

"19. It is a well-accepted principle that in the case of sale of immovable property, time is never regarded as the essence of the contract. In fact, there is a presumption against time being the essence of the contract. This principle is not in any way different from that obtainable in England. Under the law of equity which governs the rights of the parties in the case of specific performance of contract to sell real estate, law looks not at the letter but at the substance of the agreement. It has to be ascertained whether under the terms of the contract the parties named a specific time within which completion was to take place, really and in substance it was intended that it should be completed within a reasonable time. An intention to make time the essence of the contract must be expressed in unequivocal language.

20. We will now refer to the decisions of this Court. In Gomathinayagam Pillai's case it was held :

"Sec.55 of the Contract Act which deals with the consequences of failure to perform an executory contract at or before the stipulated time provides by the first paragraph:

"When a party to a contract promises to do a certain thing at or before a specified time, or certain things at or before specified times, and fails to do any such thing at or before the specified time, the contract, or so much of it as has not been performed, becomes voidable at the option of the promisee if the intention of the parties was that time should be of the essence of the contract."

It is not merely because of specification of time at or

before which the thing to be done under the contract is promised to be done and default in compliance therewith, that the other party may avoid the contract. Such an option arises only if it is intended by the parties that time is of the essence of the contract. Intention to make time of the essence, if expressed in writing, must be in language which is unmistakable : it may also be inferred from the nature of the property agreed to be sold, conduct of the parties and the surrounding circumstances at or before the contract. Specific performance of a contract will ordinarily be granted, notwithstanding default in carrying out the contract within the specified period, if having regard to the express stipulations of the parties, nature of the property and the surrounding circumstances, it is not inequitable to grant the relief. If the contract relates to sale of immovable property, it would normally be presumed that time was not of the essence of the contract. Mere incorporation in the written agreement of a clause imposing penalty in case of default does not by itself evidence an intention to make time of the essence. In *Jamshed Khodaram Irani V/s. Burjorji Dhunjibhai* the Judicial Committee of the Privy Council observed that the principle underlying sec. 55 of the Contract Act did not differ from those which obtained under the law of England as regards contracts for sale of land. The Judicial Committee observed:

"Under that law equity, which governs the rights of the parties in cases of specific performance of contracts to sell real estate, looks not at the letter but at the substance of the agreement in order to ascertain whether the parties, notwithstanding that they named a specific time within which completion was to take place, really and in substance intended more than that it should take place within a reasonable time Their Lordships are of opinion that this is the doctrine which the section of Indian Statute adopts and embodies in reference to sales of land. It may be stated concisely in the language used by Lord Cairns in *Tilley V/s. Thomas* :-

"The construction is, and must be, in equity the same as in a Court of law. A Court of equity will

indeed relieve against, and enforce, specific performance, notwithstanding a failure to keep the dates assigned by the contract, either for completion, or for the steps towards completion, if it can do justice between the parties, and if (as Lord Justice Turner said in *Roberts V/s. Berry*, (1853) 3 De G.M. & G. 284), there is nothing in the express stipulations between the parties, the nature of the property, or the surrounding circumstances, which would make it inequitable to interfere with and modify the legal right. This is what is meant, and all that is meant, when it is said that in equity time is not of the essence of the contract. Of the three grounds mentioned by Lord Justice Turner 'express stipulations' requires no comment. The 'nature of the property' is illustrated by the case of reversions, mines, or trades. The 'surrounding circumstances' must depend on the facts of each particular case."

Their Lordships will add to the statement just quoted these observations. The special jurisdiction of equity to disregard the letter of the contract in ascertaining what the parties to the contract are to be taken as having really and in substance intended as regards the time of its performance may be excluded by any plainly expressed stipulation. But to have this effect the language of the stipulation must show that the intention was to make the rights of the parties depend on the observance of the time limits prescribed in a fashion which is unmistakable. The language will have this effect if it plainly excludes the notion that these time limits were of merely secondary importance in the bargain, and that to disregard them would be to disregard nothing that lay as its foundation. "Prima facie, equity treats the importance of such time limits as being subordinate to the main purpose notwithstanding that from the point of view of a Court of Law the contract has not been literally performed by the plaintiff as regards the time limit specified."

21. In *Govind Prasad Chaturvedi V/s. Hari Dutt Shastri*,

following the above ruling it was held at pages 543-544: (SCC para 5) :

"It is settled law that the fixation of the period within which the contract has to be performed does not make the stipulation as to time the essence of the contract. When a contract relates to sale of immovable property it will normally be presumed that the time is not the essence of the contract. It may also be mentioned that the language used in the agreement is not such as to indicate in unmistakable terms that the time is of the essence of the contract. The intention to treat time as the essence of the contract may be evidenced by circumstances which are sufficiently strong to displace the normal presumption that in a contract of sale of land stipulation as to time is not the essence of the contract." (emphasis supplied)

22. In Hind Construction Contractors case, 1979 2 SCR 1147 quoting Halsbury's Laws of England, this Court observed : as under: (SCC pp.76-77, paras 7 & 8)

"In the latest 4th edn. of Halsbury's Laws of England in regard to building and engineering contracts the statement of law is to be found in Vol. 4, Para 1179, which runs thus:

"1179. Where time is of the essence of the contract. The expression time is of the essence means that a breach of the condition as to the time for performance will entitle the innocent party to consider the breach as a repudiation of the contract. Exceptionally, the completion of the work by a specified date may be a condition precedent to the contractor's right to claim payment. The parties may expressly provide that time is of the essence of the contract and where there is power to determine the contract on a failure to complete by the specified date, the stipulation as to time will be fundamental. Other provisions of the contract may, on the construction of the contract, exclude an inference that the completion of the works by date is fundamental, time is no the essence where a sum is payable for each week that the work remains

incomplete after the date fixed, nor where the parties contemplate a postponement of completion.

Where time has not been made of the essence of the contract or, by reason of waiver, the time fixed has ceased to be applicable, the employer notice fix a may by reasonable time for the completion of the work and dismiss the contractor on a failure to complete by the date so fixed." (Emphasis supplied)

It will be clear from the aforesaid statement of law that even where the parties have expressly provided that time is the essence of the contract such a stipulation will have to be read along with other provisions of the contract and such other provisions may, on construction of the contract, exclude the inference that the completion of the work by a particular date was intended to be fundamental, for instance, if the contract were to include causes providing for extension of time in certain contingencies or for payment of fine or penalty for every day or week the work undertaken remains unfinished on the expiry of the time provided in the contract such clauses would be construed as rendering ineffective the express provision relating to the time being of the essence of contract. The emphasis portion of the aforesaid statement of law is based on Lamprell V/s. Billericay Union, Webb V/s. Hughes and Charles Rickards Ltd. V/s. Oppenheim. "

23. In Smt. Indira Kaur V/s. Shri Sheo Lal Kapoor it was held as under:

"The law is well-settled that in transactions of sale of immovable properties, time is not the essence of the Contract."

24. ... xxx

25. From an analysis of the above case-law it is clear that in the case of sale of immovable property there is no presumption as to time being the essence of the contract. Even if it is not of the essence of the contract the Court may infer that it is to be performed in a reasonable time if

the conditions are :

- (1) from the express terms of the contract;
- (2) from the nature of the property; and
- (3) from the surrounding circumstances, for example : the object of making the contract."

7.24 Applying the aforesaid settled principles *vis-a-vis* the terms and conditions of the contract (Exh.105), I find argument time being essence of the contract, in this case, is totally non-applicable.

7.25 As far as contention that the defendant no.2 is *bona fide* purchaser and is not bound by the enforcement of the specific performance against him as defendant no.2 has purchased the suit property for a value and paid Rs.80,000/-, whereof Rs.40,000/- each to defendant no.1 vendor and his brother Prabhudas in good faith and without notice of original contract as well as the pendency of the suit is concerned, let me refer the judgment in the case of K.S.Manjunath (*supra*) wherein Hon'ble the Supreme Court has held as under, in paras:69 to 75, governs or clinches the issue, reads thus:

"69. Similarly, in Durg Singh v. Mahesh Singh, 2004 SCC OnLine MP 9, tire Madhya Pradesh High Court had observed that there are two farfors that are necessary for the adjudication of suit for specific performance of the contract where the subject matter property has been sold to a subsequent purchaser: (1) that whether the plaintiff remained always ready and willing to perform his part of the contract to purchase the suit property and the readiness and willingness should exist till the date of the passing of the decree, and (ii) that whether subsequent transferee was having prior knowledge of the earlier agreement executed in favour plaintiff. Both these factors need to have nexus with the facts of each case and

conduct of parties. The relevant observation is as under:

"11. In a suit of specific performance of the contract where the property in dispute has been sold to the subsequent purchaser, two things are necessary for the adjudication, they are: (1) that whether the plaintiff remained always ready and willing to perform his part of the contract to purchase the suit property and the readiness and willingness should exist till the date of the passing of the decree and in whether the subsequent transferee was having prior knowledge of the earlier agreement. executed in favour of plaintiff in other words, we may say that if plaintiff fails to plead and prove by his conduct the readiness and willingness to purchase the suit property and if the subsequent purchaser was a bona fide purchaser without prior notice of the original contract who had paid the value of the suit property to the vendor, the suit of specific performance cannot be decreed. Both these essential ingredients are having nexus with the facts of each case as well as the conduct of the parties of that case. No straight-Jacket formula can be framed in this regard and each case should be tested on the touchstone of its own facts and circumstances coupled with the evidence. Thus, I shall now examine the present case in that regard." (Emphasis Supplied)

70. The expression "wilful abstention from inquiry or search" recalls the expression used by Sir James Wigram VC in the case of Jones v. Smith, (1841) 1 Hare 43, wherein the High Court of Chancery of England & Wales had held that constructive notice is basically a manifestation of equity which treats a man who ought to have known a fact, as if he had actually known it. The court noted that:

"It is, indeed, scarcely possible to declare a priori what shall be deemed constructive notice, because, unquestionably, that which would not affect one man may be abundantly sufficient to affect another. But I believe, I may, with sufficient accuracy for my present purpose and without danger assert that the cases in which constructive notice has been established

resolve themselves in two classes:

First, cases in which the party charged has had actual notice that the property in dispute was in fact charged, encumbered or in some way affected, and the court has thereupon bound him with constructive notice of facts and instruments, to a knowledge of which he would have been (sic) led by an enquiry after the charge, encumbrance or other circumstances affecting the property of which he had actual notice; and secondly, cases in which the court has been satisfied from the evidence before it that the party charged had designedly abstained from enquiry for the very purpose of avoiding notice [...]"(Emphasis Supplied)

71. Similar to the importance of the term "notice" used in Section 19 (b) of the Act of 1963, the term "good faith" which is also used in Section 19(b) is equally important. The term "good faith" is defined in Section 3(22) of the General Clauses Act, 1897 (for short, "GC Act") as well as Section 2(11) of the Bhartiya Nyaya Sanhita, 2023 (for short, "BNS"). Section 3(22) of GC Act defines "good faith" is defined in the following terms:

"3(22). A thing shall be deemed to be done in good faith where it is in fact done honestly whether it is done negligently or not."

72. Section 2(11) of the BNS defines "good faith" in the following terms:

"2(11). "Good faith Nothing is said to be done or believed in good faith" which is done or believed without due care and attention"

73. Therefore, in order to come to a conclusion that an act was done in good faith it must have been done with (i) due care and attention, and (ii) there should not be any dishonesty. This Court recently in case of Manjit Singh v. Darshana Devi, 2024 SCC OnLine SC 3431, wherein one of us, J.B. Pardiwala, J., forming a part of the Bench, construed the usage of the term "good faith" under

Section 19(b) of the Act of 1963 in the above sense and held that each of the abovementioned aspects is a complement to the other and not an exclusion of the other. This Court observed that the definition of the BNS emphasizes due care and attention whereas the definition of the GC Act emphasizes honesty. The relevant observation is as under:

"13. Section 3(2) of the General Clauses Act defines 'good faith' as follows:-

3(22). A thing shall be deemed to be done in good faith where it is in fact done honestly whether it is done negligently or not.

14. Section 2(11) of the Bhartiya Nyaya Sanhita, 2023 defines "good faith", as follows:-

2(11). "Good faith- Nothing is said to be done or believed in "good faith" which is done or believed without due care and attention;

15. The abovesaid definitions and the meaning of the term 'good faith' indicate that in order to come to a conclusion that an act was done in good faith it must have been done with due care and attention and there should not be any negligence or dishonesty. Each aspect is a complement to the other and not an exclusion of the other. The definition of the Penal Code, 1860 emphasises due care and attention whereas General Clauses Act emphasises honesty.

16. The effect of abstention on the part of a subsequent purchaser, to make enquiries with regard to the possession of a tenant, was considered in Ram Niwas v. Bano, (2000) 6 SCC 685 [...]

17. In the case reported in Kailas Sizing, Works v. Municipality, B. & N., 1968 Bom LR 554, the Bombay High Court observed as follows:

A person cannot be said to act honestly unless he acts with fairness and uprightness. A person who

acts in a particular manner in the discharge of his duties in spite of the knowledge and consciousness that injury to someone or group of persons is likely to result from his act or omission or acts with wanton or wilful negligence in spite of such knowledge or consciousness cannot be said to act with fairness or uprightness and, therefore, he cannot be said to act with honesty or in good faith. Whether in a particular case a person acted with honesty or not will depend on the facts of each case. Good faith implies upright mental attitude and clear conscience. It contemplates an honest effort to ascertain the facts upon which the exercise of the power must rest. It is an honest determination from ascertained facts. Good faith precludes pretence, deceit or lack of fairness and uprightness and also precludes wanton or wilful negligence." (Emphasis Supplied)

74. This aspect also deserves a reference to the case of Jammula Rama Rao v. Merla Krishnaveni, 2002 SCC OnLine AP 646, wherein the Andhra Pradesh High Court while holding that honesty is the essential condition in 'good faith' observed that when subsequent purchasers were informed about the existence of the agreement in favour of the prior vendee, then the subsequent purchasers should have made enquiries from the prior vendee to satisfy themselves whether the agreement in favour of prior vendee is only a nominal one as alleged by the vendors. The court held that the failure on the part of the subsequent purchasers in not conducting such an enquiry with the prior vendee would render them susceptible to the complaint that subsequent purchasers had not acted honestly and in good faith. The relevant observation is as under:

"7. In view of the language employed in Sec. 19(b) of Specific Relief Act, the subsequent purchaser has to establish that he paid money in good faith, without notice of the original contract. Since 'good faith' is not defined in Specific Relief Act, its meaning has to be understood from the definition of 'good faith' in General Clauses Act, 1897, Sub-sec. 22 of Sec. 3 of General

Clauses Act, defined 'good faith' as "a thing shall be deemed to be done in 'good faith' if it is done honestly". So, honesty is the essential condition in 'good faith'. When appellants, were informed about the existence of the suit agreement in favour of the 1 respondent, appellants should have made enquiries from the 1 respondent to satisfy themselves whether the agreement in favour of 1" respondent is only a nominal one, as alleged by respondents 2 to 5. If they have not done so, it cannot be said that they acted honestly, and consequently it cannot be said that appellants acted in good faith." (Emphasis Supplied)

75. At the outset, it must be noted that the subsequent purchasers have themselves admitted that prior to their purchase they were Uranded over a copy of the notice of termination dated 10.03.2003 by the original vendors and were also specifically informed that the ATS stood terminated by virtue of the said notice. This single fact is of decisive importance. The said notice of termination in the present case is not a peripheral document, rather, it is a self-contained recital of the very material terms of the contract. The said notice of termination makes a clear reference to the fact of existing ATS dated 28.04.2004 and the material terms agreed therein including but not limited to the description of subject land, area of the subject land agreed to be sold, sale consideration, payment of earnest money and payment stages thereafter, and names and residential addresses of the original vendees. Thus, by their own admission, the subsequent purchasers were put in possession of all material particulars of the ATS. Having been confronted with a document of this character, no prudent purchaser acting in good faith could have remained passive. The subsequent purchasers had at their disposal clear and concrete means to demand from the original vendors a copy of the ATS itself or at the very least verify from the original vendees the correctness of the assertions contained in the notice of termination, however, the subsequent purchasers chose not to pursue either course."

7.26 In the case of *Chander Bhan (dead) through LRS*

Sher Singh Vs. Mukhtiar Singh & Ors. reported in **2024 INSC 377**, Hon'ble the Supreme Court after referring to Sections 41 and 52 of the Transfer of Property Act and the settled position that even if Transfer of Property Act, is not applicable since the principle of *lis pendence* is based upon justice, equity and good conscience, is applicable, to set aside subsequent purchaser. Paras:15, 16, 18 and in para :22 (highlighted portion)

"15. In order to appreciate the rival contentions of the parties, it will be appropriate to reproduce the relevant provisions of the Transfer of Property Act, 1882, the benefit of which is being claimed by both parties. Section 41 of the Act of 1882 which governs the principle of bonafide purchaser for valuable consideration is reproduced below:

"41. Transfer by ostensible owner.-Where, with the consent, express or implied, of the persons interested in immovable property, a person is the ostensible owner of such property and transfers the same for consideration, the transfer shall not be voidable on the ground that the transferor was not authorised to make it:

Provided that the transferee, after taking reasonable care to ascertain that the transferor had power to make the transfer, has acted in good faith."

Similarly, Section 52 of the Act of 1882 governs the principle of *lis pendens* and is reproduced below:

"52. Transfer of property pending suit relating thereto. - *During the [pendency] in any Court having authority (within the limits of India excluding the State of Jammu and Kashmir) or established beyond such limits] by [the Central Government, of (any) suit or*

proceeding (which is not collusive and in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.

[Explanation- For the purpose of this section, the pendency of a suit or proceeding shall be deemed commence from the date of the presentation of the plaint or the institution of the proceeding in a court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order, and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force.]"

16. The object underlying the doctrine of lis pendens is for maintaining status quo that cannot be affected by an act of any party in a pending litigation. The objective is also to prevent multiple proceedings by parties in different forums. The principle is based on equity and good conscience. This Court has clarified this position in a catena of cases. Reference may be made here of some, such as: **Rajendra Singh. Santa Singh, AIR 1973 SC 2537; Dev Raj Dogra . Gyan Chand Jain, (1981) 2 SCC 675, Sunita Jugalkishore Gilda Ramanlal Udhoji Tanna, (2013) 10 SCC 258.**

17. xxxx

18. Keeping this in mind, the explanation to Section 52 which was inserted by the Act No. XX of 1929, clarifies

that pendency of a suit shall be deemed to have commenced from the date on which the plaintiff presents the suit. Further, that such pendency would extend till a final decree is passed and such decree is realised.

19. xxxx.....

.... xxxx

22. We are going by the settled position that subsequent purchasers will be bound by *lis pendens* and cannot claim they are bonafide purchasers because they were not aware of the injunction order, looking at the peculiar facts of the present case.

7.27 In the present case, it is admitted fact that defendant no.1 in violation of injunction sold suit property to defendant no.2. The defendant no.2 claimed shelter of '*bona fide* purchaser' with value and paid without having notice of previous contract fails to prove that his transaction was *bona fide* and was in good faith and he has no notice. It was expected from the defendant no.2 to inquire into such title of the property. The defendant no.2 was knowing fully well that there was dispute between defendant no.1 and his brother and, therefore, he was expected to inquire in such title of property.

7.28 This Court raised a question to learned advocate Mr.Jenil Shah appearing for defendant no.2, while he was arguing that the defendant no.2 was *bona fide* purchaser, that whether defendant no.2 has published any public notice in any news paper widely circulated in the area before purchasing disputed property, and whether defendant no.2 has obtained title clearance certificate from any solicitor or the advocate,

he said “No”. The defendant no.2, who was required to take constructive notice and to make necessary inquiry or such, before purchasing the suit property, has failed to do so and, therefore, his defense cannot be accepted.

7.29 It is important to note that the learned City Civil Court, while recording the evidence, noted the demeanor of defendant no.1, who changed his version like chameleon. At first blush, in pleading as well as in deposition he denied execution of such deed in favour of defendant no.2 but in same breathe accepted the same. In first blush, he did not recognize to defendant no.2 but in same breath he recognized defendant no.2. Thus all these conduct and the evidence clearly suggesting that it was defendant no.1 who was culprit for non executing sale-deed and he executed sale-deed in favour of defendant no.2 once prohibitory injunction was issued by learned City Civil Court. The defense of defendant no.2 that defendant no.1 did not inform him of earlier contract or pendency of the suit would not survive as defendant no.2 was required to take constructive notice and was further required to make necessary and detailed inquiry and search about title of the immovable property before purchasing the same.

7.30 In wake of above reasons, appellant failed to make out case.

7.31 Before parting with the judgment, let me deal with the judgments relied upon by the learned advocate Mr.Dhotare. In case of Shena Begum (**supra**) and in case of

Vijaykumar and others (*supra*), Hon'ble the Supreme Court explained the principle of 'readiness and willingness' to perform the part of the contract. On factual aspect, the Hon'ble Supreme Court believed that the plaintiff was not ready and willing to perform his part of contract. The judgment in the case of Sangita Sinha (***supra***) would not be applicable in the facts of the present case. It is also a case where majority of earnest money was refunded much prior to filing of the suit by cancelling ATS and the suit was filed after delayed period. Insofar as the judgment in the case of I.S.Sikandar (***supra***) is concerned, it is factually distinguishable.

7.32 Thus, for the reasons stated hereinabove, both the appeals are found meritless. As far as the judgment relied upon in the case of Chanda Rani (***supra***) is concerned, is referred herein-above and rather postulates law in favour of plaintiff. In factual aspect of judgment referred in the said case of Chanda Rani (***supra***), the Hon'ble Supreme Court reached to the conclusion that plaintiff was failed to prove readiness and willingness and thus, plaintiff's suit stood dismissed.

8. For the reasons stated herein above, captioned appeals deserve no consideration and require to be dismissed and accordingly they are dismissed. The judgment and decree passed by the learned City Civil Court in Civil Suit No.4584 of 1986 is hereby confirmed and approved. *Interim relief*, granted earlier, if any, shall stand vacated. Decree to be drawn accordingly. Throughout cost is awarded in favour of

the plaintiff. Records and Proceedings is ordered to be sent back. Registry to maintain a copy of this judgment in each appeal.

(J. C. DOSHI,J)

After pronouncement of judgment, learned advocates Mr.Jenil Shah and learned advocate Mr.Dhotare, request for staying the implementation and execution of this judgment for a period of weeks, so as to enable them to appear before the higher forum. However, learned advocate Mr.Bhavnani, for the respondent has strongly object to grant of any such relief. Having heard learned advocates and having gone through the fact that the interim relief is operating in the matter since long time, request of learned advocate for the appellants is acceded to and operation, implementation and execution of this judgment is stayed for a period two weeks.

(J. C. DOSHI,J)

MISHRA AMIT V.