



**IN THE HIGH COURT OF KARNATAKA, AT DHARWAD**  
**DATED THIS THE 04<sup>TH</sup> DAY OF FEBRUARY, 2026**  
**BEFORE**  
**THE HON'BLE MR. JUSTICE HANCHATE SANJEEVKUMAR**  
**REGULAR SECOND APPEAL NO.100234 OF 2017 (SP)**

**BETWEEN:**

PRABHAKARLAL KALWAR  
S/O. MOHANLAL KALWAR,  
SINCE DECEASED BY LRS,

SMT. DYHNASHWARI DEVI  
W/O. PRABHAKARLAL KALWAR,  
SINCE DECEASED BY LRS,

SHRI SACHIN S/O. PRABHAKARLAL KALWAR,  
AGE: 52 YEARS, OCC: BUSINESS,  
R/O. H.NO.1679/A, KIRLOSAKR ROAD, BELAGAVI.

...APPELLANT

(BY SRI G.B.SHASTRY, ADVOCATE FOR SRI CHETAN MUNNOLI  
AND SRI RAGHUVeer SATTIGERI & SRI SURBHI KULKARNI,  
ADVOCATES)

**AND:**

SHRI GAJANAN S/O. JAIKISHAN JOSHI,  
SINCE DECEASED BY HIS LRS,

SMT. SHARADA W/O. GAJANAN JOSHI,  
SINCE DECEASED BY HER LRS,

1. SHRI KAMALKISHOR S/O. GAJANAN JOSHI,  
AGE: MAJOR, OCC: BUSINESS,  
R/O. VITHALDEV GALLI, SHAHAPUR,  
BELAGAVI-590001.

SHRI LAXMINARAYAN S/O. GAJANAN JOSHI,





SINCE DECEASED BY HIS LR'S

2. SMT. MAYA W/O LAXMINARAYAN JOSHI,  
AGE: MAJOR, OCC: HOUSEHOLD,  
R/O. VITHALDEV GALLI, SHAHAPUR,  
BELAGAVI-590001.
3. MASTER AMUL S/O. LAXMINARAYAN JOSHI,  
AGE: 20 YEARS, OCC: STUDENT,  
R/O. VITHALDEV GALLI, SHAHAPUR,  
BELAGAVI-590001.
4. MISS. ANUJA D/O. LAXMINARAYAN JOSHI,  
AGE: 19 YEARS, OCC: STUDENT,  
R/O. VITHALDEV GALLI, SHAHAPUR,  
BELAGAVI-590001.
5. MISS. RAJASHREE D/O. GAJANAN JOSHI,  
AGE: 34 YEARS, OCC: STUDENT,  
R/O. VITHALDEV GALLI, SHAHAPUR,  
BELAGAVI-590001.
6. SHRI VISHNU @ GOPAL GAJANAN JOSHI,  
AGE: 33 YEARS, OCC: BUSINESS,  
R/O. VITHALDEV GALLI, SHAHAPUR,  
BELAGAVI-590001.
7. SHRI RAGHUVeer  
S/O. PRABHAKARLAL KALWAR,  
AGE: MAJOR, OCC: BUSINESS,  
R/O. KIRLOSKAR ROAD, BELAGAVI-590001.
8. SHRI SANJAY S/O. PRABHAKARLAL KALWAR,  
AGE: 62 YEARS, OCC: BUSINESS,  
R/O. H.NO.1679/A, KIRLOSKAR ROAD,  
BELAGAVI-590001.

...RESPONDENTS

(BY SRI SHRIPAD JOSHI, ADVOCATE FOR  
SRI RAVIRAJ C. PATIL ADVOCATE FOR R1 TO R6;  
SRI DEEPAK S. KULKARNI, ADVOCATE FOR R7;  
NOTICE TO R8 SERVED.)



THIS REGULAR SECOND APPEAL IS FILED UNDER SECTION 100 OF THE CODE OF CIVIL PROCEDURE, 1908, PRAYING TO SET ASIDE THE JUDGMENT AND DECREE DATED 18.11.2016 PASSED IN R.A.NO.592/2009 ON THE FILE OF THE I ADDITIONAL DISTRICT JUDGE, AT BELAGAVI, CONFIRMING THE JUDGMENT AND DECREE OF THE TRIAL COURT DATED 01.04.2002 IN O.S.NO.351/1989 ON THE FILE OF THE PRINCIPAL CIVIL JUDGE (JR. DN.), BELAGAVI, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS APPEAL COMING ON FOR ADMISSION THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

**ORAL JUDGMENT**

(PER: THE HON'BLE MR. JUSTICE HANCHATE SANJEEVKUMAR)

The regular second appeal is filed by the defendant No.1 calling in question the judgment and decree dated 18.11.2026 passed in RA No.592/2009, on the file of I Additional District Judge, Belagavi<sup>1</sup>, which confirmed the judgment and decree dated 01.04.2002 passed in O.S.No.351/1989 on the file of Civil Judge (Jr.Dn) and JMFC, Belagavi<sup>2</sup>, thereby, granting decree for specific performance in favour of plaintiffs directing the defendants to execute the registered sale deed in favour of plaintiffs.

2. The only modification of the First Appellate Court is that directing the plaintiffs to pay additional sum of

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<sup>1</sup> Hereinafter referred to as “first appellate Court”

<sup>2</sup> Hereinafter referred to as “trial Court”



Rs.4,00,000/- + Rs.15,000/- to defendants within two months from the date of decree and defendants shall execute the registered sale deed in favour of the plaintiffs.

3. Against concurrent findings of fact issuing direction to defendants to execute registered sale deed in favour of the plaintiffs, the defendants have preferred the instant regular second appeal.

4. For the purpose of convenience and easy reference, ranking of the parties is referred to as per their status before the trial Court.

5. It is the case of the plaintiffs, as pleaded in the plaint, that the defendants are the owners of the suit schedule property and that the plaintiff/Gajanan was a tenant in respect of the said property. Defendant No.1 namely, Prabhakarlal was working in a cement factory at Shahabad in Kalaburagi District. Thereafter, he inducted the plaintiff/Gajanan as a tenant. It was the intention of the defendants to settle in Shahabad town and therefore, he offered the suit schedule property for sale and executed an agreement of sale dated 16.07.1976 for a total sale



consideration of Rs.20,000/-. On the said date, an advance amount of Rs.5,000/- was paid by the plaintiff to the defendant.

6. One of the conditions of the agreement was that the defendants shall execute a registered sale deed within two months from the date of obtaining permission to sell the land from the Deputy Commissioner, Belagavi, under the Urban Land (Ceiling and Regulation) Act, 1976. The defendant obtained the order of permission to sell the land on 31.03.1981. Thereafter, the defendant on one pretext or the other avoided execution of the sale deed. Consequently, on 22.06.1981 a legal notice was issued by the plaintiff to the defendant and thereafter the suit was filed on 22.07.1981. Hence, it is contended that the suit has been filed within the period of limitation. Accordingly, the suit is filed for specific performance.

7. The defendants appeared through their Advocate and filed their written statement denying the execution of the agreement of sale as well as the receipt of advance amount of Rs.5,000/-. It is further contended that the suit schedule property is joint family property and that the defendant is not the exclusive owner of the said property. It is also pleaded that



legal action was taken by the defendants to evict the plaintiffs from the premises, as the plaintiff/Gajanan was a tenant. The defendants further submit that the suit is barred by limitation and plead that time was the essence of the contract, which the plaintiff failed to adhere to the time stipulation. Therefore, on these grounds and averments made in the written statement, the defendants pray for dismissal of the suit.

8. Both the Trial Court and the First Appellate Court have concurrently held that the plaintiff has proved execution of agreement of sale - Ex.P.1 by defendant and also the defendant received advance consideration amount of Rs.5,000/-, therefore, decreed the suit. Both the Trial Court and the First Appellate Court on the fact that since agreement of sale is proved and plaintiff is in continuous possession, held that the plaintiff is ever ready and willing to perform his part of contract, therefore, opined that all the legal requirements are proved for grant of a decree for specific performance and accordingly granted.

9. The First Appellate Court concurred with the Trial Court that the plaintiff is entitled for the relief of decree for specific performance, but has directed the plaintiff to pay additional sum



of Rs.4,00,000/- to defendant over and above Rs.15,000/-. Therefore, directed the defendant to receive an amount of Rs.4,00,000/- + Rs.15,000/- and directed the defendant to execute the registered sale deed.

10. Being aggrieved by decreeing the suit in full in favour of plaintiff, the defendant owner has preferred the instant Regular Second Appeal by raising various grounds and raising substantial questions of law.

11. Upon considering the appeal, the following substantial questions of law would arise for consideration in this appeal.

- i) Whether, under the facts and circumstances involved in the case, both the Trial Court and the First Appellate Court are justified in granting decree of specific performance in favour of plaintiff without considering the parameters enumerated in Section 20 of the Specific Relief Act like arbitrariness, hardship and unfair advantage over the defendant by the plaintiff?
- ii) Whether, under the facts and circumstances involved in the case, time is essence of contract in the present case and the plaintiff is



adhered to the time stipulated in the contract for exercising his right of seeking relief of specific performance?

12. Learned counsel for appellant/defendant submitted that grant of decree for specific performance by both the Trial Court and the First Appellate Court is completely arbitrary and causing hardship to the defendant and also creating unfair advantage over the defendant by the plaintiff. He argued that the agreement of sale is dated 16.07.1976 and total sale consideration is Rs.20,000/- and in case of plaintiff that he has paid Rs.5,000/- to the defendant, therefore the Trial Court delivering the judgment after 20 years directing the defendant to execute the registered sale deed for the meagre amount of Rs.20,000/- is nothing but arbitrary.

13. Further submitted that though the First Appellate Court has directed the plaintiff to pay additional sum of Rs.4,00,000/- that also would not solace the defendant. Therefore submitted, the grant of decree for specific performance is causing hardship to the defendant rather than the plaintiff and is also creating an unfair advantage over the defendant by the plaintiff. Thus, submitted that both the Trial Court and the First



Appellate Court have not appreciated correctly the mandate of law that the Court shall have to exercise the discretion judiciously. Therefore, submitted that the plaintiff on the basis of decree of specific performance is getting unfair enrichment at the cost of defendant owner. Therefore, submitted that both the Trial Court and the First Appellate Court have not exercised the discretionary power judiciously and correctly.

14. Further submitted that, as against the sale, time is the essence of contract and according to terms of contract, performance ought to have been performed within two months and necessity of obtaining permission to sell the property, by the competent authority, lies on the defendant and the defendant has obtained permission from the ULC authorities on 31.03.1981. The plaintiff was well represented by advocate before ULC authorities and the plaintiff came to know regarding grant of permission to sell the property on 31.03.1981 itself and as per stipulation in the agreement that within one month from grant of permission, the plaintiff ought to have taken recourse requesting the defendant to execute such sale deed, but not done so. Therefore, the suit is barred by limitation. But this aspect is not



considered by both the Trial Court and the First Appellate Court. Hence, both the Trial Court and the First Appellate Court have not exercised the discretion correctly and judiciously. Therefore, prays to make interference with the order passed by both the Trial Court and the First Appellate Court.

15. Further submitted that, the defendant has faced much hardship at the hands of plaintiff. Since the defendant underwent legal proceedings up to the Hon'ble Supreme Court, for taking back his property and the suit schedule property is the only source of income for the family of defendant, therefore, if the plaintiff gets a decree of specific performance, that causes unjust enrichment to the plaintiff whereas the defendant will be put into greater hardship, but these factors are not considered by both the Trial Court and the First Appellate Court. Therefore, submitted that both the Trial Court and the First Appellate Court have not exercised the power correctly. Hence, prays to interfere with the judgment and decree of both the Trial Court and the First Appellate Court by allowing this appeal.

16. On the other hand, learned counsel for the respondents/plaintiffs submitted that from the evidence adduced



by DW.1 it is admitted and proved that the defendants executed the agreement of sale (Ex.P1). It was further contended that the suit is filed well within the period of limitation. Placing reliance on the admission made by DW.1 during cross-examination, the learned counsel submitted that once the execution of agreement of sale is proved the plaintiff is entitled to the relief of specific performance, which has been rightly granted by both the Trial Court and the First Appellate Court. Therefore, prays to dismiss the appeal, as it does not involve any substantial question of law.

17. It is further submitted that though there has been escalation in the price of the property, the First Appellate Court in exercise of its discretion has directed the plaintiffs to pay an additional sum of Rs.4,00,000/- to the defendants. Thus, any hardship that might have been caused to the defendants stands mitigated by the said direction. It was contended that there would be no hardship to the defendants, if the suit schedule property is sold to the plaintiffs. Therefore, when the agreement of sale is proved and the defendants have received an advance amount of Rs.5,000/-, there remains no ground to deny the decree. Accordingly, it was submitted that both the Trial Court



and the First Appellate Court have rightly granted the decree of specific performance, which needs no interference. Therefore, prays to dismiss the appeal.

18. Upon consideration of the pleadings and the rival contentions placed by the learned counsel for both parties, it is proved that the defendants are the owners of the suit schedule property and that the plaintiffs are the tenants under the defendants. From the cross-examination of DW.1 it is evident that he has admitted the execution of the agreement of sale dated 16.07.1976 and also received an advance amount of Rs.5,000/-.

19. It is pertinent to note that the suit property is situated on Kirloskar Road, Belagavi. As submitted by both learned counsel the property is located in a prime area of the Belagavi city.

20. The Trial Court after a trial of 20 years, has decreed the suit in favour of the plaintiffs directing the defendants to receive Rs.15,000/- and execute the registered sale deed. However, the Trial Court failed to consider the escalation in the market value of the property during this long period. Granting a



decree for specific performance at the original consideration fixed 20 years earlier, is arbitrary and causes serious hardship to the defendants resulting in an unfair advantage to the plaintiffs.

21. The First Appellate Court concurred with the findings of the Trial Court and upheld the decree for specific performance with a modification directing the plaintiffs to pay an additional sum of Rs.4,00,000/- over and above Rs.15,000/-. However, both the Trial Court and the First Appellate Court failed to properly exercise their discretionary power in deciding whether the decree for specific performance could have been granted considering the factual background of the case.

22. The agreement of sale is dated 16.07.1976 stipulated a total sale consideration of Rs.20,000/, out of which Rs.5,000/- was paid as advance. As per the terms of the agreement the plaintiffs were required to perform their part of contract within two months. It was also stipulated that the defendants were required to obtain necessary permission from the competent Urban Land Authorities and upon obtaining such permission, the plaintiffs were required to exercise their rights of specific performance within one month.



23. Based on the evidence it is proved that on 31.03.1981, the defendants obtained permission from the Competent Authorities to sell the land. Proceedings before the Competent Authorities show that both the defendants and plaintiffs were represented by their respective Advocates. Therefore, the plaintiffs were fully aware of the grant of permission on 31.03.1981. As per the conditions stipulated in Ex.P1 - agreement of sale, the plaintiffs were required to perform their part of contract within one month from the date of permission by establishing their readiness and willingness to get the sale deed executed.

24. However, the plaintiffs issued a legal notice at Ex.P7 on 22.06.1981 and thereafter filed the suit on 22.07.1981. Thus, the suit filed by the plaintiffs is barred by limitation. When the agreement specifically stipulates the time within which the sale deed is to be executed, time becomes the essence of the contract and both parties are bound to such stipulation. The plaintiffs failed to adhere to the agreed time frame and is not supposed to act at his own convenience to seek execution of registered sale deed.



25. The Hon'ble Supreme Court in ***DESH RAJ AND OTHERS vs. ROHTASH SINGH***<sup>3</sup>, has laid down the principles relating to whether time is the essence of the contract in paragraph Nos.21, 22, 23 and 24, which reads as under:

*"21. Before venturing into the aforementioned issue, we must highlight that throughout the entire dispute, the appellants have taken a consistent stand of time-bound performance being an essence of the contract. They have maintained that sale deed was needed to be executed necessarily on the date of execution as agreed between the parties. It is unfortunate that all the courts below have failed to render a finding on this aspect despite the fact that this was one of the key defences taken by the appellants in respect of the prayer seeking specific performance.*

*22. In this respect, we must now take note of Section 55 of the Contract Act which stipulates the aftermath in case of failure to perform contractual obligations at fixed time. The provision states –*

***55. Effect of failure to perform at fixed time, in contract in which time is essential.--*** 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.

***Effect of such failure when time is not essential.--***If it was not the intention of the parties that time should be of the essence of the contract, the contract does not become voidable by the failure to do such thing at or before the specified time; but the promisee is

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<sup>3</sup> (2023) 3 Supreme Court Cases 714



*entitled to compensation from the promisor for any loss occasioned to him by such failure.*

***Effect of acceptance of performance at time other than that agreed upon.***—If, in case of a contract voidable on account of the promisor's failure to perform his promise at the time agreed, the promisee accepts performance of such promise at any time other than that agreed, the promisee cannot claim compensation for any loss occasioned by the non-performance of the promise at the time agreed, unless, at the time of such acceptance, he gives notice to the promisor of his intention to do so.

23. The sale agreements in the present case clearly indicate the intention of the parties to treat time-bound performance as an essential condition. They stipulate that in case the sale deed was not executed on the date of execution, the sale agreements were liable to be treated as cancelled, and the earnest money was to be forfeited. Even in the legal notices dated 18.08.2004, through which last opportunity was extended to respondent to execute the sale deed, the factum of time being an essential condition for performance was reiterated. On the other hand, no evidence or communication has been brought on record by the respondent to contradict the defence of time-bound performance taken by the appellants.

24. At this juncture, we must note the decision of this Court in *Citadel Fine Pharmaceuticals v. Ramaniyam Real Estates Private Ltd<sup>4</sup>*. and *Saradamani Kandappan v. S. Rajalakshmi<sup>5</sup>* wherein it was held that defence under Section 55 of the Contract Act is valid against anyone who is seeking the relief of specific performance. The facts of the instant case make the observations in *Saradamani Kandappan<sup>5</sup>*."

26. Therefore, when the contract contains a clear time stipulation the plaintiffs are required to strictly adhere to it. In

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<sup>4</sup> (2011) 9 SCC 147, para 53 : (2011) 4 SCC (Civ) 526

<sup>5</sup> (2011) 12 SCC 18 : (2012) 2 SCC (Civ) 104



the present case, the time stipulated was two months for execution of the sale deed and in the event of obtaining necessary permission, one month from the date of such permission. As discussed above, the plaintiff was aware that permission to sell the land was granted on 31.03.1981 by the concerned Authorities and this fact was well within the knowledge of the plaintiffs and his Advocate. The plaintiffs are also represented by an Advocate as could be seen from the orders in Ex.P9 and Ex.D6. Despite this, the plaintiffs failed to exercise their rights within the stipulated period, as they issued notice only on 22.06.1981 and filed the suit on 22.07.1981.

27. Thus, the plaintiffs failed to honour the time stipulation contained in the agreement, which disentitles them from seeking a decree for specific performance. In this regard, both the Trial Court and the First Appellate Court have committed an error in decreeing the suit in favour of the plaintiffs.

28. Further, while considering the question of hardship likely to be caused to both the plaintiffs and the defendants, it is necessary to undertake a comparative analysis of hardship as



required in the present case. The plaintiffs are merely tenants of the suit property, whereas the defendants are the owners thereof. At the relevant point of time, the original defendant was working in cement factory at Shahabad in Kalaburagi District and therefore, could not properly anticipate the termination of his service. Consequently, he executed an agreement of sale dated 16.07.1976. Unfortunately, thereafter, the original defendant was terminated from service and was constrained to return to Belagavi. The suit property is the only property belonging to the defendants and their joint family.

29. Under these circumstances, the defendants initiated eviction proceedings in HRC No.234/1981 against the plaintiffs under Section 21(1)(f) of the Karnataka Rent Control Act, 1999. The defendants were compelled to undergo prolonged legal proceedings, during which the plaintiffs ultimately lost and directions were issued to vacate and handover possession of the suit property to the defendants. However, the plaintiffs failed to comply with the said directions. This resulted in plaintiffs filing an affidavit of undertaking in CRP No.4324/1992, which was also not honoured. Consequently, filed an Execution Petition



No.236/1992 and also filed Contempt Petition before this Court in CCC No.725/1992, only then the plaintiff evicted the suit property. Therefore, just for receiving Rs.5,000/- as advance from the plaintiff, the defendant has undergone all these legal proceedings, which is nothing but causing hardship to the defendant. When upon making compared analysis of hardship, at the most, the defendant not only suffered hardship of their money, but they were compelled to face continuous legal proceedings for decade together. Therefore, this crucial aspect of comparative hardship has been completely lost sight of by both the Trial Court and the First Appellate Court while exercising discretion in granting a decree for specific performance.

30. Thus, both the Trial Court and the First Appellate Court have not exercised discretion correctly and properly and both the Courts are found to be unjustified in passing decrees in favour of the plaintiffs and also grant of decrees for specific performance by both the Courts is nothing but arbitrary for the reasons stated above.

31. The Trial Court decreed the suit by directing the defendants to receive a sum of Rs.15,000/- and to execute the



sale deed after a prolonged litigation of nearly 20 years. Consequently, the defendants were constrained to execute the sale deed for a meagre consideration of Rs.15,000/-, which has resulted in an unfair advantage over the defendants by the plaintiffs. Though the First Appellate Court has directed the plaintiffs to pay an additional sum of Rs.4,00,000/-, the same does not sufficiently mitigate or redress the hardship suffered by the defendants, having regard to the prolonged litigation and the attendant circumstances faced by them.

32. It is further submitted that the suit property is required for the sons of deceased defendant for employment and livelihood. If the suit property is sold to the plaintiffs pursuant to a decree for specific performance, it would result in grave hardship and inequity to the defendants by the plaintiffs. These factors are also not considered by both the Trial Court and the First Appellate Court. Therefore, the discretion exercised by both the Trial Court and the First Appellate Court are not sound and reasonable guided by the judicial principles.



33. It is submitted that the discretion exercised by the Court under Section 20 of the Specific Relief Act, 1963<sup>6</sup>, must be sound, reasonable and guided by settled judicial principles, taking into account both legal and equitable considerations. Section 20 of the S.R. Act is enunciated on the bedrock of equity and it is a well settled principle that law and equity both play crucial role in giving justice. A decree for specific performance is not to be granted as a matter of course, but must rest on equitable considerations, as expressly provided under Section 20 of the S.R. Act.

34. In the present case, both the Courts have failed to properly appreciate the scope and meaning of judicial discretion while exercising their powers under Section 20 of the S.R. Act. Without exercising such discretion judiciously and in accordance with law, both the Courts have erroneously granted a decree for specific performance. Merely because the execution of agreement of sale is proved and grant of decree is lawful to do so, the Court is not bound to grant specific performance. The discretion to grant or refuse such relief must be exercised on a

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<sup>6</sup> Hereinafter referred to as the 'S.R. Act'



consideration of the principles stipulated in section 20 of S. R. Act.

35. In this regard, this Court places reliance on the judgments of the Hon'ble Supreme Court as follows. The Hon'ble Supreme Court in the case of **JAYAKANTHAM AND OTHERS v. ABAYKUMAR**<sup>7</sup> at paragraph Nos.7, 8 and 9 has held as follows:

*"7. While evaluating whether specific performance ought to have been decreed in the present case, it would be necessary to bear in mind the fundamental principles of law. The court is not bound to grant the relief of specific performance merely because it is lawful to do so. Section 20(1) of the Specific Relief Act, 1963 indicates that the jurisdiction to decree specific performance is discretionary. Yet, the discretion of the court is not arbitrary but is "sound and reasonable", to be "guided by judicial principles". The exercise of discretion is capable of being corrected by a court of appeal in the hierarchy of appellate courts. Sub section (2) of Section 20 contains a stipulation of those cases where the court may exercise its discretion not to grant specific performance. Sub Section (2) of Section 20 is in the following terms:*

**"20. (2)** *The following are cases in which the court may properly exercise discretion not to decree specific performance-*

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

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<sup>7</sup> (2017) 5 SCC 178



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

*(c) where the defendant entered into the contract under circumstances which though not rendering the contract voidable, makes it inequitable to enforce specific performance."*

8. However, Explanation 1 stipulates that the mere inadequacy of consideration, or the mere fact that the contract is onerous to the defendant or improvident in its nature, will not constitute an unfair advantage within the meaning of clause (a) or hardship within the meaning of clause (b). Moreover, Explanation 2 requires that the issue as to whether the performance of a contract involves hardship on the defendant has to be determined with reference to the circumstances existing at the time of the contract, except where the hardship has been caused from an act of the plaintiff subsequent to the contract.

9. The precedent on the subject is elucidated below:

9.1. In Parakunnan Veetill Joseph's Son Mathew v. Nedumbara Kuruvila's Son<sup>8</sup>, this Court held that: (scc p. 345, para 14)

*"...14. Section 20 of the Specific Relief Act, 1963 preserves judicial discretion of Courts as to decreeing specific performance. The Court should meticulously consider all facts and circumstances of the case. The Court is not bound to grant specific performance merely because it is lawful to do so. The motive behind the litigation should also enter into the judicial verdict. The Court should take care to see that it is not used as an instrument of oppression to have an unfair advantage to the plaintiff..."*

9.2 A similar view was adopted by this Court in Sardar Singh v. Krishna Devi<sup>4</sup>: (SCC p.26, para 14)

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<sup>8</sup> 1987 Supp SCC 340 : AIR 1987 SC 2328



"14..... Section 20(1) of the Specific Relief Act, 1963 provides that the jurisdiction to decree specific performance is discretionary, and the court is not bound to grant such relief, merely because it is lawful to do so; but the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal. The grant of relief of specific performance is discretionary. The circumstances specified in Section 20 are only illustrative and not exhaustive. The court would take into consideration the circumstances in each case, the conduct of the parties and the respective interest under the contract."

9.3. Reiterating the position in K. Narendra v. Riviera Apartments (P) Ltd<sup>9</sup>, this Court held thus: (SCC p.91, para 29)

"29..... Performance of the contract involving some hardship on the defendant which he did not foresee while non-performance involving no such hardship on the plaintiff, is one of the circumstances in which the court may properly exercise discretion not to decree specific performance. The doctrine of comparative hardship has been thus statutorily recognized in India. However, mere inadequacy of consideration or the mere fact that the contract is onerous to the defendant or improvident in its nature, shall not constitute an unfair advantage to the plaintiff over the defendant or unforeseeable hardship on the defendant. The principle underlying Section 20 has been summed up by this Court in Lourdu Mari David v. Louis Chinnaya Arogiaswamy<sup>10</sup> by stating that the decree for specific performance is in the discretion of the Court but the discretion should not be used arbitrarily; the discretion should be exercised on sound principles of law capable of correction by an appellate court."

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<sup>9</sup> (1999) 5 SCC 77

<sup>10</sup> (1996) 5 SCC 589



9.4. These principles were followed by this Court in A.C. Arulappan v. Ahalya Naik<sup>11</sup>, with the following observations: (SCC pp.604 & 606, paras 7 & 15)

"7..... The jurisdiction to decree specific relief is discretionary and the court can consider various circumstances to decide whether such relief is to be granted. Merely because it is lawful to grant specific relief, the court need not grant the order for specific relief; but this discretion shall not be exercised in an arbitrary or unreasonable manner. Certain circumstances have been mentioned in Section 20(2) of the Specific Relief Act, 1963 as to under what circumstances the court shall exercise such discretion. If under the terms of the contract the plaintiff gets an unfair advantage over the defendant, the court may not exercise its discretion in favour of the plaintiff. So also, specific relief may not be granted if the defendant would be put to undue hardship which he did not foresee at the time of agreement. If it is inequitable to grant specific relief, then also the court would desist from granting a decree to the plaintiff." .....

"15..... Granting of specific performance is an equitable relief, though the same is now governed by the statutory provisions of the Specific Relief Act, 1963. These equitable principles are nicely incorporated in Section 20 of the Act. While granting a decree for specific performance, these salutary guidelines shall be in the forefront of the mind of the court...."

9.5. A Bench of three Judges of this Court considered the position in Nirmala Anand Vs. Advent Corporation (P) Ltd<sup>12</sup>, and held thus : (SCC p.150, para 6)

"6..... It is true that grant of decree of specific performance lies in the discretion of the court and it is also well settled that it is not always

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<sup>11</sup> (2001) 6 SCC 600

<sup>12</sup> 8 (2002) 8 SCC 146



*necessary to grant specific performance simply for the reason that it is legal to do so. It is further well settled that the court in its discretion can impose any reasonable condition including payment of an additional amount by one party to the other while granting or refusing decree of specific performance. Whether the purchaser shall be directed to pay an additional amount to the seller or converse would depend upon the facts and circumstances of a case. Ordinarily, the plaintiff is not to be denied the relief of specific performance only on account of the phenomenal increase of price during the pendency of litigation. That may be, in a given case, one of the considerations besides many others to be taken into consideration for refusing the decree of specific performance. As a general rule, it cannot be held that ordinarily the plaintiff cannot be allowed to have, for her alone, the entire benefit of phenomenal increase of the value of the property during the pendency of the litigation. While balancing the equities, one of the considerations to be kept in view is as to who is the defaulting party. It is also to be borne in mind whether a party is trying to take undue advantage over the other as also the hardship that may be caused to the defendant by directing specific performance. There may be other circumstances on which parties may not have any control. The totality of the circumstances is required to be seen."*

36. The Hon'ble Supreme Court in the case of **PARAKUNNAN VEETILL JOSEPH'S SON MATHEW vs. NEDUMBARA KURUVILA'S SON<sup>13</sup>**, at paragraph No.14, has held as follows:

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<sup>13</sup> (1987) Supp SCC 340



*"14. Section 20 of the Specific Relief Act, 1963 preserves judicial discretion of courts as to decreeing specific performance. The court should meticulously consider all facts and circumstances of the case. The court is not bound to grant specific performance merely because it is lawful to do so. The motive behind the litigation should also enter into the judicial verdict. The court should take care to see that it is not used as an instrument of oppression to have an unfair advantage to the plaintiff. The High Court has failed to consider the motive with which Varghese instituted the suit. It was instituted because Kuruvila could not get the estate and Mathew was not prepared to part with it. The sheet anchor of the suit by Varghese is the agreement for sale Exhibit A-1. Since Chettiar had waived his rights thereunder, Varghese as an assignee could not get a better right to enforce that agreement. He is, therefore, not entitled to a decree for specific performance."*

37. The Hon'ble Supreme Court in the case of **SARDAR SINGH vs. KRISHNA DEVI**<sup>14</sup>, at paragraph No.14, has held as follows:

*"14. The next question is whether the courts below were justified in decreeing the suit for specific performance. Section 20(1) of the Specific Relief Act, 1963 provides that the jurisdiction to decree specific performance is discretionary, and the court is not bound to grant such relief, merely because it is lawful to do so; but the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal. The grant of relief of specific performance is discretionary. The circumstances specified in Section 20 are only illustrative and not exhaustive. The court would take into consideration the circumstances in each case, the conduct of the parties and the respective interest under the contract."*

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<sup>14</sup> (1994) 4 SCC 18



38. The Hon'ble Supreme Court in the case of **K. NARENDRA vs. RIVIERA APARTMENTS (P) LTD.**<sup>15</sup>, at paragraph Nos.29, 30, 31, 32, 33 and 34, has held as follows:

*"29. Section 20 of the Specific Relief Act, 1963 provides that the jurisdiction to decree specific performance is discretionary and the court is not bound to grant such relief merely because it is lawful to do so; the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal. Performance of the contract involving some hardship on the defendant which he did not foresee while non-performance involving no such hardship on the plaintiff, is one of the circumstances in which the court may properly exercise discretion not to decree specific performance. The doctrine of comparative hardship has been thus statutorily recognized in India. However, mere inadequacy of consideration or the mere fact that the contract is onerous to the defendant or improvident in its nature, shall not constitute an unfair advantage to the plaintiff over the defendant or unforeseeable hardship on the defendant. The principle underlying Section 20 has been summed up by this Court in *Lourdu Mari David v. Louis Chinnaya Arogiaswamy* [(1996) 5 SCC 589 : AIR 1996 SC 2814] by stating that the decree for specific performance is in the discretion of the Court but the discretion should not be used arbitrarily; the discretion should be exercised on sound principles of law capable of correction by an appellate court.*

30. *Chitty on Contracts* (27th Edn., 1994, Vol. 1., at p. 1296) states:

*"Severe hardship may be a ground for refusing specific performance even though it results from circumstances which arise after the conclusion of the contract, which affect the person of the defendant rather than the subject-matter of the contract, and for which the plaintiff is in no way responsible."*

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<sup>15</sup> (1999) 5 SCC 77



31. Very recently in K.S. Vidyanadam v. Vairavan [(1997) 3 SCC 1] this Court has held: (SCC p. 7, para 10)

*"10. It has been consistently held by the courts in India, following certain early English decisions, that in the case of agreement of sale relating to immovable property, time is not of the essence of the contract unless specifically provided to that effect. The period of limitation prescribed by the Limitation Act for filing a suit is three years. From these two circumstances, it does not follow that any and every suit for specific performance of the agreement (which does not provide specifically that time is of the essence of the contract) should be decreed provided it is filed within the period of limitation notwithstanding the time-limits stipulated in the agreement for doing one or the other thing by one or the other party. That would amount to saying that the time-limits prescribed by the parties in the agreement have no significance or value and that they mean nothing. Would it be reasonable to say that because time is not made the essence of the contract, the time-limit(s) specified in the agreement have no relevance and can be ignored with impunity? It would also mean denying the discretion vested in the court by both Sections 10 and 20. As held by a Constitution Bench of this Court in Chand Rani v. Kamal Rani [(1993) 1 SCC 519 : AIR 1993 SC 1742] : (SCC p. 528, para 25)*

*'... 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 (evident?): (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.'*

*In other words, the court should look at all the relevant circumstances including the time-limit(s) specified in the agreement and determine whether*



*its discretion to grant specific performance should be exercised. Now in the case of urban properties in India, it is well-known that their prices have been going up sharply over the last few decades — particularly after 1973."*

32. Referring to the principle that mere rise in prices is no ground for denying the specific performance the Court has emphasized the need for being alive to the realities of life and inflationary tendencies judicially noticeable and observed: (SCC p. 9, para 11)

*"Indeed, we are inclined to think that the rigor of the rule evolved by courts that time is not of the essence of the contract in the case of immovable properties — evolved in times when prices and values were stable and inflation was unknown — requires to be relaxed, if not modified, particularly in the case of urban immovable properties. It is high time, we do so."*

33. The Court has further proceeded to hold: (SCC pp. 9-10, para 11)

*"All this only means that while exercising its discretion, the court should also bear in mind that when the parties prescribe certain time-limit(s) for taking steps by one or the other party, it must have some significance and that the said time-limit(s) cannot be ignored altogether on the ground that time has not been made the essence of the contract (relating to immovable properties)."*

34. Having noticed the Constitution Bench decision in *Chand Rani* [(1993) 1 SCC 519 : AIR 1993 SC 1742] the Court has further held: (SCC p. 11, para 14)

*"Even where time is not of the essence of the contract, the plaintiff must perform his part of the contract within a reasonable time and reasonable time should be determined by looking at all the surrounding circumstances including the express terms of the contract and the nature of the property."*



39. The Hon'ble Supreme Court in the case of **A.C. ARULAPPAN vs. AHALYA NAIK**<sup>16</sup>, at paragraph No.7, 8, 9, 10 and 15, has held as follows:

*"7. The jurisdiction to decree specific relief is discretionary and the court can consider various circumstances to decide whether such relief is to be granted. Merely because it is lawful to grant specific relief, the court need not grant the order for specific relief; but this discretion shall not be exercised in an arbitrary or unreasonable manner. Certain circumstances have been mentioned in Section 20(2) of the Specific Relief Act, 1963 as to under what circumstances the court shall exercise such discretion. If under the terms of the contract the plaintiff gets an unfair advantage over the defendant, the court may not exercise its discretion in favour of the plaintiff. So also, specific relief may not be granted if the defendant would be put to undue hardship which he did not foresee at the time of agreement. If it is inequitable to grant specific relief, then also the court would desist from granting a decree to the plaintiff.*

*8. In Damacherla Anjaneyulu v. Damcherla Venkata Seshiah [1987 Supp SCC 75 : AIR 1987 SC 1641] the High Court declined to grant a decree for specific performance in favour of the plaintiff, even though the defendant was guilty of breach of agreement. That was a case where the defendant had constructed costly structures and if a decree for specific performance was granted, the defendant would have been put to special hardship. This Court directed the defendant to pay compensation to the plaintiff.*

*9. In Parakunnan Veetill Joseph's Son Mathew v. Nedumbara Kuruvila's Son [1987 Supp SCC 340: AIR 1987 SC 2328] this Court cautioned and observed as under: (SCC p. 345, para 14)*

*"14. Section 20 of the Specific Relief Act, 1963 preserves judicial discretion to courts as to decreeing specific performance. The court should meticulously consider all facts and circumstances of*

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<sup>16</sup> (2001) 6 SCC 600



*the case. The court is not bound to grant specific performance merely because it is lawful to do so. The motive behind the litigation should also enter into the judicial verdict. The court should take care to see that it is not used as an instrument of oppression to have an unfair advantage to the plaintiff."*

10. In *Lourdu Mari David v. Louis Chinnaya Arogiaswamy* [(1996) 5 SCC 589 : AIR 1996 SC 2814] the plaintiff, who sought for specific performance of an agreement to purchase immoveable property, filed a suit with incorrect and false facts. In the plaint, it was alleged that the plaintiff was already given possession of Door No.2/53 as a lessee and he was given possession of Door No.1/53 on the date of the agreement itself. But he did not give any evidence that he had got possession of Door No.1/53 on the date of the agreement. It was found that his case as regards Door No.1/53 was false. He also alleged that he had paid Rs.400 in addition to the sum of Rs.4000 paid as advance, but this was proved to be an incorrect statement. He alleged that the third defendant had inspected the house during the course of negotiations, but this also was found to be false. This Court held that it is settled law that the party who seeks to avail of the jurisdiction of a court and specific performance being equitable relief, must come to the court with clean hands. In other words, the party who makes false allegations does not come with clean hands and is not entitled to the equitable relief.

15. Granting of specific performance is an equitable relief, though the same is now governed by the statutory provisions of the Specific Relief Act, 1963. These equitable principles are nicely incorporated in Section 20 of the Act. While granting a decree for specific performance, these salutary guidelines shall be in the forefront of the mind of the court. The trial court, which had the added advantage of recording the evidence and seeing the demeanour of the witnesses, considered the relevant facts and reached a conclusion. The appellate court should not have reversed that decision disregarding these facts and, in our view, the appellate court seriously flawed in its decision. Therefore, we hold that the respondent is not entitled to a decree of specific performance of the contract."



40. The Hon'ble Supreme Court in the case of  
***U.N.KRISHNAMURTHY (SINCE DECEASED) AND OTHERS***  
***LRS. vs. A.M.KRISHNAMRTHY, reported in (2023) 11 SCC***  
***175***, at paragraph Nos.32, 33 and 34, has held as under:

*"32. In a suit for specific performance of a contract, the Court is required to pose unto itself the following questions, namely:*

*32.1. Whether there is a valid agreement of sale binding on both the vendor and the vendee.*

*32.2. Whether the plaintiff has all along been and still is ready and willing to perform his part of the contract as envisaged under Section 16(c) of the Specific Relief Act, 1963.*

*33. There is a distinction between readiness and willingness to perform the contract and both ingredients are necessary for the relief of specific performance. In Acharya Swami Ganesh Dassji v. Sita Ram Thapar [Acharya Swami Ganesh Dassji v. Sita Ram Thapar, (1996) 4 SCC 526] cited by Mr Venugopal, this Court said that there was a difference between readiness and willingness to perform a contract. While readiness means the capacity of the plaintiff to perform the contract which would include his financial position, willingness relates to the conduct of the plaintiff. The same view was taken by this Court in Kalawati v. Rakesh Kumar [Kalawati v. Rakesh Kumar, (2018) 3 SCC 658 : (2018) 2 SCC (Civ) 609] .*

*34. Even in a first appeal, the first appellate court is duty-bound to examine whether there was continuous readiness and willingness on the part of the plaintiff to perform the contract. This proposition finds support from Balraj Taneja v. Sunil Madan [Balraj Taneja v. Sunil Madan, (1999) 8 SCC 396] and H.P. Pyarejan v. Dasappa [H.P. Pyarejan v. Dasappa, (2006) 2 SCC 496] where this Court approved the views taken by the Privy Council in Ardeshir Mama v. Flora Sassoon [Ardeshir*



*Mama v. Flora Sassoon, 1928 SCC OnLine PC 43 : (1927-28) 55 IA 360 at p. 372 : AIR 1928 PC 208] ."*

41. In the case of **P.DAIVASIGAMANI vs. S.SAMBANDAN<sup>17</sup>**, at paragraph Nos.21, 22, 23, 24 and 25, has held as under;

*"21.Readiness and willingness are not one, but two separate elements. Readiness means the capacity of the plaintiff to perform the contract, which would include the financial position to pay the purchase price. Willingness refers to the intention of the plaintiff as a purchaser to perform his part of the contract. Willingness is inferred by scrutinising the conduct of the plaintiff purchaser, including attending circumstances reported in See para 2 in Ganesh Dassji V. Sita Ram Thapar, (1996) 4 SCC 526<sup>18</sup>. Continuous readiness and willingness on the part of the plaintiff purchaser from the date the balance sale consideration was payable in terms of the agreement to sell, till the decision of the suit, is a condition precedent for grant of relief of specific performance reported in See para 5 in N.P.Thirugnanam V. R. Jagan Mohan Rao, (1995) 5 SCC 115. Also see Anleshir Manu V. flora Sassoon, 1928 SCC Online PC 43: (1927-28) 55 IA 360: Air 1928 PC 208.*

*22. The expression "readiness and willingness" used in Section 16 (c) of the said Act, has been interpreted in a catena of decisions by this Court, in the light of facts and circumstances of the cases under consideration for the purpose of granting or refusing to grant the relief of Specific Performance of a contract. The said expression cannot be interpreted in a straitjacket formula. In a very apt decision of this Court in Syed Dastagir vs. T.R. Gopalakrishna Setty (1999) 6 SCC 337, a three-Judge Bench of this Court, construing a plea of "readiness and willingness to perform" in view of the requirement of Section 16(c) and its explanation, observed as under: (SCC p. 341, para 9)*

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<sup>17</sup> (2022) 14 SC 793



*"9. So the whole gamut of the issue raised is, how to construe a plea specially with reference to Section 16(c) and what are the obligations which the plaintiff has to comply with in reference to his plea and whether the plea of the plaintiff could not be construed to conform to the requirement of the aforesaid section, or does this section require specific words to be pleaded that he has performed or has always been ready and is willing to perform his part of the contract. In construing a plea in any pleading, courts must keep in mind that a plea is not an expression of art and science but an expression through words to place fact and law of one's case for a relief. Such an expression may be pointed, precise, sometimes vague but still it could be gathered what he wants to convey through only by reading the whole pleading, depending on the person drafting a plea. In India most of the pleas are drafted by counsel hence the aforesaid difference of pleas which inevitably differ from one to the other. Thus, to gather true spirit behind a plea it should be read as a whole. This does not distract one from performing his obligations as required under a statute. But to test whether he has performed his obligations, one has to see the pith and substance of a plea. Where a statute requires any fact to be pleaded then that has to be pleaded may be in any form. The same plea may be stated by different persons through different words; then how could it be constricted to be only in any particular nomenclature or word. Unless a statute specifically requires a plea to be in any particular form, it can be in any form. No specific phraseology or language is required to take such a plea. The language in Section 16(c) does not require any specific phraseology but only that the plaintiff must aver that he has performed or has always been and is willing to perform his part of the contract. So the compliance of "readiness and willingness" has to be in spirit and substance and not in letter*



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*and form. So to insist for a mechanical production of the exact words of a statute is to insist for the form rather than the essence. So the absence of form cannot dissolve an essence if already pleaded”.*

23. It was further observed therein that: (Syed Dastagir case<sup>19</sup>,

*“11.....It is significant that this explanation carves out a contract which involves payment of money as a separate class from Section 16(c). Explanation (i) uses the words “it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court”. (emphasis supplied) This speaks in a negative term what is not essential for the plaintiff to do. This is more in support of the plaintiff that he need not tender to the defendant or deposit in court any money but the plaintiff must [as per Explanation (ii)] at least aver his performance or readiness and willingness to perform his part of the contract”.*

*(emphasis in original)*

24. In *Sukhbir Singh v. Brij Pal Singh*<sup>20</sup> this Court had laid down that law is not in doubt and it is not a condition that the respondents (Plaintiffs) should have ready cash with them. It is sufficient for the respondents to establish that they had the capacity to pay the sale consideration. It is not necessary that they should always carry the money with them from the date of the suit till the date of the decree. The said principle was followed in *A. Kanthamani v. Nasreen Ahmed*<sup>21</sup>, in case of *C.S. Venkatesh v. A.S.C. Murthy*<sup>22</sup>.

25. Section 20 of the Specific Relief Act (Pre-amendment), which confers discretion on the court to exercise jurisdiction to decree of specific performance, states that this exercise should not be arbitrary, but guided by

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<sup>19</sup> Syed Dastagir V. T. R. Gopalkrishna setty, (1999) 6 SCC 337

<sup>20</sup> (1997) 2 SCC 200

<sup>21</sup> (2017) 4 SCC 654 : (2017) 2 SCC (Civ) 596

<sup>22</sup> (2020) 3 SCC 280 : (2020) 2 SCC (Civ) 90



*sound and reasonable judicial principles. Interpreting and elucidating on Section 20 of the Specific Relief Act (pre-amendment) and factors to be considered, this Court in Kamal Kumar v. Premrata Joshi<sup>23</sup> has also referred to Sections 16(c), 22, 23 and 24 of the Specific Relief Act and Forms 47/48 of Appendix A to C of the Code of Civil Procedure, 1908, to summarise: (SCC pp.705-706, paras 7-8)*

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

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

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

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

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

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

*8. In our opinion, the aforementioned questions are part of the statutory requirements [See Sections 16 (c), 20, 21, 22, 23 of the Specific Relief Act, 1963 and Forms 47/48 of Appendix A to C of the Code of Civil Procedure].*

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<sup>23</sup> (2019) 3 SCC 704 : (2019) 2 SCC (Civ) 405



*These requirements have to be properly pleaded by the parties in their respective pleadings and proved with the aid of evidence in accordance with law. It is only then the Court is entitled to exercise its discretion and accordingly grant or refuse the relief of specific performance depending upon the case made out by the parties on facts."*

42. The Hon'ble Supreme Court in the case of **J.P.BUILDERS AND ANOTHER vs. A.RAMDAS RAO AND ANOTHER<sup>24</sup>**, at paragraph Nos.20, 21, 23, 24, 25, 26 and 27, it is held as under:

***Readiness and willingness***

*"20. Section 16(c) of the Specific Relief Act, 1963 provides for personal bars to relief. This provision states that:*

*"16. Personal bars to relief:--- Specific performance of a contract cannot be enforced in favour of a person ---*

*a) who would not be entitled to recover compensation for its breach; or*

*b) who has become incapable of performing, or violates any essential term of, the contract that on his part remains to be performed, or acts in fraud of the contract, or wilfully acts at variance with, or in subversion of, the relation intended to be established by the contract; or*

*c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.*

*Explanation.- For the purposes of clause (c),-*

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<sup>24</sup> (2011) 1 SCC 429



*(i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court;*

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

21. Among the three clauses, we are more concerned about clause (c). "Readiness and willingness" is enshrined in clause (c) which was not present in the old Act of 1877. However, it was later inserted with the recommendations of the 9th Law Commission's report. This clause provides that the person seeking specific performance must prove that he has performed or has been ready and willing to perform the essential terms of the contract which are to be performed by him.

23. In *N.P. Thirugnanam vs. Dr. R. Jagan Mohan Rao*<sup>25</sup>, at SCC para 5, this Court held: (SCC pp. 117-18)

*"5.....Section 16(c) of the Act envisages that the plaintiff must plead and prove that he had performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than those terms the performance of which has been prevented or waived by the defendant. The continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of specific performance. This circumstance is material and relevant and is required to be considered by the court while granting or refusing to grant the relief. If the plaintiff fails to either aver or prove the same, he must fail. To adjudge whether the plaintiff is ready and willing to perform his part of the contract, the court must take into consideration the conduct of the plaintiff prior and subsequent to the filing of the suit along with other attending circumstances. The amount of consideration which he has to pay to the defendant must of necessity be proved to be available. Right*

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<sup>25</sup> (1995) 5 SCC 115



*from the date of the execution till date of the decree he must prove that he is ready and has always been willing to perform his part of the contract. As stated, the factum of his readiness and willingness to perform his part of the contract is to be adjudged with reference to the conduct of the party and the attending circumstances. The court may infer from the facts and circumstances whether the plaintiff was ready and was always ready and willing to perform his part of the contract."*

24. In *P.D'Souza vs. Shondrilo Naidu*<sup>26</sup>, this Court observed: (SCC p. 654, paras 19 and 21)

*"19. It is indisputable that in a suit for specific performance of contract the plaintiff must establish his readiness and willingness to perform his part of contract. The question as to whether the onus was discharged by the plaintiff or not will depend upon the facts and circumstances of each case. No straitjacket formula can be laid down in this behalf...."*

21.....*The readiness and willingness on the part of the plaintiff to perform his part of contract would also depend upon the question as to whether the defendant did everything which was required of him to be done in terms of the agreement for sale."*

25. Section 16(c) of the Specific Relief Act, 1963 mandates "readiness and willingness" on the part of the plaintiff and it is a condition precedent for obtaining relief of grant of specific performance. It is also clear that in a suit for specific performance, the plaintiff must allege and prove a continuous "readiness and willingness" to perform the contract on his part from the date of the contract. The onus is on the plaintiff.

26. It has been rightly considered by this Court in *R.C. Chandiook. vs. Chuni Lal Sabharwal*<sup>27</sup>, that "readiness and willingness" cannot be treated as a

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<sup>26</sup> (2004) 6 SCC 649

<sup>27</sup> (1970) 3 SCC 140



*straightjacket formula. This has to be determined from the entirety of the facts and circumstances relevant to the intention and conduct of the party concerned.*

*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 plaintiff has to comply with Section 16(c) of the Specific Relief Act and when there is non-compliance with this statutory mandate, the Court is not bound to grant specific performance and is left with no other alternative but to dismiss the suit. It is also clear that readiness to perform must be established throughout the relevant points of time. "Readiness and willingness" to perform the part of the contract has to be determined/ascertained from the conduct of the parties."*

43. The Hon'ble Supreme Court in the case of **ZARINA SIDDIQUI vs. A. RAMALINGAM ALIAS R.AMARNATHAN**<sup>28</sup> at paragraph Nos.30, 33, has held as under:

*"30. In a recent judgment dated 22.9.2014 in Civil Appeal No.9047 of 2014 entitled K. Prakash vs. B.R. Sampath Kumar<sup>29</sup>, this Court observed that: (SCC p.605 and paras 16 & 18-19)*

*"16. The principles which can be enunciated are that where the plaintiff brings a suit for specific performance of contract for sale, the law insists a condition precedent to the grant of decree for specific performance: that the plaintiff must show his continued readiness and willingness to perform his part of the contract in accordance with its terms from the date of contract to the date of hearing. Normally, when the trial court exercises its discretion in one way or other after appreciation of entire evidence and materials on record, the appellate court should not interfere unless it is established that the discretion has been*

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<sup>28</sup> (2015) 1 SCC 705

<sup>29</sup> (2015) 1 SCC 597



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*exercised perversely, arbitrarily or against judicial principles. The appellate court should also not exercise its discretion against the grant of specific performance on extraneous considerations or sympathetic considerations. It is true, as contemplated under Section 20 of the Specific Relief Act, that a party is not entitled to get a decree for specific performance merely because it is lawful to do so. Nevertheless once an agreement to sell is legal and validly proved and further requirements for getting such a decree are established then the Court has to exercise its discretion in favour of granting relief for specific performance.*

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

*19. However, the court may take notice of the fact that there has been an increase in the price of the property and considering the other facts and circumstances of the case, this Court while granting decree for specific performance can impose such condition which may to some extent compensate the defendant owner of the property. This aspect of the matter is considered by a three-Judge Bench of this Court in Nirmala Anand vs. Advent Corporation (P) Ltd...<sup>30</sup>*

*33. The equitable discretion to grant or not to grant a relief for specific performance also depends upon the conduct of the parties. The necessary ingredient has to be proved and established by the plaintiff so that discretion would be exercised judiciously in favour of the plaintiff. At the same time, if the defendant does not come with clean hands and suppresses material facts and evidence and misled the*

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<sup>30</sup> (2002) 8 SCC 146



*Court then such discretion should not be exercised by refusing to grant specific performance."*

44. The Hon'ble Supreme Court in the case of **R.SHAMA NAIK vs. G.SRINIVASIAH**<sup>31</sup> at paragraph Nos.8, 9, 10 and 11, has held as under:

*"8. Section 16(C) of the Specific Relief Act, 1963 (prior to amendment w.e.f. 1.10.2018) bars the relief of the specific performance of a contract in favour of a person who fails to aver readiness and willingness to perform his part of the contract.*

*9. There is a legion of precedents on the subject of readiness and willingness.*

*10. The law is well settled. The plaintiff is obliged not only to make specific statement and averments in the plaint but is also obliged to adduce necessary oral and documentary evidence to show the availability of funds to make payment in terms of the contract in time.*

*11. There is a fine distinction between readiness and willingness to perform the contract. Both the ingredients are necessary for the relief of specific performance."*

45. Therefore, both the Courts below have held contrary to the principles enunciated under Section 20 of the S.R. Act and have erroneously granted decree for specific performance. Therefore, they are liable to be set aside.

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<sup>31</sup> 2024 SCC ONLINE 3586



46. Furthermore, the plaintiffs in the plaint have not averred that they were ever ready and willing to perform his part of contract, but later on, upon the defect shown by the defendants the plaintiffs got amended the plaint by pleading on the aspect of readiness and willingness. Upon considering the evidence on record, the plaintiffs have not adduced any evidence to prove their readiness and willingness for specific performance of contract. Mere issuance of legal notice is not sufficient to prove that the plaintiffs were ever ready and willing to perform their part of contract.

47. In this regard, I place reliance on the judgment of the Division Bench judgment of this Court in **SRI. T.N. ARUN KUMAR AND OTHERS vs. SRI. SHIVANNA, S/O. LATE BASAPPA AND ANOTHER<sup>32</sup>**, which reads as follows:

*"16. Therefore, we are of the view that the findings of the Trial Court is incorrect with regard to the readiness and willingness of the plaintiffs.*

*17. Be that as it may, Even if we accept the contention of the plaintiffs that they were ready and willing to take the sale deed by paying the balance sale consideration, atleast it was for the plaintiffs to deposit the amount of Rs. 15,50,000/- immediately after the decree, since the Trial Court has directed the plaintiffs to pay the balance sale consideration and obtain the sale deed by paying the defendants within three*

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<sup>32</sup> (2012) 3 KCCR 1757 (DB)



*months to receive the balance sale consideration and to get the sale deed at their cost and even otherwise atleast the plaintiffs were required to deposit Rs. 15,50,000/- before the Court below immediately after completion of three months from the date of decree. But such an attempt has not been made by the plaintiffs to deposit the money. Only reason assigned by Mr. Rama Mohan. learned counsel for the respondent is that since the matter was pending before this Court, they did not deposit the amount. But the said submission cannot be accepted by this Court because the matter was listed before this Court on 01.06.2010 and on which date notice was ordered in regard to consider the application of the appellants for grant of stay. The Court notice issued by this Court in this appeal has been received by the respondents on 22.06.2010 Therefore, the respondents-plaintiffs cannot contend that they did not deposit the money on account of the pendency of this appeal because they filed the appeal only on 13.05.2010 which date was the last day for the respondents - plaintiffs to pay the amount in terms of the decree. Even thereafter it was open for the plaintiffs-decree holder to deposit the amount into the Court by filing an execution. Till today no such execution petition is filed, no amount is deposited by the plaintiffs. In addition to that the appeal was dismissed for default on 26.11.2010 Nine months thereafter on 05.10.2011 the appeal has been restored by this Court on an application filed by the plaintiffs. Atleast on dismissal of this appeal the respondents could have deposited the amount, with the permission of the Court, but such an attempt has not been made."*

48. Further, I place reliance on the judgment of the Division Bench judgment of this Court in **SRI. PUNNY AKAT PHILIP RAJU, SINCE DEAD BY HIS LRS. vs. SRI. DINESH**



**REDDY**<sup>33</sup>, wherein at paragraphs No.31, 32, 33, 34, 35 and 36,

it is held as under:

*"31. It is in this background of the statutory provisions, we have to find out, when the plaintiff avers in the plaint that he has performed or is always being ready and willing to perform the essential terms of the contract, which deals with payment of money, what is the proof that is required to prove the said averments. The explanation to Section 16 clarifies that when a contract involves payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in Court any money except when so directed by the Court. But none the less, if the plaintiff wants to prove that he is possessed with the requisite funds to perform his part of the contract i.e., payment of balance sale consideration, he should produce such evidence to substantiate his case. What he has to place before the Court is his financial ability either to raise the requisite funds or the possession of the requisite funds in proof of his readiness and willingness to perform the stipulations regarding the payment of balance sale consideration. The rule that in each case best evidence of which the case in its nature is susceptible should always be given naturally leads to the division of evidence into primary and secondary. Primary evidence is the best or highest evidence, or, in other words, it is that kind of proof which, in the eye of the law, affords the greatest certainty of the fact in 29 question. Until it is shown that the production of this evidence is out of the party's power, no other proof of the fact is in general admitted. It is based on the principle that 'best evidence' in the possession or power of the party must be produced. What the best evidence is, it depends upon the facts and circumstances of each case.*

### **PROOF OF READINESS**

*32. The proof of readiness necessarily means demonstration of financial ability or capacity to pay the balance sale consideration and take the sale deed. When a person on oath states in the witness box that he is ready with the requisite funds, he must produce some evidence to*

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<sup>33</sup> ILR 2016 KAR 2252



*prove his possession of the required funds. The explanation makes it clear that the proof of requisite funds does not mean he should produce the currency before the Court or he should deposit the money in Court. But at the same time, mere statement on oath in the witness box that he is possessed of the requisite funds would also do not prove possession of funds. The said proof has to be necessarily by way of documentary evidence. The reason being, if, the payment is to be made in cash i.e., by handing over currency, currency is a documentary evidence. The explanation makes it clear that to prove readiness, the plaintiff need not produce the currency before the Court. If the balance consideration is to be deposited in the Court such a deposit is also evidenced by documentary evidence, which is also not necessary by virtue of the explanation.*

*33. Money does not exist in vacuum. Money has to be necessarily in the form of physical object. It is in the nature of document. Money is deposited in banks. Money is in the nature of securities. Money is capable of being raised from borrowing. Money could be raised by sale of properties movable or immovable. When a person claims that he is possessed of sufficient funds, he has to produce some documentary evidence, which proves his capacity to raise the funds or he possess the funds. What are the documents which, the plaintiff can produce to prove his capacity? It may be a passbook issued by a Bank where he has kept the balance sale consideration ready for payment. If he has invested his money by way of securities, he has to produce those securities before Court to show that any time he can encash the same and pay the balance consideration. Similarly, if he has kept the money in Fixed Deposit, in a Bank, that deposit receipt is the proof of his ability to raise the balance sale consideration. If he intends to borrow money from a Nationalized Bank or from his employer or from any other financial institution, it has to be demonstrated by producing a request for such financial assistance in writing, sanctioning of the said loan which has to be necessarily in writing. These instances are only illustrative. There may be several other modes by which the requisite funds are raised. But all of these instances are evidenced by documentary evidence.*

*34. Therefore, mere stepping into the witness box and saying on oath that he is ready with the balance sale*



*consideration or that he is going to borrow money from any financial institution or that he has got sufficient funds in his Bank accounts or that he has kept money in Fixed Deposit, without that oral evidence being supported by documentary evidence will not prove the plaintiff's readiness to pay the balance sale consideration. It is immaterial whether such oral evidence is challenged in cross-examination or not. The plaintiff has to prove to the satisfaction of the Court that he possessed the requisite funds. He has to produce such documentary evidence, which would enable the Court to come to the conclusion that plaintiff is ready with the requisite balance sale consideration to complete the sale transaction. If no evidence is adduced in this regard by way of documentary evidence, no prudent man would come to the conclusion that the person has proved the possession of funds. In the absence of any such documentary evidence being produced, it is a case of plaintiff's case being not proved. Plaintiff cannot expect the Court to pass a decree for specific performance of a contract of sale when the plaintiff has not proved his readiness to perform his part of the contract.*

*35. Therefore, in a case arising under Section 16(c) of the Specific Relief Act, the obligation is cast on the plaintiff to prove that he was ready with the balance sale consideration. When the statute requires the plaintiff must plead and prove his readiness and willingness to perform his part of the contract and that readiness refers to the possession of the requisite funds, there is an obligation cast on that person, who has to prove the possession of funds to produce documents to show possession of funds by him. Though he is not expected to tender or deposit the cash before the Court, he has to produce such evidence to prove his financial capability. Only on production of such documentary evidence, on verification and appreciation of those documents, Court could come to the conclusion that the plea of readiness is proved. Mere assertion on oath that he is ready with the balance sale consideration, even if it is not challenged in the cross-examination; is not the proof of the plaintiff's readiness with the balance sale consideration. He should produce such evidence to show either he possess the requisite funds or he is capable of raising such funds within the time stipulated. If such evidence is not forthcoming it is a case of, the plaintiff's case being not proved.*



36. The Apex Court had an occasion to consider the contention that when there is no denial of readiness and willingness by the defendant either in the written statement or in the evidence, there is no obligation on the part of the plaintiff to produce any documentary evidence to prove his readiness. The Supreme Court in the case of *J.P. Builders & another –vs- A. Ramadas Rao* reported in (2011)1 SCC 429 after referring to Section 16 of the Specific Relief Act has held at para-21 as under:

"21. Among the three clauses, we are more concerned about clause (c). 'Readiness and Willingness' is enshrined in clause (c) which was not present in the old Act of 1877. However, it was later inserted with the recommendations of the 9th Law Commission's Report. This clause provides that the person seeking specific performance must prove that he has performed or has been ready and willing to perform the essential terms of the contract which are to be performed by him."

At para 22 it is held as under:

"The words 'ready' and 'willing' imply that the person was prepared to carry out the terms of the contract. The distinction between 'readiness' and 'willingness' is that the former refers to financial capacity and the latter to the conduct of the plaintiff wanting performance. readiness is backed by willingness."

At paras-25, 26 and 27 it is held as under:

"Generally, 25. Section 16(c) of the Specific Relief Act, 1963 mandates "readiness and willingness" on the part of the plaintiff and it is a condition precedent for obtaining relief of grant of specific performance. It is also clear that in a suit for specific performance, the plaintiff must allege and prove a continuous "readiness and willingness" to perform the contract on his part from the date of the contract. The onus is on the plaintiff."



*26. It has been rightly considered by this Court in R.C. Chandiok V. Chuni Lal Sabharwal that "readiness and willingness" cannot be treated as a straitjacket formula. This has to be determined from the entirety of the facts and circumstances relevant to the intention and conduct of the party concerned.*

*27. It is settled law that even in the absence of specific plea by the opposite party, it is the 36 mandate of the statute that the plaintiff has to comply with Section 16(c) of the Specific Relief Act and when there is non-compliance with this statutory mandate, the Court is not bound to grant specific performance and is left with no other alternative but to dismiss the suit. It is also clear that readiness to perform must be established throughout the relevant points of time. "Readiness and Willingness" to perform the part of the contract has to be determined/ascertained from the conduct of the parties."*

49. Considering the chronology of events in the case from the date of execution of agreement of sale, the market value of the property has substantially escalated. If considerable time is consumed during the legal battle and the market value of the property escalates, granting a decree for specific performance at the earlier agreed lower price would certainly cause hardship for the defendants by the plaintiffs, as the owner of the property was not be directed to sell away the land for earlier meagre price. Therefore, escalation in market value is also a relevant factor to be taken into consideration by the Court



while exercising its discretionary relief of specific performance, as stipulated by the Hon'ble Supreme Court in **SARADAMAI KANDAPPAN vs. S. RAJALAKSHMI**<sup>34</sup>, wherein at paragraph Nos.36 and 43, it has been held as follows:

*"36. The principle that time is not of the essence of contracts relating to immovable properties took shape in an era when market value of immovable properties were stable and did not undergo any marked change even over a few years (followed mechanically, even when value ceased to be stable). As a consequence, time for performance, stipulated in the agreement was assumed to be not material, or at all events considered as merely indicating the reasonable period within which contract should be performed. The assumption was that grant of specific performance would not prejudice the vendor-defendant financially as there would not be much difference in the market value of the property even if the contract was performed after a few months. This principle made sense during the first half of the twentieth century, when there was comparatively very little inflation, in India. The third quarter of the twentieth century saw a very slow but steady increase in prices. But a drastic change occurred from the beginning of the last quarter of the twentieth century. There has been a galloping inflation and prices of immovable properties have increased steeply, by leaps and bounds. Market values of properties are no longer stable or steady. We can take judicial notice of the comparative purchase power of a rupee in the year 1975 and now, as also the steep increase in the value of the immovable properties between then and now. It is no exaggeration to say that properties in cities, worth a lakh or so in or about 1975 to 1980, may cost a crore or more now.*

*43. Till the issue is considered in an appropriate case, we can only reiterate what has been suggested in K.S. Vidyadnam v. Vairavan*<sup>35</sup> :

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<sup>34</sup> (2011) 12 SCC 18

<sup>35</sup> (1997) 3 SCC 1



(i) *The courts, while exercising discretion in suits for specific performance, should bear in mind that when the parties prescribe a time/period, for taking certain steps or for completion of the transaction, that must have some significance and therefore time/period prescribed cannot be ignored.*

(ii) *The courts will apply greater scrutiny and strictness when considering whether the purchaser was 'ready and willing' to perform his part of the contract.*

(iii) *Every suit for specific performance need not be decreed merely because it is filed within the period of limitation by ignoring the time-limits stipulated in the agreement. The courts will also 'frown' upon suits which are not filed immediately after the breach/refusal. The fact that limitation is three years does not mean a purchaser can wait for 1 or 2 years to file a suit and obtain specific performance. The three year period is intended to assist purchasers in special cases, as for example, where the major part of the consideration has been paid to the vendor and possession has been delivered in part performance, where equity shifts in favour of the purchaser."*

50. Further, this Court in **SHRI. JAY R. SAWANT vs. SMT. BEENA W/O. RAJA SABNIS**<sup>36</sup>, in paragraph Nos.18, 19, 20, 21, 22 and 23, has held as follows:

*"18. Therefore, it is necessary and essential on the part of the plaintiff to plead his readiness and willingness and accordingly has to lead evidence in proving his readiness and willingness, but that is not the case. Therefore, in this regard, the plaintiff's suit cannot be entertained for the grant of a decree of specific performance of contract.*

*19. My above view are fortified by the Hon'ble Supreme Court in the case of*

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<sup>36</sup> In RSA No.100214/2016 C/w RSA Crob No.100003/2018 decided on 12.08.2024



*U.N.Krishnamurthy Vs. A.M.Krishnamurthy*<sup>37</sup>, at para 46 is reproduced as follows:

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

20. The Division Bench of this Court in case of ***Punnya Akat Philip Raju and others Vs. Dinesh Reddy***<sup>38</sup> at para No.32 to 38 are held as follows:

*"32. The proof of readiness necessarily means demonstration of financial ability or capacity to pay the balance sale consideration and take the sale deed. When a person on oath states in the witness box that he is ready with the requisite funds, he must produce some evidence to prove his possession of the required funds. The explanation makes it clear that the proof of requisite funds does not mean he should produce the currency before the Court or he should deposit the money in Court. But at the same time, mere statement on oath in the witness box that he is possessed of the requisite funds would also do not prove possession of funds. The said proof has to be necessarily by way of documentary evidence. The reason being, if, the payment is to be made in cash i.e., by handing over currency, currency is a documentary evidence. The explanation makes it clear that to prove readiness, the plaintiff need not produce the currency before the Court. If the balance consideration is to be deposited in the Court such a deposit is also evidenced by documentary evidence, - which is also not necessary by virtue of the explanation.*

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<sup>37</sup> (2022) SCC 3361

<sup>38</sup> 2016 (3) AKR 836



33. *Money does not exist in vacuum. Money has to be necessarily in the form of physical object. It is in the nature of document. Money is deposited in banks. Money is in the nature of securities. Money is capable of being raised from borrowing. Money could be raised by sale of properties movable or immovable. When a person claims that he is possessed sufficient funds, he has to produce some documentary evidence, which proves his capacity to raise the funds or he possess the funds. What are the documents which, the plaintiff can produce to prove his capacity? It may be a passbook issued by a Bank where he has kept the balance sale consideration ready for payment. If he has invested his money by way of securities, he has to produce those securities before Court to show that any time he can encash the same and pay the balance consideration. Similarly, if he has kept the money in Fixed Deposit, in a Bank, that deposit receipt is the proof of his ability to raise the balance sale consideration. If he intends to borrow money from a Nationalized Bank or from his employer or from any other financial institution, it has to be demonstrated by producing a request for such financial assistance in writing, sanctioning of the said loan which has to be necessarily in writing. These instances are only illustrative. There may be several other modes by which the requisite funds are raised. But all of these instances are evidenced by documentary evidence.*

34. *Therefore, mere stepping into the witness box and saying on oath that he is ready with the balance sale consideration or that he is going to borrow money from any financial institution or that he has got sufficient funds in his Bank accounts or that he has kept money in Fixed Deposit, without that oral evidence being supported by documentary evidence will not prove the plaintiff's readiness to pay the balance sale consideration.. It is immaterial whether such oral evidence is challenged in cross-examination or not. The plaintiff has to prove to the satisfaction of the Court that he possessed the requisite funds. He has to produce such*



*documentary evidence, which would enable the Court to come to the conclusion that plaintiff is ready with the requisite balance sale consideration to complete the sale transaction. If no evidence is adduced in this regard by way of documentary evidence, no prudent man would come to the conclusion that the person has proved the possession of funds. In the absence of any such documentary evidence being produced, it is a case of plaintiff's case being not proved. Plaintiff can- not expect the Court to pass a decree for specific performance of a contract of sale when the plaintiff has not proved his readiness to perform his part of the contract.*

*35. Therefore, in a case arising under Section 16(c) of the Specific Relief Act, the obligation is cast on the plaintiff to prove that he was ready with the balance sale consideration. When the statute requires the plaintiff must plead and prove his readiness and willingness to perform his part of the contract and that readiness refers to the possession of the requisite funds, there is an obligation cast on that person, who has to prove the possession of funds to produce documents to show possession of funds by him. Though he is not expected to tender or deposit the cash before the Court, he has to produce such evidence to prove his financial capability. Only on production of such documentary evidence, on verification and appreciation of those documents, Court could come to the conclusion that the plea of readiness is proved. Mere assertion, on other oath that he is ready with the balance sale consideration, even if it is not challenged in the cross-examination; is not the proof of the plaintiff's readiness with the balance sale consideration. He should produce such evidence to show either he possess the requisite funds or he is capable of raising such funds within the time stipulated. If such evidence is not forthcoming it is a case of, the plaintiff's case being not proved.*

*36. The Apex Court had an occasion to will consider the contention that when there is no denial of readiness and willingness by the defendant either in the written statement or in the evidence, there is*



*no obligation on the part of the plaintiff to produce any documentary evidence to prove his readiness. The Supreme Court in the case of J.P. Builders & another v. h A. Ramadas Rao reported in (2011) 1 SCC 429: (AIR 2011 SC (Civ) 230) Paras 8, 9 & 12) after referring to Section 16 of the Specific Relief Act has held at para-21 as under:*

*"21. Among the three clauses, we are more concerned about clause (c). 'Readiness and Willingness' is enshrined in clause(c) which was not present in the old Act of 1877. However, it was later inserted with the recommendations of the 9th Law Commission's Report. This clause provides that the person seeking specific performance must prove that he has performed or has been ready and willing to perform the essential terms of the contract which are to be performed by him."*

*At para 22 it is held as under:*

*"The words 'ready' and willing' imply that the person was prepared to carry out the terms of the contract. The distinction between 'readiness' and 'willingness' is that the former refers to financial capacity and the latter to the conduct of the plaintiff wanting performance. Generally, readiness is backed by willingness."*

*At paras-25, 26 and 27 it is held as under:*

*"25. Section 16(c) of the Specific Relief Act, 1963 mandates "readiness and willingness" on the part of the plaintiff and it is a condition precedent for obtaining relief of grant of specific performance. It is also clear that in a suit for specific performance, the plaintiff must allege and prove a continuous "readiness and willingness" to perform the contract on his part from the date of the contract. The onus is on the plaintiff.*

*26. It has been rightly considered by this Court in R.C.Chandiok v.Chuni Lal Sabharwal (AIR 1971 SC 1238) that "readiness and willingness" cannot be treated as a straitjacket formula. This has to be*



*determined from the entirety of the facts and circumstance relevant to the intention and conduct of the party concerned.*

*27. It is settled law that even in the absence of specific plea by the opposite party, it is the mandate of the statute that the plaintiff has to comply with Section 16(c) of the Specific Relief Act and when there is non-compliance with this statutory mandate, the Court is not bound to grant specific performance and is left with no other alternative but to dismiss the suit. It is also clear that readiness to perform the part of the contract has to be determined. Ascertained from the conduct of the parties."*

*"37. Order XIV of the Code of Civil Procedure deals with the settlement of issues and determination of suit on issues of law or on issues agreed upon. Order XIV Rule 1(3) states how the settlement of issue is framed in a suit. It provides each material proposition affirmed by one party and denied by the other shall form the subject of a distinct issue. Issues may be of fact or of law.*

*38. Section 16(c) of the Specific Relief Act is an exception to this general rule. Unless a person avers and proves that has performed or has always being ready and willing to perform the essential terms of the contract which are to be performed by him, he is not entitled to enforce the specific performance of the contract. In other words, before a Court can grant a decree for specific performance, this mandatory requirement of the status has to be complied with by the plaintiff irrespective of the defence taken by the defendant. Only if this mandatory requirement is complied with, the Civil Court gets jurisdiction to grant a decree for specific performance. If this requirement is not met, the Civil Court has no jurisdiction to grant a decree for specific performance. Therefore, it is obligatory on the part of the Court, that, in every suit for specific performance to frame an issue regarding readiness and willingness to perform the essential terms of the contract by the plaintiff irrespective of the fact*



*whether the defendant has specifically denied the allegations in the plaint regarding readiness and willingness to perform or not. Therefore, what follows is that a plaintiff, who comes to the Court seeking a decree for specific performance must aver and prove that he has performed or is always ready and willing to perform the essential terms of the contract which are to be performed by him. Whether the defendant denied those allegations are not in the written statement, the Court is under an obligation to frame an issue regarding readiness and willingness on the part of the plaintiff to perform the terms of the contract. Once that issue is framed, the burden of proving readiness and willingness is on the plaintiff. It is not dependent upon the admission of the defendant either in the written statement or in the evidence. Unless the plaintiff proves to the satisfaction of the Court that he was ready and willing to perform his part of the contract, the Court gets no jurisdiction to pass a decree for specific performance. Therefore, the argument of the learned Counsel for the plaintiff, that, as there was no serious cross examination of P.W.1 regarding readiness and willingness, the oral evidence of P.W.1 that he was ready and willing to perform his part of the contract was sufficient for the trial Court to decree the suit for specific performance is unfounded. The plaintiff has not produced a scrap of paper to show how he propose to raise the balance sale consideration of Rs.65 lakhs, where he has kept that money, is it in any bank or has he formulated a scheme for raising the funds and whether he actually possessed of the said funds. In the absence of such material, which has to be necessarily in the form of documentary evidence, not place before the Court, the trial Court committed a serious error in holding that the plaintiff was ready and willing to perform his part of the contract. There is absolutely no discussion in the entire judgment on this aspect and the said finding is not supported or based on any legal evidence on record. In that view of the matter, we are of the view that the finding recorded by the trial Court that the plaintiff was ready and willing to*



*perform his part of the contract is vitiated and is hereby set aside."*

21. The above said view is also once again fortified by the Division Bench of this Court in the case of **C.Vasudevamurthy Vs. S.S.Amarnath and others**<sup>39</sup>.

22. Further the Supreme court in the case of **Kamal Kumar Vs. Premlata Joshi**<sup>40</sup>, at para 10 is held as follows:

"10. It is a settled principle of law that the grant of relief of specific relief. The material questions, which are required to be gone into for grant of the relief of specific performance, are First, whether there exists a valid and concluded contract between the parties for sale/purchase of the suit property; Second, whether the plaintiff has been ready and willing to perform his part of contract and whether he is still ready and willing to perform his part as mentioned in the contract; Third, whether the plaintiff has, in fact, performed his part of the contract and , if so, how and to what extent and in what manner he has performed and whether such performance was in conformity with the terms of the contract; Fourth, whether it will be equitable to grant the relief of specific performance to the plaintiff against the defendant in relation to suit property or it will cause any kind of hardship to the defendant and, if so, how and in what manner and the extend if such relief is eventually granted to the plaintiff; and lastly, whether the plaintiff is entitled for grant of any other alternative relief, namely, refund of earnest money etc. and, if so, on what grounds."

23. Further in the case of **Ramesh Chand (Dead) through L.Rs Vs. Asruddin (Dead) through LR's and another**<sup>41</sup> at para 8 and 9 are held as follows:

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<sup>39</sup> 2021 (6) KLJ 345 (DB)

<sup>40</sup> 2019 AIR SCC (Civil) 1103

<sup>41</sup> AIR 2016 SC (Civil) 434



*"8. Section 20 of Specific Relief Act, 1963, provides that the jurisdiction to decree specific performance is discretionary, and the court is not bound to grant such relief merely because it is lawful to do so, However, the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles. Sub-section(2) of Section 20 of the Act provides the three situations in which the court may exercise discretion not to decree specific performance. One of such situation is contained in clause (a) of sub-section (2) of the Section which provides that where the terms of the contract or the conduct of the parties at the time of entering into the contract or the other circumstances under which the contract was entered into or such that the contract though not voidable, gives the plaintiff unfair advantage over the defendant, the decree of specific performance need not be passed. It is pertinent to mention here that in the present case, though execution of agreement dated 21.06.2004 between the parties is proved, but it is nowhere pleaded or proved by the plaintiff that he got redeemed the mortgaged land in favour of defendant No.2 in terms of the agreement, nor is it specifically pleaded that he was ready and willing to get the property redeemed from the mortgage.*

*9. In the above facts and circumstances of the case and the judicial principle discussed above, we are of the opinion that it is a fit case where instead of granting decree of specific performance, the plaintiff can be compensated by directing the appellant to pay a reasonable and sufficient amount to him. We are of the view that mere refund of rupees four lacs with interest at the rate of 8% per annum, as directed by the trial court, would be highly insufficient. In our considered opinion, it would be just and appropriate to direct the appellants (Legal Representatives of original defendant No.1, since died) to repay rupees four lacs along with interest at the rate of 18% per annum from 21.06.2004 till date within a period of three months from today to the L.Rs. of respondent No.1 (mentioned in I.A.No.\_\_\_\_\_ of*



*2015 dated 07.09.2015). If they do so, the decree of specific performance shall stand set aside. We clarify that if the amount is not paid or deposited before the trial court in favour of the L.Rs. of respondent No.1 within a period of three months, as directed above, the decree of specific performance shall stand affirmed. We order accordingly."*

51. Upon considering the evidence on record, there is no proof that the plaintiffs are ever ready and willing to perform their part of contract. Mere issuance of legal notice is not sufficient to hold that the plaintiffs are ever ready and willing to perform their part of contract. Therefore, in this regard, the judgments and decrees passed by both the Trial Court and the First Appellate Court are found to be perverse in nature.

52. Furthermore, as discussed above and in light of the principles of law laid down by the Hon'ble Supreme Court, both the Trial Court and the First Appellate Court have failed to exercise their discretion judiciously while granting a decree for specific performance. On the contrary, the decree granted in favour of the plaintiffs is found to be arbitrary. Therefore, the judgments and decrees passed by both the Trial Court and the First Appellate Court are liable to be set aside. Further, in the



absence of any prayer in the plaint seeking alternative relief of refund of the earnest money, such relief cannot be granted.

53. Accordingly, the substantial questions of law framed above are answered in the '**negative**'.

Hence, I proceed to pass the following:

**ORDER**

- a) The appeal is ***allowed***.
- b) The judgment and decree dated 18.11.2016 passed in R.A.No.592/2009 on the file of I Additional District Judge, Belagavi, and the judgment and decree dated 01.04.2002 passed in O.S.No.351/1989 on the file of Principal Civil Judge JR.DN, Belagavi, are hereby set aside.
- c) The suit of the plaintiffs is dismissed.
- d) No order as to costs.

**Sd/-  
(HANCHATE SANJEEVKUMAR)  
JUDGE**