

CASE NO.:
Appeal (civil) 4656 of 2007

PETITIONER:
Sita Ram & Ors

RESPONDENT:
Radhey Shyam

DATE OF JUDGMENT: 05/10/2007

BENCH:
Dr. ARIJIT PASAYAT & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO. 4656 OF 2007
(Arising out of SLP (C) No.26448 of 2005)

Dr. ARIJIT PASAYAT, J.

1. Leave granted.
2. Challenge in this appeal is to the order passed by a learned Single Judge of the Jaipur Bench of Rajasthan High Court dismissing the Second Appeal filed by the plaintiffs-appellants. It is to be noted that the trial court decreed the suit, which was one for specific performance of a contract while the first appellate court set aside the decree. The appellate court dismissed the suit on the ground that the pleadings were not in accordance with the provisions of Section 16(c) of the Specific Relief Act, 1963 (in short the 'Act'). Learned Single Judge dismissed the Second Appeal holding that no substantial question of law was involved as essentially the conclusions of the first appellate court were factual findings.
3. In support of the appeal, learned counsel for the appellants submitted that in the plaint, in essence, specific statement had been made about the fact that the plaintiffs had mentioned to the defendant that they were ready and willing to do such effort or act as would be necessary to be done by the plaintiffs for performance of the contract. It was, therefore, submitted that the first appellate court and the High Court were not justified in holding that the requirements of Section 16(c) of the Act were not met.
4. Per contra, learned counsel for the respondent submitted that the bare reading of the plaint itself indicated that Khasra No. 866 was later on added and, therefore, the question of the plaintiffs being ready and willing to perform the contract as originally stood, does not really arise. Specific reference was made to the pleadings to the effect that though the documents were executed on 1.9.1977, the same was complete and on that basis the sale has been concluded. It is submitted that if the sale was concluded as pleaded, the question of filing the suit for specific contract does not arise. Moreover, the plaintiffs themselves had stated that Khasra No.866 was added later on.
5. In order to appreciate the rival submissions, Section 16(c) needs to be quoted along with the Explanations. The same reads as follows:

"16. Personal bars to relief:

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

Explanation- For the purpose of clause (c)-

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

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

6. In *Ardeshir H. Mama v. Flora Sassoon* (AIR 1928 PC 208), the Privy Council observed that where the injured party sued at law for a breach, going to the root of the contract, he thereby elected to treat the contract as at an end himself and as discharged from the obligations. No further performance by him was either contemplated or had to be tendered. In a suit for specific performance on the other hand, he treated and was required by the Court to treat the contract as still subsisting. He had in that suit to allege, and if the fact was traversed, he was required to prove a continuous readiness and willingness from the date of the contract to the time of the hearing, to perform the contract on his part. Failure to make good that averment brings with it and leads to the inevitable dismissal of the suit. The observations were cited with approval in *Prem Raj v. The D.L.F. Housing and Construction (Private) Ltd. and Anr.* (AIR 1968 SC 1355).

7. While examining the requirement of Section 16(c) this Court in *Syed Dastagir v. T.R. Gopalakrishna Setty* (1999 (6) SCC 337) noted as follows:

"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 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."

8. Again in *Motilal Jain v. Ramdasi Devi (Smt.) and Ors.* (2000 (6) SCC 420) it was noted as follows:

"7. The other contention which found favour with the High Court, is that plaintiff averments do not show that the plaintiff was ready and willing to perform his part of the contract and at any rate there is no evidence on record to prove it. Mr. Choudhary developed that contention placing reliance on the decision in *Varghese case* ((1969) 2 SCC 539). In that case, the plaintiff pleaded an oral contract for sale of the suit property. The defendant denied the alleged oral agreement and pleaded a different agreement in regard to which the plaintiff neither amended his plaint nor filed subsequent pleading and it was in that context that this Court pointed out that the pleading in specific performance should conform to Forms 47 and 48 of the First Schedule of the Code of Civil Procedure. That view was followed in *Abdul Khader case* ((1989) 4 SCC 313 : AIR 1990 SC 682).

8. However, a different note was struck by this Court in *Chandiok case* ((1970) 3 SCC 140 : AIR 1971 SC 1238). In that case 'A' agreed to purchase from 'R' a leasehold plot. 'R' was not having lease of the land in his favour from the Government nor was he in possession of the same. 'R', however, received earnest money pursuant to the agreement for sale which provided that the balance of consideration would be paid within a month at the time of

the execution of the registered sale deed. Under the agreement 'R' was under obligation to obtain permission and sanction from the Government before the transfer of leasehold plot. 'R' did not take any steps to apply for the sanction from the Government. 'A' filed the suit for specific performance of the contract for sale. One of the contentions of 'R' was that 'A' was not ready and willing to perform his part of the contract. This Court observed that readiness and willingness could not be treated as a straitjacket formula and that had to be determined from the entirety of facts and circumstances relevant to the intention and conduct of the party concerned. It was held that in the absence of any material to show that 'A' at any stage was not ready and willing to perform his part of the contract or that he did not have the necessary funds for payment when the sale deed would be executed after the sanction was obtained, 'A' was entitled to a decree for specific performance of contract.

9. That decision was relied upon by a three-Judge Bench of this Court in Syed Dastagir case ((1999) 6 SCC 337) wherein it was held that 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. It is pointed out that in India most of the pleas are drafted by counsel and hence they inevitably differ from one to the other; thus, to gather the true spirit behind a plea it should be read as a whole and to test whether the plaintiff has performed his obligations, one has to see the pith and substance of the plea. It was observed :

"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) of the Specific Relief Act, 1963 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 and form."

It is thus clear that an averment of readiness and willingness in the plaint is not a mathematical formula which should only be in specific words. If the averments in the plaint as a whole do clearly indicate the readiness and willingness of the plaintiff to fulfil his part of the obligations under the contract which is the subject-matter of the suit, the fact that

they are differently worded will not militate against the readiness and willingness of the plaintiff in a suit for specific performance of contract for sale."

9. Lord Campbell in *Cork v. Ambergate etc. and Railway Co.* (1851) 117 ER 1229 observed that in common sense the meaning of such an averment of readiness and willingness must be that the non-completion of the contract was not the fault of the plaintiffs, and that they were disposed and able to complete it had it not been renounced by the defendant.

10. The basic principle behind Section 16(c) read with Explanation (ii) is that any person seeking benefit of the specific performance of contract must manifest that his conduct has been blemishless throughout entitling him to the specific relief. The provision imposes a personal bar. The Court is to grant relief on the basis of the conduct of the person seeking relief. If the pleadings manifest that the conduct of the plaintiff entitles him to get the relief on perusal of the plaint he should not be denied the relief. (See *Aniglase Yohannan v. Ramlatha and Ors.* (2005(7) SCC 534).

11. That being so, considering the background facts vested on the anvil of the principles of law formulated above, the inevitable conclusion is that the appeal deserves to be dismissed. There is no dispute that there was claim in respect of Khasra 866 which did not form part of the agreement. There was also an averment to the effect that the agreement related to a completed sale. There shall be no orders as to costs.