



NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

FA No. 281 of 2018

Reserved On 05.12.2025

Delivered On 09/01/2026

1 - Santosh Kumar Sahu S/o Late Chintaram Sahu Aged About 45 Years Presently Resident Of House No. A/1669, Kaveri Vihar, N.T.P.C. Jamnipali, Korba, Permanent Resident Of Village Sankri, Post Chandi, Tahsil Abhanpur, District Raipur, Chhattisgarh, District : Raipur, Chhattisgarh

2 - Ankit Kumar S/o Santosh Kumar Sahu Aged About 20 Years At Present Resident Of House No. A/1669, Kaveri Vihar, N.T.P.C. Jamnipali, Korba, Permanent Resident Of Village Sankri, Post Chandi, Tahsil Abhanpur, District Raipur, Chhattisgarh (Defendants), District : Raipur, Chhattisgarh

... Petitioner(s)

versus

1 - Govind Bhai Patel S/o Ramji Bhai Patel Aged About 60 Years C/o Royal Tiles Indira Timber Market, Bhanpuri, Tahsil And District Raipur, Chhattisgarh (Plaintiff), District : Raipur, Chhattisgarh

... Respondent(s)

For Petitioner(s) : Mr. D. N. Prajapati, Advocate

For Respondent(s) : Mr. Manoj Paranjpe, Senior Advocate assisted
by Ms. Shivangi Agrawal, Advocate.

(Division Bench)

Hon'ble Smt. Justice Rajani Dubey

Hon'ble Shri Justice Amitendra Kishore Prasad

C A V Order**Per, Amitendra Kishore Prasad, J.**

1. The present first appeal has been preferred by the appellants, being aggrieved by the impugned judgment and decree dated 26.02.2018 passed in Civil Suit No. 25-A/2012 by the learned Ninth Additional District Judge, Raipur, District Raipur (C.G.), whereby the suit for specific performance instituted by the plaintiff was allowed and the defendants were directed to execute the sale deed in accordance with the agreement entered into between the parties.
2. **Facts of the case** :- The case of the plaintiff/respondent, in substance, is that on 30.03.2012 the defendant No.1, for himself and on behalf of defendant No.2 who was a minor at the relevant time, executed an agreement to sale in favour of the plaintiff in respect of land bearing Khasra Nos. 55/12 and 55/13, admeasuring a total area of 3000 sq. ft., situated at Village Dumartarai, P.H. No. 115/38, R.I.C. Raipur, Tahsil and District Raipur (C.G.), for a total consideration of Rs. 10,25,000/-, out of which an advance amount of Rs. 1,00,000/- was paid by the plaintiff to the defendants; as per the terms of the agreement, the registered sale deed was to be executed within 45 days from the date of the agreement, however, despite repeated requests, defendant No.1 avoided execution of the sale deed on one pretext or another, compelling the plaintiff to issue a legal notice dated 30.07.2012, and as the defendants still failed to execute the sale

deed, the plaintiff instituted a suit for specific performance of contract. Upon service of notice, the defendants/appellants filed their written statement denying the plaint averments, while admitting execution of the agreement to sale and stipulation of 45 days for execution of the sale deed, contending inter alia that the plaintiff was merely a broker who failed to arrange a purchaser, that defendant No.1 had completed all revenue formalities and remained present at the office of the Deputy Registrar on 26.07.2012, 27.07.2012 and 28.07.2012 for execution of the sale deed, but the plaintiff did not appear, and therefore, on expiry of the stipulated period, the agreement ceased to be binding, rendering the suit liable to dismissal. On the basis of the pleadings, the learned Trial Court framed five issues, recorded evidence of the parties, and upon appreciation of the material on record, decreed the suit vide judgment and decree dated 26.02.2018, directing the appellants to execute the sale deed in favour of the plaintiff within two months, failing which the plaintiff was held entitled to get the sale deed registered through the Court.

3. Learned counsel for the appellants/defendants submitted that the impugned judgment and decree dated 26.02.2018 are illegal, perverse, erroneous and contrary to the pleadings, evidence, documents and the facts and circumstances of the case, and are therefore liable to be set aside, inasmuch as the learned Trial

Court failed to appreciate that although execution of the agreement to sale was admitted, the suit was specifically resisted on the ground that the plaintiff failed to tender the balance sale consideration within the stipulated period, demonstrating lack of readiness and willingness on his part, which is further evident from the fact that a legal notice was issued immediately after expiry of the contractual period; it was contended that under the terms of the agreement, time was the essence of the contract and the sale deed was required to be registered within 45 days, but the plaintiff neither appeared before the Registrar nor showed any inclination to perform his part, despite the appellants having completed all formalities, prepared the requisite documents and remained present in the Registrar's office on the notified dates, a fact which was also admitted by the plaintiff; it was urged that the plaintiff failed to discharge the mandatory burden of proving his continuous readiness and willingness by cogent evidence and could not derive any benefit from alleged lapses on the part of the defendants, and that the learned Trial Court erred in deciding the issues in favour of the plaintiff contrary to the material on record, including the testimony of P.W.-2 Naresh Patel, which revealed that despite delivery of relevant revenue documents by defendant No.1, the plaintiff did not proceed with registration of the sale deed; it was further argued that the plaintiff, being a land broker, failed to tender the balance consideration as he could not secure prospective buyers, and therefore was not entitled to the

discretionary relief of specific performance, particularly when the evidence clearly established that he never approached the defendants with the balance consideration either within or even after the stipulated period; reliance was placed on the judgment of the Hon'ble Supreme Court in **Padmakumari and Others v. Dasayyan and Others, (2015) 8 SCC 695**, to submit that failure to pay the balance consideration within the time stipulated under the agreement disentitles a plaintiff from specific performance, and that the Courts below committed a serious error in ignoring this settled legal position; on these grounds, it was contended that the findings recorded by the learned Trial Court are bad in law, perverse, baseless and unsustainable, and deserve to be quashed.

4. To buttress his submission, learned counsel for the appellants/defendants relied upon the judgment passed by the Hon'ble Supreme Court in the matter of **Mehboob-Ur-Rehman (D) through Lrs Vs. Ahsanul Ghani reported in 2019 SAR (Civil 404)**.
5. Learned counsel for the respondent/plaintiff submitted that the suit for specific performance and permanent injunction has been rightly decreed by the learned Trial Court, as the pleadings and evidence on record clearly establish the lawful execution of the agreement to sale dated 30.03.2012 (Ex. P/1) by Defendant Nos.1 and 2, who are father and son, in respect of the suit land bearing

Khasra Nos. 55/12 and 55/13, admeasuring 1500 sq. ft. each, situated at Village Dumartarai, Tahsil and District Raipur, for a total consideration of Rs. 10,25,000/-, out of which Rs. 1,00,000/- was duly paid as earnest money on the date of agreement; it was contended that as per Clause 03 of the agreement, the sale deed was to be executed within 45 days with payment of the balance consideration at the time of registration, while Clause 04 specifically cast the obligation upon the defendants to prepare all requisite revenue documents including map, B-1, Khasra Panchsala and Rin Pustika at their own cost and to hand over possession after measurement, and therefore time was never intended to be the strict essence of the contract; it was further submitted that due to the employment of Defendant No.1 at NTPC, Korba, the process was repeatedly delayed at his instance, and upon his request, the plaintiff not only took possession of the suit property but also, with due authorization, undertook and completed the preparation of the revenue documents by appearing before the Halka Patwari and Tehsildar on 30.06.2012 and 09.07.2012, as evidenced by Ex. P/2 to P/13, thereby demonstrating his continuous readiness and willingness to perform his part of the contract; counsel argued that immediately after completion of the documentation, the plaintiff called upon Defendant No.1 to execute the sale deed on 10.07.2012, which was avoided on a false pretext, compelling the plaintiff to issue a legal notice dated 30.07.2012 (Ex. P/14)

demanding execution of the sale deed within five days, to which no reply was given by the defendants, clearly reflecting their default and *mala fide* conduct; it was urged that the defence plea that Defendant No.1 remained present before the Registrar on 26, 27 and 28 July 2012 is an afterthought, unsupported by any documentary evidence, and in any case cannot defeat the plaintiff's right when the defendants themselves failed to perform their primary contractual obligations within time; learned counsel therefore submitted that the plaintiff has proved his readiness and willingness throughout, the agreement never became void, and the learned Trial Court has correctly appreciated the evidence and law in decreeing the suit for specific performance, warranting no interference in appeal.

6. To reinforce his arguments, learned counsel for the respondent/plaintiff relied upon the judgments passed by the Hon'ble Apex Court in the matter of Asha Joseph by Her Power of Attorney Holder Abraham Joseph Vs. Babu C. George & Ors. reported in 2022 SCC OnLine KER 1822 and further in the matter of Gaddipati Divija & Anr. Vs. Pathuri Samrajyam & Ors reported in 2023 SCC OnLine SC 442.
7. We have listened to the learned counsel representing the parties and scrutinized the documents placed on record with careful attention.

8. After adjudicating upon the issues involved, the following two points arise for consideration before this Court:—

- i. Whether time was the essence of the contract?
- ii. Whether the plaintiff was ready and willing to perform his part of the contract?

9. In order to adjudicate the aforesaid **first issue**, the agreement to sale has been duly considered, wherein a specific time frame for execution of the sale deed has been expressly stipulated. A perusal of the said agreement reveals that a period of **45 days** was prescribed for registration of the sale deed; however, the same was not complied with, and no effective steps were taken by the concerned party to have the sale deed executed within the stipulated period.

10. The Hon'ble Supreme Court in the matter of **Consolidated Construction Consortium Limited Vs. Software Technology Parks of India reported in (2025) 7 SCC 757** has held that where the contract expressly stipulates a specific time for its performance, and the contract is not completed or executed within the said stipulated period, the enforcement of such contract thereafter would fall beyond its permissible purview; consequently, the suit filed for specific performance of the agreement to sale is liable to fail. The relevant paragraph of the judgment is reproduced hereinunder for ready reference :-

“43. A conjoint reading of Sections 55, 73 and 74 would indicate that in a contract whether time is of the essence or not, if the contractor fails to execute the contract within the specified time, the contract becomes voidable at the option of the promisee and the promisee would be entitled to compensation from the promisor for any loss occasioned to him by such failure. However, in case of a contract where time is of the essence, the contract becomes voidable on account of the contractor's failure to execute the contract within the agreed time. The promisee cannot claim compensation for any loss occasioned by such breach of the contract unless he gives notice to the promisor of his intention to claim compensation. This is made more specific in Section 73. Section 74 contemplates a situation where penalty is provided for and quantified as compensation for breach of contract. In such a case, the party complaining of the breach is entitled to compensation whether or not actual damage or loss is proved to have been caused thereby but such compensation shall not exceed the quantum of penalty stipulated.”

11. Further, in the matter of **State of Madhya Pradesh & Ors. Vs. Ruchi Printers reported in (2016) 12 SCC 628** the relevant paragraph is quoted hereinunder :-

“7. The printers were very well aware that booklets were required urgently and time was the essence of the contract and time for supply could not have been more than what was originally stipulated. Sufficient time had been given to them to supply the booklets and the booklets supplied by them till 31-3-2008 had been accepted by the appellants and payment has also been made. Thus, after the order for

printing booklets stood cancelled on failure to supply within the stipulated period, the contract came to an end, there was no reason for the printers to print the booklets. No communication has been placed on record between 31-3-2008 and 22-5-2008 asking printers to print and supply the booklets. No right could be said to have accrued on the basis of palpably illegal communication dated 22-5-2008. The Division Bench of the High Court in the circumstances of the case has erred in directing that the booklets printed till 22-5-2008 be accepted. Booklets printed after 31-3-2008 were without any work order in existence. The communication dated 25-2-2008 did not confer on them a right to print books after 31-3-2008. Whatever booklets they had supplied till 31-3-2008 were accepted. Thus, the High Court has erred in the facts of the case to interfere in the contractual matter and by granting the relief. However, we observe that in case payment has not been made to the printers for booklets which were supplied till 31-3-2008, it shall be made forthwith.”

12. Further, in the matter of **Padmakumari & Ors. Vs. Dasayyan & Ors. reported in (2015) 8 SCC 695** the relevant paragraph is quoted hereinunder :-

“18. The other judgments relied upon by the learned counsel reiterate the same proposition. It would be worthwhile to extract para 22 of the judgment in Chand Rani v. Kamal Rani [(1993) 1 SCC 519] , which reads as follows : (SCC pp. 527-28, para 22)

“22. In Hind Construction Contractors case [Hind Construction Contractors v. State of Maharashtra, (1979) 2 SCC 70 : (1979) 2 SCR 1147] quoting Halsbury's Laws of

England, this Court observed at SCR pp. 1154-55 as under : (SCC pp. 76-77, paras 7-8)

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

"1179. Where time is of the essence of the contract.—The expression time is of the essence means that a breach of the condition as to the time for performance will entitle the innocent party to consider the breach as a repudiation of the contract. Exceptionally, the completion of the work by a specified date may be a condition precedent to the contractor's right to claim payment. The parties may expressly provide that time is of the essence of the contract and where there is power to determine the contract on a failure to complete by the specified date, the stipulation as to time will be fundamental. [Ed. : The matter between two asterisks has been emphasised in Hind Construction Contractors case, (1979) 2 SCC 70.] Other provisions of the contract may, on the construction of the contract, exclude an inference that the completion of the works by a particular date is fundamental; time is not of the essence where a sum is payable for each week that the work remains incomplete after the date fixed, nor where the parties contemplate a postponement of completion.

Where time has not been made of the essence of the contract or, by reason of waiver, the time fixed has ceased to be applicable, the employer may by notice fix a reasonable time for the completion of the work and dismiss the contractor on a failure to complete by the date so fixed [Ed. : The matter between two asterisks has been emphasised in Hind Construction Contractors case, (1979) 2 SCC 70.] ."

8. It will be clear from the aforesaid statement of law that even where the parties have expressly provided that time is of the essence of the contract such a stipulation will have to be read along with other provisions of the contract and such other provisions may, on construction of the contract, exclude the inference that the completion of the work by a particular date was intended to be fundamental; for instance, if the contract were to include clauses providing for extension of time in certain contingencies or for payment of fine or penalty for every day or week the work undertaken remains unfinished on the expiry of the time provided in the contract such clauses would be construed as rendering ineffective the express provision relating to the time being of the essence of the contract. The emphasised portion of the aforesaid statement of law is based on Lamprell v. Billericay Union [(1849) 3 Exch 283 : 154 ER 850] (Exch p. 308), Webb v. Hughes [(1870) LR 10 Eq 281] and Rickards (Charles) Ltd. v. Oppenheim [(1950) 1 KB 616 : (1950) 1 All ER 420 (CA)] .”

13. In order to determine the **second issue**, it has been consistently held by the Hon’ble Supreme Court that the plaintiff is required to adduce cogent and satisfactory evidence to establish his readiness and willingness to perform his part of the contract, and such readiness and willingness must subsist continuously up to the passing of the decree for specific performance.

14. The Hon’ble Supreme Court in the matter of **Pydi Ramana Alias Ramulu Vs. Davarasety Manmadha Rao reported in (2024) 7 SCC 515** relevant paragraphs are as under :-

“14. There is a distinction between the terms “readiness” and “willingness”. [Acharya Swami Ganesh Dassji v. Sita Ram Thapar, (1996) 4 SCC 526] “Readiness” is the capacity of the plaintiff to perform the contract which includes his financial position to pay the sale consideration. “Willingness” is the conduct of the party. In the instant case, even according to the concurrent findings recorded by the courts below, it would emerge that the plaintiff had been able to successfully prove the sale agreement dated 7-6-1993 Ext. A-1 on which date Rs 2005 was paid by the plaintiff to the defendant. The evidence on record tendered by the plaintiff came to be accepted by all the courts and judgments of courts below would also indicate that further amount towards sales consideration in a sum of Rs 17,000 was paid by the plaintiff to the defendant on 23-6-1993 and same was endorsed by him.

15. As per the recital in the agreements, the defendant was required to get the suit land surveyed and as such the total consideration was agreed to be settled after such survey. On the one hand, the plaintiff contends that the defendant never got surveyed the suit land. On the other hand, pleadings and evidence of the plaintiff is silent on steps taken by the plaintiff as expected of a reasonable person which has not been taken in the instant case, namely, the plaintiff has not produced any evidence either oral or documentary to establish that there was any demand made by him for the land being surveyed by the defendant. No witnesses have been examined on behalf of the plaintiff to establish that at any point of time there has been demand made by the plaintiff with the defendant by calling upon him to get the suit land surveyed as agreed under the agreement of sale Ext. A-1.

20. The long unexplained delay and silence on the part of the plaintiff in this regard while in the witness box would not entitle the plaintiff to a decree of specific performance and it is for this precise reason, the trial court as noticed supra has refused to grant the equitable relief which has been reversed by the appellate court without assigning proper and cogent reason and the one assigned are at tangent or in other words contrary to the facts. The resultant effect of filing the suit for specific performance on the verge of limitation coming to an end came to be examined by this Court in Rajesh Kumar v. Anand Kumar [Rajesh Kumar v. Anand Kumar, 2024 SCC OnLine SC 981] and held that the plaintiff would not be entitled to the equitable relief (vide paras 14, 15, 16, 17 and 18).

22. For the reasons aforesaid, we are of the considered view that the impugned judgment [Pydi Ramana v. Davarasetty Manmadha Rao, 2011 SCC OnLine AP 280] of the High Court and the first appellate court is liable to be set aside and accordingly, it is set aside. Consequently, the judgment of the trial court dated 19-1-2002 passed in OS No. 226 of 1998 is restored. The appeal stands allowed with no order as to costs.”

15. The Hon'ble Supreme Court, has categorically held that it is the bounden duty of the plaintiff to prove his continuous readiness and willingness to perform his part of the contract till the final disposal of the suit by adducing cogent evidence in this regard reliance be placed upon the judgments of the Hon'ble Supreme Court in the matter of **P. Ravindranath & Anr. Vs. Sasikala & Ors. reported in 2024 SCC OnLine SC 1749,** as well as on the

subsequent decision in the matter of **Sangita Sinha Vs. Bhawana Bhardwaj & ors reported in 2025 SCC OnLine SC 723**. The relevant paragraphs thereof are reproduced hereinbelow:

P. Ravindranath (supra)

“22. Having considered the submissions, our analysis is as follows:

(i) Relief of specific performance of contract is a discretionary relief. As such, the Courts while exercising power to grant specific performance of contract, need to be extra careful and cautious in dealing with the pleadings and the evidence in particular led by the plaintiffs. The plaintiffs have to stand on their own legs to establish that they have made out case for grant of relief of specific performance of contract. The Act, 1963 provides certain checks and balances which must be fulfilled and established by the plaintiffs before they can become entitled for such a relief. The pleadings in a suit for specific performance have to be very direct, specific and accurate. A suit for specific performance based on bald and vague pleadings must necessarily be rejected. Section 16(C) of the 1963 Act requires readiness and willingness to be pleaded and proved by the plaintiff in a suit for specific performance of contract. The said provision has been widely interpreted and held to be mandatory. A few of authorities on the point are referred hereunder:

a) In the case of Man Kaur v. Hartar Singh Sangha, this Court held in paragraph 40 which is reproduced hereunder:

“40.....A person who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be

performed by him (other than the terms the performance of which has been prevented or waived by the defendant) is barred from claiming specific performance. Therefore, even assuming that the defendant had committed breach, if the plaintiff fails to aver in the plaint or prove that he was always ready and willing to perform the essential terms of contract which are required to be performed by him (other than the terms the performance of which has been prevented or waived by the plaintiff), there is a bar to specific performance in his favour. Therefore, the assumption of the respondent that readiness and willingness on the part of the plaintiff is something which need not be proved, if the plaintiff is able to establish that the defendant refused to execute the sale deed and thereby committed breach, is not correct.....”

b) In the case of U.N. Krishnamurthy (Since Deceased) Thr. Lrs. v. A.M. Krishnamurthy, following was held in paragraph 46:

“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 the 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.”

c) In the case of His Holiness Acharya Swami Ganesh Dassji v. Sita Ram Thapar, it was held under paragraph 2:

“2. There is a distinction between readiness to perform the contract and willingness to perform the contract. By readiness may be meant the capacity of the plaintiff to perform the contract which includes his financial position to

pay the purchase price. For determining his willingness to perform his part of the contract, the conduct has to be properly scrutinised. There is no documentary proof that the plaintiff had ever funds to pay the balance of consideration. Assuming that he had the funds, he has to prove his willingness to perform his part of the contract. According to the terms of the agreement, the plaintiff was to supply the draft sale deed to the defendant within 7 days of the execution of the agreement, i.e., by 27-2-1975. The draft sale deed was not returned after being duly approved by the petitioner. The factum of readiness and willingness to perform plaintiff's 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. The facts of this case would amply demonstrate that the petitioner/plaintiff was not ready nor had the capacity to perform his part of the contract as he had no financial capacity to pay the consideration in cash as contracted and intended to bide for the time which disentitles him as time is of the essence of the contract."

(ii) In the present case, we find from a perusal of the plaint that, at the first instance, the plaintiffs failed to plead specifically with details about the restriction said to have been imposed by the State on registration of sale deeds relating to similar survey numbers and revenue sites. No details of the Government Order are mentioned. Neither the Government Order is placed on record as evidence to connect that such restriction was actually applicable to the land in question.

(iii) Defendant nos. 1 to 5 executed sale deeds in April and June, 1983 in favour of the appellant as also other

purchasers. It is recorded by the Trial Court as also the High Court, that these sale deeds were executed by the defendants 1 to 5 after depositing some betterment charges, getting the land converted and then effecting the transfer. The plaintiffs do not seem to have ever approached the defendants to get this kind of a status change and, thereafter, get the sale deeds executed. It has not come either in pleadings or in evidence of the plaintiffs that the alleged ban imposed by the State Government had been lifted but still the sale deeds were executed in favour of the appellants and other purchasers in 1983.

(iv) If the plaintiffs were actually keen, ready and willing to get the land transferred or get the agreement to sell enforced, they should have made an effort in that regard. Neither any specific date has been mentioned in the pleadings or in the evidence, on which date the plaintiffs tendered the balance amount with a request to the defendants 1 to 5 to get the land status changed and execute the sale deed, or otherwise also, request the defendants 1 to 5 to execute the sale deed with the same status of the land in suit.

(v) Even before filing a suit, there is no evidence forthcoming on behalf of the plaintiffs to show that they tendered the balance consideration or a draft sale deed to the defendants 1 to 5 and requested for execution and registration of the sale deed.

(vi) The Courts below have proceeded to hold that there was readiness and willingness primarily relying upon the restriction imposed by the State. According to them, as the restriction had not been lifted, there was no obligation on the part of the plaintiffs to have expressed any readiness or willingness. However, the Courts below failed to take into consideration that there was no evidence regarding the said

ban. Further the Courts below also failed to take into consideration that a keen and a willing buyer would have found out a way for execution of the sale deed just as defendants 6 & 7 and C. Nagaraju.

(vii) The Courts below also fell into error in recording a finding that the defendants 1 to 5 had committed breach of contract and had dishonestly proceeded to get the status of the land changed and, thereafter, execute the sale deed in favour of the appellant and other purchasers.

(viii) It is clear from the record that the defendant no. 1 had given a written notice in September, 1981, then legal notice in November, 1981 and also another communication in December, 1981 requesting for payment of balance sale consideration and, thereafter communicating that advance amount had been forfeited and the agreement to sell had come to an end as the plaintiffs failed to get the sale deed executed within three months. After December, 1981, the plaintiffs kept silent. They neither responded to the last communication of the defendant no. 1 of December, 1981, nor did they take any steps to file the suit for specific performance of contract for more than one and a half years after the defendant no. 1 had communicated forfeiture of the earnest money and the cancellation of the agreement to sell. There is no communication from the plaintiffs after December, 1981 till July, 1983 when they filed the suit. There is not even a notice by the plaintiffs before filing the suit of showing their readiness and willingness by tendering the amount of balance sale consideration and sending a draft sale deed for approval and fixing a date for execution and registration of the sale deed.

(xi) We are thus unable to agree with the findings of the courts below that the plaintiffs were always ready and willing to get the sale deed executed and registered. As a matter of

fact, the conduct of the plaintiffs throughout gives credence and strength to the contention of the defendant nos. 1 to 5 that the plaintiffs never had the funds available with them to clear the balance sale consideration and that they were middlemen only interested in blocking the property and, thereafter, selling it on a higher price to third parties and make profit thereof. The plaintiffs were never the real purchasers interested in buying the land in suit for themselves.

(x) Under such facts and circumstances as discussed above, we are of the confirmed view that the decree of specific performance was not warranted in the present case and ought to have been denied and the suit was liable to be dismissed.

(xi) In view of the finding on the issue of readiness and willingness being decided against the plaintiffs in the facts of the present case, we are not inclined to enter into other arguments raised by the learned Senior Counsel for the parties.

(xii). However, in order to adjust equities between the parties, as the plaintiffs made a payment of Rs. 12,000/- as advance money on 24.05.1981 or before, that being an admitted position, they need to be suitably compensated for the same. About 43 years have passed since the date of the agreement to sell. According to the appellant as stated in the written brief, the value of the property is about four crores. The respondents have not given any such figure of the approximate value of the property in question. Considering the facts and circumstances, we direct that the appellant compensate the plaintiffs by paying an amount of Rs. 24 lakhs in lieu of the advance and further Rs. 6 lakhs as cost of litigation. Total amount of Rs. 30 lakhs to be paid within a period of three months from today and file proof of

such payment before this Court within the next four months. In the event, such proof is not filed, the Registry will list the matter before the Court immediately after expiry of the aforesaid period for further orders.

Sangita Sinha (supra)

“16. It is settled law that under the Act, 1963, prior to the 2018 Amendment, specific performance was a discretionary and equitable relief. In Kamal Kumar v. Premlata Joshi, (2019) 3 SCC 704, which has been followed in P. Daivasigamani v. S. Sambandan, (2022) 14 SCC 793, this Court framed material questions which require consideration prior to grant of relief of specific performance. The relevant portion of the judgment in Kamal Kumar (supra) is reproduced hereinbelow:

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

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

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

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

7.4. Fourth, whether it will be equitable to grant the relief of specific performance to the plaintiff against the defendant in relation to suit property or it will cause any kind of hardship

to the defendant and, if so, how and in what manner and the extent if such relief is eventually granted to the plaintiff;

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

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

17. It is trite law that ‘readiness’ and ‘willingness’ are not one but two separate elements. ‘Readiness’ means the capacity of the Respondent No. 1-buyer to perform the contract, which would include the financial position to pay the sale consideration. ‘Willingness’ refers to the intention of the Respondent No. 1-buyer as a purchaser to perform his part of the contract, which is inferred by scrutinising the conduct of the Respondent No. 1-buyer/purchaser, including attending circumstances.

18. Continuous readiness and willingness on the part of the Respondent No. 1-buyer/purchaser from the date of execution of Agreement to Sell till the date of the decree, is a condition precedent for grant of relief of specific performance. This Court in various judicial pronouncements has held that it is not enough to show the readiness and willingness up to the date of the plaint as the conduct must be such as to disclose readiness and willingness at all times from the date of the contract and throughout the pendency

of the suit up to the decree. A few of the said judgments are reproduced hereinbelow:—

A. In Gomathinayagam Pillai v. Palaniswami Nadar, (1967) 1 SCR 227, it has been held as under:—

“6. But the respondent has claimed a decree for specific performance and it is for him to establish that he was, since the date of the contract, continuously ready and willing to perform his part of the contract. If he fails to do so, his claim for specific performance must fail. As observed by the Judicial Committee of the Privy Council in Ardeshir Mama v. Flora Sassoon, 1928 SCC OnLine PC 43:

“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 brought with it the inevitable dismissal of his suit.”

The respondent must in a suit for specific performance of an agreement plead and prove that he was ready and willing to perform his part of the contract continuously between the date of the contract and the date of hearing of the suit....”

B. In Vijay Kumar v. Om Parkash, 2018 SCC OnLine SC 1913, it has been held as under:—

“6. In order to obtain a decree for specific performance, the plaintiff has to prove his readiness and willingness to perform his part of the contract and the readiness and willingness has to be shown throughout and has to be established by the plaintiff....”

C. In J.P. Builders v. A. Ramadas Rao, (2011) 1 SCC 429, it has been held as under:—

“27. It is settled law that even in the absence of specific plea by the opposite party, it is the mandate of the statute that the plaintiff has to comply with Section 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.”

D. In Umabai v. Nilkanth Dhondiba Chavan (Dead) By LRs., (2005) 6 SCC 243, it has been held as under:—

“30. It is now well settled that the conduct of the parties, with a view to arrive at a finding as to whether the plaintiff-respondents were all along and still are ready and willing to perform their part of contract as is mandatorily required under Section 16 (c) of the Specific Relief Act must be determined having regard to the entire attending circumstances. A bare averment in the plaint or a statement made in the examination-in- chief would not suffice. The conduct of the plaintiff- respondents must be judged having regard to the entirety of the pleadings as also the evidence brought on records.”

E. In Mehboob-Ur-Rehman (Dead) through Legal Representatives v. Ahsanul Ghani (supra), it has been held as under:—

“16. Such a requirement, of necessary averment in the plaint, that he has already performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him being on the plaintiff, mere want of objection by the defendant in the written statement is hardly of any effect or consequence.

The essential question to be addressed to by the Court in such a matter has always been as to whether, by taking the pleading and the evidence on record as a whole, the plaintiff has established that he has performed his part of the contract or has always been ready and willing to do so...

F. In C.S. Venkatesh v. A.S.C. Murthy (Dead) by Legal Representatives (supra), it has been held as under:—

“16. The words “ready and willing” imply that the plaintiff was prepared to carry out those parts of the contract to their logical end so far as they depend upon his performance. The continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of performance. If the plaintiff fails to either aver or prove the same, he must fail. To adjudge whether the plaintiff is ready and willing to perform his part of contract, the court must take into consideration the conduct of the plaintiff prior, and subsequent to the filing of the suit along with other attending circumstances. The amount which he has to pay the defendant must be of necessity to be proved to be available. Right from the date of the execution of the contract till the date of decree, he must prove that he is ready and willing to perform his part of the contract. The court may infer from the facts and circumstances whether the plaintiff was ready and was always ready to perform his contract.

17. In N.P. Thirugnanam v. R. Jagan Mohan Rao [N.P. Thirugnanam v. R. Jagan Mohan Rao, (1995) 5 SCC 115], it was held that continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant of the relief of specific performance. This circumstance is material and relevant and is required to be considered by the court while granting or refusing to grant the relief. If the plaintiff fails to either aver or prove the same, he must fail. To adjudge whether the plaintiff is ready and willing to perform

his part of the contract, the court must take into consideration the conduct of the plaintiff prior to and subsequent to the filing of the suit along with other attending circumstances. The amount of consideration which he has to pay to the defendant must necessarily be proved to be available.

18. In *Pushparani S. Sundaram v. Pauline Manomani James* [*Pushparani S. Sundaram v. Pauline Manomani James*, (2002) 9 SCC 582], this Court has held that inference of readiness and willingness could be drawn from the conduct of the plaintiff and the totality of circumstances in a particular case. It was held thus : (SCC p. 584, para 5)

“5. ... So far these being a plea that they were ready and willing to perform their part of the contract is there in the pleading, we have no hesitation to conclude, that this by itself is not sufficient to hold that the appellants were ready and willing in terms of Section 16(c) of the Specific Relief Act. This requires not only such plea but also proof of the same. Now examining the first of the two circumstances, how could mere filing of this suit, after exemption was granted be a circumstance about willingness or readiness of the plaintiff. This at the most could be the desire of the plaintiff to have this property. It may be for such a desire this suit was filed raising such a plea. But Section 16(c) of the said Act makes it clear that mere plea is not sufficient, it has to be proved.”

16. The Hon'ble Supreme Court in the matter of **C. S. Venkatesh**

Vs. A.S.C. Murthy reported in (2023) 3 SCC 280; relevant

paragraphs are reproduced for ready reference hereinunder :-

“16. The words “ready and willing” imply that the plaintiff was prepared to carry out those parts of the contract to their logical end so far as they depend upon his performance. The continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of performance. If the plaintiff fails to either aver or prove the same, he must fail. To adjudge whether the plaintiff is ready and willing to perform his part of contract, the court must take into consideration the conduct of the plaintiff prior, and subsequent to the filing of the suit along with other attending circumstances. The amount which he has to pay the defendant must be of necessity to be proved to be available. Right from the date of the execution of the contract till the date of decree, he must prove that he is ready and willing to perform his part of the contract. The court may infer from the facts and circumstances whether the plaintiff was ready and was always ready to perform his contract.

17. In N.P. Thirugnanam v. R. Jagan Mohan Rao [N.P. Thirugnanam v. R. Jagan Mohan Rao, (1995) 5 SCC 115] , it was held that continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant of the relief of specific performance. This circumstance is material and relevant and is required to be considered by the court while granting or refusing to grant the relief. If the plaintiff fails to either aver or prove the same, he must fail. To adjudge whether the plaintiff is ready and willing to perform his part of the contract, the court must take into consideration the conduct of the plaintiff prior to and subsequent to the filing of the suit along with other attending circumstances. The amount of consideration which he has to pay to the defendant must necessarily be proved to be available.

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19. Similar view has been taken by this Court in *Manjunath Anandappa v. Tammanasa* [*Manjunath Anandappa v. Tammanasa*, (2003) 10 SCC 390] and *Pukhraj D. Jain v. G. Gopalakrishna* [*Pukhraj D. Jain v. G. Gopalakrishna*, (2004) 7 SCC 251] .

20. The judgment of this Court in *Umabai v. Nilkanth Dhondiba Chavan* [*Umabai v. Nilkanth Dhondiba Chavan*, (2005) 6 SCC 243] is almost similar to the case at hand where the plaintiff had filed a suit for specific performance of the agreement to re-convey property. The plea of the plaintiff was that the transaction was one of mortgage and

the sale stood redeemed and the plaintiff was discharged from the debt and he was ready to pay the defendant the amount for the property only in the alternative that the plea of mortgage was not accepted by the Court, would show that his readiness was conditional. The plaintiff did not have any income and could not raise the amount required for repurchase of the property. In the totality of the circumstances, it was held that the plaintiff was not ready and willing to perform the contract. The conditions laid for the specific performance of the contract are in para 30, which is as under: (SCC p. 256)

“30. It is now well settled that the conduct of the parties, with a view to arrive at a finding as to whether the respondent-plaintiffs were all along and still are ready and willing to perform their part of contract as is mandatorily required under Section 16(c) of the Specific Relief Act must be determined having regard to the entire attending circumstances. A bare averment in the plaint or a statement made in the examination-in-chief would not suffice. The conduct of the respondent-plaintiffs must be judged having regard to the entirety of the pleadings as also the evidence brought on record.”

21. *In the instant case, the plaintiff has alleged that he was ready to pay Rs 35,000 to the defendants and called upon them to execute the re-conveyance deed. However, in para 11 of the plaint it is pleaded that the plaintiff was running contract business wherein he suffered heavy loss and as such he gave up the business. It is also pleaded that at present the plaintiff has no business or profession and has no source of income. He has no property, either movable or immovable. Mere plea that he is ready to pay the*

consideration, without any material to substantiate this plea, cannot be accepted. It is not necessary for the plaintiff to produce ready money, but it is mandatory on his part to prove that he has the means to generate the consideration amount. Except the statement of PW 1, there is absolutely no evidence to show that the plaintiff has the means to make arrangements for payment of consideration under the reconveyance agreement.”

17. On a careful examination of the records, it is evident that the agreement, marked as Exhibit P1, explicitly stipulates that time was the essence of the contract. The agreement, dated 30.03.2012 (Ex.P1), clearly provides that the sale deed was to be executed within 45 days from the date of the agreement, i.e., on or before 14.05.2012. The plaintiff, however, did not approach the defendants or the Registrar's office for registration of the sale deed within the stipulated period. The notice issued by the plaintiff, dated 30.07.2012, falls well beyond the contractual period, and therefore cannot be considered as timely action in terms of the agreement. From the evidence on record, particularly the testimony of PW-18, it emerges that the plaintiff had full knowledge that the defendant appeared before the Registrar's office on 09.07.2012 for execution of the sale deed. The plaintiff admitted to having contacted the defendant telephonically regarding execution of the sale deed; however, the defendant did not receive the call. Despite this, the plaintiff failed to produce any documentary evidence demonstrating continuous readiness and

willingness to perform his obligations under the agreement. There is no proof of tendering the balance consideration or taking any substantial steps to comply with the contractual requirements within the prescribed period. It is further observed that the plaintiff admitted that no payment was made towards the balance consideration of Rs. 9,25,000/- as stipulated under the agreement. The source of funds for this amount was neither disclosed nor documented. The agreement had authorized the plaintiff to complete all necessary formalities for registration, and the defendants had duly prepared the requisite documents, including revenue records. The plaintiff himself acknowledged that time was the essence of the contract, and the defendants had repeatedly stated this condition. According to the evidence, the plaintiff failed to appear before the Registrar's office within the 45-day period and only issued a notice after the contractual period had expired. The plaintiff has not demonstrated readiness and willingness to pay the balance amount or perform his obligations within the agreed time. His conduct clearly indicates a lack of intention to complete the transaction in accordance with the contractual terms. Time being an essential condition of the agreement, the plaintiff's failure to act within the stipulated period disentitles him from claiming specific performance. Considering the above facts and evidence, it is clear that the trial court erred in holding that the plaintiff was ready and willing to perform the contract. The plaintiff neither acted within the prescribed period nor produced sufficient

evidence to show preparedness to complete the sale. Consequently, the trial court’s observation regarding readiness and willingness is unsustainable in law.

18. The plaintiff’s suit is hereby **dismissed** and as a result of which the present appeal filed by the defendants/respondents is hereby **allowed**. Decree be drawn accordingly, if required.

Sd/-

(Rajani Dubey)
Judge

Saxena

Sd/-

(Amitendra Kishore Prasad)
Judge

The date when the judgment is reserved	The date when the judgment is pronounced	The date when the judgment is uploaded on the website.	
05/12/2025	09/01/2026	Operative	Full
		09/01/2026	09/01/2026