IN THE HIGH COURT AT CALCUTTA
(CIVIL APPELLATE JURISDICTION)
APPELLATE SIDE

Present:
The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Supratim Bhattacharya

FA No. 102 of 2023

Sri Chandranath Dutta
Vs.
Smt. Dhira Mazumder and another

For the Appellant	:	Mr. A. C. Kar Mr. Manoj Kumar Roy Mr. Anirban Kar Mr. Rohit Mahato
For the Respondent No. 1 & 2	:	Mr. Ayan Banerjee Mr. Suman Banerjee
Heard On	:	16.07.2026
Reserved On	:	16.07.2026
Judgment On	:	29.07.2026

Supratim Bhattacharya, J.:

1. The present appeal has been preferred by the plaintiff /appellant being aggrieved by the judgment dated 18.12.2021 passed by the learned Civil Judge (Senior Divn.) 3rd Court Alipore in Title Suit No. 615 of 2016 (Sl. No. 39 of 2003) through the said judgment the learned Court has been pleased to dismiss the suit on contest against the defendant.

2. **Factual matrix**.

Before the Trial Court

The plaintiff /appellant has filed a suit for specific performance of contract alternatively for damages and recovery of part consideration and further damages valued at Rs. 24,50,000/- before the learned Civil Judge (Sr. Divn.) 3rd Court at Alipore, South-24-Parganas being Title Suit No. 39 of 2003 thereafter renumbered as 615 of 2016 praying for

a) Decree for specific performance of contract dated 15.05.2002 against the defendant calling upon the defendant to execute and register the deed of conveyance in favour of the plaintiff in respect of the suit property on receipt of the balance consideration and failing which to get the deed of conveyance executed and registered through court according to law on deposit of balance consideration money,

b) Decree for recovery of vacant possession of the suit property,

c) Decree of permanent injunction restraining the defendant from transferring , alienating and encumbering the suit property,

d) Alternatively a decree for damages and further damages for breach of contract,

e) For cost,

f) For interim injunction,

g) For such other relief or reliefs which the plaintiff is entitled in law and equity.

The defendant contested the said suit by filing written statement. Through the written statement the defendant has controverted and denied the contentions of the plaintiff made in the plaint.

On the basis of the contentions raised by the parties to the suit the following issues have been framed. Those are as follows:

ISSUES

1) Is the suit maintainable in its present form in law ?

2) Is there any cause of action to file the present suit ?

3) Is the agreement dated 15.05.2002 still subsisting ?

4) Is the plaintiff ready and willing to comply the terms of said agreement?

5) Is the plaintiff entitled to the decree of specific performance of contract as prayed for ?

6) To what other relief/reliefs the plaintiff is entitled to ?

The plaintiff himself namely Chandranath Dutta has adduced evidence. He has been cross-examined at length.

On behalf of the plaintiff the following documents have been exhibited :

I) Exhibit 1- Agreement for sale dated 15.05.2002.

II) Exhibit 2- Passbook in respect of a joint savings bank account of the plaintiff (Chandranath Dutta) and his wife (Anindita Dutta) in the UCO Bank Bowbazar branch, account No. 5983.

III) Exhibit 3- A letter dated 04.06.2003 issued by a learned Advocate representing the defendant /respondent namely Sanchayita Chaudhuri addressed to the plaintiff.

IV) Exhibit 4- Photo Copy of a letter dated 16.06.2003 issued by Messrs C. Kar the learned Advocate of the appellant.

On behalf of the defendants Amit Mazumder the constituted attorney of the defendants /respondents has adduced evidence.

The witness has proved the following documents which are as follows:

a) Exhibit A – General Power of Attorney dated 11.04.2016 issued by Smt. Dhira Mazumder in favour of Amit Mazumder.

b) Exhibit B – General Power of Attorney dated 28.10.2015 issued by Sri Abhra Mazumder in favour of Dhira Mazumder and Amit Mazumder.

c) Exhibit C – Original Aadhar card of Dhira Mazumder, Abhra Mazumder and Amit Mazumder.

d) Exhibit D – Cheque No. 211877 dated 15.05.2002 issued in the name of Smritimoy Mazumdar amounting Rs. 2,00,000/- issued by Indranath Dutta and Chandranath Dutta partners of Sani Trust.

After taking into consideration both oral and documentary evidence relied upon by both the parties the learned Trial Court has dismissed the suit on contest which is the bone of contention in the present first appeal.

<u>Submissions of the Ld. Counsels</u>

3. Mr. Kar, learned Senior counsel for the appellant during his exhaustive argument has placed the following:

i. That earnest money of Rs. 2,00,000/- have been paid by the plaintiff/appellant which has been mentioned in the agreement for sale under the heading “Memo. of consideration” wherein it has been mentioned that the vendor namely Smritimoy Mazumder has received Rs. 2,00,000/- from the within named purchaser being the part payment of the consideration money in the following manner that is by a cheque of the Standard Chartered Bank account No. 211877 dated 15.05.2002.

ii. He has further submitted that through the agreement for sale it has been admitted that the vendor agrees to sale and the purchaser agrees to purchase all that the land with the building being premises No. 154C, Rashbehari Avenue, P.S. Lake, Kolkata more fully and particularly described in the schedule free from all encumbrances subject to the approval of title by the vendor’s advocate for the price of Rs. 19,50,000/-.

iii. Ld. Senior Counsel has placed before the Court Section 54 of the Transfer of Property Act and has highlighted that the sale is a transfer of ownership in exchange for a price paid or promised or part paid and part promised.

iv. He has also brought to the notice of the Court Section 49 of the Registration Act, 1908 and has submitted that no document required by Section 17 of the said act or by any provision of the Transfer of Property Act, 1882 to be registered shall affect any immovable property comprised therein or confer any power to adopt or be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered provided that an unregistered document affecting immovable property and required by this act or the Transfer of Property Act, 1882 to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 or as evidence of any collateral transaction not required to be effected by registered instrument. Thus pressing upon the issue that though the present agreement for sale being unregistered can be taken into consideration under the Specific Relief Act.

v. The Ld. Senior Counsel has further submitted that though the agreement for sale is an unstamped one but it can be taken into consideration and has stressed upon the issue that the said document has been marked exhibit without any objection.

vi. The Ld. Senior Counsel has brought to the notice of the Court the averment made by the defendant through his written statement that the defendant has entered into an agreement on 15.05.2002 for the sale of premises No. 154C, Rashbehari Avenue, Kolkata - 700029 for a total consideration of Rs. 19,50,000/- only to the plaintiff.

vii. He has further relied upon the contention that before the execution of the agreement it was agreed between the parties that the plaintiff would pay a sum of Rs. 2,00,000/- as earnest money and the plaintiff had handed over an account payee cheque of Rs. 2,00,000/- at the time of execution of the agreement.

viii. The Ld. Counsel during his argument has relied upon a judgment of this Court in the case between ***A.E.G. Carapiet Vs. A.Y. Derderian*** published in ***1960 SCC Online Calcutta 44*** and has relied upon Paragraph 9 of the said judgment. The Ld. Senior Counsel has stressed upon the issue that wherever the opponent has declined to avail himself of the opportunity to put his essential and material case in cross -examination, it must follow that he believed that the testimony could not be disputed at all. He has further submitted that no suggestion was placed before the prosecution witness as regard to the issue of request not to encash the cheque and instead bank draft is to be paid. Relying upon the said judgment the Ld. Senior Counsel has emphasised that the respondent did not cross-examine the prosecution witness during his deposition as regards to the issuance of the cheque of Rs. 2,00,000/- as earnest money by the Sani Trust, so it signifies that the defendants/respondents have accepted the same as there has not been any cross-examination of the PW1 on this aspect.

ix. The Ld. Counsel has further placed before the Court the letter dated 16.06.2003 issued by Messrs C. Kar Solicitors and Advocates on behalf of the appellant/plaintiff and has emphasised on the point that the appellant/plaintiff was always ready and willing to pay the amount agreed to be paid under the agreement and has thus stressed upon the point that the appellant /plaintiff was always ready and willing to pay the remaining consideration amount.

Banking upon the aforementioned submission the Ld. Counsel has emphasised time and again that the appellant/plaintiff was always ready and willing to perform his part as such the impugned judgment of dismissal of the prayer of specific performance of contract is ought to be reversed and the present appeal is to be allowed.

4. *Per contra*, Mr. Banerjee the learned Counsel representing the respondents/defendants has controverted the submission made on behalf of the appellant by submitting the following:

i. The learned counsel has submitted that the agreement for sale was between two persons that is Smritimoy Mazumdar the vendor on the one part and Mr. Chandranath Dutta the intending purchaser on the other.

ii. He has thereafter submitted that the cheque for earnest money was issued by two partners (Indranath Dutta and Chandranath Dutta) of a partnership firm namely Sani Trust.

iii. He has also submitted that the defendant/respondent/ vendor had never entered into an agreement with a trust or partnership firm instead had entered into an agreement with a person namely Chandranath Dutta. So the issuance of cheque for earnest money by the two partners is nothing but utter violation of the agreement for sale.

iv. The learned counsel has further submitted that Section 17 of the Registration Act, 1908 clearly states in detail that non-testamentary instrument which purport or operate to create, declare, assign, limit or extinguish whether in present or in future any right, title or interest whether vested or contingent, of the value of one hundred rupees or upwards, to or in immovable property shall be registered. He has further submitted that the present agreement for sale is an unregistered and unstamped agreement (on a stamp paper of Rs. 10/-) for sale as such the same cannot be relied upon and cannot be made a basis for specific performance of contract.

v. The Ld. Counsel has further submitted that the plaintiff appellant/ purchaser was never ever ready and willing to play his part to give effect to the agreement for sale. In this regard the Ld. Counsel has placed before the court the savings bank account in the name of the appellant/plaintiff and his wife and has brought to the notice of the court that during the entire period between the agreement for sale till the filing of the suit or thereafter that is till 20.02.2004 the plaintiff /appellant did not have the requisite amount of money which was required for the payment of consideration amount. So the Ld. Counsel has submitted that the intending purchaser /appellant was never ever ready and willing to give effect to the agreement for sale.

vi. As regards to the issue of willingness to give effect to the agreement for sale the learned advocate has further submitted that the intending purchaser was never willing to give effect to the agreement for sale. He has submitted that in the agreement for sale it has been mentioned that the balance consideration money will be paid within eight months from the date of execution of the agreement and/or at the time of the execution and registration for the necessary conveyance for sale and the vendor will be bound to effect registration of the deed of conveyance at the cost of the purchaser immediately after the execution of the deed of conveyance within such time of eight months.

vii. The Ld. Counsel has placed the letter issued by the Ld. Advocate representing the intending purchaser and submitted that the said letter has been issued on 16.06.2003 that is after more than a year from the date of agreement for sale dated 15.05.2002. Stressing upon this point the Ld Counsel has reiterated that the intending purchaser was never ready and willing to perform his role as regards to the performance of contract. In this regard the Ld. Counsel has relied upon a judgment of the Hon'ble Apex Court in the case between ***Mohammed Khaleel (D) Through Lrs and Others Vs. Jayamma*** reported in ***2026 SCC Online SC 1191*** and has relied upon Paragraphs No. 30 and 35 of the said judgment. He has submitted that the term 'readiness' refers to the financial capacity and the term 'willingness' reflects the conduct and intention of the party seeking the relief to perform the contract. He has further submitted that financial readiness should be during the relevant period that is from the date of the agreement till the filing of the suit.

viii. The Ld. Counsel has further submitted that though it is not mentioned in the agreement for sale that time is not the essence of the contract but it is fact that in the said agreement for sale eight months had been mentioned, it signifies that time was the essence of contract.

Banking upon the aforementioned submission the Ld. Counsel has reiterated that the intending purchaser/appellant had never been ready and willing to perform his part of the contract and as such the appellant/plaintiff is not at all entitled to the prayer sought for by him as regards to specific performance of the contract. Thus the Ld. Counsel has submitted that the impugned judgment dismissing the prayer for specific performance of the contract passed by the Trial Court is correct and is not to be interfered with.

5. From the submission of the Ld. Counsels it transpires that the following points are required to be considered which are as follows:

i) Whether the agreement for sale dated 15.05.2002 though being not properly stamped and unregistered can be taken into consideration for the purpose of specific performance of contract?

ii) Whether the plaintiff /appellant is entitled to have a decree of specific performance of contract ?

Analysis

6. *Regarding point No.1:*

Whether the agreement for sale dated 15.05.2002 though being not properly stamped and unregistered can be taken into consideration for the purpose of specific performance of contract?

As regards to the first point, it is fact that Section 54 of the Transfer of Property Act lays down the definition which is as follows:

"54. "Sale" defined.—

"Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

It also lays down how sale can be made.—Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument. In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property. Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

As regards to contract for sale it has been laid down.—A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties. It does not, of itself, create any interest in or charge on such property."

To have a clear picture as regards to registration of a document the two sections that is Section 17 and Section 49 of the Registration Act are to be read conjointly.

Section 17(1) of the Registration Act, 1908 states the following:

"17. Documents of which registration is compulsory.

(1)The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely,

(a)instruments of gift of immovable property

(b)other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;

(c)non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and

(d)leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;

(e)[non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property:] "

Section 49 of the Registration Act, 1908 lays down as follows:

"49. Effect of non-registration of documents required to be registered.

- No document required by section 17 [or by any provision of the Transfer of Property Act, 1882] to be registered shall

(a) affect any immovable property comprised therein, or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:

[Provided that an unregistered document affecting immovable property and required by this Act, or the Transfer of Property Act, 1882, to be registered may be received as evidence of a

> *contract in a suit for specific performance under Chapter II of the [Specific Relief Act, 1877], or as evidence of any collateral transaction not required to be effected by registered instrument.]"*

Thus, as per Section 49 of the Registration Act, 1908 unregistered agreement for sale can be received as evidence of a contract in a suit for specific performance.

Insofar as the issue of the agreement being insufficiently stamped is concerned, despite the defendants having not raised any specific objection in that regard at the time of exhibiting the same, it was the duty of the Court to ensure that proper stamp duty is paid before passing a decree on the basis of the agreement.

However, this deficiency could be cured by the Court by directing impoundment of the agreement before passing the final decree. Thus, mere insufficiency of stamp could not be an insurmountable impediment in passing a decree of specific performance of the agreement.

So the agreement for sale dated 15.05.2002 can be taken into consideration in this present lis though being an unregistered and insufficiently stamped one.

7. Regarding point No.2:

Whether the plaintiff /appellant is entitled to have a decree of specific performance of contract ?

From the said agreement for sale it transpires that the total consideration amount for sale of the suit property was agreed at Rs. 19,50,000/- and for the sake of argument if it is taken into consideration that Rs. 2,00,000/- had been paid as earnest money so the remaining amount of Rs. 17,50,000/- ought to have been paid by the intending purchaser/appellant. From the Exhibit-2 that is the statement of accounts in respect of the joint savings bank account, in the name of Chandranath Dutta (appellant) and his wife (Anindita Dutta), in the UCO Bank Bowbazar branch, it transpires that since the date of agreement for sale that is 15.05.2002 till 20.02.2004, that is beyond the date of institution of the suit filed during the year 2003, the appellant /plaintiff did not ever have sufficient amount that is Rs. 17,50,000/- in the bank account. The appellant himself has produced this bank account and has proved and exhibited the same, apart from this the appellant has not proved any other bank account.

On behalf of the appellant it has also not been argued that the appellant had been arranging for any loan from any bank or any institution.

So it transpires that the appellant was not ready to pay the balance consideration amount of Rs. 17,50,000/- to the vendor during the entire period extending from the date of execution of agreement for sale till the institution of the suit.

If a person is not having sufficient fund at his disposal then in spite of his willingness the said person cannot perform the act which he intends to perform. In this case the appellant /plaintiff even for the sake of argument if it is taken into consideration that he had the willingness to purchase the property he did not possess the capacity to purchase the same as such the issue of readiness goes against the intending purchaser herein the appellant/plaintiff .

As regards to the issue of willingness, in this present case the intending purchaser/appellant/plaintiff issued a letter through his Ld. Advocate which has been dated 16.06.2003 stating that the appellant /plaintiff is ready and willing to pay the amount agreed to be paid under the agreement but in view of the attitude displayed by the respondent /defendant the appellant/plaintiff has been advised to file the suit for specific performance of the contract. So during the entire period of eight months since the execution of the agreement for sale the appellant/intending purchaser never showed his willingness to perform his part of the contract. On the contrary it is through the letter dated 16.06.2003 the appellant has expressed about his willingness to pay the agreed amount and in addition to that has stated that the appellant has been advised to file a suit for specific performance of the contract.

So since the date of agreement for sale till eight months thereafter or thereafter the appellant/intending purchaser was neither ready nor willing to play his part to give effect to the fulfilment of the agreement for sale. In this context this Court relies upon Paragraphs 29, 30 and 37 of the judgment of the Hon'ble Apex Court passed in the case of ***Mohammed Khaleel (supra)*** which states as follows:

> ***"<u>The Statutory mandate of 'readiness and willingness' and its continuing nature</u>***
>
> ***29.*** *The relief of specific performance is one based on equity for enforcing contractual obligations undertaken by the parties. Section 16(c) of the Specific Relief Act, 1963 (as it stood prior to the amendment dated 01.10.2018) required the person seeking specific performance to specifically aver and prove his continuous readiness and willingness to perform his obligations. A failure to satisfy these requirements would ultimately make him disentitled for the relief of specific performance.*
>
> ***30.*** *The term 'readiness' refers to the financial capacity, and the term 'willingness' reflects the conduct and intention of the party seeking the relief to perform the contract. Thus, both these conditions cumulatively have to be seen for making out a case of specific performance.*
>
> ***37.*** *In the present case, there is no material whatsoever to show that the appellant/plaintiff had the balance sale consideration available either at the time of execution of the agreement, within the stipulated period of four months for performance of the contract, or even at the time of filing of the suit in the year 1993. Thus, in our view, the High Court has rightly observed that the availability of funds must* be proved with reference to the relevant point of time and not by relying upon financial documents generated long after the filing of the suit.***"***

So this point of readiness and willingness as regards to the performance of the contract for sale goes against the appellant as from his statement of accounts it is apparent that he did not possess the consideration amount during the relevant period and it is also not the case of the appellant that he had made arrangement for any financial assistance from any bank or any financial institution.

8. <u>Conclusion</u>

In view of the above findings this Court does not find any error as regards to the inference reached at in the impugned judgment and decree whereby the Ld. Trial Judge has dismissed the suit on contest thereby refusing to grant specific performance of the agreement dated 15.05.2002.

Accordingly **FA 102 of 2023** is **dismissed on contest** thereby affirming the impugned judgment and decree dated 18.12.2021 passed by the Ld. Civil Judge (Sr. Divn.) 3rd Court, Alipore, South-24 Parganas in Title Suit No. 615 of 2016 (Sl. No. 39 of 2003).

There will be no order as to costs.

I Agree,

(Sabyasachi Bhattacharyya, J.)

(Supratim Bhattacharya, J.)