



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

SECOND APPEAL NO.276 OF 1994

Vishnu Ramkrishna Doiphode

...Appellant
(Org. Plaintiff)

-VERSUS-

Vitthal Bhau Doiphone, deceased
by his heirs

(A) Anjanabai Vithhal Doiphode
(B) Laxmibai Ambadas Walhekar
(C) Parubai Baba Aragade
(D) Shobha Sonyabapu Khandagale
(E) Suman Bhaginath Kardile

...Respondents
(Org. Defendant)

...
Advocate for the Appellant :- Mr. K. D. Bade Patil
Advocate for Respondent Nos.1(B) to 1(E) :- Mr. V. D.Sapkal, Sr.
Advocate, i/b Mr. S. R. Sapkal
Advocate for Respondent No.1 A : Mr. C. K. Shinde
...

CORAM : ROHIT W. JOSHI, J.

DATED : 27th FEBRAURY 2025

JUDGMENT :

1. The present Second Appeal is admitted vide order dated 06.09.1995 on the following substantial question of law:-

(i) Whether readiness and willingness of the plaintiff to

perform his part of the contract is not evident from his conduct and his pleading is substantial question of law.

2. The appellant is the original plaintiff. He had filed a suit for specific performance of contract against the defendant being Regular Civil Suit No.130 of 1980. Likewise the defendant had also filed a suit being Regular Civil Suit No.40 of 1981 against the plaintiff seeking cancellation of the agreement for sale. Learned Tribunal has decided both the suits together by consolidating them and recording common evidence. Both the suits are decided by common judgment dated 06.08.1984. The learned Trial Court has granted decree for specific performance in favour of plaintiff and has dismissed the suit for cancellation of agreement filed by the defendant. Aggrieved by the said decrees passed against him, the defendant filed two separate appeals being Regular Civil Appeal No.374 of 1984 challenging the decree for specific performance of contract passed in Regular Civil Suit No.130 of 1980 and Regular Civil Appeal No.432 of 1984 challenging the decree dismissing Regular Civil Suit No.40 of 1981 which was filed for cancellation of agreement. The learned First Appellate Court has partly allowed Regular Civil Appeal No. 374 of 1984 by substituting decree for specific performance of contract with a decree for refund of sale consideration of Rs.3,000/- with interest. As regards Regular Civil

Appeal No.432 of 1984, the appeal is dismissed. In such circumstances, the present appeal is filed by the original plaintiff challenging judgment and decree passed in Regular Civil Appeal No.374 of 1984 whereby decree for specific performance of contract came to be refused and decree for refund of part sale consideration which was paid is granted. It will be pertinent to mention that the defendant has not challenged decree passed in Regular Civil Appeal No.432 of 1984 which came to be dismissed.

3. The plaintiff and defendant have entered into agreement for sale dated 04.11.1977 with respect to suit property for a consideration of Rs.11,725/-. It is necessary to mention that the plaintiff had earlier advanced a sum of Rs.5,000/-, initially a sum of Rs.4,000/- followed by an amount of Rs. 1,000/- to the defendant. The defendant has executed two documents of mortgage by conditional sale dated 26.03.1974 for a sum of R.4,000/- and 10.05.1974 for a sum of Rs.1,000/-. On 04.11.1977 i.e. the date of agreement for sale the plaintiff had paid a sum of Rs.2,500/- to the defendant. Amount of Rs. 5,000/- paid earlier in the year 1974 was also treated as a part of sale consideration. Thereafter, the plaintiff has paid a sum of Rs.500/- to the defendant on 31.01.1978 which is also admitted by the defendant. It must also be mentioned that the case of the defendant as regards the agreement to

sale dated 04.11.1977 is that the said agreement was executed as a collateral security for repayment of loan of Rs.7,500/- and that the said agreement for sale was never intended to be acted upon. In other words, the case of the defendant is that the agreement for sale dated 04.11.1977 is a sham document which was created in order to camouflage the loan transaction.

4. The plaintiff claims that he had tried to contact the defendant on several occasions requesting him to sell the suit property in compliance of the aforesaid agreement. However, since the defendant avoided to execute the sale deed, the plaintiff issued a notice dated 25.05.1978 calling upon the defendant to receive the balance sale consideration and to execute the sale deed with respect to suit property in his favour.

5. Since the defendant did not execute the sale deed the plaintiff has filed suit for specific performance of contract against the defendant being Regular Civil Suit No.130 of 1980. After the said suit was filed the defendant has also filed a suit for cancellation of the agreement being Regular Civil Suit No.40 of 1989. As stated above, both the suits were clubbed together and tried together. Based on rival pleadings issues were framed and the parties led evidence on the issues so framed. After recording the evidence and hearing rival arguments the

learned Trial Court was pleased to allow the suit for specific performance of contract filed by the plaintiff thereby directing the defendant to execute sale deed with respect to suit property in favour of the plaintiff by accepting the balance sale consideration of Rs.3,725/- on or before 10th September 1984. As regards the suit of defendant, the same was dismissed. The learned Trial Court has recorded that the plaintiff had proved his case by leading proper evidence. It is held that ingredients of Section 16(c) of the Specific Relief Act with respect to pleadings and evidence regarding readiness and willingness were fully satisfied by the plaintiff.

6. As stated above, the defendant carried both these decrees in Appeal under Section 96 of the Code of Civil Procedure, 1908 before the District Court. The learned Fourth Additional District Judge, Ahmednagar decided both the Appeals by a common judgment. The learned First Appellate Court has dismissed the Appeal arising out of Suit filed by defendant for cancellation of agreement. However, as regards the appeal arising out of suit for specific performance of contract, the learned first appellate court has held that the pleadings in the plaint did not specify the requirements of Section 16(c) of the Specific Relief Act and therefor decree for specific performance could not have been granted. Accordingly, the decree for specific performance

was set aside and instead relief of refund of Rs.3,000/- along with interest was granted. In such circumstances, the present Second Appeal has been filed by the original plaintiff in which the question of law quoted above has been framed vide order dated 06.09.1995 while admitting the appeal.

7. The learned Advocate for the appellant Mr. K. D. Bade Patil contends that the plaint averments were sufficient to meet the requirement of Section 16(c) of the Specific Relief Act. He has drawn my attention to the plaint to demonstrate that out of total sale consideration of Rs.11,725/-, sum of Rs.8,050/- was already paid and the plaintiff was repeatedly requesting the defendant to execute sale deed of the suit property in his favour. He points out that it was further pleaded that since the defendant avoided to execute the sale deed, legal notice was issued on 25.05.1978 for the said purpose. He then states that since the legal notice also did not serve the purpose, ultimately the civil suit was filed on 11.07.1980. His contention with respect to pleadings is that the form of pleadings should not be seen. The pleadings are required to be meaningfully interpreted. He contends that the pleadings if meaningfully interpreted would clearly indicate that the plaintiff has categorically averred that he was always ready and willing to perform his part of the contract. He further draws attention

to the evidence to demonstrate that statement regarding readiness and willingness is made by the plaintiff in his examination in chief and that the said statement is not even challenged in the cross examination. He has also drawn my attention to the plaint in civil suit filed by the defendant, wherein, it is stated that the plaintiff was a man of means. He sums up the contention stating that the pleadings in the plaint and conduct of the plaintiff clearly signifies readiness and willingness. According to him, the pleadings and evidence on record are sufficient to satisfy the mandate of Section 16(c) of the Specific Relief Act.

8. Per contra, Mr. V. D. Sapkal, the learned Senior Advocate for the respondent contends that the plaintiff had two financial obligations under the agreement, firstly to make payment of balance sale consideration and secondly to make payment of half of the charges towards stamp duty and registration charges for the sale deed. He contends that there is no statement in the plaint to the effect that plaintiff was ready to bear half of the stamp duty and registration charges. He also submits that the plaint averments at best will demonstrate readiness and willingness on the part of plaintiff till the date of issuance of notice and that after the date of issuance of notice, there is no statement in the plaint to infer readiness and willingness on the part of plaintiff. According to him, the plaint averments do not

disclose continuous and uninterrupted readiness and willingness on the part of plaintiff to perform his part of the contract from the date of agreement till final adjudication of the Suit. As regards the evidence, he states that the plaintiff has failed to produce any documents on record to demonstrate his capacity to discharge financial obligations under the agreement. He has placed strong reliance on the judgment of the Hon'ble Supreme Court in the matter of *U. N. Krishnamurthy V/s. A. M. Krishnamurthy* reported in (2023) 11 SCC 775 in support of his contention.

9. I have heard the respective submissions as above. I have perused the pleadings of the parties, their depositions on record, the exhibited documents and judgments delivered by the learned Trial Court and learned First Appellate Court. The plaint averments indicate that the plaintiff has initially made averments about amount of Rs. 5,000/- advanced by him to the defendants and the two documents of mortgage by conditional sale executed by the defendant in his favour. The plaintiff then states that the defendant had decided to sell the suit property and had approached him in that regard. It is averred that the parties arrived at agreement under which plaintiff was to purchase and defendant was to sell the suit property for a consideration of Rs.11,725/- and further that the amount of Rs.5,000/- received by the

defendant earlier was to be adjusted towards the total sale consideration. The plaintiff has stated that on 04.11.1977, at the time of execution of the agreement, he had paid a further sum of Rs.2,500/- to the defendant and thereafter a further amount of Rs.500/- on 31.01.1978 on the request of the defendant. He has alleged that thereafter a small amount of Rs.50/- was also paid to the defendant at his request. He has thereafter stated that he was persuaded the defendant to execute the sale deed in his favour time and again, however, since the defendant avoided he was constrained to issue a legal notice and the suit was being filed because the defendant did not execute the sale deed despite receiving the notice. Since, the controversy in the matter pertains to the pleadings, it will be appropriate to reproduce relevant portion from the plaint which is referred and reproduced by the learned First Appellate Court, which reads as under :-

“Thereafter, the plaintiff asked the defendant several times to register the permanent purchase deed of the disputed land by taking the remaining Rs. (3675) Three Thousand Six Hundred Seventy Five remaining with the plaintiff as the price of the land and registering it in writing, but the defendant refused to do so. Thereafter, the plaintiff served a notice through his lawyer on 25th May 1978 and informed him to register the permanent purchase deed of the land immediately by taking the remaining Rs. (3675)/- Three Thousand Six Hundred Seventy Five with the plaintiff as the price of the land, but the defendant did not execute sale deed of the said property in favour of the plaintiff, therefore, the plaintiff's suit is to register the purchase deed of the disputed land in the name of the plaintiff as per the agreement made with the plaintiff.”

10. The plaint averment as quoted above convey that according to the plaintiff he had made repeated inquiries from the defendant with respect to execution and registration of the sale deed in his favour by accepting balance sale consideration of Rs. 3,675/-, however, the defendant gave evasive replies and avoided to do the needful. Therefore, the plaintiff issued legal notice on 25.05.1978 and informed the defendant to receive the balance sale consideration of Rs.3,675/- from the plaintiff and immediately execute the sale deed with respect to suit property in his favour. Since the defendant did not execute sale deed with respect to suit property in favour of the plaintiff, he was constrained to file the suit for execution of sale deed with respect to suit property in his favour as per the agreement executed between plaintiff and defendant.

11. These pleadings according to the learned Trial Court were sufficient to satisfy the requirement of Section 16 (c) of the Specific Relief Act. The learned Trial Court has also referred to the evidence and has arrived at a satisfaction that the suit for specific performance was required to be decreed.

12. However, the learned First Appellate Court has found that the pleadings only suggested readiness and willingness on the part of the

plaintiff till the date of issuance of notice and that there was no statement in the plaint as regards readiness and willingness on the part of the plaintiff to perform his part of the contract from the date of issuance of legal notice till the date of filing of suit. In that view of the matter, the learned First Appellate Court reversed the decree for specific performance of contract and passed a judgment for refund of sale consideration.

13. In my considered opinion, the learned First Appellate Court has adopted a hyper technical approach. Section 16(c) does not require the plaintiff to reproduce the words mentioned in the section itself in the plaint. All that is required is, intention should be conveyed by the plaintiff as regards readiness and willingness to perform his part of the contract. It will be appropriate to refer the judgment of the Hon'ble Supreme Court in the matter of *Syed Dastagir Vs. T. R. Gopalakrishna Setty*, reported in (1999) 6 SCC 337, wherein the Hon'ble Supreme Court has observed that although section 16(c) of the Specific Relief Act is a mandatory provision, the section does not require that the plaintiff must use specific words mentioned in the section, in the plaint. The Hon'ble Court has held that pleadings are merely expression of thoughts through words which are at times precise and at times vague. However, if the intention can be gathered by reading of the pleadings,

that by itself should be sufficient. These observations have been made in the context of a suit for specific performance of contract. It will be profitable to reproduce paragraphs Nos.9, 12 and 13 for ready reference:-

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 confirm 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 ones case for a relief. Such an expression may be pointed, precise, some times 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 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.*

12. *In interpreting a pleading wherever there be two possible interpretations, then the one which defeats justice should be rejected and the one which subserves to justice should be accepted.*

13. *It was held in the case of R. C. Chandiok V. Chuni Lal Sabharwal, that readiness and willingness cannot be treated as a strait-jacket formula. This has to be determined from the entirety of the facts and circumstances relevant to the intention and conduct of*

the party concerned. Finally, we have no hesitation to hold that the pleading as made by the plaintiff not only shows his readiness and willingness to perform his part of the obligation under the contract but by tendering the total amount shows he has performed his part of the obligation. We also construe such a plea to be a plea of "readiness and willingness" as required under Section 16(c). In view of the aforesaid findings we hold that the High Court committed an error by defeating the claim of the plaintiff on the basis of a wrong interpretation of his plea in terms of the said Section.

14. What is apparent from the facts of the case is that the plaintiff has averred that he tried to contact the defendant repeatedly for execution of sale deed, he also issued a legal notice, and on failure on the part of defendant to comply, the plaintiff filed suit for specific performance of contract. This in my mind is sufficient to satisfy the ingredients of Section 16 so far as pleadings are concerned. The last sentence in the quoted extract of plaint which is referred to by the learned First Appellate Court clearly conveys readiness and willingness on the part of the plaintiff after issuing the legal notice.

15. In my considered opinion the learned First Appellate Court has taken a hyper technical view while interpreting the pleadings. The interpretation of pleadings by the trial court is reasonable and in accordance with the settled legal principals with respect to law of pleadings. The conclusion drawn by the learned First Appellate Court that pleadings convey readiness and willingness only till the date of issuance of notice dated 25.05.1978 and not thereafter is recorded without taking into consideration the averment in plaint that because

the defendant did not execute sale deed despite receiving the notice, the plaintiff was constrained to file the suit for specific performance.

16. Apart from the pleadings, the learned Senior Counsel for the respondent has also vehemently contented that there is no evidence worth mentioning to demonstrate that the plaintiff had financial capacity to perform his financial obligation under the contract. The learned senior Counsel contends that there is no material to prove that the plaintiff was ready and willing to pay the balance sale consideration to the defendant in terms of the contract. Mr. Sapkal contends that readiness implies financial capability which could be proved only by producing documents such as Bank Statements etc. He contends that since the plaintiff has not produced any such documents showing his financial capability, the decree for specific performance of contract could not have been granted.

17. At the outset, it must have mentioned that the suit for specific performance of contract and the suit for cancellation of contract filed by the defendant have been tried together. The defendant has made a statement in paragraph 2 of the plaint that the plaintiff is a rich person who is engaged in business of money lending although without a license. The said statement in the plaint of the Suit filed by the

defendant by itself is sufficient to hold that the plaintiff was a man of means. It will be profitable to refer to the judgment of the Hon'ble Supreme Court in the matter of ***Nagindas Ramdas Vs. Dalpatram Ichharam alias Brijram and Ors.*** reported in (1974) 1 SCC 242, wherein the Hon'ble Supreme Court has referring to admissions in the pleadings observed as under :-

“27. ... Admissions, if true and clear, are by far the best proof of the facts admitted. Admissions in pleadings or judicial admissions, admissible under Section 58 of the Evidence Act, made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary admissions. The former class of admissions are fully binding on the party that makes them and constitute a waiver of proof. They by themselves can be made the foundation of the rights of the parties. On the other hand, evidentiary admissions which are receivable at the trial as evidence, are by themselves, not conclusive. They can be shown to be wrong.”

18. Apart from this, it also needs to be mentioned that the plaintiff has made a categorical statement in the examination in chief that he was ready and willing to pay the balance consideration in order to obtain sale deed of the suit property. This statement is not challenged by the defendant in the cross examination of the plaintiff. It is well settled that when a statement made in examination-in-chief is not challenged during the course of cross-examination of the witness, it is deemed that the other party admits and accepts the correctness of the statement made in examination-in-chief. The emphasis in the cross examination was to try to establish that the agreement in question was

in fact a camouflage for mortgage.

19. It will also be pertinent to mention that it is not even the case of the defendant that the plaintiff did not have the means to discharge his financial obligations under the agreement. It needs to be mentioned that out of the total sale consideration of Rs.11,725/-, sum of Rs.8,000/- was admittedly received by the defendant, amount of Rs.3,275/- merely was remaining.

20. It is now well settled by a catena of judgments that the plaintiff in a suit for specific performance must not demonstrate that he was always having the necessary cash amount in order to make payment of balance sale consideration to satisfy the ingredients of Section 16(c). The over all conduct of the plaintiff needs to be seen to determine as to whether who was ready to willing to perform his part of the contract. The plaintiff in the present case is a man of means according to the defendant himself. The plaintiff has paid around more than 2/3rd of the sale consideration. The conduct of plaintiff demonstrates eagerness on his part to complete the transaction. In my considered opinion, the plaintiff has satisfactorily proved that he was all the while ready and willing to perform his part of the contract.

21. The Hon'ble Supreme Court in the matter of ***Mrs. A. Kanthamani V/s. Mrs. Nasreen Ahmed*** reported in (2017) 4 SCC 654 has held that it is not necessary for the plaintiff to be always possessed with funds or to demonstrate that he was always having the money to perform his part of the contract. It will be pertinent to mention here that in the said case more than 50% of the sale consideration was already paid by the plaintiff. Similar is the case in the present appeal where the appellant had paid more than 2/3rd of the total agreed sale consideration. The present case stands on a higher pedestal because financial capability of the plaintiff was never challenged either in the written statement or in cross examination and further in the suit filed by the defendant, the said fact was admitted in the plaint itself.

22. In the judgment relied upon by learned Senior Counsel Mr.Sapkal, the agreement for sale was for total consideration of Rs.15,10,000/-. Out of which the plaintiff had paid an amount paltry sum of Rs. 10,001/- to the defendant towards advance. The balance sale consideration was to be paid at the time of sale deed. In this context the Hon'ble Supreme Court has held that it is necessary for the plaintiff to plead and prove that he was equipped with adequate funds to discharge his part of the contract. Out of the total sale consideration of Rs.11,725/-, the plaintiff has already paid a sum of Rs.8,000/-. He

has demonstrated his intention to pay balance sale consideration to get the sale deed executed in his favour. He is undisputedly a man of means. In that view of the matter in my considered opinion the contention of Mr. Sapkal as regards failure on the part of the plaintiff to prove his readiness and willingness is required to be rejected.

23. It also needs to be mentioned that whereas the learned Counsel for the appellant has raised issue about failure on the part of the appellant to produce any documentary evidence such as bank account statement etc. to demonstrate his financial capabilities. The defendant also did not issue any notice for production of documents while the suit was pending. In such circumstances, as has been held by the Hon'ble Supreme Court in the matter of *Basavaraj Vs. Padmavathi & Anr.* reported in 2023(2) MHLJ 645, adverse inference cannot be drawn against the appellant for not producing documentary evidence regarding financial capabilities on record, particularly, in view of the fact that financial capability was not disputed and was rather admitted.

24. It is well settled that a decree for specific performance is a matter of discretion of the Court. The learned Trial Court has exercised this discretion in granting decree for specific performance of contract. The discretion exercised by the Trial Court can call for interference by the

learned Appellate Court only when discretion is not exercised in accordance with law. When an Appellate Court interferes with discretionary orders or decrees passed by Trial Courts it is necessary to deal with the reasons that weigh with the Trial Court in passing the order. The learned First Appellate Court has reversed the discretionary relief of specific performance granted by the learned Trial Court without dealing with the reasons recorded by the learned Trial Court in its judgment. As is held by the Hon'ble Supreme Court in the case of *Santosh Hazari Vs. Purushottam Tiwari (Dead) by Lrs.* reported in (2001) 3 SCC 179, while writing a reversing judgement it is duty of the Appellate Court to come to close quarters with the reasons recorded by the Trial Court while granting relief. This duty needs to be followed with a greater rigor in appeals arising out of reliefs granted by Trial Court in exercise by their discretion. The learned First Appellate Court has not dealt with the reasons recorded by the learned Trial Court while passing the decree for specific performance of contract. The learned First Appellate Court has clearly erred in this regard.

25. In view of the reasons recorded above, in my opinion, the substantial question of law needs to be answered in favour of the appellant/plaintiff. The pleadings and conduct of the appellant/plaintiff as is established from the evidence on record is sufficient to infer that

the appellant/plaintiff was ever ready and willing to perform his part of the contract and is entitled to decree for specific performance of contract. In the result, the Second Appeal is allowed in the following terms:-

- (i) The judgment and decree dated 18.07.1994 passed by the learned Fourth Additional District Judge, Ahmednagar in Regular Civil Appeal No.374 of 1984 is quashed and set aside.
- (ii) The judgement dated 06.08.1994 passed by the learned Joint Civil Judge Junior Division, Shevgaon in Regular Civil Suit No.130 of 1980 is restored.
- (iii) Parties to bear their own costs.

[ROHIT W. JOSHI J.]

Narwade