

**(2012) 11 DEL CK 0054**  
**In the Delhi High Court**  
**Case No : CS (OS) 1589 of 2000**

Anil Sharma and Others

APPELLANT

Vs

Maresh Dass Thru Lr's and Others

RESPONDENT

**Date of Decision :** 23-11-2012

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2  
Land Acquisition Act, 1894 — Section 17, 4, 6  
Specific Relief Act, 1963 — Section 16  
Transfer of Property Act, 1882 — Section 53A  
Urban Land (Ceiling and Regulation) Act, 1976 — Section 16, 17, 4

**Citation :** (2012) 11 DEL CK 0054

**Hon'ble Judges :** V.K. Jain, J

**Bench :** Single Bench

**Advocate :** Amit S. Chadha with Mr. V.C. Rishi and Ms. Mukta Sharma, for the Appellant; Arun Mohan, with Ms. Shalini Kapoor, for D-3 to 19 and Mr. Ajay Verma, for D-20 to 22, for the Respondent

**Final Decision :** Dismissed

## Judgement

V.K. Jain, J.

IA 7137/2000(O. XXXIX R.1 & 2 CPC) in CS(OS) No. 1589/2000

1. This is a suit for declaration, injunction and specific performance of an agreement stated to have been executed by defendants No. 1 to 19 in favour of the plaintiffs. The case of the plaintiffs in this regard is that land measuring 11 bighas, 17 biswas comprised in Khasra No. 127(1-12), 128(3-03), 131(3-18) and 186/133(2-19) situated in the Revenue Estate of Village Kalu Sarai, Old Mehrauli Road, presently known as 4, Aurbindo Marg, New Delhi, was owned by late Shri Parmeshwari Dass and on his death, it devolved on his five legal heirs, namely, Mahesh Dass, Damodar Dass, Shiv Charan Dass, Ganesh Dass and Durga Rani. It is further alleged that the suit land was notified u/s 4 of the Land Acquisition Act followed by declaration u/s 6 of the said Act. The land, however, came to be

released from execution on 23rd September, 1986. It is stated in para 10 of the plaint that after the suit land was released from acquisition, defendants No. 1 to 19 approached plaintiffs No. 1 and 2 for selling the same to them for a consideration of Rs. 5 crores, for the land as well as the super-structure existed on it. It is further alleged that defendants No. 1 to 19 agreed to sell the aforesaid land for the price of Rs. 5 crores and the plaintiffs paid Rs. 2.95 crores to them as part-payment between September, 1987 to July, 1989. Another notification under Sections 4 & 17 of the Land Acquisition Act came to be issued on 19th February, 1990, which was challenged in this Court by way of a writ petition. It is stated in para 15 of the plaint that in continuation of the earlier agreement, another document dated 3rd January, 1994 was executed between plaintiffs No. 1 & 2 and defendants No. 1 to 19 whereby plaintiff No. 3 was also inducted as a purchaser in respect of half of the suit land and the plaintiffs made further payment of Rs. 50,99,000/- between 3rd January, 1994 to 5th January, 1994, thereby raising the total amount paid by them to Rs. 3.50 crores. The balance amount was agreed to be paid at the time of registration of the sale deed. According to the plaintiffs, they kept on making payment even after execution of the document dated 3rd January, 1994 and made further payment of Rs. 49,98,000/- to the defendants in the year 1995. They also claimed to have paid Rs. 50 lakhs to the defendant towards expenses to be incurred for obtaining requisite permissions from the concerned authorities. Vide notice dated 14th January, 1998, defendants No. 1 to 19 revoked the agreements and documents which they had executed and those documents included the General Power of Attorney dated 17th August, 1991 in favour of defendant No. 12-Shri Pradeep Kumar, whereby he had been authorized to execute a sale deed in favour of plaintiff No. 1. It was further stated in the notice that the money which the plaintiffs had paid to defendants 1 to 19 stood forfeited.

2. The plaintiffs have sought a declaration that the Agreement to Sell dated 3rd January, 1994 and the Power of Attorneys dated 8th August, 1991 and 17th August, 1991 are valid. They have also sought specific performance of the Agreement to Sell dated 3rd January, 1994, besides injunction restraining defendants No. 1 to 19 from creating third party interest in the suit property.

3. In their written statement, defendants No. 3 to 7 and 9 to 19 have taken a preliminary objection that the suit is barred by limitation and that the plaintiffs were never ready and willing to perform their part of the agreement and committed its breach by not fulfilling their promise and not making payment in terms of the said Agreement. It is alleged that the plaintiffs induced the defendants to enter into Agreement dated 3rd January, 1994 and certain earlier agreements on the strength of misrepresentations and false assurance that they would remove the deficiencies/discrepancies mentioned in para 3 of the written statement. These deficiencies according to the defendants included notification issued under Sections 4, 16 and 17 of Urban Land (Ceiling and Regulation) Act, 1976. The defendants have denied having received Rs. 2.95 crores from the plaintiffs between September, 1987 to July, 1989. The defendants admit having

received Rs. 1,04,50,000/- from the plaintiffs and claim to have forfeited the said amount, on account of breach of the agreement on the part of the plaintiffs. This is also the case of these defendants that after terminating the agreement with the plaintiffs, they had entered into agreements with defendants No. 21 and 22, namely, Mr. Arun Goyal and Mr. Sandeep Goyal.

It is also stated in the written statement that the notifications issued under Sections 4 and 17 of the Land Acquisition Act were challenged by defendants No. 20 and 21 by way of CWP 1289 of 1990 filed in this Court and this Court directed maintenance of status quo with respect to possession of the suit land. Thereafter, sometime in March, 1991, plaintiff No. 1 Anil Sharma approached the sons and daughter of late Shri Parmeshwari Dass offering to purchase the suit property for a consideration of Rs. 2 crores. He represented to them that he had contacts and was representing very powerful political persons and, therefore, would be able to have the suit property de-notified and would also have other obstacles removed so as to facilitate the sale of the suit property. Based upon these representations, the legal heirs of late Shri Parmeshwari Dass executed an undertaking dated 18th March, 1991 with plaintiff No. 1, whereby he undertook to remove/clear the deficiencies pointed out earlier at his own cost. According to these defendants, they had not received any amount till 18th March, 1991 when the aforesaid undertaking was executed. It is further stated in the written statement that plaintiff No. 1 paid a sum of Rs. 3,50,000/- to defendant No. 12-Pradeep Kumar on 25th March, 1992 and that was the first payment received by them as earnest money. Subsequently, plaintiff No. 1 brought into picture plaintiff No. 2 and both of them induced the defendants to execute an Agreement dated 20th April, 1993, which was signed by some of the owners of the suit property. Plaintiffs No. 1 and 2, according to the defendants, failed to remove the deficiencies or arrange requisite funds to meet their obligations and roped in plaintiff No. 3, whereupon another set of documents including an undertaking dated 30th December, 1993 and an Agreement to Sell dated 3rd January, 1994 were executed. The plea taken by these defendants is that to ensure faithful compliance of the Agreement dated 3rd January, 1994 within the stipulated period of one year, the plaintiffs asked them to sign documents which contained a deterrent in the form of mentioning receipt of an amount of Rs. 3 crores from the plaintiffs though in fact no such amount had been given and only a sum of Rs. 51 lakhs was paid on 3rd January, 1994 against proper receipts. It is further alleged that after getting the documents signed from the defendants, the plaintiffs started playing taunt with them and avoided contact with them. It is further stated that on 15th July, 1995, plaintiff No. 3 reluctantly made a further payment of Rs. 50 lakhs to the defendants, thereby raising the total amount paid by the plaintiffs to Rs. 1,04,50,000/-. According to the defendants, since the plaintiffs did not bother to perform their obligations and were not ready and willing to perform their part of contract, the Agreement dated 3rd January, 1994 automatically lapsed on expiry of one year, but as a matter of caution, they revoked the General Power of Attorney as well as all agreements vide notice

dated 14th January, 1998.

4. The first question which arises for consideration in this case is as to when the parties actually entered into an Agreement for Sale of the suit property to the plaintiffs. No specific date of the first agreement between the parties has been pleaded in the plaint. Since the plaintiffs are setting up payments of as much as Rs. 2.95 crores to the defendants between September, 1987 to July, 1989 and have expressly pleaded in para 10 of the plaint that they had offered Rs. 5 crores for the entire land with super-structure existed on it, the case of the plaintiffs seems to be that a verbal agreement was entered into between the plaintiffs No. 1 & 2 and the legal heirs of late Shri Parmeshwari Dass on or before September, 1987 for sale of the suit property to them for a consideration of Rs. 5 crores. The case of the defendants is that the first payment received by them from the plaintiffs was of Rs. 3,50,000/- which Shri Pradeep Kumar received from plaintiff No. 1 on 25th March, 1991. This was followed by an Agreement dated 20th April, 1993 between plaintiffs No. 1 & 2 and the defendants.

What is material is that there is no written agreement between the parties executed in or around September, 1987, for sale of the suit property to the plaintiffs. There is no explanation from the plaintiffs as to why they did not enter into a written agreement with the defendants before making payment of as much as Rs. 2.95 crores to them from time to time between September, 1987 to July, 1989. In fact, no specific date of any oral agreement between the parties has been pleaded. The defendants have placed on record an Agreement to Sell dated 24th September, 1991 purporting to be signed by defendant No. 12- Pradeep Kumar and plaintiff No. 1 - Shri Anil Sharma. The plaintiffs are not disputing the signatures of Anil Sharma on this document. In this document, there is absolutely no reference to any previous agreement, oral or written, between the parties. In the ordinary course of events, if there is an oral agreement followed by a written Agreement, there would be reference to the oral agreement, in the written Agreement. At this stage, there is no explanation as to why no reference to the oral agreements was made while executing the Agreement to Sell dated 24th September, 1991. Mr. Chadha, learned senior counsel for the plaintiffs, states that the explanation is that the payment was made in cash. To my mind, this is not a plausible explanation. Had there been a pre-existing oral agreement, in the ordinary course of events, that would have found reference in the Agreement to Sell dated 24th September, 1991, irrespective of whether the payment was in cash or otherwise. Another material circumstance in this regard is that plaintiff No. 2 is not a party to this document, though the case of the plaintiffs is that the defendants had initially agreed to sell the suit land to both, plaintiff No. 1 as well as plaintiff No. 2.

The Agreement dated 24th September, 1991 was followed by an Agreement of 20th April, 1993 between plaintiffs No. 1 & 2 on one hand and the defendants on the other hand. In this Agreement also, there is no reference to any pre-existing oral agreement between the parties, though the case of the plaintiffs, as set out

in the plaint, is that the legal heirs of late Shri Parmeshwari Dass had approached, both, plaintiffs No. 1 & 2, for sale of the suit property to them.

A perusal of the Agreement dated 3rd January, 1994 shows that even in this document, there is no reference to any pre-existing agreement including any oral agreement between the parties. In these circumstances, prima facie, it would be difficult for me to accept that there was an oral agreement between the parties some time on or before September, 1987 for sale of the suit property to plaintiffs No. 1 &

5. The next question which arises for consideration in this case is as to how much is the total amount paid to the defendants or their predecessor-in-interest so far. The case of the plaintiffs, according to Mr. Chadha is that the plaintiffs have so far paid Rs. 4,00,97,000/- towards sale consideration and Rs. 50 lakhs towards expenditure to be incurred in obtaining requisite permissions. The case of the defendants, on the other hand, is that they have received a total sum of Rs. 1,04,50,000/- from the plaintiffs. The plaintiffs have placed on record receipts for a total sum of Rs. 1,07,70,500/-. One receipt of Rs. 1 lakh has been disputed by the defendants. Thus even according to the plaintiff, they obtained receipt only of Rs. 1,07,70,500/-. There is no valid explanation as to why the plaintiffs did not obtain any receipt from the defendants or their predecessor-in-interest at the time of each payment made to them. The fact that a large number of receipts were executed by the defendants, clearly shows that the plaintiff was to obtain receipt for each payment. Otherwise, there would have been no receipt at all. The case of the plaintiffs, as set out in the plaint, is that they paid Rs. 2.95 crores in cash to the legal heirs of late Shri Parmeshwari Dass between September, 1987 to July, 1989. Admittedly, there was no written agreement between the parties at that time for sale of the suit property to the plaintiffs. It is difficult to accept that despite there being no written agreement between the parties, the plaintiffs kept on making payments, in cash to the defendants without taking any receipt from them. Mr. Chadha, however, states that in fact receipts were taken whenever cash payments were made but those receipts were destroyed when written agreement was executed on 3rd January, 1994 wherein the payment made in cash was acknowledged. I, however, find that there is no such averment in the plaint. This is no where case pleaded in the plaint that the plaintiffs used to obtain receipt from the defendants as and when payments in cash were made and those receipts were destroyed at the time of execution of Agreement dated 3rd January, 1994. Even otherwise, I find it difficult to accept the explanation given by Mr. Chadha. No one is likely to destroy such original receipts, without completion of the transaction between the parties. Moreover, there is no reference to execution of any such receipt in any of the written agreements.

Pursuant to the order passed by this Court on September, 19, 1987, the plaintiffs answered certain interrogatories delivered upon them by the defendants. The plaintiffs were asked to state from which bank the money was withdrawn by

them, in case of cash payments and whether receipts for that amount was taken. In answer, the plaintiffs stated that there was income tax raid on the office premises of plaintiff No. 1 and the house of plaintiff No. 2 and income tax Officer seized all the books of accounts, bank passbooks etc. This has no where come in the answer that the vendors had executed receipts at the time of receiving cash payments from the plaintiffs between September, 1987 to July, 1989 and those receipts were later destroyed. Therefore, the explanation given today by Mr. Chadha is not borne out even from the reply to the interrogatories. More importantly, nothing prevented the plaintiffs from obtaining statements of their account with the concerned bank to show withdrawal of money from the account for payment to the vendors and filed those bank statements in the Court. It would be pertinent to note here that the plaintiffs have not given specific dates of individual cash payments alleged to have been made by them to the defendants. They have alleged payments of Rs. 5 lakhs between September, 1987 to December, 1987, Rs. 20 lakhs between January to December, 1988 and Rs. 2,70,00,000/- between January, 1989 to July, 1989. I fail to understand why the plaintiffs could not have ascertained the dates of the cash payment with the help of their bank statements which would have shown the cash withdrawals made by them for payment to the vendors and filed those bank statements in the Court. Thus, prima facie, the plaintiffs have failed to show that they had withdrawn money from the bank accounts for making cash payments to the defendants. In fact, there is no evidence which would even indicate that the plaintiffs had that much money in their bank account as they claim to have paid to the defendants between September, 1987 to July, 1989.

6. The learned senior counsel has pointed out that the payment of Rs. 3 crores has been acknowledged in writing in the Agreement dated 3rd January, 1994 and, therefore, it would make no difference as to whether separate receipts with respect to that amount were executed or not. As noted earlier, the case of the defendants is that the mention of receipt of Rs. 3 crores in the Agreement dated 3rd January, 1994 was by way of a deterrence and in fact no such amount was received by them. In the facts and circumstances of the case, as discussed in the preceding paragraph, the plea taken by the defendants cannot be said to be wholly untenable.

7. As per agreement dated 3rd January, 1994, the transaction was to be completed within one year from the date of the Agreement. The last date for completion of the transaction, therefore, expired on 2nd January, 1995. Pointing out that there were payments made to the defendants even after 2nd January, 1995, the learned senior counsel for the plaintiff submitted that the parties never intended to treat the time to be the essence of the contract between them and that is why payments were accepted even after 2nd January, 1995. In this regard, he further submits that in an agreement for sale of immovable property, the time is not taken to be the essence of the contract. In support of his contention, he has placed reliance upon Gomathinayagam Pillai and Others Vs. Pallaniswami Nadar, and Govind Prasad Chaturvedi Vs. Hari Dutt Shastri and

Another, . The learned counsel for the defendants, on the other hand, places reliance upon K.S. Vidyanadam and Others Vs. Vairavan, . In K.S. Vidyanadam (supra), Supreme Court, inter alia, held observed as under:-

10. It has been consistently held by the courts in India, following certain early English decisions, that in the case of agreement of sale relating to immovable property, time is not of the essence of the contract unless specifically provided to that effect. .... in the case of urban properties in India, it is well-known that their prices have been going up sharply over the last few decades-particularly after 1973.

11. .... We cannot be oblivious to the reality-and the reality is constant and continuous rise in the values of urban properties-fuelled by larger-scale migration of people from rural areas to urban centers and by inflation. ... Indeed, we are inclined to think that the rigor of the rule evolved by courts that time is not of the essence of the contract in the case of immovable properties-evolved in times when prices and values were stable and inflation was unknown-requires to be relaxed, if not modified, particularly in the case of urban immovable properties. It is high time, we do so

(emphasis supplied)

In Saradamani Kandappan vs. S. Rajalakshmi, Supreme Court, after considering its previous decisions on the subject including the decision of the Constitution Bench in Smt. Chand Rani (dead) by LRs. Vs. Smt. Kamal Rani (dead) by LRs., , inter alia, observed and held as under:-

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

crore or more now.

37. The reality arising from this economic change cannot continue to be ignored in deciding cases relating to specific performance. The steep increase in prices is a circumstance which makes it inequitable to grant the relief of specific performance where the purchaser does not take steps to complete the sale within the agreed period, and the vendor has not been responsible for any delay or non-performance. A purchaser can no longer take shelter under the principle that time is not of essence in performance of contracts relating to immovable property, to cover his delays, laches, breaches and "non-readiness". The precedents from an era, when high inflation was unknown, holding that time is not of the essence of the contract in regard to immovable properties, may no longer apply, not because the principle laid down therein is unsound or erroneous, but the circumstances that existed when the said principle was evolved, no longer exist. In these days of galloping increases in prices of immovable properties, to hold that a vendor who took an earnest money of say about 10% of the sale price and agreed for three months or four months as the period for performance, did not intend that time should be the essence, will be a cruel joke on him, and will result in injustice. Adding to the misery is the delay in disposal of cases relating to specific performance, as suits and appeals therefrom routinely take two to three decades to attain finality. As a result, an owner agreeing to sell a property for rupees one lakh and received rupees ten thousand as advance may be required to execute a sale deed a quarter century later by receiving the remaining rupees ninety thousand, when the property value has risen to a crore of rupees.

42. Therefore there is an urgent need to revisit the principle that time is not of the essence in contracts relating to immovable properties and also explain the current position of law with regard to contracts relating to immovable property made after 1975, in view of the changed circumstances arising from inflation and steep increase in prices. We do not propose to undertake that exercise in this case, nor referring the matter to larger bench as we have held on facts in this case that time is the essence of the contract, even with reference to the principles in Chand Rani and other cases. Be that as it may.

43. Till the issue is considered in an appropriate case, we can only reiterate what has been suggested in K.S. Vidyadnam (supra):

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

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

(iii) Every suit for specific performance need not be decreed merely because it is filed within the period of limitation by ignoring the time-limits stipulated in the

agreement. Courts will also "frown" upon suits which are not filed immediately after the breach/refusal. The fact that limitation is three years does not mean a purchaser can wait for 1 or 2 years to file a suit and obtain specific performance. The three year period is intended to assist purchasers in special cases, as for example, where the major part of the consideration has been paid to the vendor and possession has been delivered in part performance, where equity shifts in favour of the purchaser.

8. In the present case, the last payment evidenced by a receipt was made by the plaintiffs on 15th July, 1995. The notice terminating the agreement was issued by the defendants on 14th January, 1998. During this period of about two and a half years, neither any payment appears to have been made by the plaintiffs to the defendants nor did they send any notice to them calling them upon to accept the balance payment and execute the sale deed in their favour. There has been no plausible explanation from the plaintiffs for the total inaction on their part for such a long period. The case of the defendants, as noted earlier, is that the agreement stood terminated and as a matter of abundant caution they expressly terminated the agreement as the plaintiffs failed to perform their obligations by making payment of the balance sale consideration to them.

As noted earlier, the notice terminating the agreement between the parties was issued on 14th January, 1998. The present suit has been filed on July 11, 2000, i.e. about two and a half years after the Agreement was terminated by the defendants. Again, there is no logical explanation forthcoming from the plaintiffs as to why they did not approach the Court soon after termination of the Agreement by the defendants and waited for as many as two and a half years. There must have been substantial appreciation in the land value during two and a half years between 14th January, 1998 to July 11, 2000. In the absence of any justification for the abnormal delay in coming to the Court, the plaintiffs may not be entitled to specific performance, even if they are able to prove that there was no breach on their part. As observed by Supreme Court in *Saradamani Kandappan vs. S. Rajalakshmi And Others*, the Courts need to frown upon suits which are not filed immediately after the breach/refusal and the period of limitation being three years does not mean that the purchaser can wait for years to file a suit and still obtain specific performance. The Court was of the view that the limitation period of two years is intended to assist the purchasers in special cases, as for example, where the major part of the consideration has been paid to the vendor and possession has been delivered in part performance, where equity shifts in favour of the purchaser. In the present case, though the case of the plaintiffs, is that though they have paid as much as Rs. 4,00,97,000/-, the case of the defendants is that they have been paid only Rs. 1,04,50,000/- and in the facts and circumstances, as discussed earlier, *prima facie*, the plea taken by the defendants in this regard appears to be more plausible. Moreover, this is not a case where possession of the property was delivered to the purchaser. Here, admittedly, the property was and continues to be in possession of D-20, which is its lawful tenant. Therefore, it would be difficult to say in the facts and

circumstances of this case that the equity has shifted in favour of the plaintiffs.

9. In *B.B. Sabharwal & Anr. vs. M/s. Sonia Associates*, decided by me on 14th January, 2011, the case of the plaintiff before this Court was that he had paid a total sum of Rs. 20 lakhs to the defendant whereas the case of the defendant was that it had been paid only Rs. 5 lakhs. After recording evidence, the finding of the Court was that the plaintiff had paid only Rs. 5 lakhs and the plea alleging second payment of Rs. 15 lakhs to the defendants was false. Holding that in such circumstances, the plaintiff was not entitled to specific performance of the Agreement, this Court, *inter alia*, observed and held as under:-

28. For determining the willingness of the plaintiff to perform his part of the contract, his conduct needs to be scrutinized by the Court. Grant of specific performance of an agreement is an equitable relief and the Court may in its discretion, in appropriate cases, refuse to grant this relief, if it comes to the conclusion that by his conduct, the plaintiff has disentitled himself from grant of such relief. Equity demands that a person approaching the Court must come with true facts and should not have conducted himself in a manner which would indicate that he at any point of time was unwilling to perform his contractual obligation, as agreed with the defendant. This principle finds statutory recognition in Section 16(C) of Specific Relief Act and, therefore, is back by force of law. If a person, sets up a plea which is false to his knowledge, the Court will not be justified in coming to his rescue, even if he later on is agreeable to make amends this regard.

29. In AIR 1952 244 (Nagpur) , the allegation of the purchaser was that he had paid Rs. 15 to the vendor after execution of the agreement. This averment was found to be false. Relying on the decision in *Rustomali and Others Vs. Sheikh Ahider Rahaman Mia* , it was held that making a false plea that a certain obligation under the contract had been discharged shows an unwillingness on the part of the transferee to abide strictly by the contract entered into between him and the transferer. It was held that the vendee was not willing to perform his part of the contract and, therefore, could not be allowed the benefit of Section 53A of Transfer of Property Act. In *Bishwanath Mahto Vs. Srimati Janki Devi* , the plaintiff had alleged a part payment of Rs. 200/- which was denied by the defendant. Referring to the provisions contained in clause (c) of Section 16 of Specific Relief Act and relying on the decision of Privy Council in *Ardeshir H. Mama Flora Sassoon*, AIR 1928 PC 208 and decision of Supreme Court in *Gomathinayagam Pillai and Others Vs. Pallaniswami Nadar* , it was held that since the plaintiff had sent a notice to the defendants before filing the suit falsely asserting payment of a sum of Rs. 200/- and showing readiness to pay only a sum of Rs. 7,000/- out of the agreed sale consideration of Rs. 7,200/-, the Court was of the view that the plaintiff was ready and willing to pay only a sum of Rs. 7,000/- as the consideration for the Sale Deed when he sent a notice and when he filed the suit. The Court was, therefore, of the view that the plaintiff was not willing to perform the terms of the agreement which was to be performed by

him. In *Kommisetti Venkatasubbayya Vs. Karamsetti Venkateswarlu and Others*, , the plaintiff paid Rs. 50 on the date of the execution of the agreement and claimed payment of a further sum of Rs. 1500/- thereafter. It was found that his claim of having paid Rs. 1500/- subsequent to the agreement was not true and, therefore, he was not ready and willing to perform his part of the contract since he was willing to pay only Rs. 272.50/- though he was required to pay Rs. 1,772.50/-. The Court was of the view that unless the readiness and willingness of the plaintiff was to pay the entire balance of the purchase money, he was not entitled to a decree for specific performance. It was held that irrespective of any other fact, the averment in the plaint and in the notice with respect to payment of Rs. 1,500/- was sufficient to hold that he was not ready and willing to perform his part of the obligation. In taking this view, the High Court relied upon the decision of a Division Bench of Madras High Court in *Subarayudu vs. Tatayya*, 1937 Mad. WN 1158, where it was held that if the plaintiff seeking relief of specific performance puts forth a false plea, he would be disentitled to an equitable and justifiable relief of specific performance. The High Court also relied upon its earlier decision in *Butchiraju vs. Sri Ranga*, AIR 1967, A.P. 69, which case was carried to Supreme Court, and noted that the Supreme Court in that case, noticing that the plaintiff had set up a false case that they had offered on June 04, 1953 to the first defendant, the balance of the purchase price due and had sought to support that case by leading evidence which was false to their knowledge and that having regard to their contract, the Trial Court and the District Court had held that the plaintiffs were not entitled to a decree for specific performance, held that exercise of discretion by the Trial Court and the District Court against the claim made by the plaintiffs was not arbitrary, but was reasonable and guided by judicial principles.

30. In *M.K. Mokbool Khan vs. Smt. Shamsunnisa & Ors.* AIR 2002 NOC 87 (Karnataka), the plaintiff was to pay the balance sale consideration in four installments of Rs. 6250 each. The plaintiff paid a sum of Rs. 4,000/- towards the last installment and regarding the balance amount of Rs. 2250, he stated that he had incurred expenditure for repair of the house and payment of house tax which was more than the amount of Rs. 2,250/- withheld by him. It was held that from the conduct of the plaintiff in non-payment of the installment amount towards the consideration as per stipulation under the agreement, it could not be said that he was ready and willing to perform his part of the contract all through. The High Court was of the view that the expenditure incurred by the plaintiff for repair of the house in the absence of any stipulation in the agreement could not be recovered from the landlord.

It was contended by the learned counsel for the plaintiffs that if a person has not been able to prove a plea set up by him that, by itself, would not disentitle him from grant of specific relief of the contract to which he is otherwise entitled as a contractual obligation of the defendant. In the case before this Court, the plaintiff set up a plea of payment of which never made to the defendant. The plea, obviously, was false to their knowledge and, therefore, clearly demonstrated

their unwillingness to pay the balance sale consideration of Rs. 35 lacs to the defendant. This false averment indicates that the plaintiffs wanted to pay only Rs. 25 lacs for the property which they had contracted to purchase for Rs. 40 lacs and, therefore, leaves no reasonable doubt that they were not willing to perform the terms which they had agreed with the defendant.

Therefore, if ultimately the Court comes to the conclusion that the plaintiff did not pay the whole of the amount of Rs. 4,00,97,000/- to the defendant, that by itself would disentitle them from specific performance of the Agreement in their favour since it would mean that the plaintiffs were not willing to perform the agreement as per the terms agreed between the parties, and that was the reason they set up false payments.

10. The following salient facts of this case emerge from the above discussion:

(a) Though the plaintiffs have set up an oral agreement in or around September, 1987, no specific date of the said oral agreement has been pleaded by them.

(b) There is no reference to any oral agreement, in the written agreement between the parties.

(c) The plaintiffs have not given the break-up of the cash payments alleged to have been made by them to the defendants between September, 1987 to July, 1989, in the sense that they do not tell the Court as to how much payment was made on which date.

(d) The plaintiffs have not filed any receipts of the cash payment of Rs. 3 crore referred in the agreement dated 3.1.1994.

(e) The plaintiffs have not produced any receipt of payment of Rs. 50 lac alleged to have been made to the defendants for obtaining necessary clearances.

(f) There is no evidence of withdrawal of money from the bank account of any of the plaintiffs at or around the time the cash payments are alleged to have been made by them to the defendants.

(g) There is no documentary evidence of the plaintiffs having with them the cash they claim to have paid to the defendants.

(h) There is no reference to any cash payment in the agreement prior to 3.1.1994.

(i) There was total inaction on the part of the plaintiffs between July, 1995 when the last payment in writing was made to the defendants and January, 1998, when the agreement was terminated by the defendants.

(j) There is no plausible explanation from the plaintiffs as to why they did not come to the Court soon after termination of the agreement by the defendants.

(k) The possession of the suit property has throughout been with the defendant No. 20, which is a lawful tenant in the suit property.

11. The next question which arises for consideration is as to what should be the appropriate interim order which needs to be passed in the facts and circumstances of the case. Vide interim order dated July 14, 2000, this Court had restrained the defendants from transferring, alienating or creating third party interest in the suit land. That order continues till date and, therefore, the interim order has been enjoyed by the plaintiff for as long as 12 years. During the course of arguments, the learned senior counsel for the defendants stated that though the plaintiffs have no case for specific performance of the agreement executed in their favour, the defendants, in order to show their bonafides are willing to give an undertaking that in the event of sale deed/transfer deed of the suit land being executed in favour of defendants No. 21 and 22, those defendants, i.e. 21 and 22 shall not create any third party interest in the suit land without prior permission of the Court. This, however, was not acceptable to the plaintiffs who also wanted that they should not change the land use of the suit land though they were agreeable to transfer of the suit land in favour of defendants No. 21 and 22 and those defendants being permitted to raise further constructions on it, subject to giving an undertaking that in the event of the suit being decreed, those sale deeds would be considered as null and void and the execution of the sale deeds or any further constructions which may be raised on the suit land would not create any special equity in favour of the defendants.

The only prayer made in IA 7137/2000 is grant of an injunction restraining the defendants from transferring, alienating, creating any third party interest in the suit land. In case defendants No. 21 and 22 give an undertaking not to do so, the purpose of the plaintiffs would be well served. The objective behind an interim order of this nature is to ensure that in the event of the suit being decreed, there is no obstacle in execution of the decree and the decree holder does not face a *fait accompli*. This objective can be achieved if defendants No. 21 and 22 furnish undertaking of the nature offered by their counsel.

It has to be kept in mind that the suit property is in possession of a lawful tenant, that is, defendant No. 20-M/s. Essex Farms Pvt. Ltd. The plaintiffs are not entitled to any injunctions against defendant No. 20 since there is no privity of contract between them and defendant No. 20. It is only on the title of the suit property being transferred to them that they can seek injunction against constructions by the tenants in the property let out to it. At this stage, they have no right to seek such an injunction. Moreover, in the event of the plaintiffs succeeding in the suit, they would be entitled to execution of the sale deed in their favour and thereafter they can seek demolition of the additions/alterations which the defendant No. 20 or defendants No. 21 and 22 may raise in the suit property on the ground that the said additions/alterations were unauthorized. As far as the apprehension with respect to the land user is concerned, I see no reasonable probability of any prejudice being caused to the plaintiffs in the absence of an injunction, since even the defendants are not likely to seek such change of the land user as would diminish the value of the suit property.

For the reasons stated hereinabove, IA 7137/2000 is disposed of with the following directions:-

(1) Defendants No. 1 to 19, if they so desire, shall be at liberty to transfer the suit property to defendants No. 21 and 22 subject to defendants No. 21 and 22 giving an undertaking of this Court within two weeks that in the event of this suit being decreed, the sale deeds which defendants No. 1 to 19 may execute in their favour would be treated as null and void, they shall not come in the way of execution of the said decree and such transfer will not create any special equity in their favour.

(2) Defendants No. 21 and 22 shall furnish an undertaking to the Court that they shall not sell, transfer, assign, mortgage or otherwise part with possession of the suit property or any part of it without prior permission of the Court.

(3) The defendants would be at liberty to carry out any addition, alteration or structural change in the suit property but strictly in accordance with law. If any, sanction from MCD/DDA or any other authority is required that shall be obtained before undertaking any such exercise.

(4) The defendants can go ahead with seeking change of land use of the suit property provided such change does not diminish the value of the suit property. The observations made in this order being tentative and prima facie, made only with a view to decide this application, shall not affect the suit on merit of this suit or the connected suits.

IA 5122/2012

Mr. Arun Mohan states that if the matter is fixed for framing of issues, he would not press this application. Since I propose to fix the suit for framing issues, this application is dismissed as not pressed.

IA 5122/2012 stands disposed of.

CS(OS) 1589/2000

List for framing of issues on 13th December, 2012.