
(1990) 10 DEL CK 0040
In the Delhi High Court
Case No : Suit No. 2311 of 1985

Nanak Builders Andinvestors Pvt. Ltd. APPELLANT
Vs
Vinod Kumar Alag RESPONDENT

Date of Decision : 24-10-1990

Acts Referred:

Contract Act, 1872 — Section 2
Specific Relief Act, 1963 — Section 16

Citation : AIR 1991 Delhi 315 : (1991) 1 ILR Delhi 303 : (1991) RLR 87

Hon'ble Judges : Arun Kumar, J

Bench : Single Bench

Advocate : Harish Malhotra and H.N. Chaudhary, for the Appellant;

Judgement

Arun Kumar, J.

(1) The plaintiff has filed the present suit for specific performance of a contract dated 16th October 1985 regarding sale of plot No. E-554, Greater Kailash Part Ii, New Delhi, measuring 275 Sq. Yards by the defendant in favor of the plaintiff and for delivery of possession thereof.

(2) The case of the plaintiff is that on 16th October, 1985, the defendant agreed to sell plot of land measuring 275 So. Yds. bearing No. E-554 (Part), Greater Kailash Part-11, New Delhi to the plaintiff for a total consideration of rupees eleven lacs. A receipt for the sum of rupees one has which was paid in cash by the plaintiff to the defendant was executed on the same date. The said receipt itself contains the terms and conditions of the agreement between the parties. The case of the plaintiff is that the said document, though titled as a receipt, is in fact a contract which is signed by both the parties and the plaintiff seeks specific performance of the same. The plaintiff has further stated in the plaint that it had been repeatedly requesting the defendant to accept the further sum of Rs. 3,40,000 in terms of the Agreement dated 16th October, 1985 and deliver possession of the plot but the defendant had been avoiding the same on one pretext or the other. The plaintiff states that ultimately on 16th November, 1985

it got a draft for Rs. 3.40.000 prepared in favor of the defendant and a telegraphic information regarding tills was sent to the defendant, requesting him to accept the said payment and to complete the formalities regarding the agreement. In spite of this, the defendant was not willing to accept the said payment. In response to the said telegram, the defendant telegraphically informed the plaintiff that there was no agreement dated 16th October, 1985 and the defendant was not willing to accept the payment offered by the plaintiff. The defendant also made a reference to a notice dated 10th November, 1985 in the said telegram which was issued by counsel for defendant to the plaintiff repudiating the agreement dated 16th October, 1985. It is the case of the plaintiff that the contents of the notice show that the defendant was resting from the agreement. According to the plaintiff, the stand taken by the defendant in the said notice was totally false and illegal and the defendant could not resile from the said agreement and his obligation to perform his part of the contract. In para 12 of the plaint, the plaintiff has averred its readiness and willingness to perform its part of the contract and that the plaintiff has always been ready to pay the amount in terms of the agreement. On the basis of these assertions, the plaintiff has come to this Court seeking specific performance of the contract dated 16th October, 1985.

(3) The defendant filed its written statement in which the execution of the receipt dated 16th October, 1985 is not disputed. The receipt of rupees one lac in cash on 16th October, 1985 is also admitted. However, the defendant has raised the following defenses in support of his prayer that the plaintiff is not entitled to any relief and the suit be dismissed :---

"(I)The document dated 16th October, 1985 is not a contract which can be specifically enforced. According to the defendant, it is a mere "receipt". (ii) Even if the document is taken to be a contract, it is not enforceable at law for want of mutuality. (iii) Time was of the essence of the contract and the plaintiff has failed to perform his obligations under the contract within the specified time. therefore ,the plaintiff is not entitled to the relief of specific performance. (iv) The property which is the subject matter of the contract, has not been identified. Therefore, the alleged agreement is vague and no relief can be granted on its basis in favor of the plaintiff. (v) The plaintiff has failed to satisfy the statutory requirement as per Section 16(c) of the Specific Relief Act."

(4) The plaintiff filed a replication to the written statement of the defendant reiterating its stand and also reasserting its readiness and willingness to perform its part of the contract.

(5) On the pleadings of the parties, the following issues were framed on 2nd August, 1988 :-

(1)Whether the plaintiff has been ready and willing to perform his part of the agreement at all the material times ? (2) If issue No. 1 is proved, whether the defendant has been willing and ready to perform his part of the contract? If not,

its effect. (3) Whether the plaintiff is entitled to specific performance of agreement dated 16th October, 1985 ? If so, on what terms ? (4) Relief."

(6) I have heard the learned counsel for the parties in support of their respective cases. The counsel for the parties have also taken me through the relevant portions of the pleadings, the evidence and the documents on record. At the outset, I note that in the issues framed on 2nd August, 1988 in the presence of counsel for both the parties, no issue was claimed regarding the controversy now raised before me during the course of the hearing as to "whether the document dated 16th October, 1985 amounts to a contract or it is a mere receipt which cannot be specifically enforced". Since no issue was framed on this aspect of the case, it may be reasonable to say that the defendant was not serious about this plea and Therefore, did not want any adjudication thereon. However, since the counsel for the parties have addressed arguments before me on this question. I propose to deal with the same and record my findings thereon.

(7) The original of the document dated 16th October, 1985 is Ex P-I on the record. The same is titled as "RECHIPT". A perusal of the said document- will show that all the essential and basic ingredients required for an agreement to sell are contained therein. The same is signed by both the parties and is also witnessed by an attesting witness. Besides acknowledging the receipt of rupees one lac in cash, the document contains the following terms :-

"(A)The sum of Rs. 1 lac has been received by the vendor as token money for sale of my plot No. E-554, Greater Kailash Part-II, New Delhi, measuring 275 Sq. Yds". (b) Total sale price has been fixed for Rs. 11 lacs. (c) "The amount of Rs. 3,40,000 (Rupees three lacs forty thousand only) shall be paid within a period of 30 days from today and I shall hand over the physical vacant possession of the plot to the purchaser on payment of the said amount of Rs. 3.40,000." (d) "The balance amount of Rs. 6,60,000 (Rupees six lacs sixty thousand only) shall be paid within 45 days from the date I get Income Tax clearance and accordingly inform the purchaser in writing by letter under registered post). (e) "I shall execute the document for sale of the property as per advice of the purchaser" (f) "In case the buyer fails to pay the balance amount of Rs. 3,40,000 within a period of 30 days from today, the deal stands cancelled." (g) The deal has been brought about through M/s. Thapar Associates, Real Estate Consultants. A-78, Malviya Nagar, New Delhi. M/s. Thapar Associates shall be paid their professional charges equivalent to 2 per cent of the total sale price separately and respectively by both the parties.-; (h) The purchaser will not construct any building on the said plot till full payment of Topes eleven lacs is made.

(8) Existence of a contract is sine qua non or the grant of relief of specific performance. The entire provisions of Specific Relief Act contained in Chapter II refer to contracts which can be specifically enforced or otherwise. As per the provisions of Section 2(h) of the Contract Act, "an agreement enforceable by law is a contract". Even in oral agreement can be a valid and enforcement contract "Therefore, in the strict sense, it is not essential that a contract must be in

writing. Where the parties contemplate a writing to complete the contract or where the contract is required by law or otherwise to be in writing, it will be necessary that the contract is reduced to writing. Further, where all the specific terms have been agreed upon and reduced into writing, the mere fact that it is stated that a formal contract will be executed, does not render the writing, in the first instance, to be of no avail. These are certain general principles regarding formation of contracts.

(9) Now coming to the "receipt", Ex. P.1, as already noticed above the essential/substantial terms have been agreed upon and reduced into writing therein. It does not contain any mention that a formal Agreement Safe will be executed. Therefore, it is not possible to hold that the same does not amount to a contrail. Looking at it from a different angle one may ask as to when the stage for payment of earnest money or token money arises ? The answer is that the occasion for payment of earnest money arises only in pursuance of an agreement, i.e., when the essential terms and conditions are finalised. The fact that the vendee parts with a substantial amount in favor of the vendor shows that the parties have reached a consensus on the various terms of the arrangement between them meaning thereby that a contract has been arrived at. It is also worth noting that the defendant never brought out or averred that a formal contract had to be executed between the parties after the receipt dated 16th October, 1985. In view of this conduct of the defendant, the defendant is also estopped from alleging that there is no contract between the parties and the document Ex. P-1 is a mere receipt not amounting to a contract.

(10) Mere heading or title of a document cannot deprive the document of its real nature. Law is well settled in such matters that it is the substance which has to be seen and not the form. It may be sufficient to refer to *Md. Akbar Khan Vs. Attar Singh* Air 1936 Privy Council page 171(1) and *Commissioner of Income Tax, Punjab, Haryana, J. and K., H.P. and Union Territory of Chandigarh Vs. Panipat Woollen and General Mills Co. Ltd.*, in this behalf. As already noticed above, the document Ex. P-1 though titled as a receipt contains all the essential ingredients of a contract and therefore, I have no hesitation in holding that this is a contract and the plaintiff can seek specific performance thereof. The counsel for defendant has also submitted that Ex. P-1 does not bear the plaintiff's stamp, though it is conceded that Shri Nanak Ram, who has signed the plaint and the power of attorney in the present suit, has signed this document on behalf of the plaintiff. The mere absence of the rubber stamp of the plaintiff company does not render the document as a mere receipt. I have noticed this argument of the counsel for the defendant, though I need not have done so in view of absence of any plea in the written Statement in this behalf. The further argument of the counsel for defendant that there is no acceptance of the offer of the defendant / vendor by the plaintiff is also factually incorrect because Ex. P-1 has been signed on behalf of the plaintiff with the following endorsement :--

"I confirm the above."

(11) In view of the above discussion, I hold that Ex. P-1 is a contract on the basis whereof the plaintiff can seek specific performance as per the provisions of Chapter II of the Specific Relief Act.

(12) Having held that the document Ex. P-1 is a contract which is capable of being specifically enforced, I proceed to examine whether in the facts and circumstances of the case and on the evidence on record and the submission of the counsel for the parties. Ex. P-1 is liable to be specifically performed. Sec. 20(1) of the Specific Relief Act provides :--

"THE jurisdiction to decree specific performance is discretionary, and the court is not bound to grant such relief merely because it is lawful to do so, but the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal."

Thus the relief of specific performance is a discretionary Mayawanti Vs. Kaushalya Devi, . The discretion is, however, to be exercised in a judicial manner and cannot be arbitrary. Fry in his Specific Performance (6th edn. p. 19) said :

"THERE is an observation made with regard to the jurisdiction in specific performance, which remains to be noticed. It is said to be in the discretion of the court. The meaning of this proposition is not that the court may arbitrarily or capriciously perform one contract and refuse to perform another, but that the court has regard to the conduct of the plaintiff and to circumstances outside the contract itself, and that the mere fact of the existence of a valid contract is not conclusive in the plaintiff's favor. If the defendant, said Plumer V. C. can show any circumstances *dehors*, independent of the writing, making it inequitable to interpose for the purpose of a specific performance, a Court of equity, having satisfactory information upon that subject ,will not interpose." "

The author goes on to say that of the circumstances calling for the exercise of this discretion, "the court judges by settled and fixed rules, hence the discretion is said to be not arbitrary or capricious but judicial, hence, also, if the contract has been entered into by a competent party, and is unobjectionable in its nature and circumstances, specific performance is as much a matter of course, and Therefore of right, as are damages. The mere hardship of the resets will not affect the discretion of the court."

(13) A contract contains certain stipulations and specific performance is the actual execution of the contract when a party to the contract does not perform its obligations there under. It is then that the party seeking performance of the contract approaches the court to compel the other to perform his! her obligations. While in India this remedy finds statutory recognition, in England this was an equitable remedy. The law on the subject is, however, the same in India as in England. The growth of law in England was as an equitable remedy. Therefore, all the requirements, which a plaintiff seeking relief in equity had to satisfy before such a relief could be granted became relevant. Same is the position in India. I have to examine the case in the light of these principles to

find out whether the plaintiff is entitled to this discretionary relief.

(14) Counsel for defendant contends that assuming that it was a contract the same is bad and Therefore, unenforceable on account of lack of mutuality. To support this argument counsel draws my attention to Ex. P-I to say that on receipt of payment of Rs. 3,40,000 the vendor had to hand over possession of title land to the vendee. Thereafter what was the security for the vendor that he would receive the balance sale consideration. Lack of this opportunity shows, according to counsel for the defendant, that the agreement suffers on account of lack of mutuality and is, Therefore, unenforceable. In this behalf the counsel has cited 1986 (2) Mlj 367. In order to examine this argument of the defendant, I first turn to Ex. P-I. It is worth noting that Ex. contains a stipulation that till the entire balance sale consideration is paid, the vendor will not be entitled to make any construction on the land subject matter of the agreement. Therefore, on facts, the argument of the counsel for the defendant does not appear to be sound. Apart from this. Sec. 20 Sub-Sec. (4) of the Specific Relief Act, specifically provides that the court shall not refuse to any party specific performance of a contract merely on the ground that the contract is not enforceable at the instance of the other party. This statutory provision to my mind takes care of such an argument as has .been advanced in the present case. In view of this I do not find any substance in the. argument based on Jack of mutuality advanced on behalf of the defendant. The same is rejected.

(15) Now coming to the third point as to whether time was of the essence of the contract and whether the plaintiff has failed to perform its obligations under the contract, certain sequence of the events that have taken place has to be noted.

(16) In this behalf the first stage is of the execution of the agreement on 16th October, 1985. A sum of rupees one lac was admittedly received by the defendant from the plaintiff on the said date. A further sum of Rs. 3,40,000 was payable within 30 days from, the said date by the plaintiff to the defendant. However, the admitted position is that the defendant vide a notice dated 10-11-85 (Ex. D-I) sent through his counsel took the stand that there was no agreement between the parties and for various reasons the receipt was not enforceable at law. There is some controversy regarding the date of receipt of this notice by the plaintiff. The plaintiff has in para 7 of the plaint stated that the notice was received by it on 17-11-85 while the case of the defendant is that the said notice was delivered to the plaintiff on 14-11-85. The defendant has placed on record a letter received by his consul from the Post Office to the effect that the said notice was delivered to the plaintiff on 14-11-85. Now when the defendant has himself stated that the notice was delivered to the plaintiff on 14-11-85 and this is supported through documentary proof adduced by the defendant, I will accept the date of delivery of the notice Ex. D-I to the plaintiff as 14-11-85 and" not permit the defendant to argue otherwise. In the chain of events, the next date is 16-11-85 when the plaintiff sent a telegram to the defendant drawing reference to the agreement dated 16-10-85 and saying that a

bank draft for the amount of Rs. 3,40,000 was ready with him which should be received by the defendant and the agreement be performed in the presence of the property agents. There is also on record a photo copy of the bank draft got prepared by the plaintiff in favor of the defendant for a sum of Rs. 3,40,0001- bearing the date 16-11-1985. The defendant has not disputed this. The defendant sent a telegram in reply to the telegram of the plaintiff on 17-11-85. The said reply telegram is Ex. D-3. In the said telegram the defendant has averred, that the notice Ex. D-1 sent on his behalf by his advocate has the effect of cancelling the receipt dated 16-10-85. Reference is drawn and reliance is placed on the contents of the notice (Ex. D-1). The defendant has further stated that the payment tendered is out of time. The concluding part of the telegram says "for this and for reasons disclosed in the notice of 10th November, 1985. I express my inability to accept the amount mentioned in your felegram". This is all the documentary evidence on the point. This leads me to the oral evidence led by the parties. On behalf of the plaintiff it has been stated in the examination-in-chief of Public Witness 1 that before the one month expired, the defendant sent a notice resiling from the contract. "However, I was ready to make the payment of Rs. 3,40,0001- and accordingly a demand draft was also made. A telegram was sent by the plaintiff to defendant on 16-11-85 to that effect. The telegram is Ex. D-2. Reply was received from the defendant which is Ex. D"-3 and the defendant stated that the defendant is not ready to accept the payment of Rs. 3,40,0001-" In the cross-examination, Public Witness -1 has stated as under :-

"IT is true that 30 days expire on 15th November 1985. It is incorrect to suggest that till 15th November 1985 I did not offer to make the payment. I bed given a cheque which he refused to accept."

It is true that telegram was sent on 15th November 1985" (should be 16th November J 985). The defendant has appeared as DW-1. This is all that he had to say in this context. ""The notice was sent because there was no security for the balance of Rs. 6,60,0001"- . We have heard about the reputation of the plaintiff that as, builders they were purchasing the property by paying Rs. 1,00,000.00 or so and taxing the possession and not paying the balance amount, therefore. I wanted the amount to be secured. Even after 15th November 1985 the plaintiff did not come for payment till date." A suggestion was put to the defendant in his cross-examination about the plaintiff having offered "to pay the amount of Rs. 3.40,0001- to him on 15-11-85. The defendant denied the suggestion.

(17) From the cross-examination it is, however, clear that the only hitch on the part of the defendant in performing the agreement and executing the sale deed was his apprehension about the payment of balance amount after he. handed over the possession of the plot in suit to the plaintiff. He has in fact stated, "if they had paid Rs. ten lacs in lump sum, I would have certainly signed the sale deed. If Rs. ten lacs had been paid to me I would have handed over the possession of the premises and got the sale deed executed."

(18) It is clear from this evidence that the defendant was fully aware of the existence of the contract and wanted to wriggle out of the same for the only reason that he felt unsecured for the payment of balance sale consideration after he had handed over possession of the plot to the plaintiff. The defendant did, not dispute the existence of the contract as such. This statement of the defendant further shows -that the argument about the receipt not being an agreement and absence of a contract is an after thought.

(19) These facts raise two questions. First, whether time was of the essence of the contract, and second, if so, was there any default on the part of the plaintiff in performing his part of the contract? A further question has been raised by the plaintiff which in this behalf also requires to be examined. This is based on the submission of the plaintiff that even if time was of the essence of the contract, in view of the repudiation of the contract by the defendant as per his notice Ex. D-I, the plaintiff was discharged of its obligation to perform its part of the contract. The defendant was not prepared to hand over vacant possession of the plot in suit to the plaintiff on the plaintiff paying him a sum of Rs. 3,40,000. Both these conditions were to be performed simultaneously.

(20) Whether time is of the essence of a contract is a question of fact and the decision of this depends on the entire relevant facts on record of the case. The principles in this behalf are well-known and find expression in various judgments. Suffice to refer to N. Palanichami Nadar Vs. Gomathinayagam Pillai and Others, which was approved by the Hon'ble Supreme Court in Gomathinayagam Pillai and Others Vs. Pallaniswami Nadar, followed by Govind Prasad Chaturvedi Vs. Hari Dutt Shastri and Another, A Division Bench of our own High Court has also dwelled on this in Smt. Kamal Rani Vs. Smt. Chand Rani & Others, reported as ILR 1978 Delhi. 539. All the authorities lay down that the real test is the intention of the parties. Generally in the context of immovable properties time is not of the essence of the contract. But this general principle is subject to the exceptions as may arise on the facts of a given case herein the parties may make time of the essence of the contract even in cases relating to immovable property. In the present case the stipulation regarding payment of Rs. 3,40,000.00 contains the rider that the said amount was payable within 30 days of the date of execution of Ex. P-I. It is further stated that failure to comply with the condition would mean that the agreement would stand cancelled. Beyond this there is nothing by way of any letter, notice or telegram by the parties making time as essence of the contract.

(21) We have to find out the intention of the parties on the basis of this material on record. In the facts of the case I find it hard to believe that the plaintiff did not offer to pay a sum of Rs. 3,40,000/- to the defendant within 30 days of the date of the agreement Ex. P-I. Defendant's own statement as DW-1 that the plaintiff is a builder, and is buying properties for re construction and sale is relevant here. For the purpose of said business the defendant says that the plaintiff keeps on buying plots/ properties, this will suggest that the plaintiff is a

person who is in the trade and who is suppose to be entering into agreements of similar type for the purchase of property. Therefore, an experienced person as the plaintiff is sought to be made out, will not commit such a default. Secondly, it is clear that the defendant himself was not interested in receiving the sum of Rs. 3,40,000.00 and hand over possession of the plot, because. he was afraid that lie may not get the balance payment .It was for this reason that the defendant got the notice Ex D-I served on the plaintiff. Further it is worth pointing out that the plea of the defendant in para 13 of the written statement is worded in a manner so as to suggest (hat the defendant did not really want to accept the said amount from the plaintiff. Apart from this it is important to note that it was not a case of mere payment of the sum of Rs. 3,40,0001- by the plaintiff to the defendant. The defendant had to d.clivcr vacant possession of the suit plot against, the said payment. Thus both the conditions had to be simultaneously performed. The defendant was not interested and was not willing to perform the condition regarding delivery of possession of the plot in any case. There- tore. it is reasonable to infer that the defendant would avoid receiving payment in order not to get further entangled in the deal. The defendant had an impression that he could get out of the deal by refunding rupees one lac to the plaintiff and for that reason he did not want to go further on with the deal Then there is yet another aspect, of this controversy. The defendant's notice Ex. D-I dated 10th November 1985 clearly signified the intention of the defendant not. to go ahead with the "agreement and in fact the agreement was repudiated vide said notice. As already held by me, the said notice was delivered to the plaintiff on 14th November 1985. In spite of this notice and the content thereof, is it possible to infer that time was of the essence of the contract meaning thereby that by 15th, i.e., the next date after the notice was received by the plaintiff, the plaintiff must pay a sum of Rs. 3,40,000"- to the defendant irrespective of the fact whether defendant delivers the possession of the plot to him or not. To my mind it cannot be said in these facts that time was the essence of the contract. Even in the telegram Ex. D-3. the emphasis of the defendant is on the contents of his notice Ex. D-I. All this leaves no doubt in my mind that time was -never intended to be of the essence by the parties, or at least it is not open to the defendant to say so.

(22) Counsel for the defendant has submitted that there is no convincing evidence on record that payment of Rs. 3,40,000 was offered by the plaintiff to the defendant within 30 days. counsel further says that the plaintiff has not specifically said so in his examination-in-chief. It is interesting to note that what remained to be said in the Examination-in-Chief of Public Witness 1, has specifically come out in his cross-examination where Public Witness -1 has specifically said that the money was offered to the defendant on 15th November and even prior to that.

(23) The cases referred to above cited by counsel for the parties on this point lay down the legal principles and also recognise that ultimately this question is a question of fact which will depend on the facts of each case. I find that in the facts of this case, time was not intended to be of essence of the contract. It may

be useful to quote from Govaid Prasad (Supra) the following passage :-

"THE intention to treat time as the essence of the contract may be evidenced by circumstances which are sufficiently strong to displace the normal presumption" that in a contract of sale of land stipulation as to time is not the essence of the contract."

"....." AT this stage it is sufficient to state that neither the terms of the agreement nor the correspondence would indicate that the parties treated time as of essence of the contract."

(24) In the present case assuming for a moment that time was of the essence of the contract, there is enough proof on record that on 16th November 1985, the plaintiff offered to pay a sum of Rs. 3,40,000 to the defendant through a bank draft for the said. amount in favor of the defendant. One day's delay, if any, in the background of the notice Ex. D-I received by the plaintiff on 14th November 1985 cannot be said to be fatal to the plaintiff's case even if time was of the essence of the contract. Reference in this connection be made to K.M. Jose and Others Vs. D. Anantha Bhat, where the stipulations and facts were close to the situation in hand

(25) Counsel for the plaintiff also referred to Sec. 51 of the Contract Act regarding performance of a contract when reciprocal promises are involved. Referring to Ex. P-I counsel submits that a sum of Rs. 3,40,000 was payable to the defendant by the plaintiff on vacant possession of the land being simultaneously delivered by the defendant to the plaintiff. It is not a case where the plaintiff had to just pay the money to the defendant without any corresponding obligation on the part of the defendant. The defendant had to deliver vacant possession of the land which was a very important consideration. Thus the performance of the plaintiff was linked up with the performance on the part of defendant. When the defendant was not willing to perform his part of the promise and had made his intention very clear in this behalf, where was the question of plaintiff paying a sum of Rs. 3,40,000 to the defendant. The counsel relies on Section 51 of the Contract to say that he is to be relieved of his obligation under the contract in view of the clear intention" of the defendant not to perform his part of the agreement.

(26) The counsel for plaintiff has laid emphasis on the case of the defendant in his written statement as well as in the notice Ex. D-I which is one of repudiation of the agreement. On the plaintiff's plea of repudiation of the contract by the defendant, there is yet another argument from the defendant which needs to be examined. The argument is that notwithstanding the repudiation of the contract by the defendant, the plaintiff was bound to perform its obligation under the agreement. The principle enunciated in this behalf is that the party which seeks to enforce the agreement and which does not accept repudiation, has to continue to perform its obligation under the contract notwithstanding repudiation by the other party. Reference in this connection has been invited by the counsel for

defendant to P. Lazarus Vs. Johnson Edward Air 1976 Ap 243,(10) AIR 1933 233 (Privy Council) ;(II) and AIR 1952 220 (Nagpur) No doubt that these cases lay down the legal principle that the plaintiff who is seeking performance of the contract should show that he did not accept repudiation and he was continuing to go by the agreement meaning thereby that he was willing to perform his obligation under the contract. Applying this legal principle to the facts of the present case, I have already held that the plaintiff offered to perform its part of the obligation under the contract by tendering the amount of Rs. 3,40,000 to the defendant as stipulated or at least admittedly on 16th November 1985. In view of this fact it cannot be said that :he plaintiff was not willing to perform its obligation under the contract. Thus this argument of the defendant need not detain me in the facts of the case.

(27) To sum up, I hold that time was not of essence of the contract and even" otherwise the plaintiff had performed its obligation under the contract within time and the conduct of the plaintiff is not blameworthy so as to disentitle the plaintiff to seek the relief of the specific performance.

(28) The fourth point urged on behalf of the defendant is regarding alleged identifiably of the property which is the subject matter of the contract and on that basis the plea of vagueness leading to the contract being rendered unenforceable. To my mind this is wholly mis-conceived besides being contrary to the material on record. The agreement Ex. P-1 itself shows that the entire particulars of the property including the suit fur partition and the decree passed by this Court in the said suit have been" stated therein. Apart from this the statement of defendant as DW-1 is very significant in this behalf in which the defendant has admitted that the identity of the property to be sold under Ex. P-I was never in" doubt and he was clear in his mind about the same. On this admission of the plaintiff nothing survives in the argument advanced by counsel for the defendant,

(29) This brings me to the last point urged on behalf of the defendant. Counsel for the defendant has drawn my attention to Section 16(c) of the Specific Relief Act where it is laid down as a statutory requirement that the plaintiff has to clearly aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him. Reference had been made by counsel for the defendant in this behalf to Ardeshir Vs. Flora Sassoon .1928 P.C. 208 and Raj Rani Bhasin and Others Vs. S. Kartar Singh Mehta, .(14) Counsel for the defendant has further submitted with reference to the plaint in the suit that the same is totally vague on this point and fails to satisfy the requirements of this provision of the statute.

(30) In answer to this argument, counsel for the plaintiff has drawn my attention to para 12 of the plaint. Apart from this the counsel has drawn my attention to the statement of Nanak Ram, Public Witness -1. The counsel urges that in this behalf an overall view has to be taken on the basis of totality of the facts and not on the basis of a statement here or there. Reference has also been made to para

22 of the plaint as well as para 13 of the replication at internal page 9. Counsel says that his necessary requirements of the statute have been fulfilled and there as no defect in the plaint. I find that the necessary averments have been made in the plaint and evidence has been led both oral as well as documentary which is on the record and which shows that the plaintiff was ready and willing to perform its obligations under the contract and even at the relevant time it was ready and willing to perform its obligation under the contract.

(31) On the basis of this material I do not find any force in the argument of the counsel for defendant that the suit lacks these basic requirements of the plaint and is liable to be dismissed for this reason.

(32) Having dealt with all the points in controversy in the suit, I record my issue-wise findings recorded thereon, the issues framed in the suit will stand decided as under : Issue No. 1 The plaintiff has been ready and willing to perform his part of the agreement at all the material times. Issue No. 2 The defendant has not been ready and willing to perform his part of the contract. Therefore, the plaintiff is entitled to specific performance of the contract. Issue Nos. 3 & 4 The plaintiff is entitled to specific performance of the agreement dated 16th October 1985. The agreement between the parties was a complete contract and they had agreed to be bound by the terms thereof. The contract did not contain any term which rendered its performance subject to grant of permission if any, by any authorities. Therefore, there is no reason why specific performance of the contract be not enforced through Court. (Eldee Velvet and Silk Mills Pvt. Ltd. Vs. Anant Ram Whig T.L.R. (1971)2 Delhi 249. (15)

(33) The suit of the plaintiff is decreed. The defendant is directed to execute the sale deed regarding plot No. E-554, Greater Kailash Part II, New Delhi, measuring 275 Sq. Yds. in favor of the plaintiff and to hand over possession thereof on the plaintiff depositing the balance sale consideration in Court. The plaintiff is allowed two months" to deposit the balance sale consideration.. -On- the amount of balance sale consideration being deposited, the defendant will, within two weeks, take necessary steps to obtain the requisite permission"s from the authorities concerned. Within two weeks of obtaining such per-mission(s), the defendant will execute the sale deed in favor of the plaintiff. If the defendant fails to execute the sale deed, the plaintiff will be emended to seek further necessary directions from Court and to have the sale deed executed through the Registrar of this Court and obtain possession of the plot in suit through process of the Court. The plaintiff will be entitled to costs.