

(2010) 07 MAD CK 0368

In the Madras High Court

Case No : A.S. No. 485 of 1999 and C.M.P. No's. 9892 and 4201 of 2006

S. Gananatha Perumal

APPELLANT

Vs

S. Valliappan

RESPONDENT

Date of Decision : 09-07-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2, Order 23 Rule 1

Citation : (2010) 6 CTC 95

Hon'ble Judges : S. Palanivelu, J

Bench : Single Bench

Advocate : T.R. Rajagopalan, for Pushpa Sathyanarayan, for the Appellant; T.V. Ramanujan, for P.L. Narayanan, for the Respondent

Final Decision : Allowed

Judgement

S. Palanivelu, J.—This Appeal has been preferred by the unsuccessful Defendant against the judgment and decree dated 15.04.1998 made in O.S. No. 2265 of 1997 on the file of the IV Additional Judge, City Civil Court, Chennai. The following are the averments in the Plaint succinctly stated:

1.1. On 07.07.1980, the Defendant entered into a Sale Agreement with the Plaintiff in respect of the property in question for a sum of Rs. 4,50,000/-. The Defendant agreed to execute the Sale Deed in favour of the Plaintiff after completing all the formalities, besides producing Encumbrance Certificate for 15 years and to hand over the Title Deeds. Pursuant to the agreement, a sum of Rs. 3,000/- was paid as advance by the Plaintiff. While so, in spite of repeated demands, the Defendant failed to produce the original Title Deeds and also Patta pertaining to the property in question.

1.2. Under such circumstances, the Plaintiff gave a telegram to the Defendant calling upon him to produce and deposit all original Title Deeds, but his efforts went in vain, as a result of which, he filed a Suit in O.S. No. 6145 of 1980 on the file of the Civil Court Court, Chennai, for a Permanent Injunction restraining the

Defendant from selling the property in question and he also obtained interim order of status quo till the disposal of the above-said Suit.

1.3. Due to the inaction on the part of the Defendant, the Plaintiff filed a Suit for Specific Performance of the Sale Agreement, dated 07.07.1980. There are no laches on the part of the Plaintiff. Since the Plaintiff had 45 days time after the Defendant submitted all the required documents to execute the Sale Deed, the Plaintiff is always ready and willing to perform his obligations. Since the Defendant has failed to execute the Sale Deed, the Plaintiff has filed the above-said Suit for a direction to the Defendant to execute and register the Sale Deed in favour of the Plaintiff or his nominee as per the Sale Agreement dated 07.07.1980 in respect of the schedule mentioned property.

2. In the Written Statement filed by the Defendant, the allegations are as follows:

2.1. The Plaintiff entered into an agreement with the Defendant for the sale of the suit property in question. However, since he was not interested to execute the Sale Deed, as per the agreement agreed upon between the parties, the Defendant caused a notice dated 28.08.1990. However, the said notice was returned back to the Defendant's Counsel and thereafter, the Defendant sent a demand draft for Rs. 3,001/- by way of refunding the advance paid by the Plaintiff. The same was also returned with a remark that the party is out of station and the arrival date is not known, so also, in the case of Certificate of Posting. Under such circumstances, the Plaintiff has committed breach of contract in not pursuing the agreement agreed upon between the parties and therefore, the Plaintiff is not entitled for the relief of Specific Performance of the Suit agreement except the refund of Rs. 3,001/-being the advance paid to the Defendant.

3. In the additional Written Statement, the following are the allegations:

3.1. The Suit for Specific Performance is belated one and the delay in filing the Suit is fatal to the Suit and that it is inequitable for the Plaintiff to seek Specific Performance, after a considerable delay of 14 months after knowing the stand taken by the Defendant and that in the suit agreement itself, an alternative provision for damages is provided for and the Plaintiff is not entitled to sue for Specific Performance, particularly, when he has himself committed default in the performance of his own obligations under the agreement.

4. After analysing the pleadings and evidence on record, the learned IV Additional Judge, City Civil Court, Chennai, decreed the Suit directing Specific Performance of contract by execution of Sale Deed by the Defendant on his depositing of Rs. 4,46,999/- by the Plaintiff, in default, the Sale Deed be executed by the Court. Aggrieved by the said judgment, the Defendant is before this Court with this Appeal.

5. The following points have arisen for consideration in this Appeal.

(i) Whether the Respondent has established his readiness and willingness to

perform his part of contract from the inception?

(ii) Whether the delay of 14 months in filing the Suit for Specific Performance from the date of issue of notice to the Defendant would disentitle the Respondent from claiming Specific Performance?

(iii) Whether the Suit is hit by the provisions under Order 2, Rule 2, C.P.C.?

5.1. Point Nos:1 & 2: The suit property belongs to the Appellant. He agreed to sell the property to the Respondent and both of them entered into a Sale Agreement-Ex.P.1 on 07.07.1980 wherein, it was agreed inter alia that the vendor shall produce and deposit the original title and all other documents required by the purchaser or his legal adviser for inspection and necessary perusal so as to draft the Sale Deed and register it, that the vendor shall also obtain and produce the Encumbrance Certificate for 15 years and that the entire transaction will be completed within 45 days from the date when the vendor completes the production of all documents required by the purchaser or the legal adviser of the purchaser. The above said recitals are vital clauses.

5.2. The sale price was agreed as Rs. 4,50,000/-. A sum of Rs. 3,001/- was paid as advance by the Respondent to the Appellant. The Respondent sent a telegram Ex.D.1 through his lawyer to the Appellant on 18.09.1980 calling upon him to produce the original deeds as per agreement dated 07.07.1980. Since he felt that the Appellant was trying to sell the suit property to third parties, on 20.09.1980, the Respondent filed a Suit in O.S. No. 6145 of 1980 on the file of the City Civil Court, seeking permanent injunction restraining the Appellant from selling the suit property and he also obtained an interim order of status quo.

6. In the Written Statement and Counter filed by this Appellant in the above-said suit, he raised an objection that the Plaintiff has not asked for Specific Performance of contract. Ex.D.1 was received by the Appellant on 19.09.1980. It bears only the name of the Advocate but not his address. Hence, the Appellant says that he did not know to whom the documents have to be produced. It is his further pleading in his Written Statement that even on the date of execution of the Sale Agreement, he produced necessary records before the Respondent and hence, from the date of the agreement within 45 days, he should have taken steps to get the Sale Deed executed.

7. It is contended by the Respondent that a portion of the property in question was encroached by one Rajalakshmi, who is a neighbour of the Appellant and in order to remove the encroachments, the Appellant required some time and hence, there was a delay in enforcing the right of Specific Performance.

8. On 28.08.1980, the Appellant claims to have sent a notice Ex.P.3(b) to the Respondent. On 18.09.1980, he again issued a notice through his lawyer to the Respondent stating that he had already sent a notice on 28.08.1980 under registered post, that he (the Appellant) has cancelled the agreement dated 07.07.1980 since the time stipulated in the said agreement had expired and the

Respondent committed default and that the advance of Rs. 3,001/-paid by the Respondent was also sent to him by means of a demand draft drawn on Indian Bank, Esplanade, Madras. The Appellant's Counsel also enclosed copy of the notice dated 28.08.1980. But the Respondent states that he did not receive any notice from the Appellant dated 20.08.1980. In the said notice, he has stated that the entire transaction was to be completed within 45 days after production of the Title Deeds and the Appellant was ready and willing to produce necessary deeds right from the signing of the agreement, however, the Respondent did not take any steps to complete the transaction.

9. A reply was sent to the Appellant by the Respondent through his Counsel in Ex.P.4 on 20.09.1980 refuting the allegations in the above said notices wherein, he has stated that in spite of repeated demands, the Appellant did not produce and deposit the Title Deeds. On 30.08.1980 along with Ex.D.5 notice, the Appellant through his lawyer sent a demand draft for Rs. 3,001/- to the Respondent, but was not received by the Respondent which was returned to the Appellant with an endorsement as "left".

9.1. By means of D.1,-Telegram, the Respondent called upon the Appellant to produce Title Deeds to the property. In this Telegram, the Appellant was required to produce the documents within 24 hours before the Counsel for the Respondent by means of Notice dated 20.09.1980. It is pertinent to state that the Respondent has not sent any communication to the Appellant after Ex.D1 till 20.09.1980 either for production of the documents or for execution of Sale Deed. Only on 20.09.1980, he sent a Notice calling upon the Appellant to produce and deposit all the original Sale Deeds for completion of the sale transaction. This is the reply for the Notice sent by the Appellant on 18.09.1980 which accompanied the copy of Notice dated 28.08.1980.

10. After the Notice dated 20.09.1980, the Respondent did not move his little finger to enforce of his right of Specific Performance. He has not sent any communication nor had he filed the Suit within a reasonable time. He filed the present Suit in January, 1982 after the lapse of 14 months. During this period of 14 months, he did not take any steps to show that he was ready and willing to perform his part of contract.

11. The learned Senior Counsel T.R. Rajagopalan appearing for the Appellant would place much reliance upon a decision reported in *Indravathi Vs. Kamala*, wherein this Court has observed that there is no reason given as to why there should be a delay of two years and ten months from the date of Suit Notice in filing Suit. A person, who seeks an equitable remedy ought to demonstrate conduct which is fair and above board and that the delay itself is sufficient to deny the Respondent the relief of Specific Performance.

12. Mrs. Prabha Sridevan, J., in the said decision has also referred to three earlier decisions of this Court which are as follows:

(i) *G. Chelliah Nadar (died) and Others Vs. Periasami Nadar and Others*,

(ii) The Kancheepuram Kamakshi Amman Silk Handloom Weavers" Co-operative Production and Sale Society Limited Vs. Yamuna Bai and Others, and

(iii) Vasantha and others Vs. M. Senguttuvan,

13. In the case of G. Chelliah Nadar (died) and Others Vs. Periasami Nadar and Others, a Division Bench of this Court, in a Suit for Specific Performance of contract, found that there was delay in sending the Notice on 04.07.1974, even if the Plaintiff came to know in February, 1974, that the Defendant was making attempt to purchase the property. Referring to this delay of about five months, the Division Bench has opined that the unexplained delay on the part of the Plaintiff in seeking the remedy would also constitute a ground for refusing the relief of Specific Performance of contract.

14. In Yamuna Bai's case mentioned above, the Division Bench of this Court has pointed out that expiry of about one year in filing the Suit after issuance of notice and in the absence of explanation, it should have been considered for turning down the relief of Specific Performance. The relevant portion of the judgment goes thus:

9. We have already referred to the notices issued by the society once a year. There is no explanation as to why the society waited for nearly a year after issuing every notice. Once it was made clear to the society that the Defendants would not execute a Sale Deed as claimed by them, they should have proceeded to enforce Specific Performance. But, they did not do so. They issued a notice again after a year and filed a Suit after expiry of a further year. In the absence of any explanation for this inordinate delay in approaching the Court, it can be inferred that the society has waived the performance of contract and abandoned the same. This is a case of unexplained silence and wanton delay and the society cannot escape the consequence of the same by saying that mere delay in seeking Specific Performance would not disentitle them to get the relief. See: Kantilal C. Shah Vs. A.G. Devarajulu Reddiar, .

15. The Division Bench has also quoted another Division Bench decision of this Court reported in Easwari Amma v. M.K. Korah, 1972 (1) MLJ 218, wherein it was held that mere delay will not preclude the Plaintiff from obtaining Specific Performance if the Suit is otherwise in time and that the delay must not be such from which it may be properly inferred that the Plaintiff has abandoned his right or on account of the delay there must have been such a change of circumstances that the grant of Specific Performance would prejudice the Defendant. The grant of relief of Specific Performance is discretionary though not arbitrary and it should be guided by the judicial principles.

16. In Vasantha case afore-noted, Mrs. Prabha Sridevan, J., has extracted and followed a decision of the Supreme Court wherein it was observed that even if for a single day, the Plaintiff/agreement holder is not ready to take the Sale Deed, the equitable remedy should not be granted and that readiness and willingness must be there continuously from the date of agreement till the date of Suit.

16.1. The extracted portion of the Supreme Court in the said decision contained in para. 15 therein is as follows:

15. In *Gomathinayagam Pillai and Others Vs. Pallaniswami Nadar*, the Supreme Court held that in a Suit for Specific Performance, Plaintiff must prove readiness and willingness. The relevant portion of the said decision reads thus:

The Respondent has claimed a decree for Specific Performance and it is for him to establish that he was, since the date of the contract, continuously ready and willing to perform his part of the contract. If he fails to do so, his claim for Specific Performance must fail. As observed by the Judicial Committee of the Privy Council in AIR 1928 208 (Privy Council)

In a Suit for Specific Performance, on the other hand, he treated and was required by the Court to treat the contract as still subsisting. He had in that suit to allege, and if the fact was traversed, he was required to prove a continuous readiness and willingness from the date of the contract to the time of the hearing, to perform the contract on his part. Failure to make good that averment brought with it the inevitable dismissal of his suit. The Respondent must in a suit for Specific Performance of an agreement plead and prove that he was ready and willing to perform his part of the contract continuously between the date of the contract and the date of hearing of the Suit."

(Emphasis supplied)

17. In view of the above illuminating judicial pronouncements of the Privy Council, Apex Court and this Court as well, the concept of readiness and willingness would include the desire of the Plaintiff from the date of notice of demand for the execution of the Sale Deed till the filing of the Suit for Specific Performance. This is the cardinal principle settled by the Apex Court and that has to be followed in ascertaining whether the Plaintiff has been ready and willing to perform his part of contract. It is not enough for the Plaintiff to issue notice demanding execution of Sale Deed and to keep quiet for a long time without initiating any proceedings.

18. In order to find out the element of readiness and willingness on his part, there shall be some materials which show that he was conscious enough about his part and whether he was acting to get the Sale Deed executed positively. If there had been absence of convincing explanation on his part for the delay, he has to be non-suited for the relief of Specific Performance and he has to face legal consequences for his laches. Even though the delay in filing the Suit has been specifically pleaded in the additional Written Statement of the Appellant, the Respondent has not rendered any satisfactory explanations for the undue delay. The pendency of the other Suit will in no way put an embargo for Respondent to file the Suit for Specific Performance of contract, subject to the provisions of Order 2, Rule 2, C.P.C.

19. An in-depth study of the circumstances would go to show that the

Respondent committed default by not carrying out the contract as agreed and he has woefully failed to establish that he was ready and willing to perform his part of contract from the date of issue of notice till the date of filing of the Suit. Even though, he called upon the Appellant by means of his notice Ex.P.4 dated 20.09.1980 to produce and deposit the original Sale Deeds for completion of the said transaction, he should have taken further steps. Even if he found any inaction on the part of the Appellant in this regard, he should have initiated proceedings in a manner known to law.

20. In view of the above said observations, this Court is of the considered opinion that the Respondent has not established his readiness and willingness to complete the sale transaction and the unexplained delay of 14 days in filing the Suit after issuance of Ex.P.4 notice has non-suited him for availing the relief prayed for by him. I answer point No. 1 in negative and point No. 2 in affirmative.

Point No:3

21. Much was said about the maintainability of the present Suit in view of filing of earlier Suit in O.S. No. 6145 of 1980 by the Respondent for permanent injunction against the Appellant restraining the Appellant from selling the property to any third party. It is pleaded in the Plaint that the refusal on the part of the Defendant to execute the Sale Deed, in the Written Statement filed on 12.03.1981 in O.S. No. 6145 of 1980, prompted the Plaintiff to file the Suit for Specific Performance of contract. O.S. No. 6145 of 1980 was filed in the Court on 20.09.1980 as per the Plaint pleading. The Suit was afterwards transferred to this Court for being tried along with present Suit which was originally filed in this Court, for joint trial. The said O.S. No. 6145 of 1980 was renumbered as C.S. No. 452 of 1983 in this Court and the same was dismissed as not pressed on 23.02.1994, based upon the endorsement made by the Plaintiffs Counsel. This Court has passed the judgment in the following lines:

The learned Counsel for the Plaintiff has made an endorsement to the effect that he is not pressing the Suit since the other Suit C.S. No. 80/1982 which is a comprehensive Suit has been filed against the Defendant. In view of this, this Suit is dismissed. No costs.

The Plaintiff has stated therein that the present Suit is a comprehensive one.

22. In order to deal with the maintainability of the present Suit, it is profitable to extract Order 2, Rule 2, C.P.C. which reads thus:

2. Suit to include the whole claim.? (1) Every Suit shall include the whole of the claim which the Plaintiff is entitled to make in respect of the cause of action; but a Plaintiff may relinquish any portion of his claim in order to bring the Suit within the jurisdiction of any Court.

(2) Relinquishment of part of claim.? Where a Plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) Omission to sue for one of several reliefs.? A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for nay relief so omitted.

Explanation: For the purpose of this Rule an obligation and a collateral: security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action.

23. It is vehemently contended on behalf of the Appellant that the cause of action for the present Suit was available for the Plaintiff at the time of filing of the earlier Suit in O.S. No. 6145 of 1980 and since he willfully omitted to include the present prayer in the earlier Suit, he is not entitled to continue the present Suit. It is also urged that the cause of action in both the Suits are one and the same and for the same cause of action two Suits could not be instituted.

24. Repelling this contention, it is argued on the side of the Respondent that cause of action for filing of Suit for Specific Performance did not arise at the time of filing of the earlier Suit, that the causes of action are different and that there is no room for dismissal of the present Suit.

25. In order to strengthen his contention, the learned Senior Counsel for the Appellant placed reliance upon a decision of the Privy Council reported in Mohammad Khalil Khan and others v. Mahbub Ali Mian and others, AIR 1948 PC 318 (FB). The opinion of Their Lordships in the said judgment is as follows:

Order 2, Rule 2, Civil Procedure Code, enacts that if a Plaintiff fails to sue for the whole of the claim which he is entitled to make in respect of a cause of action in the first Suit, then he is precluded from suing in a second Suit in respect of the portion so omitted. The object of the rule is clearly to avoid splitting up of claims and to prevent multiplicity of Suits.

The correct test in cases falling under Order 2, Rule 2 is whether the claim in the new Suit is in fact founded upon a cause of action distinct from that which was the foundation for the former Suit. The cause of action means every fact which will be necessary for the Plaintiff to prove if traversed in order to support his right to the judgment. It has no relation whatever to the defence that may be set up by the Defendants nor does it depend upon the character of the relief prayed for by the Plaintiff. It refers entirely to the grounds set out in the Plaint as the cause of action, or in other words to the media upon which the Plaintiff asks the Court to arrive at a conclusion in his favour.

If the evidence to support the two claims is different, then the causes of action are also different.

The causes of action in the two Suits may be considered to be the same if in substance they are identical.

26. The above said decision has been referred to and followed in a Division

Bench judgment of this Court relied upon by the Respondent's side which is reported in *R. Vimalchand and M. Ratanchand Vs. Ramalingam, T. Srinivasalu and T. Venkatesaperumal*, It is further held in the judgment of this Court that Order 2, C.P.C. can be made applicable only if the earlier Suit was disposed of and thereafter, a fresh Suit is being filed with the same cause of action for fresh relief and when the present Suit has been filed during the pendency of the earlier Suit, the provision of Order 2, Rule 2, C.P.C. is not attracted.

27. In *Kalash Properties Pvt. Ltd. Vs. Lilly Pushpam, Sheela, K.K. Ravi and S. Sasikala*, cited by the Appellant's side, it is held that the test should be, whether the causes of action on which the present claim is rested, were available to the Plaintiff at that time to claim the relief in the present Suit now sought for. It is further observed as follows:

In the instant case, the alleged agreement for sale was entered into in the second week of January, 1995 and on the strength of which, the first Suit for injunction was made in 1995 and thus, all these causes of action for seeking the relief of Specific Performance were very much available at that time. But, he has not reserved his right to seek the said relief later. Under these circumstances, it is a case, where it is barred under Order 2, Rule 2 of C.P.C.

28. In the above said case, it has been held that even though a Suit for permanent injunction was filed at a point of time, the Plaintiff should have reserved his right to file the Suit for Specific Performance on the later date and that the cause of action for the said relief was available at the time of filing of the earlier Suit being available to him at that time, the subsequent Suit is barred.

29. The learned Senior Counsel for the Appellant also garnered support from a decision of the Apex Court reported in *N.V. Srinivasa Murthy and Others Vs. Mariyamma (dead) by Proposed LR's. and Others*, in which it is held as under:

13. In paragraph 11 of the Complaint, the Plaintiffs have stated that they had earlier instituted original Suit No. 557 of 1990 seeking permanent injunction against Defendants and the said Suit was pending when the present Suit was filed. Whatever relief the Petitioners desired to claim from the Civil Court on the basis of averment with regard to the registered Sale Deed of 1953 could and ought to have been claimed in original Civil Suit No. 557 of 1990 which was pending at that time. The second Suit claiming indirectly relief of declaration and injunction is apparently barred by Order 2, Rule 2 of the Code of Civil Procedure.

29.1. Their Lordships in the above mentioned decisions pointed out the pendency of the earlier Suit for permanent injunction and were pleased to hold that whatever may be the reliefs to be claimed under the registered Sale Deed of 1953 should have been claimed in the earlier Suit for declaration and injunction is barred by Order 2, Rule 2.

30. In *Dalip Singh v. Mehar Singh Rathee and Ors.*, (2004) 7 SCC 650, it is held that the sine qua non for applicability of Order 2, Rule 2, C.P.C. is that a person

entitled to more than one relief in respect of the same cause of action has omitted to sue for some relief without the leave of the Court.

31. A Division Bench of this Court, while discussing the import of Order 2, Rule 2, C.F.C., after referring to various decisions, in the case of M.S. Velappan, Proprietor, Ponni Production Vs. K.S. Gopalakrishnan, Karpagam Studios, has held as follows:

18. ... It is thus clear that Order 2, Rule 2 of the CPC operates in the case of relinquishment of part of a claim or omission to sue in respect of such claim before the institution of the suit and after institution of the Suit it is open to withdraw the suit or abandon a part of the claim subject to the consequences in the former case that the Plaintiff shall not be permitted to sue in respect of the portions omitted or relinquished and in the case of the latter, he can institute a fresh Suit only when he has the permission of the Court to sue afresh while withdrawing the Suit or abandoning any part of the claim. He is otherwise precluded from instituting any fresh Suit in respect of such subject matter of such part of the claim under Order 23, Rule 1 of the Code.

In the said decision, the Division Bench has referred and followed a Constitution Bench decision in Gurbux Singh Vs. Bhooralal,

32. Adverting to the facts of the present case, the Sale Agreement was executed on 07.07.1980. Ex.D.1 is the first occasion where the parties started exchange of communication. By Ex.D.1, on 19.09.1980, the Respondent sent a Telegram requiring the Appellant to produce and deposit the original Title Deeds expressing his apprehension that the Appellant was negotiating with the third party to make an unlawful gain. He has also asked the Appellant to produce the documents within 24 hours or otherwise he would take legal action. The same demand has been reiterated in Ex.P.4-Advocate Notice dated 20.09.1980. Afterwards, the Respondent had not moved his little finger to claim the original Title Deeds nor had he taken any further steps to get the Sale Deed executed.

33. In O.S. No. 6145 of 1980, causes of action alleged are that on 07.07.1980, the Sale Agreement was executed and on 18.09.1980, the Plaintiff sent the Telegraphic Notice and subsequently. As far as the Respondent is concerned, he simply stopped with demanding the Appellant to produce the original Title Deeds and had done nothing more except on two occasions, i.e. on 18.09.1980 and 20.09.1980. In the cause of action column in the present Plaint, it is stated that the cause of action for the Suit arose at Madras on 07.07.1980 where and when the Sale Agreement was executed and subsequently. Obviously, two causes of action for the present Suit are that the issue of Telegraphic Notice- Ex.D.1 and Advocate Notice-Ex.P.4 by the Respondent.

34. It is apparent that the cause of action for filing the fresh Suit was existing even at the time of filing of the earlier Suit. Even though the reliefs claimed in both the Suits are different, the causes of action for filing of both the Suits are identical, that is to say, the issuance of Telegraphic Notice, on 19.09.1990 and

Notice dated 20.09.1980. Two statutory requirements as per Order 2, Rule 2, C.P.C. that the existence of causes of action for the subsequent Suit at the time of filing of the earlier Suit and the presence of identical causes of action in both the Suits, are very much available in this case. In this case, the legal position enunciated in N.V. Srinivasa Murthy's case cited supra is applicable. Hence, there is no legal impediment to reach a conclusion that the present suit is barred by the provision Order 2, Rule 2, C.P.C. I answer this point in affirmative.

35. A critical examination of pleadings, oral and documentary evidence, in the light of the weighty judicial pronouncements has paved way to conclude that the Respondent has not been ready and willing to perform his part of contract and that the Suit is barred by virtue of Order 2, Rule 2, C.P.C. The Appellant has received Rs. 3,001/- as advance, on the date of entering into contract, which has to be refunded to the Respondent. Hence, a direction is to be issued to the Appellant to pay the advance amount to the Respondent along with interest at the rate of 9% per annum from 07.07.1980 till the date of payment. The judgment and decree of the Trial Court have to be set aside and they are accordingly set aside. The Appeal deserves to be allowed. In the result, the Appeal is allowed. Consequently, connected M.Ps are closed. No costs. The Suit in O.S. No. 2265 of 1997 on the file of the IV Additional Civil Court, Chennai, is dismissed without costs. The Appellant is directed to pay the advance amount of Rs. 3,001/- to the Respondent along with interest at the rate of 9% from 07.07.1980 till the date of payment.