

(2009) 08 MAD CK 0122

In the Madras High Court

Case No : OSA No. 292 of 2003 and Cross Objection No. 8 of 2006

Shanthi Kawarbai, Praful Kumar Nahata, Urmila Devi and
Pramila

APPELLANT

Vs

Sushila
Sushila Vs Nihalchand Nahata (deceased)
represented by his Power of Attorney Agent R. Dayachand
Savan Sukha Nihalchand Nahata (since deceased) by LRs
Shanthi Kawarbai, Praful Kumar Nahata, Urmila Devi and
Pramila

RESPONDENT

Date of Decision : 25-08-2009

Acts Referred:

Specific Relief Act, 1963 — Section 16, 20

Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 — Section 10(1), 11, 11(1),
11(3), 11(4)

Citation : (2009) 4 LW 756

Hon'ble Judges : R. Subbiah, J;M. Chockalingam, J

Bench : Division Bench

Advocate : A.L. Somayaji for P. Sivagnanam, in OSA and T. Viswanatha Rao, in
Cross Objection, for the Appellant; A.L. Somayaji for P. Sivagnanam in Cross
Objection and T. Viswanatha Rao in OSA, for the Respondent

Final Decision : Allowed

Judgement

M. Chockalingam, J.—This appeal and the cross objection has arisen from the judgment of the learned Single Judge of this Court made in

C.S. No. 1437 of 1988 whereby a decree for specific performance issuing a direction to the defendant to execute and register a sale deed in

favour of the plaintiff with respect to the land that has been exempted by the Urban Land Ceiling Authority.

2. The respondent/plaintiff has filed the suit with the following averments:

(a) The plaintiff intended to start an Educational Society. She was in search of a suitable land. The original defendant represented to her that he

was the owner of the suit property having purchased the same in public auction on 12.11.1975; that he sold a portion of the said property together

with the bungalow and the appurtenant land in favour of one Saraswathy Kailasam on 29.3.1984; that the balance of the land measuring 9 acres

and 50 cents was available; and that he was ready and willing to sell the same for a sum of Rs. 15 lakhs. The plaintiff agreed to purchase the same.

Accordingly, an agreement for sale was entered into by her with the original defendant represented by his Power of Attorney, on 4.11.1985.

(b) On 17.3.1985, a sum of Rs. 1 lakh was already paid as advance, and another sum of Rs. 4 lakhs was paid on 18.6.1985. The original

defendant agreed to obtain exemption for the transfer of property from the Urban Land Ceiling Authority and also necessary Income Tax

Clearance Certificate. It is also agreed that in the event of sale transaction being completed, she should obtain vacant possession from the Madras

Race Club, a tenant in respect of a portion of the property. The sale transaction shall be completed within six months. But, despite repeated

requests to sign and present necessary documents for obtaining permission from the Urban Land Ceiling Authority and clearance certificate from

the Income Tax Department, the defendant was postponing the same. The plaintiff was all along ready and willing to pay the balance of sale price.

The defendant did not cooperate with the plaintiff. Therefore, the defendant committed default of the agreement. Hence the suit for specific

performance.

3. The Power of Attorney Agent of the original defendant contested the suit by filing a written statement with the following averments:

(a) The suit ought to have been instituted only against the disclosed principal, and hence, leave to sue is necessary. The disclosed principal

ordinarily resides outside the jurisdiction of this Court. The suit is also barred by limitation. The agreement entered into between the defendant and

the plaintiff on 4.11.1985, contains reciprocal promises that the plaintiff should get exemption from the Urban Land Ceiling Authority; that she

should pay all arrears of tax payable to the Urban Land Tax Ceiling Authority upto the date of the properties agreed to be conveyed; and that she

should get vacant possession from Madras Race Club. The plaintiff did not take steps to comply with the terms and conditions of the agreement.

She did not take steps for obtaining exemption from the Urban Land Ceiling Authority and did not even ascertain the arrears of Urban Land Tax.

The plaintiff was indifferent towards her obligations. The plaintiff did not show any interest in the transaction or to pay the balance of sale

consideration. The plaintiff has even abandoned the agreement. In such circumstances, the defendant sent a letter on 29.2.1988 cancelling the agreement and calling upon the plaintiff to return the original title deeds.

(b) The defendant is also willing to return the advance of Rs. 5 lakhs. The defendant caused a lawyer's notice. The plaintiff has been evading the

service of various notices issued. The plaintiff never expressed her willingness. She was never ready and willing to complete the transaction. She

did not have the finance to meet the same. The agreement is hit by Tamil Nadu Urban Land Ceiling Act. Hence it is ab initio void and opposed to

public policy. The period of six months provided in the agreement was the essence of the transaction. The defendant received a letter on 2.6.1990

from the plaintiff as a counter-blast to the defendant's notice dated 27.5.1990. The agreement has become unenforceable and incapable of

performance. Hence the suit was to be dismissed.

4. On the above pleadings, the trial Court framed six issues and the parties went on trial. On scrutiny of the evidence both oral and documentary

and consideration of the submissions made, the trial Court granted a decree for specific performance with a direction to the defendant to execute

and register a sale deed transferring the extent of the suit land to which the Urban Land Ceiling Authority has granted exemption under the Urban

Land Ceiling Act, within a period of two months on or before 18.8.2003 and deliver the suit property to the plaintiff and in default to execute the

sale deed through the Assistant Registrar (Original Side). Aggrieved over the said judgment, the defendants have brought forth this appeal.

Aggrieved over the disallowed portion of the judgment, the plaintiff has brought forth the cross objection.

5. Advancing arguments on behalf of the appellants, the learned Senior Counsel Mr. A.L. Somayaji would submit that the judgment of the trial

Court was erroneous both factually and legally; that the agreement for sale stipulated that the entire transaction should be completed within six

months; that it was also agreed between the parties that the time was the

essence of the contract; that the plaintiff has failed to complete the sale transaction within the stipulated period, and hence the plaintiff was not entitled to the relief of specific performance; that the plaintiff was not ready and willing at any point of time; that she did not adduce any legal and tangible evidence to show her readiness and willingness to complete the sale transaction within the stipulated period or thereafter, at any point of time; that on the contrary, the defendants were able to prove by oral and documentary evidence that the plaintiff was never ready and willing to perform her part of the contract; that the trial Court has shifted the burden of proof on the defendants instead of calling the plaintiff to prove the same; and that the finding given by the trial Court that the plaintiff was ready and willing to pay the balance of sale consideration was totally erroneous and also against the oral and documentary evidence produced by the parties.

6. Added further the learned Senior Counsel that the trial Court has not considered Exs.D2 to D14 which would clearly testify the financial position of the plaintiff and also would demonstrate that she was not ready and willing to execute the sale deed; that under the agreement for sale, it was for the plaintiff to approach the Urban Land Ceiling Authority and seek exemption of the suit properties; that the trial Court has erroneously observed that only the owner of the land can apply for exemption under the Urban Land Ceiling Act which was contrary to the understanding in the agreement; that once the parties have agreed that it was the responsibility of the plaintiff to get the exemption under the Urban Land Ceiling Act, such an observation was against the agreement between the parties; that it is for the plaintiff to pay the arrears of the urban land tax with respect to the suit property; that the trial Court has found that there was no demand from the concerned, and hence necessity of paying the same did not arise which was contrary to the understanding in the agreement; that it was also for the plaintiff to obtain the vacant possession from the Madras Race Club with respect to the suit property; and that an erroneous view was taken by the trial Court that only the defendants could seek the possession from them since they happened to be the landlords which was contrary to the understanding in the agreement where the parties have agreed that it should be the responsibility of the plaintiff to vacate them.

7. The learned Senior Counsel would further submit that Section 6 of the Urban

Land Ceiling Act specifically prohibits any person from transferring any land in excess of the ceiling limits, and no person holding vacant land in excess of the ceiling limit immediately before the commencement of the Act should transfer any such land or part thereof either by sale, mortgage, gift, lease or otherwise unless he has furnished a statement u/s 7, and a notification regarding the excess vacant land held by him has been published under Sub-section (1) of Section 10, and any such transfer made in contravention of the provisions should be deemed to be null and void; that when the Ceiling Act prohibits any transfer of vacant land prior submission of returns and fixation of ceiling limit, such transactions are declared void, and the decree for specific performance cannot be granted in respect of such transactions; that the agreement for sale Ex.A5 was entered into on 3.11.1985; that the notification under Sub-section 1 of Section 11 of the Act was published by notification dated 27.1.1988 under Ex.D17 which would clearly show that any agreement pending returns u/s 7 was void; that the citations produced by the defendants would confirm the view that the prohibition u/s 6 will attract the agreement for sale also; that while that being the case, the agreement per se was void and cannot be enforced; that on the contrary, the learned Single Judge has found that there was likelihood of getting exemption and in respect of such lands where exemption can be obtained and in such cases decree for specific performance can be granted which was totally illegal; that the reliance on AIR 1986 SC 1912 to decree the suit was incorrect; that as per the agreement, there was no contemplation of obtaining exemption; and that permission to sell was not akin to getting exemption under the Urban Land Ceiling Act.

8. Added further the learned Senior Counsel that the trial Court has not appreciated Exs.D17 to D19 which would show that the land which had been agreed to be sold had been declared as excess vacant land by notification dated 27.1.1988; that u/s 11(4) of the Urban Land Ceiling Act, no person should transfer by way of sale, mortgage, gift, lease or otherwise any vacant land including part thereof specified in the notification and any such transfer made in contravention of the said provision was null and void; that under the circumstances, the decision reported in 2003 Law Weekly and 1999 CTC affirm the view that the transfer includes the agreement

for sale; that the ratio decided by this Court would squarely apply to the case on hand; that admittedly, the suit was filed on 3.11.1988 when the lands were declared as excess vacant land; that the trial Court has erred in holding that a portion of the land has been exempted as a result of which the embargo laid down u/s 6 was not applicable; that the exemption of 54 grounds of land was granted only subsequent to the filing of the suit, and the same was of no relevance in granting the decree in favour of the plaintiff; that it was totally not correct on the part of the trial Court to construe that the land got vested with the Government only after the notification u/s 11(3) of the Urban Land Ceiling Act and Section 6 was applicable only under such circumstances, and the prohibition commences from the filing of returns and continues till exercise of the powers u/s 11 of the said Act; that it was not the case of the appellant that the suit was barred by limitation; and that the claim was hit by laches that the plaintiff filed the suit after considerable delay and therefore was not bona fide person for claiming specific performance.

9. It is further submitted by the learned Senior Counsel that the judgment rendered in 1997(3) SCC was not given credence, and the trial Judge has erroneously observed that the plaintiff had paid 1/3rd of the total consideration, and hence she was entitled for a decree; that the granting of decree in respect of the exempted land on the amount already paid by stating that the consideration already paid was sufficient for the land exempted was erroneous; that even the plaintiff never agreed on that basis; that the plaintiff only wanted the entire property mentioned in the suit agreement; that she never gave her rights in respect of the excess land, and hence the suit should have been dismissed.

10. Added further the learned Senior Counsel that the reliance upon an order dated 8.11.1989 made in WP No. 14636 of 1989 to say that the plaintiff was permitted to make representation to the Urban Land Ceiling Authority was incorrect; that the said writ petition was dismissed with an observation that it was open to the writ petitioner to make a representation to the Government to consider the matter; that in the said writ petition, the Government was Housing and Urban Development Authority and not the Urban Land Ceiling Authority; that the order would not in any way advance the case of the plaintiff; that in any event, the writ petition was filed in

the year 1989 much after the filing of the instant suit; that the observation made by the trial Judge that the filing of the writ petition before the Court would go to show that she had not waived her right in the suit property was not correct; that the trial Judge has observed that P.W.1 met DW1's father and that Ex.P10 was accepted and the evidence of PW1 was not challenged was totally erroneous and opposed to law of evidence; that Ex.P10 was neither signed nor dated, and it was written on the back of the calendar sheet; that relying upon such exhibits and granting the relief was much against the law of evidence; that the documents were not mentioned in the plaint nor raised in the pleadings, and hence the same cannot be relied upon; that marking of the said exhibits and relying upon them were totally erroneous; that the trial Judge has merely relied upon surmises and conjectures to decree the suit; that the plaintiff has categorically admitted that she did not send any letters intimating her readiness and willingness to the defendant since 1985; that on the contrary, the learned Single Judge has observed that Exs.P11 and P12 which were supposed to have been written by the plaintiff to the father of the defendant would go to show that she has been contacting the defendant since the inception of the agreement was not correct; that the letters were not admitted nor was there any proof of service of those letters; and that while that being the case, relying upon Exs.P11 and P12 erroneously to come to a conclusion that there has been no laches or delay on the part of the plaintiff was thoroughly incorrect.

11. The learned Senior Counsel would further submit that the plaintiff has miserably failed to prove her readiness and willingness; that on the contrary the defendant was able to establish by oral and documentary evidence that the plaintiff was evasive and was not ready and willing to complete the sale transaction and was not in a sound financial position; that the agreement for sale was rescinded by the defendant under Ex.D2; that the same was refused by the plaintiff; that thereafter the defendant caused a letter under Ex.D4 which was also not received by the plaintiff; that the plaintiff only on 3.11.1989 filed the suit much after the considerable delay; that if the plaintiff was genuinely interested, she ought to have filed the suit immediately; that the plaintiff has not given any proper explanation to file the suit at the last minute; that the judgment relied on by the

appellants would confirm the view that the person seeking the relief under the Specific Relief Act should approach the Court within a reasonable time; that the Supreme Court has also affirmed the view; that in the instant case, the suit was filed on the last date before the expiry of the period of three months and no explanation much less proper explanation has been offered for keeping quiet all along these years; that under the circumstances the trial Judge should have dismissed the suit; but on the contrary granted the relief, and hence the judgment of the learned Single Judge has got to be set aside.

12. In support of his contentions, the learned Senior Counsel relied on the following decisions:

- (i) K.S. Vidyanadam and Others Vs. Vairavan, ;
- (ii) Pushparani S. Sundaram and Others Vs. Pauline Manomani James (Deceased) and Others, ;
- (iii) Manjunath Anandappa urf Shivappa Hanasi v. Tammanasa and Ors. 2003 (2) CTC 109;
- (iv) Sita Ram and Others Vs. Radhey Shyam, ;
- (v) Mohammedia Coop. Building Society v. Lakshmi S. Coop. Building Society Ltd. and Ors. Supreme Court-CA 3329 of 2008;
- (vi) Ramnath Publications Pvt. Ltd. and Anr. v. A.R. Madana Gopal and Ors. 2008 3 L.W. 817;
- (vii) Pankajam Parthasarathy and Ors. v. Kasturi Guna Singh 2001 (1) CTC 200; and
- (viii) P. Gopirathnam and 4 others Vs. Ferrodous Estate (Pvt.) Ltd., .

13. The learned Counsel for the respondent put forth the very same contentions which were raised before the trial Court, in order to sustain the judgment of the trial Court.

14. The Court paid its anxious consideration on the submissions made and looked into the materials available and in particular the impugned judgment.

15. As seen above, this intra-court appeal has arisen from a judgment of this Court granting a decree for specific performance directing the defendants to execute a sale deed transferring the extent of the suit land to which the Urban Land Ceiling Authority has granted exemption under

the Urban Land Ceiling Act in favour of the respondent/plaintiff or her nominees within a stipulated period. The very reading of the judgment of the learned Single Judge would clearly indicate that what was the extent of the property to be transferred and what was the consideration fixed are actually not indicated therein. The Court has to necessarily make a comment that this part of the decree what has been granted is not at all workable.

16. The admitted facts as could be seen from the available materials would emerge as follows:

The defendant purchased 10 acres and 53 cents of land in Velacherry Village on 12.11.1975 by way of a registered sale deed. Equally on

29.3.1984, the defendant sold 55894 sq.ft. out of the above property wherein the sale deed speaks about the pendency of the income tax

clearance and also exemption proceedings. At that juncture, the plaintiff paid an advance of Rs. 1 lakh on 17.3.1985 offering to purchase the

extent of 9 acres and 50 cents from out of the larger area mentioned above. The same was acknowledged by the owner. Apart from the said Rs. 1

lakh, the plaintiff paid a further sum of Rs. 4 lakhs on 18.6.1985. Following the same, the parties entered into a written agreement of sale as seen

under Ex.P5 on 4.11.1985.

17. According to the plaintiff, pursuant to the agreement, communications and reminders were made, and on occasions, it was refused, and

following the same, there was a lawyer's notice, and despite many a demand, the defendant did not come forward to execute the sale deed and to

complete the sale transaction, and under the circumstances, the plaintiff was compelled to come forward with the instant suit. Contrarily it was

contested by the defendants that they were all along ready and willing to complete the sale transaction; that the delay was on the part of the

plaintiff; that she was never ready and willing to pay the balance of sale consideration or to act in accordance with the terms and conditions

stipulated in the agreement and did not cooperate, and under the circumstances the sale transaction could not be completed. The learned trial

Judge has taken the view that it is a fit case where relief of specific performance was to be granted agreeing with the contentions put forth by the

respondent/plaintiff's side.

18. At the outset, needless to say that the relief of specific performance is discretionary. In a given case, the plaintiff who seeks the relief, must plead and prove that he has all along been ready and willing to perform his part of the contract. The readiness and willingness should be consistent with the terms of the agreement, and he must also seek the relief with clean hands. The law is well settled that merely because the plaintiff who seeks the relief, has got a right, the relief should not be granted; but the Court should look into all the facts and circumstances attendant, exercise its discretion judiciously and grant the relief if warranted so. In the case on hand, if this legal principle is applied, this Court is afraid whether it can sustain the judgment of the trial Court.

19. It is not in controversy that the parties entered into an agreement for sale on 4.11.1985. It would be more apt and appropriate to reproduce certain clauses in the agreement. Clauses 3, 4 and 5 read thus:

3. The Parties agree that the Party of the Second Part should get exemption for the transfer of the property to be conveyed from the Urban Land

Ceiling Authority and the party of the First Part shall give such authorisation and shall sign such papers that are necessary for this purpose.

4. The Parties agree that the party of the Second Part should themselves pay all the arrears of tax payable to the Urban Land Tax Authorities upto date of sale in respect of the portion of the Land sold to them under this agreement.

5. The Parties agree that the party of the Second Part should get vacant possession from the Madras Race Club who is tenant of the property sought to be conveyed. The Party of the First Part shall also direct the Madras Race Club to attorn tenancy to the Second Part in the event of completion of the transaction.

20. The very reading of the agreement which was entered into between the parties would clearly indicate that the exemption should be obtained from the Urban Land Ceiling Authorities only by the plaintiff. Equally she should pay all the tax arrears upto the date of the agreement and should clear the same. She must also get the vacant possession of the property which was under the possession of the Madras Race Club as a tenant when it was entered into. Apart from that, it was also agreed that the transaction should be completed within six months from that date. At this

junction, when the plaint is looked into, paragraph 2 of the plaint reads as follows:

2. The Plaintiff further submits that the defendant agreed to obtain exemption for the transfer of the property in favour of Plaintiff from the Urban

Land Ceiling Authorities, and also to obtain necessary Income Tax Clearance Certificate effectively transfer the property in favour of the Plaintiff....

21. The very reading of paragraph 2 of the plaint would indicate that all these averments found therein regarding obtaining of exemption from the

Urban Land Ceiling Authority and the income tax clearance certificate are contra to what are found in the agreement as stated above. As pointed

out earlier, the party who seeks the relief must come with the clean hands. In the instant case, all these averments are contra. Now, at this juncture,

it has to be pointed out that while there was an agreement between the parties and it is for the plaintiff purchaser who should obtain the above, she

should have done so. Further, the learned Counsel for the respondent/plaintiff would submit that she was ready and willing all along and she has

given all the papers for signature and they were actually handed over to the defendants so that they could get exemption cannot be accepted even

for a moment. There is nothing to indicate in the entire materials that she has taken steps in that regard. That apart, even though it was insisted by

the parties that there was tax arrears at the time when the agreement, Ex.P5, was entered into, and it was also agreed by the plaintiff that she

should clear the arrears, she has not even paid a single pie or there is nothing available to indicate that she has paid the tax arrears.

22. Further, the learned Counsel for the respondent would submit that getting vacant possession from the Madras Race Club, who was a tenant at

that time, would arise only after the completion of the sale. Even assuming to be so, as far as getting exemption from the Urban Land Ceiling

Authorities and also payment of tax which was payable by the defendant owner at that time, the plaintiff has not taken any steps whatsoever. Now,

this Court has to point out the readiness and willingness as contemplated under the provisions of the Specific Relief Act. When a suit is filed on the

strength of an agreement for sale, what has got to be looked into is whether the plaintiff was ready and willing to perform his part of the contract

consistent with the terms found in the agreement. But, in the instant case, the plaintiff has come with contra averments as found in the plaint which

would be indicative of the frame of mind of the plaintiff to come with the relief when she should not have been really ready and willing in the past.

The Court could further comment that the above averments found in paragraph 2 of the plaint were not only contra to the agreement, but also

speak that the allegations are false. Under the circumstances, it can be well stated that the plaintiff has come forward with unclean hands, which, in

the considered opinion of this Court, would suffice to deny the relief of specific performance.

23. It is well settled proposition of law that readiness and willingness must be from the very commencement of the agreement till the completion of

the contract. While the readiness must actually indicate the financial position of the purchaser to make payment of consideration, the willingness

must speak of his frame of mind. In the instant case, a careful scrutiny of the materials would indicate that they are contrary to the contentions put

forth by the respondent/plaintiff's side that she was ready and willing to perform the contract. The Apex Court has held in a decision reported in

N.P. Thirugnanam (D) by L.Rs., Vs. Dr. R. Jagan Mohan Rao and others, as follows:

4. It is next contended that the plaintiff was always ready and willing to perform his part of the contract. To buttress it, counsel placed strong

reliance on the evidence of PW 2, who had testified that he was willing and prepared to lend a sum of Rs. 2,00,000 to the plaintiff on the foot of a

promissory note. It is not necessary for the plaintiff that he should keep ready the money on hand. What is relevant and material is that he should

have the necessary capacity to raise the funds and was ready and willing to perform his part of the contract which has been demonstrated by the

evidence of PW 2. We do not accede to the contention. The trial Judge had pointed out that on an application filed by the defendants, a direction

was given to the plaintiff by order dated 11-2-1991 to deposit the amount of Rs. 2,00,000 or furnish bank guarantee giving time up to 11-3-1991.

He neither deposited the amount nor has given bank guarantee. It was also found that the plaintiff was dabbling in real estate business. He had a

house on hire purchase agreement with the T.N. Housing Board. He paid only Rs. 7750 up to 1980. A sum of Rs. 29,665 was further payable.

He had an agreement wide one Annamma Philip for Rs. 49,500 to sell the said house after purchase from the Board. Obviously, he had obtained

advance and sold the house to his vendee on 7-2-1980 after getting a sale deed executed in his favour. He entered into an agreement (Ex. P-1) on

9-4-1979 to purchase the suit house for Rs. 2,30,000. He was not able to pay the loans and he adjusted Rs. 20,000 which was paid towards

arrears of rent and paid only Rs. 1975 under Ex. P-30 for the sale consideration of his house. He was unable to pay the rent to the respondents

and had deposited huge amount towards arrears of rent pursuant to the orders of the courts. PW 2, though professed to be willing to advance a

sum of Rs. 2,00,000, did not have cash and admitted that he had to obtain Rs. 2,00,000 by hypothecating his property and at the same time was

willing to lend on a pronote to the plaintiff a sum of Rs. 2,00,000, which was hard to believe. These circumstances were taken into consideration

by the trial Judge as well as the Division Bench in concluding that the plaintiff was not ready and willing to perform his part of the contract.

5. It is settled law that remedy for specific performance is an equitable remedy and is in the discretion of the court, which discretion requires to be

exercised according to settled principles of law and not arbitrarily as adumbrated u/s 20 of the Specific Relief Act, 1963 (for short "the Act"). u/s

20, the court is not bound to grant the relief just because there was a valid agreement of sale. Section 16(c) of the Act envisages that plaintiff must

plead and prove that he had performed or has always been ready and willing to perform the essential terms of the contract which are to be

performed by him, other than those terms the performance of which has been prevented or waived by the defendant. The continuous readiness and

willingness on the part of the plaintiff is a condition precedent to grant the relief of specific performance. This circumstance is material and relevant

and is required to be considered by the court while granting or refusing to grant the relief. If the plaintiff fails to either aver or prove the same, he

must fail. To adjudge whether the plaintiff is ready and willing to perform his part of the contract, the court must take into consideration the conduct

of the plaintiff prior and subsequent to the filing of the suit along with other attending circumstances. The amount of consideration which he has to

pay to the defendant must of necessity be proved to be available. Right from the date of the execution till date of the decree he must prove that he

is ready and has always been willing to perform his part of the contract. As stated, the factum of his readiness and willingness to perform his part of

the contract is to be adjudged with reference to the conduct of the party and the attending circumstances. The court may infer from the facts and

circumstances whether the plaintiff was ready and was always ready and willing to perform his part of the contract.

24. In the case on hand, the agreement was entered into on 4.11.1985, and the suit was filed on 3.11.1988 just one day prior to the completion of

three years. A perusal of the evidence would clearly indicate that the plaintiff has candidly admitted that she did not send any letter to the

defendants calling upon them to complete the sale transaction. Originally at the time of agreement, the total advance was shown as Rs. 5 lakhs, and

the rest of the amount was Rs. 10 lakhs which was payable. But, from the time of agreement that was on 4.11.1985 till the time of filing of the suit,

not even any part of the consideration was paid, and nothing was available to indicate that she was ready and willing to make any part of the sale

consideration.

25. Apart from the above, before the trial Court, the plaintiff has relied upon Ex.P10, letter, and also Ex.P11, letter, alleged to have been written

by the plaintiff to the defendant on 6.10.1988. Now these two letters were relied upon by the learned trial Judge to hold that the plaintiff has all

along been ready and willing to perform her part of the contract, and the defendants were not cooperating, and therefore it was a fit case for

granting the relief of specific performance. This Court is at a loss to understand how these documents were relied upon by the trial Court. These

two documents should have been rejected even from the point of evidence. That apart, these documents should not have been given any

evidentiary value at all. Ex.P10 is stated to be a letter which remained undated and also unsigned, and therefore, it cannot be put in evidence. As

far as Ex.P11 is concerned, it is true that it is dated 6.10.1988, and it also bore the signature of the party. But, it was only a copy and the original

was not available. There was no notice upon the defendants to produce the original letter. When the power of attorney of the original defendant

was in the box, no question was confronted to him in that regard. As far as Ex.P11 was concerned, no acknowledgement was filed. Under the

circumstances, Exs.P10 and P11 could not be attached with any evidentiary value and should have been rejected by the trial Court. But, the trial

Court has erroneously relied upon the same.

26. Added further, in the instant case, the suit was filed after three years from the date of the agreement. In the absence of anything to indicate that the plaintiff was at any point of time, ready and willing to make payment of any part of the consideration except coming before the Court and making the averment that she was ready and willing to make the payment of consideration and the defendants owners did not cooperate, this Court is of the view that the contentions of the plaintiff's side should have been rejected by the learned trial Judge for the simple reason that there was an interval of nearly three years from the time of the agreement till the filing of the suit; but, no part of the consideration was made. Not even an attempt was made in that regard. It would be quite indicative of the fact that the averment of the plaintiff that she was ready and willing cannot but be false. All the circumstances would clearly indicate only the inaction on the part of the plaintiff to come before the Court. It is well settled proposition of law that in a given case where there are laches and inaction on the part of the plaintiff seeking the specific relief, the Court cannot but to deny the relief.

27. It has been held by the Apex Court in a decision reported in Azhar Sultana Vs. B. Rajamani and Others, as follows:

17. Section 16(c) of the Specific Relief Act, 1963 postulates continuous readiness and willingness on the part of the plaintiff. It is a condition precedent for obtaining a relief of grant of specific performance of contract. The court, keeping in view the fact that it exercises a discretionary jurisdiction, would be entitled to take into consideration as to whether the suit had been filed within a reasonable time. What would be a reasonable time would, however, depend upon the facts and circumstances of each case. No hard and fast law can be laid down therefor.

28. A Division Bench of this Court has held in a decision reported in 2008-3-L.W. 817 (Ramnath Publications Pvt. Ltd. and Anr. v. A.R. Madana Gopal and Ors.) as follows:

33. The respondents relied on another decision of the Supreme Court reported in (2008) 2 MLJ 750 (SC) (Balasaheb Dayandeo Naik and Ors.

v. Appasaheb Dattatraya Pawar) for the legal proposition that in the case of sale of immovable property, there is no presumption as to time being

the essence of the contract and even where the parties have expressly provided that time is the essence of the contract, such a stipulation will have to be read along with other provisions of the contract. There cannot be any quarrel on the legal proposition put forth by the respondents' side. It is true that mere fixation of time within which the contract was to be performed, did not make the stipulation as to the time as the essence of the contract. But, in a given case, the Court has to read along with the other provisions of the contract and also look into all other circumstances attendant. If done in the instant case, it would be clear that it was not a mere delay, but of total inaction on the part of the plaintiffs for 2 years and 3 months in clear violation of the terms of the Memorandums of Understanding, which required them to pay the balance of consideration immediately after the disposal of the writ petition. The said delay was also coupled with the substantial raise in price between the date of agreements and Memorandums of Understanding and the date of disposal of the writ petition and filing of the suit. In the opinion of this Court, it would be inequitable to give the relief of specific performance to the plaintiffs.

29. In the instant case, the total inaction and laches on the part of the plaintiff was for a period of three years. The suit was filed just one day prior to the completion of three years and that too with false averments. In such circumstances, it is not a fit case where the Court can exercise the discretionary powers to grant the relief of specific performance. All the above aspects escaped the vision of the learned trial Judge who has granted the relief. For the reason that the plaintiff has come with false averments, it could be termed as unclean hands. The plaintiff was never ready and willing to perform the contract or to make payment of sale consideration and also did not do anything which was consistent to the terms of the agreement. On these grounds, it is a fit case where the relief should have been denied. This Court is of the view that the judgment of the trial Court has got to be made undone by upsetting the same.

30. As far as the part payments made were concerned, admittedly the first payment of Rs. 1 lakh was made on 17.3.1985, and the other Rs. 4 lakhs was on 18.6.1985. Thus, totally the defendants have received Rs. 5 lakhs from the plaintiff on those specified dates. It is true that the plaintiff could not follow the terms of the contract; but the defendants who received Rs. 5

lakhs have been enjoying the benefit of the said sum all along the period. It is also true that the plaintiff has not asked for the alternative relief. However, this Court is of the considered opinion that equity would require that a direction should be given to the defendants to make repayment of that amount with a reasonable interest. Therefore, while setting aside the judgment of the trial Court granting the relief of specific performance, the appellants/defendants are directed to repay the said Rs. 5 lakhs to the plaintiff along with interest at 12% per annum from the respective dates within a period of two months herefrom.

31. Accordingly, this original side appeal is allowed setting aside the judgment and decree of the trial Court. Consequently, cross objection is dismissed. The parties shall bear their costs.