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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 08th April, 2026
Pronounced on: 06th July, 2026

\+ RFA 729/2018

GOURAVE GUPTA .....Appellant

Through: Mr. Jai Sahai Endlaw and Ms. Shambhavi Kala, Advs.
Mob: 9818668876
Email: shambhavi@jsechambers.com

versus

LAXMI ROHRA & ANR. .....Respondents

Through: Mr. Sanjeev Anand, Sr. Adv. with Ms. Sonam Anand and Mr. Akshay Thakur, Advs.
Mob: 9711505029
Email: office@anandandassociates.co.in

\+ RFA 730/2018

M/S LA MODE FASHIONS PVT. LTD. .....Appellant

Through: Mr. Jai Sahai Endlaw and Ms. Shambhavi Kala, Advs.
Mob: 9818668876
Email: shambhavi@jsechambers.com

versus

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CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

JUDGEMENT

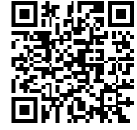
INTRODUCTION:

1. The present are Regular First Appeals (**"RFAs"**) filed under Section 96(1) read with Order XLI Rule 1 of the Code of Civil Procedure, 1908 (**"CPC"**), against two judgments and decrees, dated 26th July, 2018 (**"impugned judgments"**), passed by the Additional District Judge (**"ADJ"**)-02 (District Central), Tis Hazari Courts, Delhi (**"Trial Court"**) in two suits being *CS No. 213/2016* and *CS No. 280/2016* (Old Suit Nos. *CS (OS) 634/2006* and *CS (OS) 635/2006*), titled as *Shri Gourave Gupta Versus Mrs. Laxmi Rohra & Anr.* and *La Mode Fashions Pvt. Ltd. Versus Mrs. Laxmi Rohra & Anr.*

2. The aforesaid suits were filed by the plaintiffs, i.e., appellants herein against the common defendants, i.e., respondents herein, *inter alia* seeking specific performance and permanent injunction in respect of two inter-connected properties bearing *Municipal No. 6167, Ward No. XII*, constructed on a freehold plot of land bearing No. *8, Block-G, situated at Northern City Extension Scheme No. I, Jawahar Nagar, Subzi Mandi, Delhi–110007,* comprising:

(i) a shop admeasuring 61.6 sq. yds. approx. on the Ground Floor ('suit property in *RFA No. 729/2018*'); and

(ii) the adjoining/inter-connected shop admeasuring approximately 70 sq. yds. approx. on the Ground Floor, together with a Mezzanine



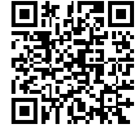
Floor area measuring approximately 100 sq. ft. ('suit property in *RFA No. 730/2018*') (collectively, **"suit properties"**).

3. Respondents are common to both the captioned appeals as they are the joint-owners of the aforenoted suit properties, both being inter-connected and actually part of one property, i.e., *Municipal No. 6167, Ward No. XII*, constructed on a freehold plot of land bearing No. *8, Block-G,* situated at *Northern City Extension Scheme No. I, Jawahar Nagar, Subzi Mandi, Delhi–110007.*

4. Further, the appellant in *RFA No. 730/2018*, i.e., La Mode Fashions Pvt. Ltd. is a private limited company, and is represented through its Director, Shri A.K. Gupta, father of Gourave Gupta, i.e., the appellant in *RFA No. 729/2018*.

5. As per the facts on record, two separate Agreements to Sell dated 18th August, 2005 were entered into with respect to the suit properties, one in the name of Shri. Gourave Gupta, son of Shri. A.K. Gupta, and the other in the name of M/s La Mode Fashions Pvt. Ltd., having Shri A.K. Gupta as one of its directors, for the total sale consideration of Rs. 1,68,00,000/- (Rupees One Crore Sixty-Eight Lakhs Only), i.e., Rs. 84,00,000/- (Rupees Eighty-Four Lakhs Only) under each of the said Agreements, out of which, Rs. 18,00,000/- (Rupees Eighteen Lakhs Only) were paid as an advance sum for sale consideration – Rs. 9,00,000/- (Rupees Nine Lakhs Only) under each of the Agreements to Sell.

6. The Trial Court, *vide* the impugned judgments, dismissed the suit of the plaintiffs, i.e., appellants herein, recording that they are neither entitled to the relief of specific performance, nor entitled to get back the advance amount of Rs. 9,00,000/- (Rupees Nine Lakhs Only), paid to the



defendants/respondents in each case, while entering into the respective Agreements to Sell dated 18th August, 2005.

7. Before adverting to the facts of the instant appeals, it is noted that this Court, *vide* order dated 31st August, 2018, granted *status quo qua* the suit properties, which was made absolute *vide* order dated 10th December, 2019 until the pendency of the appeals.

RELEVANT FACTS:

8. The facts germane to the adjudication of the present appeals, as gathered from the pleadings and the documents placed on record, are as follows:

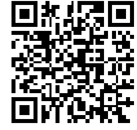
Pre-Filing of Suit:

9. The respondents herein are the joint owners of the suit properties described hereinabove. They entered into separate Agreements to Sell with the appellants in respect of the suit properties, each for a sale consideration of Rs. 84,00,000/- (Rupees Eighty-Four Lakhs Only).

10. Pursuant thereto, the parties reduced the terms and conditions governing the sale and purchase of the respective suit properties into writing, by executing documents titled as "Advance Receipt cum Agreement to Sell and Purchase", both dated 18th August, 2005 (**"Agreements to Sell"**).

11. In terms thereof, the appellants paid a sum of Rs. 9,00,000/- (Rupees Nine Lakhs Only) each, aggregating to Rs. 18,00,000/- (Rupees Eighteen Lakhs Only), as part of the sale consideration, in respect of the suit properties, in the following manner:

(i) a sum of Rs. 5,00,000/- (Rupees Five Lakhs Only) in respect of each Agreement to Sell was paid through two cheques of Rs.

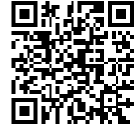


2,50,000/- (Rupees Two Lakhs Fifty Thousand Only) each. Accordingly, a total sum of Rs. 10,00,000/- (Rupees Ten Lakhs Only) was paid through four cheques dated 18th August, 2005, bearing *nos. 629771, 629772, 645398* and *645399*, drawn on *Vijaya Bank, Bhikaji Cama Palace*; and

(ii) the remaining sum of Rs. 4,00,000/- (Rupees Four Lakhs Only) in respect of each Agreement to Sell, aggregating to Rs. 8,00,000/- (Rupees Eight Lakhs Only), was paid in cash and the same was recorded in the Agreements to Sell.

12. It was further agreed under *Clause 2* of each of the Agreements to Sell that the balance sale consideration of Rs. 75,00,000/- (Rupees Seventy-Five Lakhs Only) in respect of each suit property, aggregating to Rs. 1,50,00,000/- (Rupees One Crore Fifty Lakhs Only), would be paid to the respondents upon their handing over vacant and peaceful possession of the suit properties to the appellants. In terms of the said Clause of the respective Agreements to Sell, the parties agreed that the transaction would be completed on or before 31st December, 2005.

13. The Agreements to Sell further stipulated under *Clause 3* that, in the event the vendees/appellants failed to pay the balance sale consideration within the stipulated period, the transaction would stand cancelled, and the advance amount paid by them would stand forfeited. Conversely, in the event the vendors/respondents refused or failed to complete the requisite formalities within the prescribed period, the vendees/appellants would be entitled to recover double the amount of the advance money paid by them to the vendors/respondents, and to seek specific performance of the

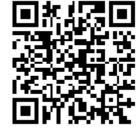


Agreements to Sell through a court of law at the cost of the vendors/respondents.

14. This Court has perused both the Agreements to Sell and notes that the terms and conditions contained therein are identical.

15. Further, it is to be noted that on 25th February, 2006, a Legal Notice was issued on behalf of the appellants to compel the respondents to perform their part of the obligations. The said Legal Notice recorded that though as per the Agreements to Sell, respondents were obligated to vacate the suit properties on or before 31st December, 2005, simultaneously upon the payment of balance sale consideration by the appellants, however, on 02nd December, 2005, respondents had requested for some more time for vacation of the suit properties and accordingly, *via* an endorsement made on both of the Agreements to Sell, appellants granted another two months' time for the same, thereby, extending the deadline upto 28th February, 2006. The Legal Notice also stated that the appellants were ready and willing to pay the balance sale consideration.

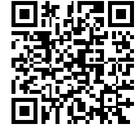
16. Insofar as the suit property forming the subject matter of *RFA No. 730/2018* is concerned, the notice further stated that the appellants had procured Pay Order No. *132190* dated 22nd February, 2006, drawn on Vijaya Bank, Service Branch, Delhi, for a sum of Rs. 37,50,000/- (Rupees Thirty-Seven Lakhs Fifty Thousand Only), in favour of Mrs. Laxmi Rohra, and Pay Order No. *132194* dated 22nd February, 2006, drawn on Vijaya Bank, Service Branch, Delhi, for a sum of Rs. 37,50,000/- (Rupees Thirty-Seven Lakhs Fifty Thousand Only) in favour of Shri Surjeet Rohra, aggregating to Rs. 75,00,000/- (Rupees Seventy-Five Lakhs Only), being the balance sale consideration payable in respect of the said suit property. The appellants



further stated that photocopies of the aforesaid Pay Orders had been enclosed with the Legal Notice and that the original Pay Orders would be handed over to the respondents at the time of delivery of vacant and peaceful possession of the suit property, and the execution and registration of the Sale Deed.

17. *Vide* Reply dated 03rd March, 2006, respondents *inter alia* denied the factum regarding extension of time for completion of sale purchase transaction. It was further stated that so far as the two Agreements to Sell were concerned, the balance sale consideration, amounting to Rs. 1,50,00,000/- (Rupees One Crore Fifty Lakhs Only), i.e., Rs. 75,00,000/- (Rupees Seventy-Five Lakhs Only) under each of the said Agreements, had to be paid by the appellants on or before 31st December, 2005, and that the time fixed was of essence of the contract. It was stated that the Agreements expressly provided that on account of failure to pay the balance consideration within stipulated time, the transaction of sale will stand cancelled and the advance sale consideration will be forfeited. Since the appellants failed to arrange for the same within the stipulated time duration, the transaction was terminated and the advance sale consideration received was forfeited by the respondents.

18. Aggrieved thereby, the appellants, on 19th April, 2006, filed Suit Nos. being *CS No. 213/2016* and *CS No. 280/2016* (Old Suit Nos. *CS (OS) 634/2006* and *CS (OS) 635/2006*), titled as *Shri Gourave Gupta Versus Mrs. Laxmi Rohra & Anr.,* and *La Mode Fashions Pvt. Ltd. Versus Mrs. Laxmi Rohra & Anr,* respectively, seeking specific performance of the Agreements to Sell, executed between the parties.

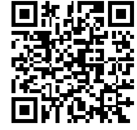


Post-Filing of Suit:

19. *Vide* order dated 19th April, 2006, Trial Court, while issuing summons to the defendants/respondents herein, granted interim injunction in favour of the plaintiffs/appellants herein, *qua* the suit properties, thereby, restraining the defendants from disturbing the *status quo* till the next date of hearing.

20. Further, by virtue of order dated 06th November, 2007, the Trial Court continued the interim order dated 19th April, 2006. *Vide* the same order, the Trial Court framed the following issues for consideration in the suits:

> *"xxx xxx xxx*
>
> *1. Whether the plaintiff exerted any undue influence upon the defendants to sell the suit property as alleged in para 6 of the preliminary objection of the Written Statement? OPD*
> *2. Whether the plaintiff has played a fraud on the defendants which has vitiated the transaction between the parties? OPD.*
> *3. Whether the defendants had got vacated and acquired the vacant possession of the suit property by 31.12.2005 so as to hand over the vacant physical possession of the suit property to the plaintiff? If so, its effect? OPD*
> *4. Whether the defendant No. 2 and son of defendant No. 1 Shri Kamal Rohra had put their signatures on blank portion at the end on the last page of the Agreement only as a token of having received the copy of the Agreement and not to seek extension of time upto 28.02.2006 for vacation of the suit property? If so, its effect? OPD*
> *5. Whether time for the performance of the agreement was extended by the parties as contended by the plaintiff? If not its effect? OPP*
> *6. Whether time was the essence of the agreement dated 18th August, 2005? OPD*
> *7. Whether the plaintiff has been ready and willing to perform his part of contract? OPP*
> *8. Whether the plaintiff is entitled to the relief of specific performance? OPP*
> *9. Whether the plaintiff is entitled to a decree of permanent injunction against the defendants? OPP*
> *10. Relief*
>
> *xxx xxx xxx"*



21. Further, this Court notes that at a later stage, in view of Notification *No. 27187/DHC/Orgl.*, dated 24th November, 2015, this Court *vide* order dated 15th January, 2016, directed the parties to appear before the Court of Learned District Judge, Tis Hazari Courts (Central) on account of change in pecuniary jurisdiction.

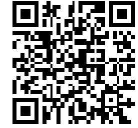
22. The Trial Court passed the two impugned judgments and decrees dated 26th July, 2018, separately dismissing the suits *qua* each of the suit properties, thereby, denying the relief of specific performance to the appellants, *inter alia* on the grounds that the extension for completion of sale transaction by 28th February, 2006, could not be proved. Moreover, time being the essence of the agreements between the parties, on account of appellants' failure to pay the due amount within the stipulated time, it legitimised both cancellation of the Agreements to Sell as well as the forfeiture of the advance amount paid *qua* each of the suit properties. The Trial Court also found lack of readiness and willingness on the part of appellants, a *sine qua non* for seeking relief of specific performance, and therefore, denied the relief of specific performance and recovery of advance amount paid by the appellants.

23. Aggrieved by the aforenoted impugned judgments and decrees of the Trial Court, the appellants herein have preferred the instant appeals, seeking setting aside of the same.

SUBMISSIONS OF THE APPELLANTS:

24. The appellants have raised the following contentions:

24.1 On 02nd December, 2005, respondent no. 2, accompanied by Sh. Kamal Rohra, approached the appellant, Sh. Gourave Gupta, and sought additional time to vacate the suit properties and hand over vacant possession

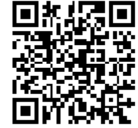


thereof. The appellant, despite being ready and willing to pay the balance sale consideration, having no reason to doubt the *bona fides* of the respondents, acceded to the said request. Consequently, it was mutually agreed between the parties that the time for performance of their respective obligations under the Agreements to Sell would stand extended by a period of two months, i.e., up to 28th February, 2006, and thus the parties executed the modification/endorsement in the Agreements to Sell.

24.2 With respect to issue nos. 1 to 3 regarding undue influence exercised and fraud played by the appellants upon respondents and the question regarding respondents having proved that they had the suit properties vacated by 31st December, 2005, since the Trial Court ruled against respondents in each of these issues, and the respondents having not preferred any appeal as regards the mentioned issues, the findings of the Trial Court *qua* the said issues have garnered finality.

24.3 So far as issue nos. 4 and 5 are concerned, which encapsulate the controversy regarding signatures put by respondent no. 2 and son of respondent no. 1, the Trial Court finding is incorrect as the said finding was made based on surmises and conjectures without reference to the pleading or evidence.

24.4 The onus for proving signatures on blank page rested on the respondents. Mr. Kamal Rohra, son of respondent no. 1 was entitled to sign the endorsement *qua* extension of time. The same is not disputed by respondents in their joint written statements. Additionally, the testimony of respondent no. 1 in her cross-examination states that her son went to meet the appellants on 02nd December, 2005, with her consent and permission. Therefore, Mr. Kamal Rohra accompanied respondent no. 2, as a



representative of respondent no. 1, acting on her behalf. Even otherwise, it is submitted that it was not an issue for the Trial Court's consideration and the Trial Court erroneously entered into the question of entitlement.

24.5 Nevertheless, the placement of the signatures, exactly at the foot of the last page of the respective Agreements to Sell, negates the respondents' assertion that there was no hand-written endorsement regarding extension of time at the time they signed the same.

24.6 The onus rested on the respondents to prove the signatures, if the same were done as a way for acknowledging the receipt of photocopy, which, does not stand satisfied by a mere assertion to that effect, especially, considering that the photocopies were never produced in the Court. The fact that three persons signed a mere receipt of photocopy becomes questionable, and these circumstances were neither explained by the respondents nor examined by the Trial Court while dealing with issue nos. 4 and 5.

24.7 Time was not essence of the agreement *inter se* the parties. If it were so, the originally agreed date of completion of sale transaction, i.e., 31st December, 2005, would not have been decided four months subsequent to the execution of the Agreements to Sell. Seeking extension of time for completion of sale transaction militates against the respondents' claim that the time was of essence of the contract.

24.8 It is averred that along with the Legal Notice, the appellants enclosed photocopies of two Pay Orders drawn on its account for a total sum of Rs. 75,00,000/- (Rupees Seventy-Five Lakhs Only), showcasing readiness and willingness on their part.

24.9 Furthermore, the respondents' claim that time was of essence since they had taken loan, put their property on mortgage, and were having family

disputes is also false as they have failed to prove that they had informed the appellants of their pending financial obligations or family disputes due to which they were in a dire need to expeditiously sell the suit properties to the appellants. Nonetheless, in transactions relating to sale of immovable properties, time is not the essence of contract.

24.10 The Trial Court erred in concluding that the appellants were not ready and willing to perform their contract. Respondents themselves stated that the appellants were owner of big chain of fashion outlets, thereby, admitting to the readiness and willingness of appellants. In that regard, it is also submitted that in a suit for specific performance, appellants need not as a condition show that they were ready with cash. The very fact that appellants enclosed the demand drafts with the Legal Notice dated 25th February, 2006, is a positive fact to prove that the appellants had the capacity to pay the sale consideration. Unless the appellants are called upon to produce the accounts either by the respondents or the Court orders them to do so, no adverse inference can be drawn.

24.11 The Trial Court erroneously regarded the issuance of the Legal Notice dated 25th February, 2006 as suspicious merely because it was sent three days prior to the extended deadline of 28th February, 2006, for completion of the sale transaction. However, the Trial Court failed to appreciate that the issuance of the said Legal Notice constituted a *bona fide* act on the part of the appellants, demonstrating nothing but their readiness and willingness to perform their obligations under the respective Agreements to Sell.

24.12 Further, in so far as the readiness and willingness on part of appellants is concerned, the Trial Court ought to have decided it in the context of extension of time for completion, i.e., if the appellants were ready and

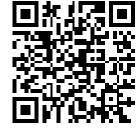
willing to perform their obligation on 28th February, 2006, and not earlier thereto. This burden has been duly discharged by the appellants.

24.13 The readiness and willingness on the part of appellants to perform their part of the contract is contingent upon the respondents doing everything which was required for them to be done in terms of the respective Agreements to Sell. Even though the respondents stated in their examination-in-chief that they had vacated the suit property on 30th November, 2005, however, conversely, they relied upon receipt dated 15th December, 2005 for averring that they sold the stock of their business to vacate the suit property.

24.14 Respondents also did not produce the income tax returns of the business they were running from the suit properties. This also contradicts their stand that they were ready to vacate the suit properties within the stipulated time. That conduct of respondents is relevant and was ignored by the Trial Court in the suits for specific performance.

24.15 The suits before the Trial Court were maintainable and the appellants were not required to seek declaration for termination of the Agreements to Sell as invalid in law. Further, the plea regarding maintainability of the suit is required to be raised at the first instance in the pleadings and only then such a plea can be adjudicated by the Trial Court on its merits as a preliminary issue. *Per contra*, the Trial Court did not frame it as a preliminary issue and even adjudicated it as one of the last issues to be decided.

24.16 Moreover, unilateral cancellation of an Agreement to Sell by one party is not permissible in law except where agreement is determinable in terms of Section 14 of the Specific Relief Act, 1963 (**"Specific Relief Act"**)



and such cancellation cannot be raised as a defence in a suit for specific performance.

24.17 The Trial Court also erroneously affirmed the forfeiture of earnest amount paid by appellants, especially, when respondents failed to prove any communication with regard to termination of the said Agreements to Sell upon alleged failure of appellants to pay the balance sale consideration on time. The respondents admittedly never met with the appellants after execution of the Agreements to Sell. Therefore, without prejudice, the Trial Court at least ought to have directed the respondents to return the advance sale consideration, received by them along with the interest thereon.

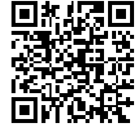
24.18 The respondents also did not prove any loss or damage accrued to them to be able to justify the forfeiture. In absence thereof, the Trial Court could not have forfeited the advance money paid by the appellants with respect to the suit properties.

24.19 Accordingly, the appellants pray for setting aside of the impugned judgments and decrees passed by the Trial Court and seek the relief of specific performance, thereby, directing the respondents to hand over the vacant peaceful possession as against the payment of balance sale consideration with respect to the suit properties.

SUBMISSIONS OF THE RESPONDENTS:

25. The respondents have raised the following contentions:

25.1 The appellant's contention in the Legal Notice dated 25th February, 2006 regarding the alleged enclosure of photocopies of two Pay Orders drawn on its account for a total sum of Rs. 75,00,000/- (Rupees Seventy-Five Lakhs Only), is misleading as the alleged photocopies of the said Pay Orders are not there on record. Additionally, in *CS No. 213/2016* (Old Suit

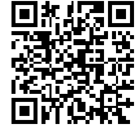


No. *CS (OS) 634/2006*), it was never the plaintiff's case that such Pay Orders had been issued. The Legal Notice associated with the mentioned suit is also completely silent on the issuance or enclosure of any such Pay Orders.

25.2 On 02nd December, 2005, respective copies of the Agreements to Sell were handed over to respondent no. 2 who was accompanied by son of respondent no. 1, Shri Kamal Rohra. Subsequent thereto, they were asked to acknowledge the receipt of those photocopies to the Agreements to Sell by putting their signatures on a blank portion at the end on the last page of the said Agreements in token of having received the said copies. It is the case of respondents that neither was anything written above their signatures nor was anything written in their presence or with their knowledge thereafter.

25.3 Time was of essence of the Agreements dated 18th August, 2005 and Rs. 75,00,000/- (Rupees Seventy-Five Lakhs Only) each under the two Agreements, as balance sale consideration, were payable on or before 31st December, 2005 as stipulated under *Clause 2* of the Agreements to Sell. Since no payment was made to that effect by the appellants, despite knowing fully well the reason and urgent need of said funds by the respondents, the Agreements to Sell stood cancelled/terminated, the advance money forfeited and there remains no subsisting agreement between the parties whose specific performance the appellants can seek.

25.4 As regards issue nos. 4 and 5, not only the alleged handwritten portion and signatures were in "different inks" but were also written using "different pens". This negates that the endorsement was made in the presence of, or with the consent and permission of respondent no. 2 and Shri Kamal Rohra,



as recorded by the Trial Court. Kamal Rohra was not even competent to act on behalf of Mrs. Laxmi Rohra, i.e., respondent no. 1.

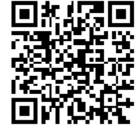
25.5 There has been nothing placed on record by appellants to showcase as to when the alleged endorsement was made and who made it. Further, Mr. A.K. Gupta, in his cross-examination, admitted that the endorsement seemed to be in handwriting of his accountant. However, the said accountant was never produced before the Court during trial proceedings.

25.6 The Trial Court has rightly concluded that time was of essence of the Agreements to Sell as the respondents had taken loan and had mortgaged the joint family property and the sale proceeds from the suit properties were to be utilized for paying the bank and getting the mortgaged property released so as to settle the family disputes.

25.7 Appellants were aware that *Clauses 2* and *3* were added at the instance of respondents for them to receive the sale consideration on time, as they were in dire need of the same. Even otherwise, the fact that respondents specifically incorporated the said Clauses, with no room for extension, is indicative of their intention to make time the essence for the fulfilment of the contract.

25.8 As regards readiness and willingness on the part of appellants, appellants were supposed to prove that right from the date of execution of Agreements to Sell till the date the Court rendered the decrees, they had always been ready and willing to perform their part of the contract. Mere averment to that effect was not sufficient and the appellants were duty bound to prove the same as well.

25.9 The appellants were never ready and willing to perform their contractual obligation as:



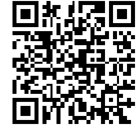
i. Appellants admittedly never offered balance sale consideration amounting to Rs. 1,50,00,000/-, and no draft sale deed was prepared and sent to the respondents. Further, the appellants admittedly never purchased stamp papers for execution of the Sale Deeds;

ii. Before 31st December, 2005, no letter was written by the appellants that they were ready with the payment of the balance sale consideration, which is admitted by Mr. A.K. Gupta.

25.10 Under both the Agreements to Sell, the appellants' witnesses in the trial, have specifically admitted that they did not have the requisite means or even half of the total amount in the bank accounts to pay the mentioned balance amount. Neither did the appellants file any documentary evidence to prove their financial capacity nor did they examine any witness from the bank or otherwise. The appellants' claim that they were arranging for balance payment to be made *via* cash, was just an attempt to cover up the admission of non-availability of funds in their bank account or otherwise, in their cross-examination.

25.11 Mr. A.K. Gupta, in *CS No. 280/2016*, in his cross-examination admitted that there was nothing on record filed by him to show that he had made arrangement of funds to make the balance payment in November, 2005. In the instant cases, the appellants have made only bald and self-serving assertions that they were always ready and willing to pay the balance sale consideration, without producing any cogent or credible evidence in support thereof.

25.12 The alleged photocopies of the Pay Orders as mentioned by the appellants in their Legal Notice dated 25th February, 2006, as well as in their



plaint are not on record, and no evidence has been led to prove that the said alleged Pay Orders were even made from the Bank.

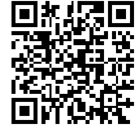
25.13 Considering the above, the Trial Court has rightly held that appellants have failed to prove that they were ready and willing to perform their part of the contract, in the sense that they have not even been able to prove that they had the financial means and capacity to go forward with the transaction by paying the balance sale consideration.

25.14 Appellants therefore, failed to fulfil their obligation to show readiness and willingness on their part, which is a condition precedent for the Court to be able to rule in their favour for granting the relief of specific performance.

25.15 On the issue of maintainability, it is submitted that suit *qua* specific performance was not maintainable as the plaintiffs in the suit, the appellants herein, did not seek for declaration of the termination of the Agreements to Sell to be illegal/bad in law. The plaintiffs/appellants directly sought for specific performance, despite the Agreements having been terminated, and the fact that the Agreements had been terminated was in the knowledge of the appellants and they were apprised about the same *vide* Reply dated 03rd March, 2006. If there is a right of termination and such right has been exercised, appellants had to seek declaration against such termination, however, the appellants having failed to do so, the suits must necessarily fail.

<u>FINDINGS AND ANALYSIS</u>:

26. I have heard learned counsels for the parties, and perused the documents and evidence on record. For the purposes of the present cases, it is appropriate to deal with the issues raised and dealt with by the Trial Court



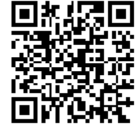
in the said cases in a combined manner, the issues being identical and common to both the suits.

ISSUE 4: Whether defendant no. 2/respondent no. 2 and son of defendant no. 1/respondent no. 1, Shri Kamal Rohra had put their signatures on the blank portion at the end on the last page of the Agreement only as a token of having received the copy of the Agreement and not to seek extension of time upto 28.02.2006 for vacation of the suit property? If so, its effect?

ISSUE 5: Whether time for the performance of the agreement was extended by the parties as contended by the plaintiffs/appellants? If not, its effect?

27. As regards the issues in hand, it is to be noted that the contention of the appellants is that the signatures of respondent no. 2 and the son of respondent no. 1, constitutes an acknowledgment of extension of time for performance and the said signatures were not a mere acknowledgment of receipt of photocopies of the Agreements to Sell.

28. The appellants have contended that the burden of proving as to why the signatures were allegedly put on a blank page rested on the respondents. Nowhere in the Agreements is it expressly enumerated that the signatures were put as an acknowledgment for receipt of photocopy. In absence thereof, a mere assertion to that effect cannot discharge their burden, especially, considering that the alleged photocopies of the Agreements to Sell were never produced during the trial proceedings. Furthermore, the fact that the signatures were placed exactly at the foot of the last page of the respective Agreements to Sell, that too, just below the hand-written endorsement negates the respondents' assertion that there was no hand-written endorsement regarding extension of time, at the time when they



signed the same. Lastly, Mr. Kamal Rohra, son of respondent no. 1 was competent to act on behalf of respondent no. 1 and the same is expressed through the testimony of respondent no. 1.

29. At this juncture, it is to be noted that the question regarding signatures and its purpose foremost depends upon validity of the signatures executed by respondent no. 2 and Mr. Kamal Rohra, i.e., son of respondent no. 1. If the signatures *per se* are not valid in the context as purported, there is no room to delve into the purpose. In that regard, the Trial Court has concluded that Kamal Rohra, son of respondent no. 1, was not even the owner of the suit properties, nor did he hold General Power of Attorney or Special Power of Attorney for respondent no. 1. Therefore, he was legally incompetent to request for any extension of time to complete the sale transaction.

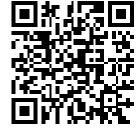
30. In this regard, it would be of relevance to refer to the cross-examination of the plaintiffs in both the suits. Reference to the cross-examination of Mr. A.K. Gupta, *PW-1* in *RFA 730/2018* reveals that Mr. A.K. Gupta has categorically admitted that he was aware that Mrs. Laxmi Rohra was the co-owner of the suit property and that agreement to purchase 50% share of Mrs. Laxmi Rohra was entered into with her only. He further admitted that she did not enter into any agreement or understanding with them regarding extension of date for performance of the agreement and there was nothing on record to show that she had given any consent or authorisation to her son for extending the date for performance of the contractual obligations under the agreement. The relevant portions of the cross-examination of Mr. A.K. Gupta, *PW-1* in *RFA 730/2018,* are reproduced as under:

> *"xxx xxx xxx*
>
> *…….. **<u>It is correct that 50% owner of the suit property is Mrs. Laxmi Rohra. It is correct that the agreement to purchase 50% share of Mrs. Laxmi Rohra was entered into with her only. It is correct that subsequent to the execution of the agreement to sell dated 18.08.2005, there was no agreement or understanding arrived at between me and Mrs. Laxmi Rohra with respect to the suit property. It is correct that subsequent to the execution of the agreement to sell I did not have any dealing with Mrs. Laxmi Rohra personally with respect to the suit property. There is nothing in writing to show that the defendant No. 1's son had extended the date for performance of the agreement with the consent and knowledge of the defendant No. 1</u>**………*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

31. It is also to be noted that in the cross-examination, Mr. A.K. Gupta, *PW-1* in *RFA 730/2018,* has admitted to even such an extent that he was aware that any modifications in the agreement could have only been done in agreement with the said owner or under a written authority of the said owner in favour of some person. Relevant portion of the evidence of Mr. A.K. Gupta, *PW-1* in *RFA 730/2018,* is reproduced as under:

> *"xxx xxx xxx*
>
> *……..**<u>It is correct that I was aware that once the agreement for the purchase of the suit property was with the owner, any modification of the said agreement could be only in agreement with the said owner or under a written authority of the said owner in favour of some person</u>**…….*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

32. Furthermore, reference may also be made to the cross-examination of Mr. Gourave Gupta, *PW-1* in *RFA 729/2018*. In his cross-examination, he had admitted that from the beginning he had dealt with Mrs. Laxmi Rohra with respect to the property. Therefore, in the light of the aforesaid deposition, the argument that the son of Mrs. Laxmi Rohra, i.e., Mr. Kamal



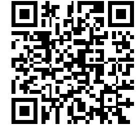
Rohra, was an authorised party for the purposes of purported extension of time under the contract, cannot be accepted. It is clear that both the plaintiffs/appellants were aware of the said aspect. The relevant portion of the cross-examination of Mr. Gourave Gupta, *PW-1* in *RFA 729/2018,* is reproduced as under:

> *"xxx xxx xxx*
>
> *.....I am 25 years old.* ***I had dealing with Mr. Surjit Rohra and Mrs. Laxmi Rohra in respect of the property on behalf of the defendants. The dealings had been with the abovementioned person only in respect of the property right from the beginning till the agreement and thereafter with respect to everything that is mentioned in the plaint****.....*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

33. It is also pertinent to note here that in his cross-examination, Mr. Gourave Gupta, *PW-1* in *RFA 729/2018,* deposed in categorical terms that there was nothing in writing to show that respondent no. 1 herein, i.e., Mrs. Laxmi Rohra, had either requested for or agreed to the extension of time for concluding the sale transaction from 31st December, 2005 to 28th February, 2006. Relevant portion of the deposition of Mr. Gourave Gupta, *PW-1* in *RFA 729/2018,* is reproduced as under:

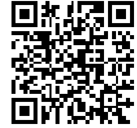
> *"xxx xxx xxx*
>
> *Q:* ***Is it correct that there is nothing in writing to show that Mrs. Laxmi Rohra had either requested for or agreed to the extension of time for concluding the sale transaction from 31.12.2005 to 28.02.2006?***
>
> *A:* ***Yes, it is correct. She requested me on phone to extend the time. It is correct to suggest that no document was executed between me and Laxmi Rohra extending the time from 31.12.2005 to 28.02.2006.***
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

34. It is trite in law that where an agreement involves multiple co-owners/sellers, an extension or modification of a material term, in the instant



appeals, the deadline for payment, cannot be valid if it cannot be proven that all of them validly executed or consented to such extension. In this regard, reference may be made to the judgment in the case of ***Janardan Das and Others Versus Durga Prasad Agarwalla and Others, 2024 SCC OnLine SC 2937***, wherein, it has been held that in contracts involving multiple co-owners, if the owners do not personally execute the agreement, an agent can act on their behalf through a valid and subsisting Power of Attorney. It has categorically been laid down that in contracts involving multiple owners of property, an agent's authority to bind the principal must be valid and proper. Without proper authority, an agent cannot bind the principals to a contract of sale. Thus, the Supreme Court held as follows:

> *"xxx xxx xxx*
>
> ***25. In contracts involving multiple owners of property, it is imperative that all co-owners either personally execute the agreement to sell or duly authorise an agent to act on their behalf through a valid and subsisting power of attorney. An agent's authority must be clear and unambiguous, and any limitations or revocations of such authority must be duly considered. Without proper authority, an agent cannot bind the principals to a contract of sale.***
>
> ***26.*** *The trial court examined the General Power of Attorney dated 30-12-1982, purportedly executed by Defendants 6 to 8 and late Soumendra in favour of Defendant 1 and held that the GPA was unregistered and executed over a decade prior to the agreement to sell. Moreover, the trial court also observed that GPA was not referenced or relied upon in the agreement dated 6-6-1993 and there was no mention that Defendant 1 was acting as an agent on behalf of his sisters under the GPA. It was held that Defendant 1 signed the agreement solely in his personal capacity, and there was no indication that he was executing it on behalf of Defendants 6 to 8. The High Court disagreed with the trial court, holding that the GPA was valid and in force at the time of the agreement. It opined that the lack of explicit reference to the GPA in the agreement did not invalidate Defendant 1's authority to act on behalf of his sisters.*

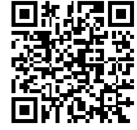


27. ***In our considered opinion, the High Court erred in its assessment of the authority of Defendant 1 to bind Defendants 6 to 8. While it is legally permissible for an agent to bind a principal even if the agency relationship is not disclosed, this principle applies when the agent has valid and subsisting authority.*** *In the present case, the GPA was executed in 1982 and was unregistered. The subsequent registered partition deed in 1988 allocated specific shares to each co-owner and delineated their rights and authorities.* ***Moreover, the partition deed dated 17-2-1988 impliedly revoked any prior authority granted under the GPA concerning the sale of the property. By specifying that Defendant 1 was authorised only to collect rent, it limited his authority and implicitly withdrew any broader powers previously granted.***

28. It must be emphasised that the agreement dated 6-6-1993 did not mention the GPA or indicate that Defendant 1 was acting on behalf of his sisters. He signed the agreement solely in his capacity, and there was no representation made to the plaintiffs that he had the authority to bind the sisters. This omission is significant, as the plaintiffs were aware that the sisters' consent was essential, which is evident from the agreement's stipulation that the sisters would come to execute the sale deed within three months.

29. The plaintiffs were cognizant of the fact that Defendants 6 to 8 were not parties to the agreement and that their willingness and participation were necessary for a valid sale. This is further corroborated by the plaintiffs' own admissions that they were assured by Defendant 1 and late Soumendra that the sisters would be brought to execute the sale deed. Thus, the plaintiffs cannot claim that they believed Defendant 1 had the authority to bind the sisters without their explicit consent. The appellants have rightly pointed out that an agent's authority must be explicit, and any limitations or revocations thereof must be given due consideration. In the absence of a valid and subsisting power of attorney authorising Defendant 1 to sell the property on behalf of Defendants 6 to 8, the agreement cannot be enforced against them.

30. In view of the above, we hold that Defendant 1 lacked the authority to bind Defendants 6 to 8 in the agreement to sell dated 6-6-1993. The General Power of Attorney did not confer upon him the power to sell the property on behalf of his sisters at the time of the agreement, having been impliedly revoked by the partition deed. The agreement was, therefore, incomplete and unenforceable against Defendants 6 to 8, who collectively held a majority share in the property. The plaintiffs' knowledge of the necessity of obtaining the sisters' consent, coupled with their failure to secure such consent,



renders the agreement ineffective against Defendants 6 to 8. Consequently, the agreement cannot be specifically enforced against them, and the plaintiffs cannot claim any right over their shares in the property based on the said agreement.

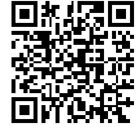
xxx xxx xxx"

(Emphasis Supplied)

35. The principles as laid out in the aforenoted case clearly indicate that no third person can personally execute any ancillary/additional/modified agreement, without the express authorization of the original signatory to the instrument/agreement. Further, a valid authorization is a must, such as a Power of Attorney/Special Power of Attorney, to act on behalf of a person, who is party/signatory to such agreement, for execution/modification of any part of an instrument related to such agreement.

36. Hence, from the aforenoted assessment, it can be inferred that for a jointly owned property, *consensus ad idem* among all the co-owners is a *sine qua non.* A hand-written endorsement modifying the terms of the Agreements to Sell would require consent of both respondent no. 1 as well as respondent no. 2, being the joint owners of the suit properties. In absence thereof, the alleged endorsement purportedly extending the time for completion of the transaction, cannot be deemed to be valid.

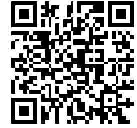
37. Additionally, the contention of the appellants that respondent no. 1 in her testimony before the Trial Court admitted that her son, Kamal Rohra visited Mr. Gupta on 02nd December, 2005 with her permission and consent, does not in any manner establish that the alleged endorsement for purported extension, was given with her consent. This is more so, in the light of the fact that there is no Power of Attorney or express authority rendered by her in favour of Kamal Rohra, to act on her behalf to extend time for performance of the obligations under the Agreements to Sell.



38. Further, Mrs. Laxmi Rohra, in her Evidence Affidavit as *DW-2*, has categorically denied any consent/authorisation to her son, i.e., Mr. Kamal Rohra, to sign any extension/endorsement, or enter into any negotiations on her behalf. The relevant portion of the Evidence Affidavit of *DW-2*, i.e., Mrs. Laxmi Rohra, is reproduced as under:

> *"xxx xxx xxx*
>
> *8. ………. **I state that I had not authorized my son Mr. Kamal Rohra to approach the plaintiff with any instruction and authorization and I had not authorized my son to request for extension of time for vacating the suit property/clearance of the goods from the suit property or to agree to the extension of time for payment by the plaintiff upto 28th February, 2006. In fact I had not authorized my son Mr. Kamal Rohra to enter into any discussion/negotiation or agreement on any aspect of the sale transaction of the suit property with the plaintiff.** …….*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

39. Perusal of the above testimony, makes it apparent that there was merely a consent or permission given by respondent no. 1 to her son to visit the buyers. However, it has been deposed expressly that no consent or authorization was given by respondent no. 1 to her son to enter into any negotiations on her behalf. Further, mere oral consent, that also given only to meet a party, cannot be corroborated as an authorization being granted to a person which is akin to powers granted through Power of Attorney or a Special Power of Attorney. The entire objective of executing Power of Attorney or Special Power of Attorney would be defeated in law, if by mere consent or verbal authorisation, a third-party person is conferred with a power to act on behalf of another person, in matters related to sale of property.

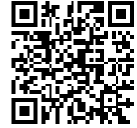


40. Additionally, it is to be noted that respondent no. 1 had signed on all documents in relation to the transaction under the Agreements to Sell, and even a prior Loan which the respondents had taken. Thus, the contention that respondent no.1's son signed on her behalf cannot be accepted, more so, in the light of the settled law that no party can sign on behalf of another party on any instrument without their express consent. In this regard, the appellants/plaintiffs were themselves aware of this position in law, and the same was categorically accepted in the cross-examinations.

41. This Court is of the considered view that the Trial Court has rightly come to the conclusion that purported extension of time for performing the obligations under the Agreement to Sell, could not be proved. The Trial Court rightly held that Kamal Rohra was anyway not competent to act on behalf of Mrs. Laxmi Rohra, i.e., respondent no. 1.

42. It is further to be noted that no evidence has come on record as to when the said alleged endorsement was made and by whom. Admittedly, neither of the parties has written the alleged endorsement. Mr. A.K. Gupta, father of appellant, Mr. Gourave Gupta, admitted in his cross-examination that the alleged endorsement seemed to be in handwriting of his accountant. It is material to note that the said accountant was never produced as a witness before the Trial Court. Thus, the alleged endorsement as relied upon by the appellants, has not been proved in accordance with law. In this regard, reference is made to the cross-examination of Mr. A.K. Gupta, *PW-1* in *RFA 730/2018*, relevant portion of which, is reproduced as under:

> *"xxx xxx xxx*
>
> *..... .....**<u>Volunteered;</u>** A photocopy was given to the other party. It is incorrect to suggest that even photocopy of the agreement to sell was not handed over to the defendants at the time of transaction. I do not*



know that defendants at the time of the entering the agreement to sell had informed me that they had mortgaged their family property at Mukherjee Nagar for Rs. 30 lacs which they wanted to pay off from the proceeds of the suit property. ***The writing at point A on Ex. P 1 appears to be in the handwriting of my Accountant Sh.Sarvesh****.*
……..

xxx xxx xxx"

(Emphasis Supplied)

43. The fact of the alleged endorsement regarding purported extension of time for completion of the terms of Agreements to Sell not being proved, is further buttressed by the fact that the alleged endorsement admittedly does not even have the signature of Mr. Gourave Gupta, being the appellant in one of the instant appeals, and one of the purchasers in the Agreements to Sell in question. In this regard, reference is made to the cross-examination of Mr. Gourave Gupta, *PW-1* in *RFA 729/2018*, the relevant portion of which, is reproduced as under:

"xxx xxx xxx

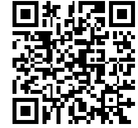
Q: Please point out your signatures on the endorsement at mark A on Ext. P1?

A: ***It is correct to suggest that the endorsement mark A on Ext. P1 does not bear my signatures.***

xxx xxx xxx"

(Emphasis Supplied)

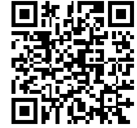
44. The appellants have contended that since the respondents have not discharged their burden of signing on the blank portion, and considering they did not produce the photocopy of the Agreements to Sell, therefore, an adverse inference ought to be drawn against them. In this regard, it is to be noted that a perusal of the documents on record and evidence relied upon by the parties, shows that the photocopies of the Agreements to Sell have not been placed on record, neither in the appeal nor in the proceedings before



the Trial Court. It is to be noted that the premise of the contentions of respondents *qua* signatures, rested upon the fact that they received photocopies of the Agreements to Sell.

45. However, in this regard it is to be noted that the standard applied in civil cases is that of *"preponderance of probabilities"*, i.e., which side's version is more likely to be true, based on evidence presented. Further, the Court under the said principle would balance the probabilities, as a fact may depend on the probability of its existence. To balance the conflicting probabilities, the Court would come to a conclusion regarding preponderance in favour of existence of a particular fact, in the context and circumstances of a particular case. Within the standard of preponderance of probabilities, the degree of probability is based on the subject-matter involved. ***(Refer to M. Siddiq (Dead) through Legal Representatives Versus Mahant Suresh Das and Others, (2020) 1 SCC 1, Paras 720 to 725)***.

46. In the light of the same, on the basis of the evidence on record, it can be concluded that Kamal Rohra, being the son of respondent no. 1, had no authority to sign any alleged endorsement to amend the timelines for completion of transaction of sale/purchase of the property, as originally stipulated in the Agreements to Sell. Pertinently, Kamal Rohra, son of respondent no.1, is not even the owner of the suit properties and the actual owner did not sign any document extending the date of completion of the transaction. Therefore, considering the hand-written, partially signed endorsement which changes the deadline as agreed in the Agreement to Sell, the preponderance of probabilities heavily favours the conclusion that the



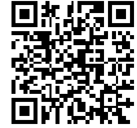
alleged endorsement in the context and circumstances of the present case, was not authentic and was legally invalid.

47. Accordingly, on the basis of the evidence on record, it cannot be said that the time for performance of the agreement was extended by the parties, nor can it be said that respondent no. 1 authorized her son to sign for modification/endorsement/extension on her behalf, as has been contended on behalf of the plaintiffs in the suit/appellants herein.

ISSUE 6: Whether time was the essence of the agreements dated 18th August, 2005?

48. The appellants have contended that time was not essence of the Agreements *inter se* the parties, as the originally agreed date of completion of sale transaction, i.e., 31st December, 2005, was four months subsequent to the execution of the Agreements to Sell, and seeking extension of time for completion of sale transaction militates against the respondents' claim that the time was of essence of the contract. Furthermore, the respondents' claim that time was of essence since they had taken loan, put their property on mortgage, and were having family disputes is also false as they have failed to prove that they had informed the appellants of their pending financial obligations or family disputes due to which they were in a dire need to expeditiously sell the suit properties to the appellants. Furthermore, appellants have submitted that in a contract for sale of immovable property, time is not of essence of performing the contract.

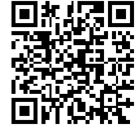
49. *Per contra*, respondents have submitted that they had taken loan and had mortgaged the joint family property and the sale proceeds from the suit properties, were to be utilized for paying the bank and getting the mortgaged property released so as to settle the family disputes, and for this reason the



respective Agreements envisaged the sale deeds to be executed by or before 31st December, 2005. The fact that respondents specifically incorporated the Clauses envisaging strict time lines, with no room for extension is indicative of their intention to make time of essence for the fulfilment of the contract.

50. The instant issue compels this Court to answer as to when, in case of sale of immovable property, time is regarded as an essence of the contract. In this regard, the Supreme Court in the case of ***Alagammal and Others Versus Ganesan and Another, (2024) 3 SCC 232***, while referring to the case of ***K.S. Vidyanadam and Others Versus Vairavan*, *(1997) 3 SCC 1***, held that in a contract for sale of immovable property, there does not exist any presumption of time being of essence in the contract and the Court has to exercise its discretion by looking into various circumstances, including, from the express terms of the contract, the nature of the property, or the surrounding circumstances including the objective of the parties for entering into the transaction. It has been held that while exercising its discretion, the Court should bear in mind that when the parties prescribe certain time limit(s) for taking steps by one or the other party, it must have some significance and that the said time limit(s) cannot be ignored altogether on the ground that time is not the essence of the contract. Thus, it has been held as follows:

> *"xxx xxx xxx*
>
> ***36.** The relevant paragraphs from K.S. Vidyanadam [K.S. Vidyanadam v. Vairavan, (1997) 3 SCC 1] read as under: (SCC pp. 7-10, paras 10-11 & 13)*
>
> *'10. **It has been consistently held by the courts in India, following certain early English decisions, that in the case of agreement of sale relating to immovable property, time is not of the essence of the contract unless specifically provided to that effect.***



The period of limitation prescribed by the Limitation Act for filing a suit is three years. From these two circumstances, it does not follow that any and every suit for specific performance of the agreement (which does not provide specifically that time is of the essence of the contract) should be decreed provided it is filed within the period of limitation notwithstanding the time-limits stipulated in the agreement for doing one or the other thing by one or the other party. That would amount to saying that the time-limits prescribed by the parties in the agreement have no significance or value and that they mean nothing. Would it be reasonable to say that because time is not made the essence of the contract, the time-limit(s) specified in the agreement have no relevance and can be ignored with impunity? *It would also mean denying the discretion vested in the court by both Sections 10 and 20. As held by a Constitution Bench of this Court in Chand Rani v. Kamal Rani [Chand Rani v. Kamal Rani, (1993) 1 SCC 519] : (SCC p. 528, para 25)*

'25. … ***it is clear that in the case of sale of immovable property there is no presumption as to time being the essence of the contract. Even if it is not of the essence of the contract, the Court may infer that it is to be performed in a reasonable time if the conditions are (evident?):***

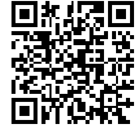
(1) from the express terms of the contract;

(2) from the nature of the property; and

(3) from the surrounding circumstances, for example, the object of making the contract.'

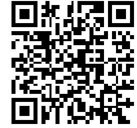
In other words, the court should look at all the relevant circumstances including the time-limit(s) specified in the agreement and determine whether its discretion to grant specific performance should be exercised. *Now in the case of urban properties in India, it is well-known that their prices have been going up sharply over the last few decades — particularly after 1973 [It is a well-known fact that the steep rise in the price of oil following the 1973 Arab-Israeli war set in inflationary trends all over the world. Particularly affected were countries like who import bulk of their requirement of oil.]. In this case, the suit property is the house property situated in Madurai, which is one of the major cities of Tamil Nadu. The suit agreement was in December 1978 and the six months' period specified therein for completing the sale expired with 15-6-1979. The suit notice was issued by the plaintiff only on 11-7-1981 i.e. more than two years after the expiry of six months' period. The question is what was the plaintiff*

doing in this interval of more than two years? The plaintiff says that he has been calling upon Defendants 1 to 3 to get the tenant vacated and execute the sale deed and that the defendants were postponing the same representing that the tenant is not vacating the building. The defendants have denied this story. According to them, the plaintiff never moved in the matter and never called upon them to execute the sale deed. The trial court has accepted the defendants' story whereas the High Court has accepted [Vairavan v. K.S. Vidyanandam, 1995 SCC OnLine Mad 105] the plaintiff's story. ***Let us first consider whose story is more probable and acceptable. For this purpose, we may first turn to the terms of the agreement. In the agreement of sale, there is no reference to the existence of any tenant in the building. What it says is that within the period of six months, the plaintiff should purchase the stamp papers and pay the balance consideration whereupon the defendants will execute the sale deed and that prior to the registration of the sale deed, the defendants shall vacate and deliver possession of the suit house to the plaintiff. There is not a single letter or notice from the plaintiff to the defendants calling upon them to get the tenant vacated and get the sale deed executed until he issued the suit notice on 11-7-1981. It is not the plaintiff's case that within six months', he purchased the stamp papers and offered to pay the balance consideration. The defendants' case is that the tenant is their own relation, that he is ready to vacate at any point of time and that the very fact that the plaintiff has in his suit notice offered to purchase the house with the tenant itself shows that the story put forward by him is false. The tenant has been examined by the defendant as DW 2. He stated that soon after the agreement, he was searching for a house but could not secure one. Meanwhile (i.e. on the expiry of six months from the date of agreement), he stated, the defendants told him that since the plaintiff has abandoned the agreement, he need not vacate.*** *It is equally an admitted fact that between 15-12-1978 and 11-7-1981, the plaintiff has purchased two other properties. The defendants' consistent refrain has been that the prices of house properties in Madurai have been rising fast, that within the said interval of 2½ years, the prices went up three times and that only because of the said circumstance has the plaintiff (who had earlier abandoned any idea of going forward with the purchase of the suit property) turned round and demanded specific performance. Having regard to the above circumstances and the oral evidence of the parties, we are inclined to accept the case put forward by Defendants 1 to 3.* ***We reject the story put forward by the plaintiff that during the said period of 2½ years, he has been repeatedly asking the defendants to get the tenant vacated and execute the sale deed and that they were asking for time on the ground that tenant was not vacating. The above finding***



means that from 15-12-1978 till 11-7-1981 i.e. for a period of more than 2½ years, the plaintiff was sitting quiet without taking any steps to perform his part of the contract under the agreement though the agreement specified a period of six months within which he was expected to purchase stamp papers, tender the balance amount and call upon the defendants to execute the sale deed and deliver possession of the property. We are inclined to accept the defendants' case that the values of the house property in Madurai town were rising fast and this must have induced the plaintiff to wake up after 2½ years and demand specific performance.

11. Shri Sivasubramaniam cited the decision of the Madras High Court in S.V. Sankaralinga Nadar v. P.T.S. Ratnaswamy Nadar [S.V. Sankaralinga Nadar v. P.T.S. Ratnaswamy Nadar, 1951 SCC OnLine Mad 217 : AIR 1952 Mad 389] holding that mere rise in prices is no ground for denying the specific performance. With great respect, we are unable to agree if the said decision is understood as saying that the said factor is not at all to be taken into account while exercising the discretion vested in the court by law. We cannot be oblivious to the reality — and the reality is constant and continuous rise in the values of urban properties — fuelled by large-scale migration of people from rural areas to urban centres and by inflation. ***Take this very case. The plaintiff had agreed to pay the balance consideration, purchase the stamp papers and ask for the execution of sale deed and delivery of possession within six months. He did nothing of the sort. The agreement expressly provides that if the plaintiff fails in performing his part of the contract, the defendants are entitled to forfeit the earnest money of Rs 5000 and that if the defendants fail to perform their part of the contract, they are liable to pay double the said amount. Except paying the small amount of Rs 5000 (as against the total consideration of Rs 60,000) the plaintiff did nothing until he issued the suit notice 2½ years after the agreement. Indeed, we are inclined to think that the rigour of the rule evolved by courts that time is not of the essence of the contract in the case of immovable properties — evolved in times when prices and values were stable and inflation was unknown — requires to be relaxed, if not modified, particularly in the case of urban immovable properties.*** *It is high time, we do so. The learned counsel for the plaintiff says that when the parties entered into the contract, they knew that prices are rising; hence, he says, rise in prices cannot be a ground for denying specific performance. May be, the parties knew of the said circumstance but* ***they have also specified six months as the period within which the transaction should be completed. The said time-limit may not amount to making time the essence of the***



contract but it must yet have some meaning. Not for nothing could such time-limit would have been prescribed. Can it be stated as a rule of law or rule of prudence that where time is not made the essence of the contract, all stipulations of time provided in the contract have no significance or meaning or that they are as good as non-existent? All this only means that while exercising its discretion, the court should also bear in mind that when the parties prescribe certain time-limit(s) for taking steps by one or the other party, it must have some significance and that the said time-limit(s) cannot be ignored altogether on the ground that time has not been made the essence of the contract (relating to immovable properties).

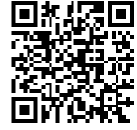
* * *

13. In the case before us, it is not mere delay. It is a case of total inaction on the part of the plaintiff for 2½ years in clear violation of the terms of agreement which required him to pay the balance, purchase the stamp papers and then ask for execution of sale deed within six months. Further, the delay is coupled with substantial rise in prices — according to the defendants, three times — between the date of agreement and the date of suit notice. The delay has brought about a situation where it would be inequitable to give the relief of specific performance to the plaintiff.'
xxx xxx xxx"

(Emphasis Supplied)

51. Applying the aforesaid principle to the facts of the instant case, it can be concluded that the respective Agreements to Sell expressly stipulated a time limit for the performance of the obligations of the parties thereto. *Clause 2* of the respective Agreements to Sell envisages that the payment of the balance sale consideration by the respective buyers and the handing over of vacant and physical possession by the sellers were to be completed by 31st December, 2005. *Clause 3* stipulates the consequences of failure on the part of the parties to perform their respective obligations.

52. Having held that the endorsement extending the time to be invalid, the date stipulated under the respective Agreements to Sell validly stands as 31st

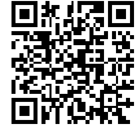


December, 2005. In view thereof, it can be concluded that the Agreements *inter se* the parties, having been duly entered into and executed with their consent, expressly provides for a time limit for performance, and therefore, time was of the essence of the contract.

53. This Court also takes note of the documents placed on record by the respondents, i.e., Loan Agreement dated 05th February, 2005 and the Letters dated 16th June, 2005 and 13th February, 2006 issued by the Bank enhancing the interest on the loan, which establish that liabilities existed upon the respondents to make payments. As rightly observed by the Trial Court, the defendants/respondents have relied upon the home loan equity documents, which demonstrate that they had mortgaged another one of their properties to secure a loan of Rs. 30,00,000/- (Rupees Thirty Lakhs Only) from the Bank. Further, the defendants/respondents have also pleaded that owing to certain family disputes, they were desirous of getting the mortgaged property released from the Bank by repaying the loan amount at the earliest.

54. Moreover, the Agreements to Sell was executed on 18th August, 2005 and the balance sale consideration had to be paid on or before 31st December, 2005, indicating that the compliance of the Agreements to Sell, had a short frame of time. The aforesaid documents and pleadings, taken together, further establish that time was of the essence of the respective Agreements to Sell, and buttresses the aspect that the suit properties were being sold in a manner of urgency, when seen together with the existence of the Loan.

55. Accordingly, no error is found in the finding of the Trial Court that time was essence of the Agreements between the parties.



ISSUE 7: Whether plaintiffs/appellants have been ready and willing to perform their part of contract?

ISSUE 8: Whether plaintiffs/appellants are entitled to the relief of specific performance?

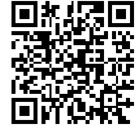
ISSUE 9: Whether plaintiffs/appellants are entitled to a decree of permanent injunction against the defendants/respondents?

ISSUE 10: Relief.

56. It is the case of appellants that the Trial Court erred in concluding that the appellants/plaintiffs herein were not ready and willing to perform their part of the contract. The appellants had, on multiple occasions showcased their readiness and willingness, *inter alia* by sending Legal Notices dated 25th February, 2006, i.e., three days prior to the extended deadline and enclosing the photocopy of Pay Orders along with the said Legal Notices. Nonetheless, in a suit for specific performance, appellants need not as a condition show that they were ready with cash.

57. Further, the appellants claim that in so far as the readiness and willingness on part of appellants is concerned, the Trial Court ought to have decided it in the context of extension of time for completion, i.e., if the appellants were ready and willing to perform their obligation on 28th February, 2006, and not earlier thereto, the burden for which stands duly discharged.

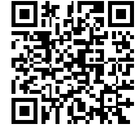
58. Moreover, it is the case of the appellants that respondents' averment that they were ready and willing to hand over the physical possession of the suit properties does not stand so much so that with respect to issue regarding respondents vacating suit properties by 31st December, 2005, the Trial Court's ruling against them *qua* Issue No. 3, has attained finality. Since the



readiness and willingness on the part of appellants to perform their part of the contract is contingent upon the respondents doing everything which was required for them to be done in terms of the respective Agreements to Sell, therefore, the Trial Court erred in adjudicating the instant issue.

59. With regard to the issues at hand, it is pertinent to note that for the purposes of a suit for specific performance, Section 16(c) of the Specific Relief Act, makes it incumbent upon the plaintiff to showcase their readiness and willingness for performing the contract, which acts as a pre-requisite for the plaintiff to be able to seek the relief of specific performance. In this regard, it is to be noted that the Specific Relief Act underwent an amendment in the year 2018 which had a prospective effect. Pre-amendment, the mandate was to both aver as well to prove readiness and willingness, however, post-amendment the stipulation is regarding proving the readiness and willingness to perform the essential terms of the contract by the plaintiff. The instant suits were filed prior to the amendment, and the position existing pre-amendment has been fulfilled in the present case, as the plaintiffs have averred and attempted to prove readiness and willingness.

60. Nevertheless, be it the pre or post amendment position, the aspect of proving the readiness and willingness remains constant. Thus, it was incumbent upon the plaintiffs/appellants to prove their readiness and willingness to perform the essential terms of the contract to be performed by them, for seeking the relief of specific performance. In this regard, reference is made to the judgement in the case of ***Pydi Ramana alias Ramulu Versus Davarasety Manmadha Rao, (2024) 7 SCC 515***, wherein, it has been held as follows:



"xxx xxx xxx

11. ***At the outset, it requires to be clarified and made clear that in the instant case the amendment brought to the Specific Relief Act by Act 18 of 2018 would be inapplicable. The amendment is prospective in nature and cannot be applied to those transactions which took place prior to amendment.*** *[Katta Sujatha Reddy v. Siddamsetty Infra Projects (P) Ltd., (2023) 1 SCC 355 : (2023) 1 SCC (Civ) 201]* ***In order to prove*** *[Man Kaur v. Hartar Singh Sangha, (2010) 10 SCC 512 : (2010) 4 SCC (Civ) 239]* ***that the plaintiff is entitled to the specific performance as per the law existing prior to amendment, the plaintiff has to establish:***

(a) That a valid agreement of sale was entered into by the defendant in his favour;

(b) That the defendant committed breach of the agreement; and

(c) That he was always ready and willing to perform his part of the obligations in terms of the agreement.

xxx xxx xxx"

(Emphasis Supplied)

61. The language of Section 16(c) of the Specific Relief Act makes it clear that relief of specific performance cannot be granted in favour of the party seeking it, if there is failure on their part to prove that they already have or have always been both ready as well as willing to perform contractual obligations required of them, to be performed under the contract.

62. The law relating to readiness and willingness of a party to a contract has been delved in detail by the Supreme Court in the case of ***C.S. Venkatesh Versus A.S.C. Murthy and Others*, (2020) 3 SCC 280**, wherein, the Supreme Court has expounded the law, as follows:

i. The plaintiff is obligated to show continuous readiness and willingness to perform his part of the contract.

ii. The amount which the plaintiff has to pay the defendant must of necessity be proved to be available.

iii. Mere plea that the plaintiff is ready to pay the consideration, without any material to substantiate this plea, cannot be accepted.

iv. Right from the date of the execution of the contract till the date of decree, plaintiff must prove that he is ready and willing to perform his part of the contract.

v. Willingness on the part of the plaintiff is to be adjudged from the conduct of the plaintiff, prior and subsequent to the filing of the suit along with other attending circumstances.

63. Thus, in the aforesaid case of ***C.S. Venkatesh (Supra)***, the Supreme Court has held as follows:

> *"xxx xxx xxx*
>
> ***16. The words "ready and willing" imply that the plaintiff was prepared to carry out those parts of the contract to their logical end so far as they depend upon his performance. The continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of performance. 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 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 which he has to pay the defendant must be of necessity to be proved to be available. Right from the date of the execution of the contract till the date of decree, he must prove that he is ready and willing to perform his part of the contract. The court may infer from the facts and circumstances whether the plaintiff was ready and was always ready to perform his contract.***
>
> *xxx xxx xxx*
>
> ***18.*** *In Pushparani S. Sundaram v. Pauline Manomani James [Pushparani S. Sundaram v. Pauline Manomani James, (2002) 9 SCC 582],* ***this Court has held that inference of readiness and willingness could be drawn from the conduct of the plaintiff and the totality of circumstances in a particular case.*** *It was held thus: (SCC p. 584, para 5)*
>
> *"5. ...* ***So far these being a plea that they were ready and willing to perform their part of the contract is there in the pleading, we have no hesitation to conclude, that this by itself is not sufficient***

to hold that the appellants were ready and willing in terms of Section 16(c) of the Specific Relief Act. This requires not only such plea but also proof of the same. Now examining the first of the two circumstances, how could mere filing of this suit, after exemption was granted be a circumstance about willingness or readiness of the plaintiff. This at the most could be the desire of the plaintiff to have this property. It may be for such a desire this suit was filed raising such a plea. But Section 16(c) of the said Act makes it clear that mere plea is not sufficient, it has to be proved."

xxx xxx xxx

21. *In the instant case, the plaintiff has alleged that he was ready to pay Rs 35,000 to the defendants and called upon them to execute the re-conveyance deed. However, in para 11 of the plaint it is pleaded that the plaintiff was running contract business wherein he suffered heavy loss and as such he gave up the business. It is also pleaded that at present the plaintiff has no business or profession and has no source of income. He has no property, either movable or immovable.* ***Mere plea that he is ready to pay the consideration, without any material to substantiate this plea, cannot be accepted. It is not necessary for the plaintiff to produce ready money, but it is mandatory on his part to prove that he has the means to generate the consideration amount. Except the statement of PW 1, there is absolutely no evidence to show that the plaintiff has the means to make arrangements for payment of consideration under the reconveyance agreement.***

xxx xxx xxx"

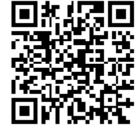
(Emphasis Supplied)

64. Likewise, holding that readiness and willingness on the part of the plaintiff, is a condition precedent for obtaining relief of grant of specific performance, the Supreme Court in the case of ***J.P. Builders and Another Versus A. Ramadas Rao and Another, (2011) 1 SCC 429***, has held as under:

"xxx xxx xxx

22. The words "ready" and "willing" imply that the person was prepared to carry out the terms of the contract. The distinction between "readiness" and "willingness" is that the former refers to financial capacity and the latter to the conduct of the plaintiff wanting performance. Generally, readiness is backed by willingness.

xxx xxx xxx



*25. **<u>Section 16(c) of the Specific Relief Act, 1963 mandates "readiness and willingness" on the part of the plaintiff and it is a condition precedent for obtaining relief of grant of specific performance. It is also clear that in a suit for specific performance, the plaintiff must allege and prove a continuous "readiness and willingness" to perform the contract on his part from the date of the contract. The onus is on the plaintiff.</u>***

xxx xxx xxx

*27. **<u>It is settled law that even in the absence of specific plea by the opposite party, it is the mandate of the statute that the plaintiff has to comply with Section 16(c) of the Specific Relief Act and when there is non-compliance with this statutory mandate, the court is not bound to grant specific performance and is left with no other alternative but to dismiss the suit. It is also clear that readiness to perform must be established throughout the relevant points of time. "Readiness and willingness" to perform the part of the contract has to be determined/ascertained from the conduct of the parties.</u>***

xxx xxx xxx"

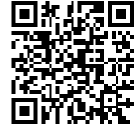
(Emphasis Supplied)

65. In this regard, reference may be made to the cross-examination of the plaintiffs/appellants, which clearly indicates that they did not possess the financial capacity or readiness/willingness to perform their part of the Agreement, i.e., payment of balance sale consideration, neither on the agreed date of completion of sale transaction, i.e., 31st December, 2005, nor on the alleged extended date, i.e., 28th February, 2006.

66. Reference to the cross-examination of Mr. A.K. Gupta, *PW-1*, in *RFA 730/2018*, shows that he has admitted that no letter was written before 31st December, 2005 to the defendants/respondents herein, to state that he was ready with the payment of the balance consideration. The relevant portion of the said cross-examination, reads as under:

"xxx xxx xxx

*……**<u>It is correct that before 31.12.2005 no letter was written by me that I was ready with the payment of the balance Sale consideration. (Vol. I had given a reminder on 30.11.2005 that I am ready with the</u>***



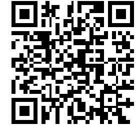
> ***balance payment). No reminder was given by me in writing. (vol. I casually asked them when they were vacating the suit premises)***……
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

67. The aforesaid witness, i.e., Mr. A.K. Gupta, *PW-1*, in *RFA 730/2018*, further admitted that there was nothing on record to show that he had funds to pay in November, 2005 and that he had not purchased any stamp papers. The relevant portion of the deposition of Mr. A.K. Gupta, *PW-1*, in *RFA 730/2018*, is reproduced as under:

> *"xxx xxx xxx*
>
> *……**It is correct that there is nothing on record of the suit file to show that I had arrangement of funds to make the balance payment any time in November 2005.***
>
> ***I had sufficient funds to pay the balance amount in the month of November 2005. It is correct that I did not offer any payment to the defendants in November 2005 in writing. It is wrong to suggest that I did not offer the payment even verbally. It is correct that the property subject matter of Ex. P.1 and the property for which agreement was entered into in the name of my son with the defendants form part of one premises. I did not purchase stamp papers for the execution of the Sale Deed***……….
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

68. It is also pertinent to note that Mr. A.K. Gupta, *PW-1*, in *RFA 730/2018*, also mentioned in the cross-examination on 18th November, 2008 that he had approached the defendants in November, 2005. However, in complete volte-face during the cross-examination held on 04th February, 2009, he stated that the defendants approached him.

69. Further, it is also to be noted that it was the case of Mr. A.K. Gupta, *PW-1* in *RFA 730/2018,* that he had prepared Pay Orders for the balance sale consideration, and photocopies of the same were sent by him along with the Legal Notice. However, the said witness has categorically admitted that no



such Pay Orders had been placed on record. The relevant portion of the cross-examination of Mr. A.K. Gupta, *PW-1* in *RFA 730/2018,* is reproduced as under:

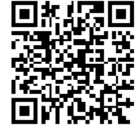
> *"xxx xxx xxx*
>
> *.....**On the perusal of the record I say that it is correct that there are no pay orders on the record of this file**......*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

70. Reference may also be made to the cross-examination of Mr. Gourave Gupta, *PW-1* in *RFA 729/2018*. He admitted that he did not have a personal savings account during the course of cross-examination on 14th September, 2009, in the following manner:

> *"xxx xxx xxx*
>
> *......**I have no personal saving account. I had no personal saving account even in the year of 2005**.......*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

71. It is noted that Mr. Gourave Gupta, *PW-1* in *RFA 729/2018,* had entered into the Agreement to Sell in his personal capacity. He had stated that he was going to make the payment in cash and through the company account in Vijaya Bank. The deposition by Mr. Gourave Gupta, *PW-1* in *RFA 729/2018,* is reproduced as under:

> *"xxx xxx xxx*
>
> *......**It is correct that no written intimation was sent to defendants either in November or December in respect of the fact that the plaintiff was ready with the payment. It is correct that I have not placed any document on record showing that in Nov. and Dec. 2005 plaintiff had sufficient funds to make the balance**......*
>
> *Q: **I put it to you that you did not have the arrangement of funds for the payment of the balance sale consideration in Nov. 2005 or Dec. 2005?***



A: ***There were no sufficient funds in the accounts however, since the defendants had asked for cash payment I had already arranged for the same.***

xxx xxx xxx

In February, 2006 I was ready with the funds for balance payment.

Q: Please tell this balance payment was in which bank, kindly give the name of the bank and the bank account No.?

A: It was Vijaya Bank, however, I do not remember the account No.

The account is in the name of L.M. Fashions which is my sole proprietorship firm. It is correct to suggest that in February, 2006 the said bank account did not have Rs.75 lacs the balance sale consideration payable under the agreement. (Vol. first the defendants asked for 50% cash of the total amount and therefore, 1 was trying to make arrangements from my bank as also by borrowing.) I do not remember the exact amount which 1 could arrange in my account in Vijaya Bank. *I can produce the bank statement of the Vijaya Bank pertaining to February, 2006. It is incorrect to suggest that no notice or letter was written to the defendant regarding arrangement of payment. (Vol. a notice dated 25.2.2006 was sent to the defendant informing them about the arrangements.)*

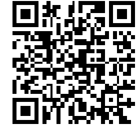
I offered to pay 50% of the total amount through draft, a copy of the draft was also sent to the defendant. *The defendants were also duly informed regarding arrangement of cash to the extent of 50%. I have placed copies of the drafts on record. There were two drafts totaling an amount of Rs.37 lacs approximately. I do not remember the exact amount, however, it was 50% of the total amount.* ***The drafts are not there on record.***

xxx xxx xxx"

(Emphasis Supplied)

72. Thus, it is apparent that there are no documents on record to show the readiness and willingness of the appellants/plaintiffs to make payment of the balance sale consideration.

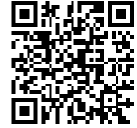
73. It is to be noted that there is nothing on record to show that Mr. Gourave Gupta, *PW-1* in *RFA 729/2018,* had any cash or funds available in the bank account. The said witness of the appellants/plaintiffs further admitted that as on February, 2006, the payable balance consideration was



not available in the Vijaya Bank account also. Thus, even on the purported extended date in February, 2006, the plaintiffs did not have the financial capacity. The said witness further deposed similar to his father, Mr. A.K. Gupta, that two drafts were made totalling to approximately Rs. 37,00,000/- (Rupees Thirty-Seven Lakhs Only), and the draft nos. and details were sent and mentioned in the Legal Notice sent by the appellants to the respondents. However, the said witness admitted likewise that no such drafts had been placed on record. In this regard, it would not be out of place to infer that any prudent person who claims existence of a financial instrument, i.e., Pay Orders/drafts for a substantial amount, admittedly in their possession, would at the least keep a copy of the same, and produce the same before the Court, especially when it is their case that they had even served a copy upon the other party.

74. Thus, the reading of the cross-examination of the plaintiffs/appellants clearly indicates that they only made bald statements that they were willing to pay the balance payment. However, nothing to corroborate the same was placed on record. Further, even the conduct of the plaintiffs and the statements made by them regarding availability of funds in their bank accounts, shows that they were not financially capable of paying the balance amount.

75. In this regard, reference is made to the judgement of the Supreme Court in the case of ***R. Shama Naik Versus G. Srinivasiah, 2024 SCC OnLine SCC 3586,*** wherein, the Supreme Court recorded that readiness refers to the actual financial capacity of the plaintiff to make payments in terms of the contract in time, while willingness is an evaluation of the conduct and intention. Plaintiff seeking relief of specific performance is,

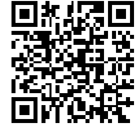


therefore, obligated to adduce necessary oral and documentary evidence to show the availability of funds at all material times. Thus, it has been held as follows:

> *"xxx xxx xxx*
>
> ***10. The law is well settled. The plaintiff is obliged not only to make specific statement and averments in the plaint but is also obliged to adduce necessary oral and documentary evidence to show the availability of funds to make payment in terms of the contract in time.***
>
> ***11. There is a fine distinction between readiness and willingness to perform the contract. Both the ingredients are necessary for the relief of specific performance.***
>
> ***12. While readiness means the capacity of the plaintiff to perform the contract which would include his financial position, willingness relates to the conduct of the plaintiff.***
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

76. Furthermore, in the case of ***Vijay Kumar and Others Versus Om Parkash*, *(2019) 17 SCC 429***, it was held that plaintiff could not prove his readiness and willingness as he could not produce any document to show that he had the requisite amount on the relevant date, nor was he able to name the friends from whom he raised money or was able to raise the money. Furthermore, he did not place on record his account book, passbook or the statement of accounts or any other negotiable instrument to establish that he had the money with him at the relevant point of time to perform his part of the contract. Thus, it was held as follows:

> *"xxx xxx xxx*
>
> ***6. In order to obtain a decree for specific performance, the plaintiff has to prove his readiness and willingness to perform his part of the contract and the readiness and willingness has to be shown throughout and has to be established by the plaintiff.*** *In the case in hand, though the respondent-plaintiff has filed the suit for specific performance on 29-4-2008, the respondent-plaintiff has not shown his*

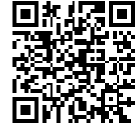


capacity to pay the balance sale consideration of Rs 22,00,000 (Rupees twenty-two lakhs). ***In his evidence, the respondent-plaintiff has stated that he has borrowed the amount from his friends and kept the money to pay the balance sale consideration. As rightly pointed out by the trial court, the respondent-plaintiff could not produce any document to show that he had the amount of Rs 22,00,000 (Rupees twenty-two lakhs) with him on the relevant date; nor was he able to name the friends from whom he raised money or was able to raise the money. Furthermore, as rightly pointed out by the trial court, the respondent-plaintiff could have placed on record his accounts book, passbook or the statement of accounts or any other negotiable instrument to establish that he had the money with him at the relevant point of time to perform his part of the contract. We are, therefore, in agreement with the view taken by the trial court that the respondent-plaintiff has not been able to prove his readiness and willingness on his part.***

xxx xxx xxx"

(Emphasis Supplied)

77. In this backdrop, it can be inferred that the Trial Court has rightly held that the appellants/plaintiffs herein could not show their readiness and willingness, as they could not establish that they had the financial means and capacity to proceed with the transaction for payment of the balance amount of Rs. 1,50,00,000/- (Rupees One Crore Fifty Lakhs Only) in total in both the cases. The appellants/plaintiffs admitted that half amount was to be paid in cash and half through cheque. However, it was admitted that they did not have the requisite or even half of the amount required in their bank accounts to pay to the respondents. Additionally, no documentary evidence was placed on record to prove their financial capacity, nor was any examination done of any witness from the bank or otherwise. The alleged Pay Orders relied upon by the appellants, are not on record. This clearly evinces that strict compliance of Section 16(c) Specific Relief Act, has not been made out.



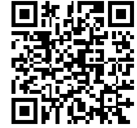
78. As per the established law, a plaintiff must demonstrate that he had the command over funds during the performance window. Admitting to deficient bank accounts and a bland averment regarding cash arrangement without a verified source of income, leads to only one conclusion, that there was no readiness and willingness on the part of the appellants/plaintiffs from the date of the agreements, until the decree was rendered by the Trial Court.

ISSUE: Maintainability

79. As regards the issue of maintainability, it is noted that the respondents have contended that the suits filed by the appellants/plaintiffs herein were not maintainable as the plaintiffs in the suit, i.e., the appellants herein, did not seek declaration of the termination of the Agreements to Sell to be bad in law and directly sought for specific performance, despite the Agreements having been terminated.

80. The Trial Court has held that since *Clause 3* of the Agreements to Sell expressly stipulated that if the purchaser fails to make payment of balance amount, then the transaction will be considered as cancelled and advance money shall stand forfeited, the said clause being unambiguous and express, no relief of declaration is required. Thus, it has been held that the suit would be maintainable and there would be no requirement for seeking a prayer/relief for declaration of termination as invalid.

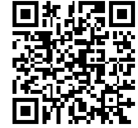
81. It is to be noted that the Trial Court dealt with the issue of maintainability and recorded the suit to be maintainable, however, no explicit issue as regards issue of maintainability was framed thereto. It is further to be noted that the Trial Court has held the suits to be maintainable, and in view of other findings in favour of the defendants/respondents herein,



it is noted that the defendants/respondents have not filed any appeal against the said issues.

82. In this regard, reference is made to the judgment of the Supreme Court in the case of ***R. Kandasamy (Since Dead) and Others Versus T.R.K. Sarawathy and Another, 2024 SCC OnLine SC 3377***, wherein, it has been held as follows:

> *"xxx xxx xxx*
>
> ***40.*** *Having held thus, allowing the appeal is the inevitable result. However, before we part, there seems to be a discordant note struck by the decision in A. Kanthamani [A. Kanthamani v. Nasreen Ahmed, (2017) 4 SCC 654 : (2017) 2 SCC (Civ) 596] while distinguishing I.S. Sikandar [I.S. Sikandar v. K. Subramani, (2013) 15 SCC 27 : (2014) 4 SCC (Civ) 365] , which could create uncertainty and confusion. It is, therefore, considered worthwhile to attempt and clear the same.*
>
> ***41.*** ***A comprehensive reading of the two decisions reveals that in a fact scenario where the vendor unliterally cancels an agreement for sale, the vendee who is seeking specific performance of such agreement ought to seek declaratory relief to the effect that the cancellation is bad and not binding on the vendee. This is because an agreement, which has been cancelled, would be rendered non-existent in the eye of the law and such a non-existent agreement could not possibly be enforced before a court of law. Both the decisions cited above are unanimous in their approval of such legal principle.*** *However, as clarified in Kanthamani [A. Kanthamani v. Nasreen Ahmed, (2017) 4 SCC 654 : (2017) 2 SCC (Civ) 596] , it is imperative that an issue be framed with respect to maintainability of the suit on such ground, before the court of first instance, as it is only when a finding on the issue of maintainability is rendered by the trial court that the same can be examined by the first or/and second appellate court. In other words, if maintainability were not an issue before the trial court or the appellate court, a suit cannot be dismissed as not maintainable. This is what Kanthamani [A. Kanthamani v. Nasreen Ahmed, (2017) 4 SCC 654 : (2017) 2 SCC (Civ) 596] holds.*
>
> ***42.*** *The aforesaid two views of this Court, expressed by coordinate Benches, demand deference. However, it is noticed that this Court in Kanthamani [A. Kanthamani v. Nasreen Ahmed, (2017) 4 SCC 654 : (2017) 2 SCC (Civ) 596] had not been addressed on the effect of non-existence of a jurisdictional fact (the existence whereof would*



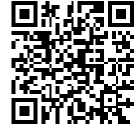
clothe the trial court with jurisdiction to try a suit and consider granting relief) i.e. what would be its effect on the right to relief claimed by the plaintiff in a suit for specific performance of contract.

43. *In Shrisht Dhawan v. Shaw Bros. [Shrisht Dhawan v. Shaw Bros., (1992) 1 SCC 534] , an interesting discussion on "jurisdictional fact" is found in the concurring opinion of Hon'ble R.M. Sahai, J. (as his Lordship then was). It reads : (SCC pp. 551-52, para 19)*

"19. … What, then, is an error in respect of jurisdictional fact? A jurisdictional fact is one on existence or non-existence of which depends assumption or refusal to assume jurisdiction by a court, tribunal or an authority. In Black's Legal Dictionary it is explained as a fact which must exist before a court can properly assume jurisdiction of a particular case. Mistake of fact in relation to jurisdiction is an error of jurisdictional fact. No statutory authority or tribunal can assume jurisdiction in respect of subject-matter which the statute does not confer on it and if by deciding erroneously the fact on which jurisdiction depends the court or tribunal exercises the jurisdiction then the order is vitiated. Error of jurisdictional fact renders the order ultra vires and bad. [Wade, Administrative Law.] In Raza Textiles [Raza Textiles Ltd. v. CIT, (1973) 1 SCC 633 : (1973) 87 ITR 539] it was held that a court or tribunal cannot confer jurisdiction on itself by deciding a jurisdictional fact wrongly."

(emphasis supplied)

44. Borrowing wisdom from the aforesaid passage, our deduction is this. An issue of maintainability of a suit strikes at the root of the proceedings initiated by filing of the plaint as per requirements of Order 7 Rule 1 CPC. If a suit is barred by law, the trial court has absolutely no jurisdiction to entertain and try it. However, even though a given case might not attract the bar envisaged by Section 9 CPC, it is obligatory for a trial court seized of a suit to inquire and ascertain whether the jurisdictional fact does, in fact, exist to enable it (the trial court) to proceed to trial and consider granting relief to the plaintiff as claimed. No higher court, much less the Supreme Court, should feel constrained to interfere with a decree granting relief on the specious ground that the parties were not put specifically on notice in respect of a particular line of attack/defence on which success/failure of the suit depends, more particularly an issue touching the authority of the trial court to grant relief if "the jurisdictional fact" imperative for granting relief had not been satisfied. It is fundamental, as held in Shrisht Dhawan [Shrisht Dhawan v. Shaw Bros., (1992) 1 SCC 534], that assumption of jurisdiction/refusal to assume jurisdiction would depend on existence of the jurisdictional fact. Irrespective of whether the



parties have raised the contention, it is for the trial court to satisfy itself that adequate evidence has been led and all facts including the jurisdictional fact stand proved for relief to be granted and the suit to succeed. This is a duty the trial court has to discharge in its pursuit for rendering substantive justice to the parties, irrespective of whether any party to the lis has raised or not. If the jurisdictional fact does not exist, at the time of settling the issues, notice of the parties must be invited to the trial court's prima facie opinion of non-existent jurisdictional fact touching its jurisdiction. However, failure to determine the jurisdictional fact, or erroneously determining it leading to conferment of jurisdiction, would amount to wrongful assumption of jurisdiction and the resultant order liable to be branded as ultra vires and bad.

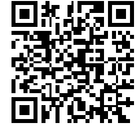
45. Should the trial court not satisfy itself that the jurisdictional fact for grant of relief does exist, nothing prevents the court higher in the hierarchy from so satisfying itself. It is true that the point of maintainability of a suit has to be looked only through the prism of Section 9 CPC, and the court can rule on such point either upon framing of an issue or even prior thereto if Order 7 Rule 11(d) thereof is applicable. In a fit and proper case, notwithstanding omission of the trial court to frame an issue touching jurisdictional fact, the higher court would be justified in pronouncing its verdict upon application of the test laid down in Shrisht Dhawan [Shrisht Dhawan v. Shaw Bros., (1992) 1 SCC 534].

46. In this case, even though no issue as to maintainability of the suit had been framed in the course of proceedings before the trial court, there was an issue as to whether the agreement is true, valid and enforceable which was answered against the sellers. Obviously, owing to dismissal of the suit, the sellers did not appeal. Nevertheless, having regard to our findings on the point as to whether the buyer was "ready and willing", we do not see the necessity of proceeding with any further discussion on the point of jurisdictional fact here.

47. However, we clarify that any failure or omission on the part of the trial court to frame an issue on maintainability of a suit touching jurisdictional fact by itself cannot trim the powers of the higher court to examine whether the jurisdictional fact did exist for grant of relief as claimed, provided no new facts were required to be pleaded and no new evidence led.

xxx xxx xxx"

(Emphasis Supplied)



83. Therefore, in view of the aforesaid position of law, since this Court has already affirmed the findings as regards the appellants/plaintiffs not being entitled to relief of specific performance, this Court is not required to delve into the issue of jurisdictional fact at this stage.

CONCLUSION:

84. In the light of the aforesaid, since appellants are not entitled to the relief of specific performance, they are also not entitled to the relief of permanent injunction.

85. In view of the detailed discussion hereinabove, no merit is found in the present appeals. The same are, accordingly, dismissed.

MINI PUSHKARNA
(JUDGE)

JULY 06, 2026
Kr/Au/AK/c/SK