S DEIVANAI; S SWAMINATHAN; Vs V M KOTHANDARAMAN

Court: MADRAS HIGH COURT

Date of Decision: June 22, 2017

Acts Referred: Code of Civil Procedure, 1908, Order 8Rule 5 - Contract Act, 1872, Section 23, Section 52, Section 54 - What consider

Hon'ble Judges: R Subbiah, M S Ramesh

Bench: DIVISION BENCH

Advocate: R Subbiah, M S Ramesh

Final Decision: Dismissed

Judgement

1. The appellants herein are the defendants 1, 2, 4 & 5 in O.S. No. 40 of 2009 on the file of the learned III Additional District Judge at

Puducherry. The said suit was filed by the 1st respondent herein/plaintiff for specific performance, directing the defendants to execute the sale deed

in respect of the suit schedule property in favour of the plaintiff on receipt of the balance sale consideration of Rs.1,15,98,000/-; in alternative, the

court shall execute the sale deed.

2. During the pendency of the suit, the 3rd defendant S. Dhandapani died; on his demise, his wife and son were brought on record as Defendants 6

& 7 as his legal heirs. The Trial Court decreed the said suit by judgment and decree dated 20.11.2014, against which the defendants have come

forward with the present appeal.

3. Even before the present appeal being numbered, the defendants 6 & 7 have sold their â…•th share in the suit schedule property in favour of the

plaintiff; hence, the defendants 6 & 7 have been transposed in this appeal as Respondents 2 & 3.

4. For the sake of convenience, the parties will be referred to as per their ranking in the suit as plaintiff and the defendants.

5. The facts of the case of the plaintiff, inter alia, are as follows:-

5.1. The defendants agreed to sell the suit schedule property to the plaintiff for a valid sale consideration at the rate of Rs.32,000/- per kuzhi. For

the said purpose, the plaintiff and the defendants entered into a Sale Agreement on 18.12.2006 and on the same day, a sum of Rs.10 lakhs was

received by the defendants from the plaintiff as advance. As per the terms of the Sale Agreement, the defendants have agreed to measure the suit

schedule property on or before 10.02.2007 and on such measurement, depending upon the extent available on ground, the total amount payable

by the plaintiff has to be calculated at the rate of Rs. 32,000/- per kuzhi, after deducting the advance amount of Rs.10 lakhs. On receipt of the

balance sale consideration, the defendants would execute the sale deed at the cost of the plaintiff. Further, the defendants have also agreed to

discharge the loan availed by them from Karikalampakkam Agricultural Co-operative Credit Society and show the discharge receipt to the plaintiff

before the said date viz., 10.02.2007.

5.2. Further, as per Clause 7 of the Sale Agreement, the defendants have agreed to show the original title deeds including the parent documents,

patta copy and Encumbrance Certificate to the plaintiff and hand over the photocopies of the same to the plaintiff within the stipulated time.

5.3. It is further case of the plaintiff that he has expressed his readiness and willingness to perform his part of the contract on various occasions and

requested the defendants to measure the suit property and to produce the original title deeds, parent documents, Patta and Encumbrance

Certificate for verification and handover the photocopies of the same to the plaintiff as agreed upon by them under Clause 7 of the Sale

Agreement. But, whenever the plaintiff requested the defendants to perform the said obligations, the defendants requested some more time to

perform their obligations under the contract. Having expressed his readiness and willingness, the plaintiff patiently waited. Whereas the defendants

have not chosen to perform their obligations such as measuring the suit property, clearing the loan and producing the original documents as agreed

upon by them under the Sale Agreement. Hence, the plaintiff issued a notice to the defendants on 11.02.2007 expressing his readiness and

willingness to pay the balance sale consideration as agreed upon under the Sale Agreement and called upon the defendants to measure the

property and perform their obligations and execute the Sale Deed within 15 days from the date of the receipt of the Notice. On receipt of the said

notice, the defendants issued a reply dated 23.02.2007 with false and frivolous allegations, as if they had already sent a Notice on 07.02.2007 to

the plaintiff, thereby expressed their readiness to perform their part of the contract. According to the plaintiff, the defendants have not at all sent

any such notice as alleged by them. Further, they have neither taken any step to measure the suit property in the presence of the plaintiff nor chosen

to produce the documents as per Clause 7 of the Sale Agreement before the stipulated date viz; 10.02.2007. According to the plaintiff, the

defendants have failed to perform their part of the obligation of measuring the suit properties to arrive at the total value of the sale consideration

and production of original documents for verification within the stipulated time. Further, they have not issued any notice calling upon the plaintiff to

come forward to pay the balance sale consideration upon receipt of the documents as agreed upon by them under Clause 7 of the Sale

Agreement; hence, the averment in the reply Notice that the contract has been rescinded/cancelled, is not sustainable in law.

5.4. Further, when the plaintiff came to know that the defendants were surreptitiously taking steps to sell the suit property to third parties for a

higher price, immediately the plaintiff gave a paper publication in Dinamalar, dated 09.05.2007, informing the public about the sale agreement

made by the defendants in favour of the plaintiff and requested the public to refrain from purchasing the suit property from the defendants. Further,

the plaintiff also lodged a protest petition on 10.05.2007 with the Sub-Registrar, Bahour and requested the Registrar not to register any sale deed

transferring the title of the defendants over the suit properties to any third party. At this juncture, the plaintiff also came to know by making local

enquiry in the village of the defendants that the 3rd item of the property mentioned in the suit Sale Agreement is not at all owned by the defendants,

but owned by one Duraisamy S/o. Sengeni, who attested the suit Sale Agreement. Thus, the defendants cheated the plaintiff by making false

representation that the 3rd item in the Sale Agreement also belonged to them. Hence, the plaintiff is bound to restrict his claim for specific

performance only for two items of properties mentioned in the suit sale agreement. In fact, the plaintiff had also taken efforts through the

panchayatars to insist the defendants to perform their part under the contract, but the said attempt of the plaintiff also ended in failure. Hence, the

plaintiff has finally filed the suit for specific performance, for directing the defendants to execute the sale deed in favour of the plaintiff on receipt of

the balance sale consideration of Rs.1,15,98,000/-, in default of the execution of the sale deed by the defendants, the Court shall execute the sale

deed in favour of the plaintiff; in the alternative, in the event of the Court coming to the conclusion that the Specific Performance could not be

granted, a direction may be given to refund the advance amount of Rs.10,00,000/- with 24% interest from the date of agreement till the date of

payment.

6.1. Resisting the case of the plaintiff, the defendants filed a written statement stating that it is true that the defendants agreed to sell the suit

schedule property to the plaintiff for a valid sale consideration at the rate of Rs.32,000/- per kuzhi and received an advance amount of Rs.10 lakhs

from the plaintiff on 18.12.2006 by way of cheque bearing No.116111 dated 18.12.2006; on the same day, a Sale Agreement was entered into

between the defendants and the plaintiffs. As per the terms of the Sale Agreement, the defendants have agreed to measure the schedule mentioned

property before the sale and to receive the balance sale consideration depending upon the extent available on ground and not before 10.02.2007

as alleged by the plaintiff. The defendants denied the case of the plaintiff that they have also agreed to discharge the loan availed by them in

Karikalampakkam Agricultural Co-operative Credit Society and show the discharge receipt to the plaintiff. It is true that the defendants have

agreed to show the original title deeds including the parent documents, Patta copy and Encumbrance Certificates to the plaintiff before the date of

the sale. It is stated by the defendants that as per the clauses in the Sale Agreement, the plaintiff has also verified all the original documents and

obtained copies of the said original documents from the defendants even at the time of executing the sale agreement. The defendants have also

denied the case of the plaintiff that the plaintiff had expressed his readiness and willingness to perform his part of the contract on various occasions

and requested the defendants to measure the suit property and produce the original title deeds. The defendants have also equally denied the

allegation that whenever the plaintiff requested the defendants to perform their obligations under the contract, the defendants requested some more

time to perform their obligations.

6.2. It is further case of the defendants that plaintiff had agreed to complete the sale on or before 10.02.2007 by paying the sale consideration and

as per Clause 5 of the Sale Agreement, if the plaintiff fails to perform his obligations on or before 10.02.2007, the defendants are entitled to retain

Rs.1,00,000/-, out of the advance amount of Rs.10 lakhs, and they have to return the balance advance amount of Rs.9 lakhs only. Since the

plaintiff has not come forward to perform his obligations under the contract, the defendants issued a lawyer''s notice on 07.02.2007 ie., before the

expiry of the period of contract to the plaintiff, expressing their readiness and willingness and also to produce all the documents mentioned in the

Sale Agreement to perform their part of the contract by executing Sale Deed in favour of the plaintiff. By way of the said Notice, the defendants

called upon the plaintiff to fix the date, time and place for executing the sale deed within the agreed date, failing which the sale agreement dated

18.12.2006 would become rescinded/cancelled and he would have to receive the balance advance amount of Rs.9,00,000/- only from the

defendants. But, on 21.02.2007 the said lawyer''s notice was returned to the sender as ''door locked and intimation given on 09.02.2007''. Even

after intimation from the postal authority, the plaintiff has not claimed the said notice. Thereafter, knowing about the contents of the notice sent by

the defendants, the plaintiff cunningly sent lawyer''s notice dated 11.02.2007 i.e., after the expiry of the date of sale fixed under the agreement, as if

the plaintiff was ready and willing to perform his part of the contract and called upon the defendants to perform their part of the contract within 15

days from the date of the receipt of the said notice. The said lawyer''s notice sent by the plaintiff was received by the defendants and immediately

the defendants sent reply dated 23.02.2007 intimating about their earlier notice dated 07.02.2007 and informed the plaintiff that since the said

agreement stands cancelled, the plaintiff is not entitled to act as per the sale agreement, except to receive the balance advance amount of Rs.9

lakhs as per the sale agreement. It is the case of the defendants that the plaintiff has no legal right to seek the relief of specific performance and no

cause of action for filing the suit. Thus, the defendants sought for dismissal of the suit.

7. On the above pleadings the Trial Court has framed the following issues_

1.Whether there is any valid cause of action in this suit?

2.Whether the plaintiff has come forward to perform his obligation under the contract?

3.Whether the plaintiff is entitled for judgment and decree as prayed for?

4.To what other relief the parties are entitled for? Before the Trial Court, in order to prove his case, the plaintiff examined himself as P.W.1,

besides examining one R. Lakshminarayanan as P.W.2 and marked 11 documents as Ex.A.1 to Ex.A.11. On the side of the defendants, the

2nd defendant examined himself as D.W.1, besides examining one Iyyanar and Manohar as D.W.2 & D.W.3 and marked four documents

as Ex.B.1 to Ex.B.4.

8. The Trial Court, after analysing both the oral and documentary evidence adduced on either side, has decreed the suit. Aggrieved over the same,

the defendants have come forward with the present appeal.

9. The learned senior counsel appearing for the appellants/defendants submitted that the 1st respondent/plaintiff had entered into an agreement with

the defendants on 18.12.2006 to purchase the suit schedule property at the rate of Rs.32,000/- per kuzhi. The extent of the land was clearly

mentioned in the Sale Agreement and the total sale consideration at the rate of Rs.32,000/- per kuzhi for the extent mentioned in the agreement is

Rs.1,25,98,000/-. As per the terms of the Sale Agreement, the plaintiff shall pay the balance sale consideration, after deducting the advance

amount of Rs.10 lakhs, on or before 10.02.2007. There is no doubt, in the agreement there are obligations on the part of the defendants, to

measure the property and to handover the title deeds of the property. Now, the plaintiff has projected a case that these three obligations were not

complied with by the defendants; therefore, the plaintiff is not obliged to pay the balance sale consideration and proceed with the sale deed, unless

and until these three obligations are complied with by the defendants.

10. In this regard, the learned senior counsel for the appellants/defendants submitted that the clauses contained in the sale agreement would not

amount to reciprocal promises to be performed by the parties. The contract does not expressly or even impliedly specify the order of performance

of reciprocal promises as alleged by the plaintiff. When that being so, now the plaintiff cannot take a stand that unless and until the said three

obligations are complied with by the defendants, he need not perform his part of the contract. In this regard, the learned senior counsel appearing

for the appellants/defendants has also relied upon the decision reported in AIR 2011 SC 3234 (1) [Mrs. Saradamani Kandappan v. Mrs. S.

Rajalakshmi and ors].

11. The learned senior counsel for the appellants/defendants would further submit that on factual aspects also, the stand taken by the plaintiff is not

correct, since the defendants examined their neighbouring land owners as D.W.2 & D.W.3, who have deposed that the measurement of the land

was taken with the help of surveyors. Similarly, Ex.B.4 - certificate issued by the Kumareswaran Primary Agricultural Co-operative Credit

Society, marked on the side of the defendants, would show that there was no agricultural loan dues from the 2nd defendant during the period

2006-2007, which is the only Society in Karikalambakkam, Puducherry. According to the learned senior counsel for the appellants/defendants,

these evidences were not properly considered by the Trial Court. Even in the evidence of D.W.1, he has stated that there was no due whatsoever

with the Kumareswaran Primary Agricultural Co-operative Society, on the date of entering into the sale agreement.

12. Further, the learned senior counsel for the appellants/defendants submitted that so far as the production of original parent documents is

concerned, all the original documents were clearly mentioned in the Sale Agreement and as per the clauses of the sale agreement, the original

documents have to be handed over to the plaintiff only before the date of execution of the sale deed and not before 10.02.2007.

13. The learned senior counsel for the appellants/defendants would further submit that the plaintiff should have expressed his readiness and

willingness by producing evidence to show his capacity to pay the balance sale consideration. His obligation to pay the balance sale consideration

is independent of the obligation cast on the defendants under the Sale Agreement. In fact, the defendants had sent Lawyer''s Notice on

07.02.2007 (Ex.B.1) to the plaintiff expressing their readiness and willingness to perform their part of the contract and called upon the plaintiff to

pay the balance sale consideration to proceed with the execution of the sale deed; but, the plaintiff has clearly evaded the receipt of the said Notice

(Ex.B.1). In fact, the postal endorsement was made in Ex.B.1-Notice, to the effect that the door was locked for a period of four days from

09.02.2007 to 12.02.2007 and intimation was also delivered to the plaintiff regarding the registered letter. In spite of the intimation being delivered,

the plaintiff did not care to collect the Notice-Ex.B.1 from the postal authority, which would expose the fact that the defendants were ready and

willing to perform their part of the contract, but, it was the plaintiff who did not come forward to perform his part of the contract. Moreover, the

plaintiff has not addressed even a single letter between 18.12.2006 to 10.02.2007 to show that he was ready with the sale consideration and the

defendants have not performed their part of obligations on or before 10.02.2007. The plaintiff, who had known about the contents of the Notice

sent by the defendants dated 07.02.2007 (Ex.B.1), by evading the receipt of the same, cunningly sent the Layer''s Notice dated 11.02.2007, ie.,

after expiry of the date fixed under the sale agreement, stating as if he was ready and willing to perform his part of the contract and it was the

defendants who were not ready and willing to perform their part of the contract. The contents of the Notice-Ex.A.2 are utter falsehood and it is

only an afterthought of the plaintiff.

14. In support of his contention that the intimation delivered to the addressee by the postal authority would amount to service of notice, the learned

senior counsel for the appellants/defendants relied upon by the following decisions _

i)1996(2) SCC 519 (Karnataka Public Service Commission v. P.S.Ramakrishna)

ii)1999(7) SCC 510 (K.Bhaskaran v. Sankaran Vaidhyan Balan)

iii)(2005) 6 SCC 478 (P.T.Thomas v. Thomas Job)

iv)(2006) 4 MLJ 740 (Jai Enterprises v. Commissioner of Customs (Appeals)

Since in the instant case intimation was delivered to the plaintiff by the postal authority, it could be safely presumed that after knowing the contents

of the Notice (Ex.B.1 sent by the defendants), the plaintiff has sent the Notice (Ex.A.2) falsely claiming that he was ready and willing to perform his

part of the contract.

15. In this regard, the learned senior counsel for the appellants/defendants has also submitted that merely pleading that the plaintiff was ready and

willing to perform his part of the contract alone, is not sufficient. The word ''readiness'' refers to the financial capacity and the word ""willingness

refers to the fact that the plaintiff is waiting to perform his part of the contract. In the instant case, absolutely the plaintiff has not chosen to adduce

any evidence to show that he had wherewithal to perform his part of the contract. In this regard, the learned senior counsel has also relied upon the

following decisions.

i)1967(1) SCR 227 : AIR 1967 SC 868 (Gomathinayagam Pillai and others v. Palaniswami Nadar)

ii)1995(2) SCC 31 (Jugraj Singh and another v. Labh Singh and others)

Relying upon the above said decisions, the learned senior counsel for the appellants/defendants submitted that in a suit for specific performance, the

plaintiff has to produce evidence to show that he was continuously ready and willing to perform his part of the contract. In the instant case, the

plaintiff has miserably failed to prove his wherewithal to perform his part of the contract.

16. Further, the learned senior counsel for the appellants/defendants, by inviting the attention of this Court to Clause 4 in the Sale Agreement,

submitted that as per the said clause, if the defendants failed to perform their part of the contract, the plaintiff has to deposit the balance sale

consideration before the equity Court and to file suit for specific performance. But, in the instant case, the plaintiff has not deposited any amount

before the equity Court before filing the suit. In this regard, the learned senior counsel for the appellants/defendants relied upon the decision

reported in 2003(1) CTC 355 [Arunachala Mudaliar v. Jayalakshmi Ammal and another], wherein it has been held that the Court cannot grant

decree in favour of one who is not ready and willing to perform essential terms of the contract. The relevant portion in the said decision reads as

follows:

25. The obvious lacunae in the plaintiff''s case have been pointed out above. The plaintiff has not deposited the amount that she should have

deposited as per Ex.A7 before filing the suit for specific performance. The defendant had raised the plea that the deposit was not made and

it would show the plaintiff''s lack of bona fide. In spite of that the plaintiff not only does not deposit the amount before filing the suit, but

P.W.1 the plaintiff''s husband glibly says in his evidence that he has deposited the amount. The plaint does not even refer to any readiness or

willingness to deposit and the suit notice claimed to have been issued has not been proved to have been issued. In the particular

circumstance of the case and in view of the specific recitals regarding the deposit, the plaintiff cannot be content with citing the explanation to

Section 16 (c) of the Act without proving his readiness and willingness clearly and beyond doubt.

By relying upon the above decision, the learned counsel for the appellants/defendants submitted that the recitals in the Sale Agreement- (Ex.A.1)

require the plaintiff to deposit the balance sale consideration into Court and thereafter, seek for enforcement of the contract. His failure to deposit

the balance sale consideration will disentitle him to seek for the relief of specific performance.

17. The learned senior counsel for the appellants/defendants would also submit that the plaintiff has kept quite for more than two-years and filed

the suit only on 13.04.2009 ie., after two years and two months from the expiry of the date fixed under the sale agreement. Therefore, on the

ground of delay also, the plaintiff is not entitled to the relief of specific performance. In this regard, the learned senior counsel for the

appellants/defendants relied upon the decision of the Hon''ble Supreme Court reported in (1997) 3 SCC 1 [K.S.Vidyanadam and others v.

Vairavan] and submitted that the delay has brought about a situation where it would be inequitable to give the relief of specific performance to the

plaintiff. The learned senior counsel for the appellants/defendants submitted that though the plaintiff had projected a case that after receipt of the

reply notice from the defendants, he had taken efforts through the panchayators to perform their part of the contract and thereafter filed the suit, the

plaintiff has not chosen to examine any witness to prove his case that there was an panchayat and since nothing fructified in the panchayat, he filed

the suit, as such there was a delay of 2 years and 2 months from the date of sale agreement in filing the suit. The learned senior counsel for the

appellants/defendants submitted that without considering all these legal aspects and without properly appreciating the evidence, the Trial Court has

decreed the suit. Thus, the learned senior counsel for the appellants/defendants sought for setting aside the judgment and decree of the Trial Court.

18. Countering the submissions made by the learned senior counsel for the appellants/defendants, it is submitted by the learned counsel appearing

for the 1st respondent/plaintiff that as per Clauses 1 & 2 in the Sale Agreement (Ex.A.1), there is an obligation on the part of the defendants to

measure the subject land on or before 10.02.2007 and inform the total amount payable by the purchaser/plaintiff and on receipt of the balance sale

consideration, at the cost of the purchaser/plaintiff, the sale deed has to be executed by the vendor/defendants. Hence, the sale consideration has

to be determined only based on the measurement to be taken by the defendants. That apart, the defendants have to redeem the mortgage and

produce the receipt of the redemption to the purchaser/plaintiff. Further, as per the terms of the sale agreement, the defendants/vendors have to

produce the original title documents pertaining to the suit property on or before 10.02.2007 and handover the copies of the said documents to the

purchaser and thereafter, handover the original title documents to the purchaser on the date of execution and registration of the Sale Deed. But,

none of the said obligations were complied with by the defendants. Hence, on realising that despite the clauses contained in the sale agreement

(Ex.A.1) and the demands made in person, the defendants are not performing their part of the contract, the plaintiff caused a lawyer

notice(Ex.A.2) to the defendants and the said notice was received by the defendants under Exs.A.3 to 7. The defendants have sent a reply dated

23.02.2007 (Ex.A.8) making false allegations. After receipt of the reply notice, the plaintiff took efforts through panchayators to get the sale deed

executed and since the defendants did not come forward, finally the plaintiff laid the suit for specific performance on 13.04.2009.

19. It is further contended by the learned counsel for the 1st respondent/plaintiff that in fact, the plaintiff has pleaded in the plaint about his

readiness and willingness to perform his part of the contract in several places and he also took a specific plea to the effect that ""subsequently the

earnest efforts taken by the plaintiff through the panchayatars to insist the defendants to perform their part under the contract also failed, hence, the

plaintiff field the suit"". Moreover, in the plaint, the plaintiff has also categorically denied the notice dated 07.02.2007 (Ex.B.1) said to have been

sent by the defendants to the plaintiff. The plaintiff had also spoken about the same in his evidence by examining himself as P.W.1 and marking

Ex.A.1 to A.11. But, the defendants have miserably failed to put any suggestion to the plaintiff during his cross-examination, to the effect that the

plaintiff was never ready and willing to perform his part of the contract. Further, notice dated 07.02.2007 (Ex.B.1) said to have been sent by the

defendants to the plaintiff was not even shown to the plaintiff during the examination of the plaintiff as P.W.1. Hence, the evidences let in by the

plaintiff through P.W.1 & P.W.2 have to be accepted by the Court. In this regard, the learned counsel appearing for the 1st respondent/plaintiff

has also relied upon the decision reported in 2003(1) SCC 240 [Sarwan Singh v. State of Punjab].

20. The learned counsel for the 1st respondent/plaintiff would further submit that before the Trial Court, on the side of the defendants, the 2nd

defendant was examined as D.W.1 and except the general denial that the plaintiff was never ready and willing to perform their part of the contract

from the date of the suit agreement, there is no specific plea or evidence adduced on the side of the defendants to the effect that the plaintiff never

had wherewithal or capacity to pay the balance sale consideration from the date of the suit agreement and that Ex.B.1-Notice has been

deliberately avoided by the plaintiff and the Notice is deemed to have been served on the plaintiff. Since there was failure on the part of the

defendants to adduce material evidence, the defence projected by the defendants cannot be accepted. In fact, the Trail Court, by considering all

these aspects in a proper perspective, has correctly decreed the suit.

21. The learned counsel for the 1st respondent/plaintiff would also contend that for the pleas raised in the plaint about the readiness and willingness

on the part of the plaintiff and sincere efforts taken by the plaintiff through the panchayators after exchanging of notices, till the date of filing the suit,

no proper explanation was given by the defendants and the said pleas have not been denied by the defendants in the manner provided under Order

8, Rule 5 of CPC. Similarly, as regards the delay in approaching the equity Court, no specific plea was taken by the defendants in the written

statement countering the case of the plaintiff. In this regard, the learned counsel for the 1st respondent/plaintiff has also relied upon the following

decisions:

a) 1997(2) LW 589 [R. Singaperumal v. Vellikkannu and another]

b) (1999) 8 SCC 396 [Balraj Taneja v. Sunil Madan]

c) 2005(1)CTC 267 [Sri Balaji Traders v. United India Insurance Co. Ltd.]

d) (2008)7 SCC 85 [Tautam Sarup v. Leela Jetly]

e) AIR 2009 SC 2463 [Seth Ramdayal Jat v. Laxmi Prasad]

f) (2013) 2 SCC 606 [Gian Chand & Bros. v. Rattan Lal]

By relying upon the above decisions, the learned counsel for the 1st respondent/plaintiff submitted that under Order 8, Rule 5 of CPC, every

allegation of fact in the plaint, if not denied specifically or by necessary implication or stated to be not admitted in the pleading of the defendant,

shall be taken to be admitted.

22. The learned counsel for the 1st respondent/plaintiff has also relied upon the decision reported in (2015) 1 SCC 597 [K.Prakash v.

B.R.Sampath Kumar] and submitted that subsequent raise in the price will not be treated as hardship entailing refusal of the decree for specific

performance. The raise in the price is a normal change of circumstances and therefore, on that ground a decree for specific performance cannot be

reversed.

23. With regard to the submission made by the learned senior counsel for the appellants/defendants that the plaintiff has not proved the sufficient

wherewithal to pay the sale consideration and he was not ready and willing to perform his part of the contract, it is replied by the learned counsel

for the 1st respondent/plaintiff that it is not necessary for the plaintiff to produce the money or vouch a concluded scheme for financing the

transaction to prove his readiness and willingness. In support of his contention, the learned counsel for the 1st respondent/plaintiff has also relied

upon the following decisions:

a)AIR 1996 SC 2510 [Sukhbir Singh and others v. Brij Pal Singh and others]

b)AIR 1970 SC 546 [Nathulal v. Phoolchand]

c)AIR 1967 MAD 220 [S.P. Narayaaswami Pillai v. Dhanakoti Ammal]

d)Civil Appeal No.2174 of 2008, 06.03.2017 (Mrs. A. kanthamani v. Mrs. Nasreen Ahamed) delivered by Hon''ble Supreme Court.

24. With regard to the submission made by the learned senior counsel for the appellants/defendants that the intimation delivered by the postal

authority would amount to service of notice, it is replied by the learned counsel for the 1st respondent/plaintiff that in the decision reported in 1992

(1) LW 5 [Ramu Mudaliar, C.M.K. v. Kanthamani Natarajan], whiling interpreting and applying Section 27 of General Clauses Act and Section

144 of Indian Evidence Act, it has been held by this Court that there is no presumption in law, because of the addressee being absent from his

premises or because his front door is shut during the brief movements of the postman visit, he is especially seeking to evade service of legal notice

addressed to him. Further, the learned counsel for the 1st respondent/plaintiff has also relied upon the judgment reported in AIR 1988 Allahabad

75 [Ram Rati v. Fakira] and submitted that the presumption stands rebutted by the statement of the addressee on Oath so that the sender could

not succeed without further evidence. Further, in the judgment reported in (1998)7 SCC 569 [Union of India v. Dinanath Shantaram Karekar], it

has been held that the registered cover was returned to the sender with endorsement ''not found'', it cannot be legally treated to have been served

and the sender should have made further efforts to have the charge-sheet to be served. By relying upon the above said decisions, the learned

counsel for the 1st respondent/plaintiff submitted that the plaintiff has specifically adduced evidence that he has not received the notice dated

07.02.2007 (Ex.B.1) alleged to have been sent by the defendants, and it was not challenged by the defendants in the cross-examination of the

plaintiff as P.W.1. Therefore, the submission made by the learned senior counsel for the appellants/defendants that intimation delivered by the

postal authority would amount to service of notice, is liable to be rejected.

25. The learned counsel for the 1st respondent/plaintiff submitted that absolutely there is no infirmity in the judgment and decree of the trial Court

and there is no compelling circumstance warranting this Court to reverse the same; thus, he sought for dismissal of the appeal.

26. We have given our anxious consideration to the submissions made on either side and perused the materials available on record.

27. In view of the above submissions made on either side, the following points fall for consideration in this appeal.

(1)Whether the plaintiff has failed to establish that he was ready and willing to perform his part of the contract?

(2)Whether the defendants have proved their defence that by knowing the contents of Ex.B.1(Notice), the plaintiff had evaded the receipt of

the Notice (Ex.B.1)?

(3)Whether the conduct of the plaintiff would disentitle him to get the relief of specific performance?

28. With regard to the readiness and willingness to perform the contract by the plaintiff, it is the submission of the learned senior counsel for the

appellants/defendants that the defendants have agreed to sell the suit schedule property for a valid sale consideration at the rate of Rs.32,000/- per

kuzhi and for this purpose, the defendants and the plaintiff entered into a sale agreement on 18.12.2006 and the defendants have received a sum of

Rs.10 lakhs from the plaintiffs by way of a cheque bearing No.116111 dated 18.12.2006 as advance amount. Under the Sale Agreement, time for

completion of performance of the contract was fixed as 10.02.2007. According to the defendants, though the final date for performance of the

contract was nearing, the plaintiff had not chosen to pay the balance sale consideration, hence, the defendants sent a notice dated

07.02.2007(Ex.B.1), calling upon the plaintiff to get the sale deed executed by paying the balance sale consideration. According to the defendants,

the plaintiff, by knowing the contents of the notice dated 07.02.2007, evaded to receive the notice, hence, the notice was returned to the

defendants with an endorsement "door locked". Thereafter, the plaintiff has come forward with an invented theory, by sending a notice stating that

as per clauses in the sale agreement, there are certain obligations to be performed by the defendants. The obligations mentioned in the Notice sent

by the plaintiff are as follows -

a)the defendants shall measure the land and receive the balance sale consideration depending upon the extent available on ground before

10.02.2017.

b)the defendants shall discharge an alleged loan availed by them with Karikalampakkam Agricultural Co-operative Society and show the

discharge receipt to the plaintiff.

c)the defendants shall produce the originals of the parent documents, patta copy and Encumbrance Certificate and handover the

photocopies of the same to the plaintiff within the stipulated time.

Therefore, according to the plaintiff, unless and until these three obligations are complied with, the plaintiff is not obliged to pay the balance sale

consideration.

29. But, it is the submission of the learned senior counsel for the appellants/defendants that as per the clauses in the sale agreement, the

measurement has to be taken only before the execution of the sale deed and not before 10.02.2007 as alleged by the plaintiff. Further, the

obligation on the part of the plaintiff to pay the sale consideration is independent of the obligation cast on the defendants under the Sale Agreement;

when that being the position, the plaintiff ought to have established before the Trial Court that he had sufficient wherewithal to perform his part of

the contract by producing proper evidence. But, the plaintiff has not produced any evidence to show that he had sufficient wherewithal to pay the

balance sale consideration. Thus, it is submitted by the learned senior counsel for the appellants/defendants that the plaintiff has miserably failed to

prove his readiness and willingness to perform his part of the contract from the date of the agreement till the date of passing the decree by the trial

Court. On this ground alone, the plaintiff is not entitled for the relief of specific performance, irrespective of the obligations fixed on the part of the

defendants under the sale agreement. In support of his contentions, the learned counsel for the appellants/defendants relied upon the following

decisions:

(i) In 1928 Indian Appeals 360 (Privy Council) [Ardeshir Mama v. Plora Sessions, wherein it has been held that in a suit for specific

performance the plaintiff has to prove a continuous readiness and willingness from the date of contract to the time of the hearing to perform

the contract on his part and failure to make good that averment brought with it the inevitable dismissal of the suit.

(ii)In AIR 1967 SC 868 [Gomathinayagam Pillai v. Palaniswami Nadar], it has been held that the respondent herein has claimed for specific

performance and it is for him to establish that he was since the date of contract continuously ready and willing to perform his part of the

contract; if he fails to do so, his claim for specific performance must fail.

30. But, it is the reply of the learned counsel for the 1st respondent/plaintiff that as per Clauses 1 & 2 in the Sale Agreement, there is an obligation

on the part of the defendants to measure the subject land on or before 10.02.2007 and inform the total amount payable by the purchaser/plaintiff

and on receipt of the balance sale consideration, at the cost of the purchaser, the sale deed has to be executed by the vendor/defendants. Hence,

sale consideration has to be determined only based on the measurement to be taken by the defendants. That apart, the defendants have to redeem

the mortgage and produce the receipt of the redemption to the purchaser. Further, as per the terms of the sale agreement, the defendants/vendors

have to produce the original title documents pertaining to the suit property on or before 10.02.2007 and to handover the copies of the said

documents to the purchaser/plaintiff and thereafter, to handover the original title documents to the purchaser on the date of execution and

registration of the sale deed. Therefore, according to the plaintiff, unless and until the measurement of the subject land is taken, the amount payable

by the plaintiff to the defendants cannot be determined. Since the plaintiff was ready and willing to perform his part of the contract, he has sent legal

notice on 11.02.2007 to the defendants expressing his readiness and willingness to perform his part of the contract and calling upon the defendants

to perform the obligations undertaken by them under Clauses 6 & 7 of the sale agreement, within 15 days from the date of receipt of the notice.

31. In view of these submissions made on either side, We are of the opinion that it would be appropriate to extract the relevant clauses in the

agreement:

VERNACULAR MATTER OMITTED

A reading of Clause 2 of the Sale Agreement would clearly show that the measurement of the land has to be taken on or before 10.02.2007 and

based on the said measurement, total amount has to be determined and the plaintiff has to pay the balance sale consideration after deducting a sum

of Rs.10 lakhs paid towards advance amount.

32. As per clause 6 of the Sale Agreement, the appellants have to redeem the mortgage and produce the receipt of the redemption to the plaintiff.

But, receipt was not produced by the defendants to the plaintiff before 10.02.2007. But, the defendants are relying upon Ex.B.4, dated

28.08.2014, Certificate issued by the Administrator, Kumareswaran Primary Agricultural Co-operative Credit society, to show that during 2006 -

2007 there was no agricultural loan in the name of the defendants. But, a perusal of Ex.B.4 would show that the certificate was issued by the Co-

operative Society only on 28.08.2014 ie., after the commencement of the trial and the same was marked through D.W.1 and the contents of the

said document (Ex.B.4) do not speak with regard to the mortgage of the property as mentioned in Ex.A.1-Sale Agreement. Therefore, We find

some force in the submission made by the learned counsel for the plaintiff that Ex.B.4 has no relevance to Clause 6 of the Sale Agreement.

33. Similarly, as per Clause 7 of the Sale Agreement, the 2nd defendant has to handover all the xerox copies of the parental documents before

10.02.2007 and thereafter, they have to handover the original documents on the date of registration of the sale deed. But, the evidence on record

would show that no xerox copies of the documents or originals of the documents were produced to the plaintiff by the defendants.

34. It has been argued on behalf of the defendants that the clauses contained in Sale Agreement, Ex.A.1, are formal clauses and they were never

intended to be performed by the defendants and for the sake of clauses, they have been incorporated and in other words, it is the contention of the

learned senior counsel for the appellants/defendants that the plaintiff was well aware of the measurement of the subject land, since the measurement

has been given in the suit schedule and suit has been laid only on the basis of the schedule measurement; that above all, but for the perusal of the

original documents, the plaintiff would not have entered into sale agreement in respect of the suit property. Further, according to the learned senior

counsel for the appellants/defendants, since the plaintiff was never ready and willing to perform his part of the contract, by relying upon the clauses

in the sale agreement, which are formal in nature, he is projecting the case as if the defendants have not performed their obligations under the

contract.

35. But, We are not inclined to accept the said submission made by the learned senior counsel for the appellants/defendants, because the Sale

Agreement Ex.A.1 is a contract, by means of a document in writing, and the said document is binding on the parties to the contract, so long as it is

not opposed to public policy as provided in Section 23 of the Indian Contract Act. Further, Ex.A.1-Sale Agreement has to be read as it is and no

interpretation is permissible and in other words, on the well laid down principles in the matter of construction of deeds and documents, the

documents are to be read as it is, including the full-stop and cumma mentioned in the said document. In the given case, Clauses 2, 6 & 7 are vital

clauses and by virtue of the said clauses, there are duties cast upon the defendants namely:

i) measurement of the land covered under Ex.A.1 on or before 10.02.2007 to be taken and on such measurement a total amount payable

by the purchaser to be calculated and informed and thereafter, the plaintiff has to pay the balance consideration after deducting the advance

amount of Rs.10 lakhs.

ii) the defendants have to produce the receipt for redemption of the mortgage

iii) the defendants have to show the original title documents pertaining to the suit property and hand over the copies of the same on or before

10.02.2007.

Further more, there is nothing on record to show that the above said clauses were added only as formal clauses and they were not intended to be

performed by the defendants.

36. A reading of the Clauses in the Sale Agreement would show that there is duty cast upon the defendants to perform the obligations on or before

10.02.2007. In this regard, a reference could be placed in Sections 52 & 54 of the Contract Act, 1872, which read as follows:

52. Order of performance of reciprocal promises:- Where the order in which reciprocal promises are to be performed is expressly fixed by

the contract, they shall be performed in that order; and where the order is not expressly fixed by the contract, they shall be performed in that

order which the nature of the transaction requires.

...

54. Effect of default as to that promise which should be first performed, in contract consisting of reciprocal promises - When a contract

consists of reciprocal promises, such that one of them cannot be performed, or that is performance cannot be claimed till the other has been

performed, and the promisor of the promise last mentioned fails to perform it, such promisor cannot claim the performance of the reciprocal

promise, and must make compensation to the other party to the contract for any loss which such other party may sustain by the non-

performance of the contract.

In the instant case, We find that the Sale Agreement/contract clearly expressed the order of performance of the reciprocal promises. In fact, it has

given a clear inference that at first, the defendants have to fulfil their obligation on or before 10.02.2007. Therefore, the submissions made by the

learned senior counsel for the appellants/defendants that the clauses contained in Sale Agreement, Ex.A.1, are formal clauses and they were never

intended to be performed by the defendants and for the sake of clauses, they have been incorporated and that the contract itself does not express

the order of reciprocal promises, cannot be accepted.

37. With regard to the Clauses in the Sale Agreement relating to taking of measurement of the suit property, it is the contention of the learned

senior counsel for the appellants/defendants that on the side of the defendants, D.W.2 & D.W.3, who were neighbours of the defendants, were

examined to show that the measurement was taken in the presence of them. But, We are of the opinion that their evidence cannot be accepted for

the reason that there is no specific plea in the written statement of the defendants to the effect that the property was measured in the presence of

D.W.2 & D.W.3. Therefore, any amount of evidence, without necessary plea cannot be accepted. Accordingly, the evidence of D.W.2 & D.W.3

will not be useful for the case of the defendants.

38. Further, We find that by letter/Notice dated 11.02.2007, the plaintiff has expressed his readiness and willingness to perform his part of the

contract and called upon the defendants to fulfil their obligations under the contract. The plaintiff, as P.W.1, has also stated in his chief-examination

that he had expressed his readiness and willingness on several occasions to pay the balance sale consideration at any time as per the terms of the

contract and he has patiently waited. But, in his cross-examination by the defendants, there was no suggestion put forth to him to the effect that he

was never ready and willing to perform his part of the contract. Similarly, there was no suggestion to the effect that the plaintiff never demanded the

defendants to measure the suit property and handover the original documents. Similarly, there was no suggestion to the effect that the plaintiff never

had wherewithal or capacity to pay the balance sale consideration from the date of sale agreement. Therefore, in the particular factual background

of this case, the judgments relied upon by the learned senior counsel for the appellants/defendants with regard to readiness and willingness of the

plaintiff to perform his part of the contract, cannot be made applicable to the present facts of the case.

39. From a perusal of the materials on record, We are of the opinion that the defendants have not denied the case of the plaintiff by putting

suggestion in the cross-examination of P.W.1. Failure to cross-examine on this aspect has resulted in establishment of the fact by the plaintiff that

the plaintiff has proved that he has been ready and willing to perform his part of the contract. In this regard, a reference could be placed in the

judgment reported in (2003) 1 SCC 240 [Sarwan Singh v. State of Punjab], wherein it has been held that it is a rule of essential justice that

whenever the opponent has declined to avail himself of the opportunity to put his case in cross-examination, it must follow that the evidence

tendered on that issue ought to be accepted.

40. Further, it is yet another submission of the learned senior counsel for the appellants/defendants that the plaintiff has kept quite for more than 2

years and filed the suit only on 13.04.2009 ie., after two years and two months from the date of sale agreement; hence, on the ground of delay

also, the plaintiff is not entitled to the relief of specific performance. In this regard, he has also relied upon the decision in (1997) 3 SCC 1 [K.S.

Vidyanadam and others v. Vairavan].

41. But, it is the case of the plaintiff that he had taken earnest efforts through the panchaytors to insist the defendants to perform their part of the

contract, but, the same has failed, thereafter, he has filed the suit. Therefore, it cannot be said that the delay in approaching the equity Court by the

plaintiff, for a period of two years and two months, is fatal to the claim of the plaintiff. Further, We find that a plea has been raised by the plaintiff

regarding his readiness and willingness and there was sincere effort taken by the plaintiff through the panchayators, after exchanging notices till the

date of filing the suit; but, this piece of evidence was not denied by the defendants in the manner provided under Order 8, Rule 5 of CPC, as

contended by the learned counsel for the 1st respondent/plaintiff. There is no specific plea in the written statement filed by the defendants to the

effect that the plaintiff has waived and abandoned his right under Ex.A.1-Sale Agreement, by not approaching the equity Court immediately after

exchange of notices and such a delay has prejudicially affected the interest of the defendants under the suit agreement. Hence, in view of the failure

on the part of the defendants to comply with Order 8, Rule 5 of CPC and failure on their part to cross-examine the plaintiff on materials aspects

touching Ex.A.1, the submissions made by the learned senior counsel for the appellants/defendants cannot be accepted.

42. In this regard, reference could be place in some of the decisions. In 1997(2) LW. 589 (R. Singaperumal v. Vellikkannu and another), this

Court has observed as follows:

15. Under Order 8, Rule 5, CPC, every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be

not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability:

Provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission. Along with this,

the Court can also take note of Section 58 of the Evidence Act. It says that ''No fact need be proved in any proceeding which the parties

thereto or their agents agree to admit at the hearing, or which before the hearing, they agree to admit by any writing under their hands, or

which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings:

Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions. So long as the

defendant has not denied that he is not the murderer of Ramasami Konar, this is a matter which does not require evidence. Under Order 8,

Rule 5, CPC read with Section 58 of the Evidence Act, this fact need not be further proved. It must be deemed to have been admitted.

43. In AIR 2009 SC 2463 (Seth Ramdaya Jat v. Laxmi Prasad), it has been observed as follows:

24. Having regard to the fact that the averments contained in paragraph 3 of the plaint were not traversed, the same would be deemed to

have been admitted by him in terms of Order 8, Rule 5 of the Code of Civil Procedure.

In Gautam Sarup v. Leela Jetly (2008) 7 SCC 85, this Court held:

14. An admission made in a pleading is not to be treated in the same manner as an admission in a document. And admission made by a

party to the list is admissible against him proprio vigore.

44. In (1999) 8 SCC 396 (Balraj Taneja v. Sunil Madan) it has been held by the Hon''ble Supreme Court as follows:

9. The scheme of this rule is largely dependent upon the filing or non-filing of the pleading by the defendant. Sub-Rule (1) of Rule 5

provides that any fact stated in the plaint, if not denied specifically or by necessary implication or stated to be not admitted in the pleading of

the defendant, shall be treated as admitted. Under Rule 3 Order 8, it is provided that the denial by the defendant in his written statement

must be specific with reference to each allegation of fact made in the plaint. A general denial or an evasive denial is not treated as sufficient

denial and, therefore, the denial, if it is not definite, positive and unambiguous, the allegations of facts made in the plaint shall be treated as

admitted under this Rule.

Keeping the dictum laid down in the above judgments of the Hon''ble Supreme Court, on a perusal of the materials available on record, We find

that in the instant case, the defendants have not denied the pleading made in the plaint about the efforts taken by the plaintiff through the

panchayatars and since the efforts ended in vain, the suit came to be filed. Similarly, the defendants have not chosen to challenge the said pleading

by putting forth suggestion during the cross-examination of P.W.1. Therefore, accepting the evidence adduced by P.W.1, We are of the opinion

that the delay of 2 years 2 months in filing the suit for relief of specific performance, from the expiry of the date fixed under the sale agreement

(Ex.A.1), can not be said to be fatal to the case of the plaintiff.

45. In this regard, a reference could be placed in the decision reported in AIR 1965 SC 1405 (Satyanarayana v. Yelloji Rao), wherein it has been

held by the Hon''ble Supreme Court as follows -

11. The result of the aforesaid discussion of the case law may be briefly stated thus: While in England mere delay or laches may be a

ground for refusing to give a relief of specific performance, in India mere delay without such conduct on the part of the plaintiff as would

cause prejudice to the defendant does not empower a Court to refuse such a relief.

In the instant case, it is the categorical statement of the plaintiff that the defendants have not performed their part of obligation by measuring the

land to determine the actual price to be paid on or before 10.02.2007; further, the plaintiff had also taken efforts through the panchayatars to insist

the defendants to perform their part of the contract, but it ended in failure and thereafter, he has filed the suit; in the mean time there was a delay in

filing the suit. But, this aspect was not challenged by the defendants by putting suggestion to the plaintiff in his cross-examination as P.W.1, as

observed earlier. Therefore, We are of the opinion that the plaintiff cannot be denied the relief of specific performance on the ground of delay.

46. It is yet another submission of the learned counsel for the appellants/defendants that in the instant case, the plaintiff has miserably failed to

prove his wherewithal to perform his part of the contract and the plaintiff has not produced any evidence to show that he was continuously ready

and willing to perform his part of the contract. Further, the learned senior counsel for the appellants/defendants has also, by relying upon Clause 4

of the Sale Agreement, submitted that as per the said Clause, if the defendants failed to perform their part of the contract, the plaintiff has to

deposit the balance sale consideration in the Court before filing the suit for specific performance; but, in the instant case, the plaintiff has not chosen

to deposit any amount in the Court before filing the suit; hence, the Court cannot grant a decree of specific performance in favour of the plaintiff. In

this regard, the learned senior counsel for the appellants/defendants has also relied upon the decision reported in 2003(1) CTC 355 [Arunachala

Mudaliar v. Jayalakshmi Ammal and another].

47. But, the evidence on record would show that as per Clause 2 of the Sale Agreement, the measurement of the land has to be taken on or

before 10.02.2007. Based on the said measurement, the total sale consideration has to be determined and the plaintiff has to pay the balance sale

consideration after deducting a sum of Rs.10 lakhs paid as advance amount. But, in the instant case, no tangible evidence was available to show

that before 10.02.2007 measurement of the land was taken in the presence of the plaintiff and the actual sale consideration to be paid by the

plaintiff was arrived at. Therefore, the above said judgment relied upon by the learned senior counsel for the appellants/defendants cannot be made

applicable to the facts of this case. Further, We find that through Ex.A.2 the plaintiff has expressed his readiness and willingness to perform his part

of the contract and called upon the defendants to measure the land to arrive at the balance sale consideration to be paid by the plaintiff as per

Clause 2 of the Sale Agreement, which would show that he is ready and willing to perform his part of the contract and he is only waiting for actual

amount to be arrived at, for making the payment. Therefore, in this factual background, the non-deposit of the sale consideration in the Court is not

fatal to the case of the plaintiff. In this context, it is worthwhile to refer to Explanation (1) to Section 16 (c) of the Specific Relief Act, 1963, which

reads as follows -

16. Personal bars to relief. Specific performance of a contract cannot be enforced in favour of a person;-

...

(c) Who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of contract which

are to be performed by him, other than terms of performance of which has been prevented or waived by the defendant.

Explanation : For the purpose of clause (c)

(i) Where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in

Court any money except when so directed by the Court

(ii) The plaintiff must aver performance of, or readiness and willingness to perform the contract according to its true construction.

In the light of the explanation appended to Section 16 (c) of the Specific Relief Act, even though the recitals contained in the agreement of sale

(Ex.A-1) require the plaintiff to deposit the amount in the event of the failure or refusal of the defendants to come forward to execute the sale deed,

it is not essential to deposit the amount by the plaintiff before filing the suit unless it is ordered by the Court. In this regard, a reference could be

made in the latest decision of the Honourable Supreme Court in the case of (Mrs. A. Kanthamani v. Mrs. Nasreen Ahmed) Civil Appeal No.2714

of 2008 dated 6th March 2017 (cited supra), which gives a fitting answer to this issue. The relevant portion in the said decision reads as follows:

28. The expression ""readiness and willingness"" has been the subject matter of interpretation in many cases even prior to its insertion in

Section 16 (c) of the Specific Relief Act, 1996. While examining the question as to how and in what manner, the plaintiff is required to

prove his financial readiness so as to enable him to claim specific performance of the contract/agreement, the Privy Council in a leading case

which arose from the Indian Courts (Bombay) in Bank of India and others v. Jamsetji A.H. Chinoy and Chinoy and Company) AIR 1950

PC 50, approved the view taken by Chagla, A.C.J., and held inter alia that ""it is not necessary for the plaintiff to produce the money or

vouch a concluded scheme for financing the transaction to prove his readiness and willingness.

A reading of the said judgment would show that it is not necessary for the plaintiff to produce the money or vouch a concluded scheme for

financing the transaction to prove his readiness and willingness. Further, though it is the submission of the learned senior counsel for the

appellants/defendants that when the suit was valued at Rs.1,25,98,000/-, the plaintiff ought to have deposited the said amount, We are of the

opinion that as per the Sale Agreement, total sale consideration has to be fixed only on the measurement to be taken by the defendant on or before

10.02.2007 and the suit was valued only for the purpose of paying the court fee. Therefore, We are not inclined to accept the submission made by

the learned senior counsel for the appellants/defendants based on the valuation made by the plaintiff for the purpose of paying the Court fee to file

the suit. Hence, in the particular background of the case, non-deposit of the money in the Court before filing the suit is not fatal to the case of the

plaintiff. Accordingly, We hold that the plaintiff has established that he was ready and willing to perform his part of the contract.

48. With regard to the aspect of service of notice, it is the submission of the learned senior counsel for the appellants/defendants that when the date

for completion of the performance of the plaintiff under the sale agreement was nearing, the defendants sent a letter/notice (Ex.B.1) dated

07.02.2007 to the plaintiff, which was evaded by the plaintiff. Thereafter, having come to know about the contents of the Notice (Ex.B.1) sent by

the defendants, the plaintiff has sent the Notice Ex.A.2, dated 11.02.2007, as if he was ready and wiling to perform his part of the contract. In this

regard, the learned counsel for the appellants/defendants submitted that the postal endorsement made in the Notice Ex.B.1 would show that the

door was locked for a period of four days from 09.02.2007 to 12.02.2007 and intimation was also delivered to the plaintiff regarding the

registered post; therefore, it would amount to service of notice. Further, though the plaintiff was given intimation regarding the registered post, he

did not care to receive the notice/letter from the postal authority. According to the learned senior counsel for the appellants/defendants, the plaintiff

had evaded the notice and the conduct of the plaintiff would disentitle him to the relief of specific performance.

49. Per contra, according to the learned counsel for the plaintiff, he has no knowledge about the letter/notice dated 07.02.2007 said to have been

sent by the defendants. In this regard, the learned counsel for the plaintiff has also relied upon the decision reported in 1992(1) LW 5 (C.M.K.

Ramu Mudaliar v. Kanthamani Natarajan and anothers) wherein, while interpreting and applying Section 27 of the General Clauses Act and

Section 114 of the Indian Evidence Act, it has been held by this Court that there is no presumption in law because of the addressee being absent

from his premises or because his front door is shut during the brief movement of the postman visit, he is especially seeking to evade service of legal

notice addressed to him.

50. But, irrespective of the submissions made on either side, We find that in the proof affidavit filed by the plaintiff, he has clearly sated that it is

false to state that the defendants sent a notice dated 07.02.2007 (Ex.B.1) to the plaintiff calling upon the plaintiff to perform his part of the contract

on or before 10.02.2007. As against this evidence adduced by the plaintiff, there was no suggestion to the plaintiff in his cross-examination to the

effect that Notice dated 07.02.2007 (Ex.B.1) was sent to the plaintiff and the same was deliberately evaded by him. Had this point been raised

during the cross-examination, the plaintiff would have got the chance of adducing more evidence explaining his defence. In the absence of any

suggestion to deny the case of the plaintiff, We are not inclined to accept the submission made by the learned senior counsel appearing for the

appellants/defendants that based on the postal endorsement, it has to be presumed that Notice was served on the plaintiff and since the plaintiff has

evaded service of the notice, he is dis entitled to the relief of specific performance.

51. Further, We find that the defendants 6 & 7, who are the legal heirs of the deceased 5th defendant, have submitted to the judgment and decree

passed by the Trial Court in favour of the plaintiff, and sold their â…•th share in the suit property in favour of the plaintiff for a valid sale

consideration, therefore, they were transposed as respondents 2 & 3 in this appeal. Now, the plaintiff has also deposited the balance sale

consideration before the Trial Court. Therefore, at this stage, We are not inclined to deny the relief of specific performance to the plaintiff. In this

regard, a reference could be placed in the judgment of Honourable Supreme Court in the case of (P. D''Souza v. Shondrilo Naidu) reported in

(2004) 6 SCC 649, wherein in Para No.43, it was held as follows:-

43. Bhan, J., however, while expressing his dissension in part observed; (SCC pp. 506 & 507, paras 38 & 40)

38. It is well settled that in cases of contract for sale of immovable property the grant of relief of specific performance is a rule and its

refusal an exception based on valid and cogent grounds. Further, the defendant cannot take advantage of his own wrong and then plead that

decree for specific performance would be an unfair advantage to the plaintiff.

....

40. Escalation of price during the period may be a relevant consideration under certain circumstances for either refusing to grant the decree

of specific performance or for decreeing the specific performance with a direction to the plaintiff to pay an additional amount to the

defendant and compensate him. It would depend on the facts and circumstances of each case.

In the instant case, since now 8 years have lapsed from the date of the sale agreement, considering the escalation of prices, We are of the opinion

that the plaintiff could be directed to pay 6% interest on the sale consideration.

52. For the foregoing reasons, the appeal is dismissed. However, the plaintiff/1st respondent herein is directed to pay 6% interest on the sale

consideration to the defendants and on such payment, the plaintiff is entitled to the relief of specific performance as ordered by the trial Court. No

costs.

A.S. Dismissed - No Costs.