

(2009) 08 MAD CK 0260

Madras High Court

Case No: Original Side Appeal No. 440 of 2003 and C.M.P. No. 9338 of 2004

S. Krishnamurthy

APPELLANT

Vs

M. Venkateswara Rao @ M.V. Rao
(died) and Others

RESPONDENT

Date of Decision: Aug. 21, 2009

Acts Referred:

- Income Tax Act, 1961 - Section 230A, 269UG(2)
- Specific Relief Act, 1963 - Section 16, 20

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

Bench: Division Bench

Advocate: R. Krishnasami for C. Ramesh, for the Appellant; B.T. Seshadri, for R2 to R7, for the Respondent

Final Decision: Dismissed

Judgement

M. Chockalingam, J.

Challenge is made to the judgment of a learned single Judge of this Court dated 28.11.2003 rendered in C.S. No. 585 of 1992, whereby a suit filed for specific performance and delivery of vacant possession of the suit property or alternatively, refund of advance and damages both past and future, has been partly decreed.

2. The appellant/plaintiff filed the suit with the following averments;

(a) The plaintiff is the owner of the property at Door No. 18, Lakshminarasimhan Street, T. Nagar, Madras. He entered into an agreement of sale in respect of the suit property with M/s. Alacrity Foundation Private Limited. All procedural formalities were complied with and the sale consideration was also fixed at Rs. 63 lakhs, which was to be paid in instalments. As advised by the tax consultant, the plaintiff purchased another residential house, to avoid the Capital Gains Tax.

(b) While the matter stood thus, the defendant, who is the owner of the suit property situate at No. 14, II Street, Nandanam Extension, Chennai-35, came forward to sell the same. The terms and conditions of sale were put in written agreement dated 09.12.1989. The sale consideration was fixed at Rs. 16 lakhs and an advance of Rs. 2.50 lakhs was paid on the date of the agreement. The plaintiff agreed to pay the balance sale consideration within two months from the date of the agreement and to have the sale deed executed and registered. The said period was fixed mainly only on the defendant's assurance that he would get the "No Objection Certificate" from the appropriate authorities within the said period. There was a default clause in the agreement, which entitled the plaintiff to a sum of Rs. 50,000/- by way of damages, in addition to the right to sue the defendant for specific performance, if there was any breach on the part of the defendant. The "No Objection Certificate" u/s 269UG.(2) of the Income Tax Act was issued by the authorities on 12.02.1990. The plaintiff prepared a draft deed and forwarded the same to the defendant for obtaining the requisite Income Tax Clearance Certificate u/s 230-A of the Income Tax Act. The defendant, being the resident of Hyderabad, the correspondence developed between the parties through post and over phone.

(c) In the meantime, the plaintiff's property was sold and he had to vacate the same and take up the place of residence. He occupied another apartment on the monthly rent of Rs. 5,000/-, hoping that the suit transaction could be completed. Thereafter, he shifted the present address. The plaintiff, in compliance with the provisions of the Income Tax Act, opened a separate bank account earmarked for Capital Gains purposes with the Union Bank of India, Egmore Branch and deposits were made in this account and the plaintiff had indicated to the defendant that as and when required, further funds would be released from the said account. A copy of the income tax clearance certificate was received on 20th June 1990, which was forwarded by the defendant, but the finalised draft sale deed was not sent to the plaintiff. The defendant sent a letter on 26.06.1990 complaining of delay on the part of the plaintiff and threatened that the balance sale consideration must be paid by 09.07.1990; otherwise, the agreement would be rescind. The plaintiff had clearly indicated to the defendant that because of his evasive activities, he would not be able to complete the transaction on or before 31.07.1990. The defendant's son agreed for the same. He also agreed to forward a finalised draft sale deed to enable the plaintiff to type the sale deed on stamp paper.

(d) In the meanwhile, the defendant demanded further Rs. 6 lakhs. The plaintiff drew from the Capital Gains Account to pay the said amount. It was the defendant who requested to further advance of Rs. 5 lakhs and the plaintiff also agreed to pay the same and requested that at least, the upstairs portion may be vacated to enable the plaintiff to occupy the same, so that he could save the monthly recurring expenditure of rental. But the defendant refused to accede to this request and demanded that the entire balance sale consideration should be paid within 3 months from the date of such payment. In November, 1990, the parties were unable

to communicate each other due to the strike in the Telephone Department. The plaintiff offered to pay the entire balance sale consideration less Rs. 50,000/- which he would pay at the time of registration of the sale deed and that he would give a bank guarantee for the said sum and that the defendant should deliver the vacant possession. He also requested that the registration should be done after the Tamil month of Margazhi. On 20.11.1990, all of a sudden, the defendant terminated the suit agreement, claiming that he would appropriate the sum of Rs. 50,000/- towards damages. On 23.04.1991, the plaintiff issued a lawyer notice, which brought forth the reply on 13.05.1991. The plaintiff has all along been ready and willing to perform his part of the contract and because of the defendant refusing to perform the contract, the plaintiff had to pay a heavy sum as Capital Gains Tax. Therefore, the plaintiff claimed that this amount, which he was called upon to pay as Capital Gains, the defendant should pay damages and the plaintiff further claimed that the amount he had been paying towards rent should also be paid as damages and the plaintiff was always ready and willing and that the defendant was not ready to execute the sale deed. Hence, the suit was filed for specific performance.

3. The suit was resisted by the defendant with the following averments;

(a) It is admitted that the defendant is the owner of the suit property and there was also an agreement entered into on 09.12.1989, fixing the sale consideration of Rs. 16 lakhs. The plaintiff was not ready and willing to perform his part of the obligation even though a letter was written by the defendant as early as June 1990. The plaintiff did not come forward to pay the amount and he did not have the full amount for payment and requested the defendant to accept the same by instalments and since, in spite of granting time on several occasions, the plaintiff could not pay, the defendant terminated the agreement.

(b) It is the plaintiff, who had committed breach of the agreement and was never ready and willing. He did not have the money to pay and hence, he is not entitled to the relief of specific performance. At no point of time, the plaintiff has not indicated his readiness and willingness. The defendant is not concerned with the incidence of Capital Gains Tax and, therefore, he is not liable to pay the damages. If the plaintiff had paid the entire amount, the sale would have been completed. Therefore, the defendant is not liable and the question of delivery of vacant possession would arise only after the payment of full sale consideration and registration of sale deed. The plaintiff was at default and he had committed breach and there is no question of claiming any amount by way of damages for use and occupation on account of the payment of rent. Hence, he is not entitled for the reliefs sought for and the suit is liable to be dismissed.

4. The learned single Judge framed 7 issues and at the time of trial, the plaintiff was examined as P.W.1 and the defendant was examined as D.W.1 and Exs.P-1 to P-37 were marked. On completion of the evidence of both sides and on hearing the submissions made, the learned trial Judge took the view that the plaintiff is not

entitled for the relief of specific performance and dismissed the suit. While doing so, the learned Judge permitted the plaintiff to withdraw the amount deposited and also entitled to interest at 12% on the said sum from 20.11.1990 till the date of deposit. Aggrieved over the same, the plaintiff has brought forth the appeal before this Court.

5. Advancing the arguments on behalf of the appellant, learned senior counsel would submit that the trial Judge should have granted the relief of specific performance by exercising the judicial and equitable discretion vested on the Court, having found that there is a valid, legal and lawful enforceable contract for the purchase of the suit property, as has entered into between the parties; that the trial court has not properly appreciated the oral and documentary evidence, which resulted in miscarriage of justice; that the appellant has entered into the contract under Ex.P-1 as early as 09.12.1989 for purchase of the suit property for a consideration of Rs. 16 lakhs and made an advance of Rs. 2.50 lakhs on the date of the contract and agreed to pay the balance of sale consideration of Rs. 13.50 lakhs to the respondent/defendant within two months from the date of execution of the contract i.e. at the time of execution and registration of the sale deed in his favour; that from the exchange of letters between the parties, it is quite clear that time was not essence of the contract; but on the contrary, the trial Judge has taken a view that the time was treated by the parties as essence of the contract and declined to grant the relief of specific performance of the contract, which was contrary to the evidence adduced by the parties; that the trial Judge should have appreciated the terms of the contract and the performance of the contract, as stipulated under the agreement dated 09.12.1989 and the respondent/defendant had not performed his obligations and duties enjoined upon him and that under such circumstances, the conclusion of the learned Judge that the appellant has committed breach of the essential terms of the contract was not only unsound and untenable but also perverse.

6. Added further the learned senior counsel that under the terms of the contract, a duty was enjoined upon the vendor, namely, the respondent, to apply the permission from the appropriate authorities i.e. the Income Tax Department and also for obtaining Income tax Clearance Certificate as contemplated u/s 230-A of the Income Tax Act and execute the sale deed in accordance with the terms of the contract and admittedly, the permission from the appropriate authorities was not obtained within the stipulated period of two months and, as such, the delay, which has resulted in performance of the contract, was beyond the control of the parties, which act has been totally ignored by the learned single Judge while passing the impugned judgment and that, even after 7 months, the Income Tax Clearance Certificate u/s 230-A of the said Act has not been secured by the respondent on flimsy and untenable grounds and secured the certificate belatedly, for which, the appellant cannot be blamed and that, the conclusion made by the trial Judge that the time had been treated as essence of the contract and the contract should have

been performed within the reasonable time, was contrary to the oral and documentary evidence.

7. Added further the learned senior counsel that the principles of readiness and willingness as found u/s 16(c) and 20 of the Specific Relief Act have not been appreciated by the trial Judge and as such, there was no proper exercise of the judicial and equitable discretion vested in the court in the light of the materials placed before the trial Court; that the plaintiff specifically averred and proved the readiness and willingness to perform the essential terms of the contract at all relevant points of time from the inception of the contract till the date of his proceedings, which had come to an end at the time of trial as evidenced by the Court; that while so, the conclusion reached by the trial Court was contra and untenable in law, which has got to be set aside; that the trial Court has not properly understood the explanation to Section 16(c) of the Act, where the contract involves the payment of money, which is not essential for the plaintiff to actually tender to the defendant or deposit into Court any money except when so directed by the Court and it is not a straight jacket form that the plaintiff should prove his readiness and willingness to perform the essential terms of the contract by jingling the coin before the Court; that the trial Judge should have appreciated the facts that the appellant had indicated in the plaint itself that the payment he has received from M/s. Alacrity Foundations Limited, with whom he entered into contract and how he has invested the sale proceeds received by him in a Capital Gains Account, as could be seen from the certificate issued by the Union Bank of India, Egmore Branch, as early as 21.10.1991 under Ex.P-22 and hence, the conclusion of the learned Judge that the appellant was not possessed of the balance sale consideration payable by him to the vendor, was based on no evidence; that it was quite evident from the materials available that the terms of the contract, particularly, the payment schedule, has been varied by the conduct of the parties and the performance was not as per the original terms contained under Ex.P-1; that the balance sale consideration was payable at the time of execution and registration of the sale deed; however, the respondent to meet his commitment, wanted a further sum of Rs. 6 lakhs from the appellant in variance of the terms of the contract and as a matter of fact, he received a sum of Rs. 6 lakhs and agreed to receive the balance sale consideration in instalments, namely, the 1st instalment payment of Rs. 5,00,000/- in October, 1990, and sought for the balance of sale consideration at the time of execution and registration of the sale deed and also agreed to deliver vacant possession of the suit property within three months from October, 1990 as per Ex.P-12 dated 19.10.1990; that it was the respondent, who wanted to wriggle out of the contract on flimsy and untenable grounds with a view to make unjust enrichment, which fact has totally ignored by the trial Judge while considering the case of the plaintiff for specific performance; that the respective pleadings and the evidence on record in the light of the materials that have been placed before the trial Court have not been analysed properly and that, while the appellant has

satisfactorily averred and proved the readiness and willingness, as required by law, the conclusion of the trial court that he has not proved the same, was contrary to the evidence available.

8. The learned senior counsel would further submit that the appellant has not wilfully acted in variance of the original order or the subversion of the terms of the contract and hence, the finding of the trial Judge that the plaintiff had acted in variance of the contract was illegal and untenable in law; that the appellant has parted with a sum of Rs. 8.50 lakhs pursuant to the contract dated 09.12.1989 and has been undertaking several journeys to the residence of the 1st respondent and his son to find out the status of the contract and the evidence which was placed before the Court would reveal that the respondent has been carrying on business in the ground floor of the premises and has been residing in the first floor therein and as such, even though an attempt has been made before the Court by the respondent that he was willing to deliver vacant possession of the property to the appellant in terms of Ex.P-1, no effective steps have been taken to substantiate the said fact; but, however, the trial Judge, believing the evidence of the respondent, held that the defendant was ready and willing to perform his part and that it was the plaintiff/appellant, who has committed breach of the terms of the contract, which are erroneous; that the appellant has been living in a rented premises and has been paying the rents to the landlord and there existed an element of anxiety on the part of the appellant to conclude the contract at the earliest, so that he could avoid payment of Capital Gains and also occupy his own residential property for his personal use and occupation which fact has not been considered by the learned Judge.

9. Added further the learned senior counsel that the appellant has been writing series of letters to the respondent, expressing his readiness to conclude the contract at the earliest and having seen the conduct of the respondent, the apprehension of the appellant that the respondent was not willing to deliver possession of the documents for scrutiny, so also the possession of the first floor, would be natural and probable for any person, who had parted with a huge sum of money; that the letter dated 11.08.1990 written by the respondent's son under Ex.P-37, would clearly indicate that the intention of the respondent is manifest and crystal clear that he wants to sell the property to a third party for an enhanced price and share the sale proceeds with the appellant after refund of the advance sale consideration and it was not taken into consideration by the learned trial Judge; that it is pertinent to point out that the appellant had suffered Capital Gains and had to contest the proceedings with the Income Tax Department and ultimately paid a sum of Rs. 1,57,992/- under Ex.P-36, which would manifestly prove and establish that the appellant has never been in breach and it was the respondent, who has committed breach of the contract; that the respondent had the benefit of Rs. 8.50 lakhs paid by the appellant towards the advance sale consideration pursuant to the contract, besides that he has also been enjoying the property, which is unjust, unfair and

unreasonable.

10. Added further the learned senior counsel that the trial Judge has not properly appreciated the contents of Ex.P-8 dated 17.09.1990 and the subsequent correspondence under Exs.P-9 to P-12; that the respondent has agreed to deliver possession of the property and also received payment in variance of the contract Ex.P-1. Under Ex.P-15 dated 18.12.1990, the appellant had indicated to the respondent that he was willing to pay the entire sale consideration and by retaining a sum of Rs. 50,000/- for which also, he has offered to give a bank guarantee, so that the essential terms of the contract are not breached, thereby the contract can be fulfilled without there being any scope for misunderstanding in implementation of the contract; that the respondent has never shown keenness to produce the title deeds and expected the appellant to pay the sale consideration and to have the registration of the sale deed and wait indefinitely for possession thereto, was contrary to the terms in Ex.P-1; that the trial Judge should have considered the hardships, that are likely to be caused to the appellant, if the relief of specific performance was declined; that it is pertinent to point out that the appellant had paid more than 50% of the sale consideration and has deposited the balance in the Capital Gains Account and under such circumstances, the relief of specific performance should have been ordered; that non-production of the pass book before the Court by the appellant could not be a ground to decline the relief of specific performance; that there cannot be any valid rescinding or termination of the contract in accordance with Ex.P-1 inasmuch as the respondent has not refunded the money while effecting termination of the contract; that while so, the learned Judge was in error in holding that there had been a valid termination of the contract and directed the refund of the money from 20.11.1990 together with interest at 12% per annum till the date of deposit; that though the refund has been directed to be paid to the appellant, the learned Judge declined to decree the suit with proportionate cost and damages which should have been ordered; that the trial Judge should have taken into consideration the conduct of both sides; that it is true that there was a duty on the purchaser to perform his readiness and willingness at all material point of time, which could be evidenced from Ex.P-33, which has not been considered by the trial Judge. Under such circumstances, it is a fit case where the relief of specific performance should have been granted and hence, the judgment of the trial Judge has got to be set aside and the reliefs have got to be granted.

11. The Court heard the learned Counsel for the respondents, who, in his sincere attempt to sustain the judgment of the trial Court, putforth the very same contentions which were raised before the trial Court.

12. The Court has paid anxious consideration on the submissions made by the learned Counsel on either side.

The following points are formulated for determination in the appeal:

(1) Whether the appellant/plaintiff is entitled for the relief of specific performance and also delivery of possession?

(2) Whether the plaintiff is entitled for any other relief?

13. As could be seen from the above, it was a suit for specific performance filed by the appellant/plaintiff on the strength of Ex.P-1, written sale agreement, dated 09.12.1989. Out of the sale consideration of Rs. 16 lakhs, as found in Ex.P-1, Rs. 2.50 lakhs was paid as advance. It is evident under Ex.P-1 that the title deeds and other relevant documents were already available in respect of the property sold with the vendor, namely, the respondent/defendant, who should give vacant possession of the property at the time of registration of the sale deed; that the balance of sale consideration, namely, Rs. 13.50 lakhs should be paid to the vendor and the document should be executed and registered within two months from that date since the time was essence of the contract; that the vendor should apply for permission for the sale of the property from the appropriate authorities of the Income Tax Department for the sale of the property to the vendee and if not obtained from the appropriate authorities of the Income Tax Department, the advance amount is repayable and apart from that, the vendor should obtain a clearance from the Income Tax Department u/s 230-A of the Income Tax Act. Though the time for completion of the transaction was stipulated as two months under Ex.P-1 dated 09.12.1989, the "No Objection Certificate" was obtained beyond the said period of two months. From Ex.P-3 dated 19.02.1990, some amendments to the draft sale deed were suggested by the respondent. Under Ex.P-5 dated 26.06.1990, the defendant has made it clear that the "No Objection Certificate" from the Income Tax Department was already obtained. But, despite many reminders, the plaintiff has not come forward to fulfil his obligation. It was also pointed out by the respondent/defendant under the said letter that if the balance of sale consideration is not paid on or before 09.07.1990, Clause 12 of the Agreement was to be invoked to cancel the agreement. At this juncture, the plaintiff has sent a reply dated 06.07.1990 that he gave assurance that the transaction could be completed before the end of July. Following the said correspondence, on 17.09.1990, the plaintiff sent a letter under Ex.P-8 along with a pay order for Rs. 6 lakhs, wherein he had stated that he was successful in getting a sum of Rs. 6 lakhs. The same was acknowledged by the defendant. In reply, the defendant asked the plaintiff to send another banker's cheque for Rs. 5 lakhs within a week's time under Ex.P-12, as promised by the plaintiff.

14. It is pertinent to point out that under Ex.P-11 dated 05.10.1990, the plaintiff assured that he would arrange a sum of Rs. 5 lakhs and the transaction could be completed finally; that the defendant's son should arrange to give possession of the upstairs portion of the premises and also delivery of documents of title and that if payment of Rs. 5 lakhs is further made, he would have made substantial payment exceeding 75%. While acknowledging Ex.P-11, the defendant wrote a letter under

Ex.P-12 dated 19.10.1990, where he made it clear that the entire transaction should be completed within a period of three months and he further indicated in the said letter that if the entire balance of sale consideration is paid before 31.10.1990, he has no objection in giving possession of the property.

15. It is pertinent to point out that Ex.P-13, registered letter, was sent on 20.11.1990, wherein the relevant paragraphs read as follows:

...You have not even acknowledged my letter. I earnestly but unsuccessfully tried to contact you on phone. From your silence, I only infer that you are not serious in getting the sale transaction completed and you wish to go back on the terms of agreement of sale.

You will also please note that your payments of amounts at your convenience is no answer to the fulfilment of the terms of agreement and the terms got automatically violated by you. You made the agreement unworkable....

In reply, the plaintiff issued Ex.P-14 letter on 04.12.1990, where he requested the defendant to consider his side as well. Finally under Ex.P-17 dated 28.03.1991, the defendant has pointed out Ex.P-13 letter referred to above and stated that the agreement stood cancelled and hence, the plaintiff could collect the balance of the advance amount. All these would indicate that the plaintiff has not made the payments as per the terms of Ex.P-1.

16. The plaintiff, who examined as P.W.1, has categorically admitted that he did not pay Rs. 5 lakhs, as demanded by the defendant and that he wanted possession of the first floor, apart from the original documents of title. He has further added that if the sum of Rs. 5 lakhs was paid, it would exceed 75% of the sale consideration and it was in that circumstances, he wanted possession of the upstairs portion and also delivery of original documents. The candid admission made by the plaintiff in evidence that he would give the said amount of Rs. 5 lakhs only if the defendant delivered the possession and also handed over the title deeds and other documents of property, was a demand repugnant to the clause in the agreement that the vendor should deliver the possession of the property and also the title deeds pertaining to the property only at the time of execution of the sale deed. Speaking about the clause found in the agreement, the plaintiff has also admitted that the delivery of possession would be immediately after the conclusion of the sale deed. Further, he has added in his evidence that he did not pay the balance amount on or before 31.07.1990 as agreed by him so as to get the sale deed registered and after Ex.P-7 letter, the plaintiff has not asked for time to pay the balance of sale consideration. But he was only insisting on the original documents for preparing the final sale deed. Contrary to the stipulation under Ex.P-1 agreement, the plaintiff has deposed that the defendant has not delivered the original documents, as required by him, and that it is the only default committed by the defendant and nothing is mentioned about the delivery of the documents under Ex.P-1. The said facts,

namely, his demand for possession of a part of the property and also the delivery of documents of title pertaining to the property, would indicate that the sale was not only in breach of the terms of the agreement, but also it would be indicative of the evasive process and tactics which the plaintiff was doing all along the period. The contention put forth by the appellant's side that more than 50% of the amount was already paid and if Rs. 5 lakhs, as demanded by the defendant was paid, it would have exceeded 75% of the amount and thus, the plaintiff was justified in making a demand for possession and also delivery of documents, could not be accepted. If this contention is accepted, it would be against the very terms of the agreement, which would be binding on the parties.

17. At this juncture, it is pertinent to point out that the defendant was expressing his readiness and willingness to hand over the entire possession of the property if the entire consideration was paid. But to that course, the plaintiff was not amenable and he was also kept silent. The stand taken by the plaintiff that the original documents were required by his counsel for preparation of the sale deed was only a ruse invent. Since there is a candid admission that the draft sale deeds were originally prepared with the copy of the documents and when it was specifically agreed under Ex.P-1 sale agreement that all the original documents pertaining to the property should be handed over by the vendor to the vendee at the time of execution of the registered sale deed, making a demand for the delivery of the original sale deeds would not only repugnant to the agreement but also would indicate that the plaintiff wanted to gain time.

18. Learned Counsel for the appellant brought to the notice of the Court that though it was stated in the agreement Ex.P-1 that the time was essence of the contract and two months" time was also stipulated therein, even the "No Objection Certificate" was obtained beyond the time and the defendant has also received further payments therefrom and thus, by conduct, the parties have varied the terms of the agreement and the conduct of the plaintiff would clearly indicate that he was all along ready and willing to perform his part of the contract. This contention is liable to be rejected since the conduct of the plaintiff would indicate that he was never ready and willing to perform his part of the contract. The concept of readiness and willingness to perform the contract, would indicate that the availability of funds in the hands of the purchaser and also the frame of mind expressing his willingness to complete the transaction by performing the terms of the agreement, as found in the agreement.

19. The agreement was entered into on 09.12.1989. It is true, the transaction could not be completed within the stipulated time of two months since there was a delay in getting "No Objection Certificate" from the competent authority. But, at the earliest, Ex.P-12 dated 19.10.1990, made clear that the transaction should be completed within a period of three months by making the payment of balance of sale consideration. Admittedly, the plaintiff has not complied with the same. On the

contrary, for making further payment of Rs. 5 lakhs, he insisted for handing over of the upstairs portion, a part of the subject matter, and also the delivery of the original documents. When the plaintiff has confronted with the documents, he has candidly admitted, he insisted so. This would indicate reluctance on the part of the plaintiff to perform the terms of the agreement as found in Ex.P-1. Thus, it is a clear case, where the plaintiff has demanded the defendant to do certain acts, which were in breach and in violative of the terms of the agreement under Ex.P-1. At the same time, he was never ready to pay the balance sale consideration and get the documents executed. Under such circumstances, it is appropriate to rely on the decision reported in [Bal Krishna and Another Vs. Bhagwan Das \(Dead\) and Others,](#), the Supreme Court held as follows:

Specific performance of the contract cannot be enforced in favour of a person who fails to aver and prove his readiness and willingness to perform the essential terms of the contract. The compliance with the requirement of Section 16(c) of the Specific Relief Act, 1963 (the Act) is mandatory and in the absence of proof of the same, the suit cannot succeed. The first requirement is that he must aver in plaint and thereafter prove those averments made in the plaint. The plaintiff's readiness and willingness must be in accordance with the terms of the agreement....

20. In a suit for specific performance, a duty is cast upon the Court to look into the conduct of the plaintiff and must take a decision whether or not to grant the relief. Having regard to the entirety of the pleadings as also the evidence brought on record, the Apex court has ruled in a case reported in [Umabai and Another Vs. Nilkanth Dhondiba Chavan \(Dead\) by Lrs. and Another,](#) as follows:

It is now well settled that the conduct of the parties, with a view to arrive at a finding as to whether the plaintiff-respondents were all along and still are ready and willing to perform their part of contract as is mandatorily required u/s 16(c) of the Specific Relier Act must be determined having regard to the entire attending circumstances. A bare averment in the plaint or a statement made in the examination-in-chief would not suffice. The conduct of the plaintiff-respondents must be judged having regard to the entirety of the pleadings as also the evidences brought on records.

21. Applying the principles laid down by the Supreme Court and the catena of decisions by the Apex Court and this Court, the discretionary relief of specific performance cannot be granted to a person, who was neither ready nor willing to perform the terms, as found in the contract. In the instant case, the plaintiff is not entitled for the reliefs on the ground that he was neither ready nor willing to perform his part of the contract. Apart from that, he has expressed his demand for handing over of possession and delivery of documents, which was repugnant to the agreement, cannot but be indicative of the breach committed by him. Under such circumstances, the finding of the learned trial Judge that he was not entitled for discretionary relief of specific performance, has got to be sustained and the finding regarding refund of the amount paid by the plaintiff to the defendant along with

interest at 12% from 20.11.1990 when the contract came to be terminated under Ex.P-13 by the defendant, was also correct. Under such circumstances, the appeal has got to be dismissed since it does not carry any merit.

Accordingly the appeal fails and is dismissed. The parties shall bear their costs. Connected M.P. is closed.