

Kalawati v. Rakesh Kumar¹ (February 16, 2018)

OVERVIEW

1. In a dispute arising out of an agreement to sell a plot of land in New Delhi, the buyer instituted a suit for grant of a decree of specific performance of the seller's obligations under the agreement and for possession of the suit property. The buyer also filed an application under Order 39 of the Code of Civil Procedure, 1908 ("**CPC**") seeking a temporary injunction against the seller from alienating the disputed land during the pendency of the suit.
2. The Supreme Court in this case examined the true meaning of "readiness" and "willingness" of a party to perform his obligations under the agreement when seeking specific performance under section 16 of the Specific Relief Act, 1963² ("**Specific Relief Act**"), and differentiated between the two terms. It ultimately held that the Respondent did not have the necessary funds to perform his obligations under the agreement, and was therefore not ready and willing to perform under the agreement.

FACTUAL BACKGROUND

3. The Respondent and Appellants entered into an Agreement to Sell ("**Agreement**"), for the sale of land situated in New Delhi. While the Respondent made a part payment towards the sale consideration, he claimed that Appellants failed to obtain a 'no-objection certificate' from the appropriate authority for the sale of land in accordance with the terms of the Agreement. Consequently, the Respondent instituted a suit before the Delhi High Court ("**HC**") for grant of a decree of specific performance of the Agreement and for possession of the disputed land. In 2001, the suit was transferred to the District Court ("**District Court**") due to a change in the pecuniary jurisdiction of the HC.
4. The Respondent also filed an application under Order 39 of the CPC seeking an injunction against alienation of the land. The court granted the interim injunction subject to the condition that the Respondent deposit the remainder of the sale consideration. Since, the Respondent failed to deposit the balance sale consideration, the injunction against Appellants was not granted.
5. In the main suit, the District Court held in favour of the Appellants while observing that the Respondent was neither ready nor willing to perform his part of the contract since it lacked the financial means to pay the balance sale consideration. The District Court relied on the cross-examination of the Respondent, as well as the fact that he had failed to deposit the balance sale consideration with the court at the time of seeking interim relief, in concluding that the Respondent did not have the means to perform his obligations under the Agreement. Aggrieved by the decision, the Respondent filed an appeal before the HC.
6. The HC held that the failure of the Respondent to deposit the balance sale consideration at the interim stage did not preclude him from the reliefs prayed for in the suit. It further found that it was the Appellants who were not ready and willing to perform their obligations under the Agreement, and therefore held in favor of the Respondent. Consequently, the Appellants filed an appeal before the Supreme Court.

¹Kalawati v. Rakesh Kumar (2018) 3 SCC 658

² Section 16. Personal bars to relief.—Specific performance of a contract cannot be enforced in favour of a person— (a) who would not be entitled to recover compensation for its breach; or (b) who has become incapable of performing, or violates any essential term of, the contract that on his part remains to be performed, or acts in fraud of the contract, or wilfully acts at variance with, or in subversion of, the relation intended to be established by the contract; or (c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms of the performance of which has been prevented or waived by the defendant.

Explanation.—For the purposes 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.


FINDINGS OF THE SUPREME COURT

7. The SC relied on its decision in *Acharya Swami*³ wherein it was observed that “by readiness it may be meant the capacity of the plaintiff to perform the contract which would include the financial position to pay the purchase price. As far as the willingness to perform the contract is concerned, the conduct of the plaintiff has to be properly scrutinized along with attendant circumstances. On the facts available, the court may infer whether or not the plaintiff was always ready and willing to perform his part of the contract”.
8. The SC further relied upon its decision in *I.S. Sikandar*⁴, wherein it was held that the plaintiff is required to prove he was ready and willing to perform his part of the contract at all times i.e. from the date of execution of the agreement till the date of the decree granting specific performance.
9. Although the SC concurred with the HC on the limited aspect that mere failure to deposit the full sale consideration during the interim stage would not preclude the Respondent from obtaining a decree for specific performance, it thereafter assessed various factual aspects, including the low income and bank balance of the Respondent, and concluded that the Respondent was incapable of fulfilling his obligations under the Agreement of paying the balance sale consideration. Ultimately, the SC concurred with the view of the District Court and held that since the Respondent was not in a position to pay the balance sale consideration, it was implicit that he was neither ready nor willing to perform the Agreement.
10. Based on the above findings, the SC allowed the appeal and set aside the HC Order which granted a decree for specific performance of the Agreement in favor of the Respondent.

CONCLUSION

11. The explanation to Section 16(c) of the Act provides that where a contract involves the payment of money, it is not essential for the party seeking specific performance to deposit the money in court or tender the amount to the opposite party unless the court directs otherwise. However, the Supreme Court in this decision has reiterated the position that, while it may not be essential to deposit the money in court unless directed to do so, the party seeking specific performance has to prove that he has the financial means and capacity to perform his part of the contract.

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³ *Acharya Swami Ganesh Dassji v. Sita Ram Thapar*, (1996) 4 SCC 526

⁴ *I.S. Sikandar v. K. Subramani*, (2014) 4 SCC (Civ) 365