

Readiness and willingness: How to plead and prove

Specific Relief Act, 1963, S.16(c) - Agreement to sell - Readiness and willingness - Pronote in favour of plaintiff executed by defendant - Plaintiff seeks to adjust amount of pro-note towards payment of sale consideration - Does not tantamount to readiness and willingness. (Malkiat Singh & Anr. Vs Om Parkash & Anr.) 2004(3) Civil Court Cases 15 (P&H)

Specific Relief Act, 1963, S.16(c) - Agreement to sell - Suit for specific performance - Ready and willing - Pleading that plaintiff was “ever ready and willing to execute the sale-deed in his favour after making a payment of Rs.200/-” - Amounts to compliance of mandatory provision of S.16(c) Specific Relief Act. (Rambhau Jagoji Garde Vs Shantabai) 2003(2) Civil Court Cases 275 (Bombay)

Specific Relief Act, 1963, S.16(c) - Ready and willing - A bare averment in the plaint or a statement in examination-in-chief is not sufficient - Conduct of plaintiff must be judged having regard to the entirety of the pleadings as also the evidence brought on record. (Umabai & Anr. Vs Nilkanth Dhondiba Chavan (Dead) by Lrs. & Anr.) 2005(1) Apex Court Judgments 681 (S.C.) : 2005(2) Civil Court Cases 445 (S.C.)

Specific Relief Act, 1963, S.16(c) - Ready and willing - Conditional offer - Does not fulfill the requirement of law. (Umabai & Anr. Vs Nilkanth Dhondiba Chavan (Dead) by Lrs. & Anr.) 2005(1) Apex Court Judgments 681 (S.C.) : 2005(2) Civil Court Cases 445 (S.C.)

Specific Relief Act, 1963, S.16(c) - Ready and willing - In a suit for specific performance plaintiff may raise an alternative plea that the transaction is a mortgage by way of conditional sale but he must be ready and willing either to repay the debt or pay the amount of consideration as agreed upon. (Umabai & Anr. Vs Nilkanth Dhondiba Chavan (Dead) by Lrs. & Anr.) 2005(1) Apex Court Judgments 681 (S.C.) : 2005(2) Civil Court Cases 445 (S.C.)

Specific Relief Act, 1963, S.16(c) - Ready and willing - Vendee agreeing to discharge mortgage debt of vendor payable to Bank - Vendee claiming to have made two payments to vendor - Vendor required due to inordinate delay in discharge of

debt payable to Bank, to sell certain other property - Proves that vendee was not ready and willing to discharge debt payable by vendor to Bank - He making payment of balance eventually - Does not cure defect that vendee was not ready and willing to perform his part of contract within stipulated time - Not entitled to relief of specific performance. (Valliamal Vs Angammal) AIR 2002 Madras 292

Specific Relief Act, 1963, S.16(c) - Suit for reconveyance of property filed on basis of right of pre-emption - By amendment of plaint suit converted to be one for specific performance - Readiness and willingness averred in the amended plaint must be proved to be continuous i.e. right from date of contract upto date of hearing of suit - Where consideration offered in suit initially filed was for less than what was offered on contract to sell, readiness and willingness in terms of contract cannot be said to be continuous - Amendment of plaint wherein plea of readiness and willingness is introduced relates back to date of institution of suit but in no way proves that such readiness and willingness was continuous from date of contract - Held, plaintiff is not entitled to relief of specific performance. (H.Muthunanjiah Vs C.G.Indiramma (Deceased) by L.Rs & Ors.) 2005(1) Civil Court Cases 448 (Karnataka)

Specific Relief Act, 1963, S.16(c) Explanation - Ready & willing - Suit for specific performance - Payment of money - It is not essential for plaintiff to actually tender to defendant or to deposit in Court any money except when so directed by the Court. (Nilkanth Dhondiba Chavan & Ors. Vs Umabai & Ors.) 2005(2) Civil Court Cases 218 (Bombay)

Section 16(c).-Specific performance of contract.-Plea of “readiness and willingness”.-Cannot be averred in specific words.

An averment of readiness and willingness in the plaint is not a mathematical formula which should only be in specific words. If the averments in the plaint as a whole do clearly indicate the readiness and willingness of the plaintiff to fulfill his part of the obligations under the contract which is subject matter of suit, the fact that they are differently worded will not militate against the readiness and willingness of the plaintiff in a suit of specific performance of contract for sale. *Motilal Jain vs. Ramdasi Devi (Smt.) and others*, AIR 2000 SC 2408 : 2000(3) mad LJ 202 : 2000(4) All Mah LR 285 : 2000(5) Andh LD 33 : 2000(6) SCC 420 : 2000(4) Civ LJ 524

Section 16(c).-Specific performance of contract.-“Readiness and willingness”.-Allotment of plot to father of appellant.-Agreement between deceased and

respondent, whereby respondent agreed to pay to Government on behalf of allottee cost of blocks, interest and arrears of rent.-Deceased was to transfer one block to respondent.-Allottee was to transfer second block for failure to repay loan.-Allottee stopped paying amount due to Government.-Cannot be said to be ready and willing to perform his part of contract.-Could not be directed to transfer second block for failure to make repayment of loan. *Ajjaib Singh vs. Tulsi Devi (Smt.)*, AIR 2000 SC 2493 : 2000(3) Mad LJ 159 : 2000(3) Land LR 261 : 2000(6) SCC 566 : 2000(86) DLT 715 : 2000(3) Cur CC 340 : 2000(4) Civ LJ 596

Section 16(c).-Suit for specific performance of contract for sale of suit lands.-No averments in plaint that plaintiff was ready and willing to perform his part of contract.-Incorporating relevant averments “readiness and willingness” by way of amendment does not change cause of action.-Amendment legally permissible.

If averment under Section 16(c) of the specific Relief Act was not originally inserted due to oversight or otherwise by the plaintiff, he can always be permitted to amend the plaint. Having considered the rival contentions, the appeal could be disposed of on the first point canvassed by learned counsel for the appellant, namely, that amendment inserting the relevant averments under Section 16(c) of the Specific Relief Act does not change the cause of action and would be legally permissible. *Lakhi Ram (dead) through LRs vs. Trikha Ram and others*, AIR 1998 SC 1230 : 1998 SCC 720 : 1998(3) Mad LJ 19 : 1998(2) Mad LW 34

Section 16(c).-Time is the essence of contract relating to contract of reconveyance.-Amount not paid within stipulated time.-Option in favour of plaintiff deemed to have lapsed.

For renewal and options to repurchase where, in regard to immovable property, as a matter of law time becomes essence of the contract. Therefore in regard to contracts of reconveyance relating to immovable property, the principle laid down in *A.H. Mama vs. Flora Sassoon*, AIR 1928 PC 208, that time is not normally essence of the contract in contract relating to immovable property.-does not apply. It is fact, so observed in *Caltex (India) Ltd. case* (AIR 1969 SC 405). In view of the abovesaid decision of this Court relating to contract of reconveyance, and inasmuch as the amount was not paid within the stipulated time, the said option in favour of the plaintiff must be deemed to have “lapsed”. For the aforesaid reasons, the appeal fails and is dismissed. *Bismillah Begum (Smt.) (dead) by LRs vs. Rahmatullah Khan (dead) by LRs.*, AIR 1998 SC 970 : 1998(1) Andh LT 24 : 1998(1) Mad LW 825 : 1998(2) SCC 226

Section 16(c), Explanation (i).-Specific performance.-Readiness and willingness.-Has to be in spirit and substance and not in letter and form.-Essence, if already pleaded, cannot be dissolved in absence of form.-Pleaded case that balance consideration amount under contract paid by plaintiff as per defendant's endorsement except balance of Rs. 120/- tendered in Court.-If words convey that plaintiff was ready and willing to perform his part of obligation, it cannot be said that there was non-compliance of Section 16(c).

Explanation (i) uses to words “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. This speaks in negative term what is not essential for plaintiff to do so. This is more in support of plaintiff that he need not tender to the defendant or deposit in Court any money but the plaintiff must (as per Explanation (i) at least aver his performance or readiness and willingness to perform his part of the contract. This does not mean that unless the Court directs the plaintiff cannot tender the amount to the defendant or deposit in the Court. Plaintiff can always tender the amount to the defendant or deposit it in court, towards performance of his obligation under the contract. Such tender rather exhibits willingness of the plaintiff to perform his part of the obligation. What is not essential only means need not do but does not mean that he cannot do so. Hence, when the plaintiff has tendered the balance amount of Rs. 120/- in Court even without Court's order it cannot be construed adversely against the plaintiff under Explanation (i). Thus the pleading as made by the plaintiff not only shows his readiness and willingness to perform his part of obligation under the contract but by tendering total amount shows that he has performed his part of obligation. Such a plea could be construed to be a plea of “readiness and willingness” as required under Section 16(c). *Syed Dastagir vs. T.R. Gopalakrishna Setty*, AIR 1999 SC 3029 : 2000(1) Mad LJ 1 : 2000(124) Pun LR 348 : 1999(4) Arbi LR 496 : 1999(9) All Mah LR 286 : 1999(6) SCC 337 : 1999(3) Pat LJR 1 : 1999(2) Andh WR 217

AIR 1988 SUPREME COURT 1074

(From : Allahabad)*

M.P. THAKKAR AND N.D. OJHA, JJ.

Civil Appeal No. 3131 of 1984, D/- 28-3-1988.

Smt. Indira Kaur and others, Appellants v. Shri. Sheo Lal Kapoor, Respondent. (F) Specific Relief Act (47 of 1963), S.16 - Readiness and willingness - Proof - Suit for specific performance of agreement to sell - Plaintiff stating that he had deposited sum

more than sale consideration in Bank - No question put by lower Courts as to how plaintiff could have saved the sum or as to his expenses and income of his sons - Finding yet recorded by lower Courts that plaintiff could not have saved the sum is improper - Evidence showing that defendant did not attend Registrar's office to perform his part despite notice - Finding of lower Courts that plaintiff was not ready and willing to perform his part, is liable to be set aside.

S. C. A. No. 1412 of 1980, D/- 16-9-1982 (All), Reversed.

Constitution of India, Art.136. (Paras 10, 12)

AIR 1990 SUPREME COURT 682

(From : Kerala)

M.H. KANIA AND T.K. THOMMEN, JJ.

Civil Appeal No. 862 (N) of 1973, D/- 28-8-1989.

Abdul Khader Rowther, Appellant v. P. K. Sara Bai and others, Respondents.

(A) Constitution of India, Art.133 - New plea - Suit for specific performance - Issue regarding mortgage by conditional sale decided against plaintiff by trial Court - Finding not challenged in appeal filed by respondent - Matter cannot be allowed to be raised in appeal before S.C.

A suit was brought for specific performance by the plaintiff-appellant. The trial Court found that the relevant mortgage deed and sale deed were not sham, but were intended to come into effect, and were supported by consideration. The Court further held that sale deed did not evidence a mortgage by conditional sale, but it did evidence sale of the suit properties with a covenant for reconveyance of the same. The issue regarding mortgage by conditional sale was specifically considered and found against him by the trial Court and that finding was not challenged by him as respondent in the defendant's appeal before the High Court.

Held, that the contention regarding mortgage by conditional sale could not be allowed to be raised in appeal before Supreme Court. (Para 9)

(B) Civil P.C. (5 of 1908), O.6, R.4 and Sch.1 Appendix A, Pleadings, Form 47 and Form 48 - Specific performance of covenant for reconveyance - Pleadings and evidence - No pleadings that plaintiff was willing to specifically perform his part as required by Forms 47 and 48 of Sch. 1 - Equitable relief could not be granted.

Specific Relief Act (47 of 1963), S.16(1)(c).

The plaintiff-appellant brought a suit for specific performance of a covenant for reconveyance. His plaint did not contain the requisite allegation that he is ready and

willing to perform his part of the contract in terms of Forms 47 and 48 which was necessary to obtain a decree for specific performance.

Held, that the equitable remedy recognised by Specific Relief Act could not be had on the basis of such pleadings and evidence.

(1969) 2 SCC 539 Foll. (Para 11)

AIR 1993 SUPREME COURT 1742

(From : Delhi)

L.M. SHARMA, C.J.I.; S.R. PANDIAN, S. MOHAN, B.P. JEEVAN REDDY AND S.P. BHARUCHA, JJ.

Civil Appeal No. 3377 of 1979, D/-18-12-1992.

Smt. Chand Rani (dead) by LR., Appellants v. Smt. Kamal Rani (dead) by LR., Respondents.

Specific Relief Act (47 of 1963), S.16 - Agreement to sell immovable property - Intention of parties to make time essence of contract - Purchaser not willing to make party payment of amount within specified time without fulfilment of some conditions which was contrary to agreement - Held, purchaser was not entitled to specific performance of contract.

Contract Act (9 of 1872), S.55.

In the case of sale of immovable property there is no presumption as to time being the essence of the contract. Even if it is not of the essence of the contract the Court may infer that it is to be performed in a reasonable time if the conditions are: (1) from the express terms of the contract; (2) from the nature of the property; and (3) from the surrounding circumstances, for example: the object of making the contract.

Case law discussed. (Para 24)

Where in an agreement to sell the immovable property it was stipulated that amount in part was to be paid within 10 days of the execution of the agreement and the balance has to be paid at the time of @page-SC1743 registration of deed and it was agreed that the vendor would redeem the property which was mortgaged and also obtain the income tax clearance certificate and the word 'only' was used twice i.e. to qualify the amount and to qualify the period of payment of such amount i.e. ten days it was held that the intention of the parties was to make time as essence of contract and in such case, when the purchaser was not ready and willing to pay the amount in part as agreed, before delivery of possession and income tax clearance certificate and redemption of property, it was contrary to the

conditions of the agreement and the purchaser was not entitled to the specific performance of contract. (Paras 28, 30)

AIR 1994 SUPREME COURT 105

(From : Allahabad)

K. RAMASWAMY AND S. MOHAN, JJ.

Civil Appeal No.24 of 1980, D/- 28-1-1992.

Surya Narain Upadhyaya, Appellant v. Ram Roop Pandey and others, Respondents. Specific Relief Act (47 of 1963), S.20, S.16(c) - Specific performance of sale-agreement - Willingness of purchaser to pay consideration - Inference of - Purchaser pleading his readiness and willingness to perform his part of contract and depositing balance amount of consideration in Court - Failure of purchaser to pay sufficient Court-fee - Drawing inference of incapacity to pay consideration and thereby refusing relief of specific performance on such ground - Not proper as it is a factor irrelevant.

Decision of Allahabad High Court in Second Appeal No.2385 of 1974 dated 26-9-1979, Reversed. (Paras 3, 4)

AIR 1995 SUPREME COURT 945

K. RAMASWAMY AND N. VENKATACHALA, JJ.

Spl. Leave Petn. (C) No.19640 of 1994, D/- 28-11-1994.

Jugraj Singh and another, Petitioners v. Labh Singh and others, Respondents.

(A) Specific Relief Act (47 of 1963), S.16(3) - Suit for specific performance of contract - Ready and willingness of plaintiff - Continuous readiness and willingness at all stages from date of agreement till date of hearing of suit must be proved.

AIR 1928 PC 208 and AIR 1967 SC 868, Rel. on. (Para 3)

(B) Specific Relief Act (47 of 1963), S.16 - Suit for specific performance of contract of sale - Plea about ready and willingness of plaintiff- purchaser - It is not available to subsequent purchasers.

The plea about ready and willingness of plaintiff is specifically available to the vendor or his legal representatives. It is personal to him. The subsequent purchasers have got only the right to defend their purchase on the premise that they have no prior knowledge of the agreement of sale with the plaintiff. They are bona fide purchasers for valuable consideration. Though they are necessary parties to the suit, since any decree obtained by the plaintiff-purchaser would be binding on the subsequent purchasers, the plea that the plaintiff must always be

ready and willing to perform his part of the contract must be available only to the vendor or his legal representatives, but not to the subsequent purchasers.

(Para 5)

AIR 1996 SUPREME COURT 116

(From : Madras)*

K. RAMASWAMY AND B.L. HANSARIA, JJ.

Spl. Leave Petn. (C) No. 12709 of 1995, D/- 12-7-1995.

N. P. Thirugnanam (D) by L.Rs., Petitioners v. Dr. R. Jagan Mohan Rao and others, Respondents.

(A) Civil P.C. (5 of 1908), O.22, R.6 - Abatement - Death of Party - Arguments already heard and judgment reserved by the time when party died - Decree Passed by court against dead party - Not nullity. (Para 3)

(B) Specific Relief Act (47 of 1963), S.16(c) - 'Ready and willing to perform' - Evidence showing that plaintiff was never ready with resources and money to fulfil his part of contract - Dismissal of suit for specific performance of contract - Justified.

To adjudge whether the plaintiff is ready and willing to perform his part of the contract, the court must take into consideration the conduct of the plaintiff prior and subsequent to the filing of the suit along with other attending circumstances. The amount of consideration which he has to pay to the defendant must of necessity be proved to be available. Right from the date of the execution till date of the decree he must prove that he is ready and has always been willing to perform his part of the contract. (Para 5)

Where the plaintiff neither deposited the amount of sale consideration nor furnished the bank guarantee as per the direction of the trial court and he was never ready with either money or resources to fulfil his part of contract, the dismissal of suit on finding of facts that plaintiff was not ready and willing to perform his part of the contract was justified (Para 7)

AIR 1996 SUPREME COURT 2095

K. RAMASWAMY AND G.B. PATTANAIK, JJ.

Spl. Leave Petn. (Civil) No. 9679 of 1996, D / - 30-4-1996.

His Holiness Acharya Swami Ganesh Dassji, Petitioner v. Shri Sita Ram Thapar, Respondent.

Specific Relief Act (47 of 1963), S.16(C) @page-SC2096 - 'Ready and willing to perform' - Has to be inferred from conduct of party and attending circumstances - vendor in dire need of cash amount for celebrating his daughter's marriage - Time essence of contract - Purchaser not having enough funds to pay consideration - Draft sale deed not returned by him after being duly approved within seven days as stipulated - Relief of specific performance - Rightly refused. (Paras 2, 3)

AIR 1996 SUPREME COURT 2510

(From : Allahabad)

K. RAMASWAMY AND G.B. PATTANAIK, JJ.

Spl. Leave Petn. (C) No. 11140 of 1996, D/- 10-5-1996.

Sukhbir Singh and others, Petitioners v. Brij Pal Singh and others, Respondents.

Specific Relief Act (47 of 1963), S.16(C) - 'Ready and willing to perform' - Plea is to and proof by way of sub-Registrar's endorsement to the effect that buyer was present in his office for having sale deeds executed and registered by seller - It is explicit that buyer was ready and willing to perform his part of contract and had necessary funds to pass on consideration - Such averments are in accordance with Forms 47 and 48 of Civil P.C. - Proof or averments that he also had ready cash with him - Not necessary. (Para 5)

AIR 1997 SUPREME COURT 463

(From: Bombay)*

S.C. AGRAWAL AND G.T. NANAVATI, JJ.

Civil Appeal No. 9874 of 1996 (Arising out of SLP (C) No. 8487 of 1995), D/- 30-7-1996.

Pandurang Ganpat Tanawade, Appellant v. Ganpat Bhairu Kadam and others, Respondents.

Specific Relief Act (47 of 1963), S.16(c) - "Ready and willing to perform" - Averment in plaint that purchaser sent registered notices to seller to execute sale deed - Further averment by buyer that as per agreement he is willing to pay fees required for sale deed, costs of registration and balance amount of sale deed- Statement in deposition before Court by Purchaser that he had sent notices to seller and was willing to pay fees as aforesaid and balance amount immediately - Held, buyer not only averred but also proved that he was ready and willing to perform his part of contract as required under S. 16(c).

S.A.No. 333 of 1984, D/- 17-10-1994 (Bom), Reversed. (Para 8)

AIR 1998 SUPREME COURT 1230

(From : Allahabad)*

S.B. MAJMUDAR AND M. JAGANNADHA RAO, JJ.

Civil Appeal No. 1646 of 1981, D/- 5-2-1998.

Lakhi Ram (dead) through LRs., Appellants v. Trikha Ram and others, Respondents.

Civil P.C. (5 of 1908), O.6, R.17 - Amendment of plaint - Suit for specific performance of contract for sale - Plaintiff by way of amendment introducing averments regarding plaintiff's readiness and willingness to perform his part of contract - It does not amount change in cause of action - Amendment allowed.

Specific Relief Act (47 of 1963), S.16(c).

F.A.F.O. No. 295 of 1975, D/- 9-10-1979 (All), Reversed.

(1990) 1 SCC 166, Followed. (Paras 7, 9)
