



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**RSA-4410-2015(O&M)
Reserved on: 07.07.2025
Pronounced on: 21.08.2025**

M/s Damini Resorts & Builders (P) Ltd.

... Appellant

Versus

Sarabjit Dhanda and another

... Respondents

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Argued by: Mr. Prateek Sodhi, Advocate, and
Mr. Divanshu Jain, Advocate,
for the **appellant**.

Mr. Sumeet Mahajan, Senior Advocate, with
Mr. Saksham Mahajan, Advocate,
Ms. Shruti Singla, Advocate, and
Mr. Shrey Sachdeva, Advocate,
for respondent No.1.

Mr. D.V. Sharma, Senior Advocate, with
Ms. Jasleen Kaur, Advocate,
for respondent No.2.

VIKRAM AGGARWAL, J.

This is plaintiff's appeal against the judgment and decree dated 23.09.2014 passed by the Court of Additional District Judge, Ludhiana, dismissing the appeal preferred by the plaintiff-appellant against the judgment and decree dated 02.02.2012 passed by the Court of Additional Civil Judge (Sr. Divn.), Ludhiana, vide which the suit filed by the plaintiff-appellant for mandatory injunction, and in the alternative, for possession by way of specific performance of agreement to sell dated 22.06.2002, was dismissed.

2. For the sake of convenience and clarity, parties shall be referred to as per their original status.



3. One Harbans Singh (defendant No.2) was the owner in possession of land measuring 5,700 sq. yards, situated at Ferozepur Road, Opposite Milk Plant, Ludhiana. He executed an agreement to sell dated 01.06.2002 (Ex.P6) [hereinafter referred to as '**agreement to sell No.1**'] in respect of 1500 sq. yards [hereinafter referred to as '**the suit land**'] out of the aforesaid land in favour of defendant No.1 (Sarabjit Dhanda). The total sale consideration was fixed at Rs.1,42,50,000/-, and the sale deed was to be executed by 30.11.2002. Earnest money of Rs.15,00,000/- was paid on 01.06.2002, and a further sum of Rs.15,00,000/- was paid on 14.06.2002. The balance amount was to be paid on or before 30.11.2002, the date fixed for execution of the sale deed.

3.1 Sarabjit Dhanda (defendant No.1), in turn, executed an agreement to sell dated 22.06.2002 (Ex.P7) [hereinafter referred to as '**agreement to sell No.2**'], in favour of the plaintiff, vide which he agreed to sell the suit land to the plaintiff for a total consideration of Rs.2,25,00,000/- (Rs.15,000/- per sq. yard). Rs.22,00,000/- was paid as earnest money. Sale deed qua 500 sq. yards of land was agreed to be executed on or before 30.11.2002 on receipt of the price to this ratio of land after deducting the advance payment. The sale deed was to be executed either directly by the recorded owner, i.e. Harbans Singh (defendant No.2), or after transfer the land into Sarabjit Dhanda's name, followed by execution of a sale deed in favour of the plaintiff. The balance sale consideration was agreed to be paid at the time of registration of the sale deed for the remaining land, for which the date was fixed as 31.12.2002. It was again



agreed that the land would be transferred either directly from defendant No.2 or through defendant No.1.

3.2 By mutual consent of the parties, the date for execution and registration of the land agreed to be sold under agreement to sell No.2 was extended to 31.03.2003 (Ex.P8). Notably, this extension was witnessed by Harbans Singh (defendant No.2) as well.

3.3 It is the case of the plaintiff that it had always been ready and willing to perform its part of the contract but it was defendant No.1 who failed to do so. Consequently, a registered legal notice dated 27.11.2002 (Ex.P9) was served upon defendant No.1, with a copy to defendant No.2 calling upon defendant No.1, to provide the actual measurement of the 500 sq. yards of land and to purchase the necessary stamp papers for executing the sale deed so that the plaintiff could pay the balance sale consideration of Rs.67,66,667/-. It was further stated that the plaintiff would be present, with the sale consideration, at the office of the Sub-Registrar on 29.11.2002, between 10:00 am to 5:00 pm.

3.4 It is the case of the plaintiff that after receipt of the notice, defendants expressed their inability to execute the sale deed prompting execution of the extension note (Ex.P8). Thereafter, the plaintiff consistently requested the defendants to perform their part of the contract and to affix an iron gate on the roadside abutting Ferozepur Road, to construct a boundary wall and to demarcate the property, but they failed to do so, leading to the filing of the suit.

4. The suit was opposed by the defendants. In the written statement filed by defendant No.1, certain preliminary objections were



raised as regards the maintainability of the suit; that it was barred under Section 41 of the Specific Relief Act, 1963 (for short, '1963 Act'); that it was not properly valued for the purposes of court fee and jurisdiction; and that the plaintiff was not ready and willing to perform his part of the contract as he never had the requisite funds etc.

4.1 On merits, the status of the Company and that of its authorized representative Vijay Kumar, being a Director, was denied. The execution of agreement to sell No.2 was admitted. It was averred that defendant No.1 had always been ready and willing to perform his part of the contract and had also filed a suit for specific performance against defendant No.2. It was denied that defendant No.2 had granted defendant No.1 the right to further alienate the suit property. The receipt of Rs.22,00,000/- as earnest money was admitted. It was also admitted that initially a sale deed was to be executed qua 500 sq. yards land. It was, however, denied that the plaintiff had been ready and willing to perform its part of the contract. The extension of time from 31.12.2002 to 31.03.2003 was also admitted.

4.2 It was averred that time was the essence of the contract, within which the plaintiff had failed to perform its part. It was also stated that a dispute was pending between defendant No.1 and defendant No.2, and it was defendant No.2 who had been trying to back out from the agreement. It was further averred that defendant No.2 had encroached upon an area of 1500 sq. yards and had not removed the passage therefrom. It was also averred that defendant No.2 had made huge alterations to the suit land. It was denied that the plaintiff had been ready and willing to perform his part of the contract.



5. A replication to the aforesaid written statement was filed by the plaintiff, wherein the averments made in the written statement were denied, and those made in the plaint were reiterated. Reference was made to certain communications, including a legal notice dated 24.10.2002 and another notice dated 16.11.2002, to which a reply was given. Further, reference was made to the replies given by defendant No.1 on 07.11.2002 and by defendant No.2 on 18.11.2002. Reference was also made to another reply issued by defendant No.1 on 23.11.2002. All other contents of the plaint were reiterated.

6. Defendant No.2 filed a separate written statement, again raising certain preliminary objections as regards the maintainability of the suit; the suit not having been valued properly for the purposes of court fee and jurisdiction; lack of privity of contract between defendant No.2 and the plaintiff; and that Vijay Kumar had no authority to file the suit.

6.1 On merits, the execution of agreement to sell No.1 was admitted. However, it was denied that defendant No.1 could have sold the suit property to anyone else even before execution of sale deed in his favour. It was averred that although he became aware of defendant No.1 having executed an agreement to sell in favour of the plaintiff but he did not have any privity of contract with the plaintiff.

6.2 As regards the extension (Ex.P8), it was admitted that defendant No.2 had signed the same as a witness. However, it was contended that this did not make him a party to the contract. The conditions of fixing of iron gate, demarcation etc. were denied. It was also denied that the plaintiff had been ready and willing to perform its part of the contract.



7. Replication to the aforesaid written statement was filed in which the averments made in the written statement were denied and those made in the plaint were reiterated.

8. From the pleading of the parties, following issues were framed:

1. Whether plaintiff is entitled to possession of the land by way of specific performance of the agreement dated 22.06.2002, as prayed for? OPP
2. Whether plaintiff is and was ready to perform his part of contract of the agreement? OPP
3. Whether suit is maintainable in the present form? OPP
4. Whether suit is properly valued for the purposes of jurisdiction and court fee? OPP
5. Whether suit has been filed by the proper person having valid authority? OPP
6. Whether cause of action has arisen to the plaintiff from filing the present suit against defendant? OPP
7. Relief.”

9. Parties led their respective evidence.

10. Vide judgment and decree dated 02.02.2012, the Court of Additional Civil Judge (Sr. Divn.), Ludhiana, dismissed the suit filed by the plaintiff for the purposes of specific performance of the agreement to sell dated 22.06.2002, whereas alternative relief for recovery of earnest money amounting to Rs.22,00,000/- along with interest @ 9% per annum w.e.f. 22.06.2002 was granted. Subsequently, the plaintiff preferred an appeal, whereas defendant No.1 preferred cross-objections. Vide judgment and decree dated 23.09.2014, the cross-objections filed by defendant No.1 were allowed by the Court of Additional District Judge, Ludhiana, and the appeal



filed by the plaintiff was dismissed. It was ordered that even the earnest money was not recoverable since no prayer as regards the same had been made in the plaint.

11. Aggrieved by the aforesaid decision, the instant Regular Second Appeal has been preferred.

12. Learned counsel for the parties were heard.

13. It was strenuously urged by learned counsel for the appellant that the judgments and decrees passed by both Courts are not sustainable and that a decree for specific performance should have been granted. The gist of the arguments raised by learned counsel for the appellant is as under:

(i) That Vijay Kumar was duly authorized to file the suit. Reference was made to documents Ex. P-1 & P-2. It was submitted that even agreement to sell No.2 had been executed by Vijay Kumar and, therefore, it did not lie in the mouth of the defendants to challenge the authority of Vijay Kumar. It was argued that the trial Court had rightly held that Vijay Kumar was duly authorized to file the suit but the first appellate Court set aside the said findings on the basis of conjectures. It was submitted that merely because photocopies of documents (Ex.P1 & P2) were produced, would not mean that Vijay Kumar was not authorized. It was also also submitted that this issue did not go to the root of the matter and, therefore, was erroneously given undue weightage by the first appellate Court.

(ii) That there was a specific authorization in agreement to sell No.1 by defendant No.2 to defendant No.1 either to get the sale deed executed in his own favour or in favour of some other person. Detailed reference was made to agreement to sell No.1 as well as agreement to sell



No.2. Further, reference was made to the extension (Ex.P3), which had duly been witnessed by defendant No.2. Legal notices and other communications produced on record were also relied upon to prove that it was with the consent of defendant No.2 that defendant No.1 had executed agreement to sell No.2 in favour of the plaintiff. Therefore, it could not be said that there was no privity of contract of defendant No.2 with the plaintiff. It was further argued that it was a clear case of a lawful assignee having been appointed and, therefore, the defendants could not have backed out of the agreement. Reference was also made to the oral and documentary evidence led on the record of the case.

(iii) That the plaintiff had always been ready and willing to perform its part of the contract. Reference was made to the legal notice (Ex.P9), the drafts (Ex.P-10 to P-19), the fact that the plaintiff remained present before the Sub-Registrar on 29.11.2002, and the pleadings in the plaint as also the oral and documentary evidence including the statements of the authorized representative of the plaintiff and other witnesses, and the documents produced on record. It was further averred that sale deed was to be executed by 31.03.2003, and upon non-execution of the same, the suit was filed on 08.04.2003, which shows the readiness and willingness of the plaintiff.

(iv) That time was never the essence of the contract, which is not so in contracts as regards immovable properties.

(v) In support of his contentions, learned counsel placed reliance on the decisions rendered by the Hon'ble Supreme Court of India in **Life Insurance Corporation of India v. Sanjeev Builders Private Limited and another**, 2022 AIR (SC) 4256; **Desh Raj and others v. Rohtash Singh**,



2023 AIR (SC) 163; Shyam Singh v. Daryao Singh (dead) by LRs and others, 2004 AIR (SC) 348; Kapilaben and others v. Ashok Kumar Jayantilal Sheth through POA Gopalbhai Madhusudan Patel and others, 2020(1) RCR (Civil) 352; United Bank of India v. Naresh Kumar and others, 1997 AIR (SC) 3; and R. Lakshmikantham v. Devaraji, 2019(8) SCC 62, by this Court in Radha Raman Sharma v. Raj Kumar, 2024(4) RCR (Civil) 485, and the Hon'ble Madras High Court in Haja Mydeen (Died) and others v. K.S. Sanjayan and others, 2023(2) CTC 801.

(vi) Lastly, it was submitted that, in the event this Court comes to the conclusion that the relief of specific performance cannot be granted, the plaintiff has moved an application seeking amendment of the plaint to include alternative relief for refund of the earnest money, and that the same may be allowed.

14. Per contra, Mr. Sumeet Mahajan, learned Senior counsel representing defendant No.1, also addressed extensive arguments, the gist of which is as under:

(i) That Vijay Kumar was not authorized to file the suit. Reference was made to the documents produced on record (Ex.P-1 & P-2) as well as the findings of the first appellate Court in this regard. It was submitted that the record proves that Vijay Kumar was not a Director of the plaintiff Company, and that only photocopies of the other documents were produced, which were inadmissible in evidence. It was further submitted that despite repeated opportunities, Vijay Kumar failed to produce the relevant documents, which shows that the documents were not existing and,



therefore, it was rightly held by the first appellate Court that Vijay Kumar was not competent to file the suit.

(ii) That time was the essence of the contract. It was submitted that there was no occasion for the plaintiff to appear before the Sub-Registrar on 29.11.2002 and not on 31.03.2003. It was argued that the first appellate Court had rightly observed that there was complete silence on the part of the plaintiff from 29.11.2002 till April, 2003, when the suit was eventually filed. It was submitted that under the circumstances, it stood proved that time was the essence of the contract, and failure to abide by the same disentitled the plaintiff from seeking the relief of specific performance.

(iii) That the plaintiff had never been ready and willing to perform its part of the contract. It was submitted that the plaintiff initially did not file the full court fee with the suit, and thereafter in the present appeal. It was further submitted that vide legal notice (Ex.P-9), the plaintiff raised a dispute as regards the payment of consideration and registration charges. It was submitted that during oral evidence, the plaintiff could not produce any proof regarding the availability of funds with the plaintiff for execution of the sale deed, which shows that the plaintiff was actually not ready and willing to perform its part of the contract.

(iv) That the first appellate Court rightly declined even the relief of refund of earnest money, for no such prayer had been made in the original suit. It was submitted that during the pendency of the appeal before the first appellate Court, the plaintiff was given an opportunity to amend the plaint to include a prayer for refund of the earnest money but the plaintiff declined and stated that it only prayed for the relief of specific performance.



Accordingly, it was submitted that in the present circumstances, the application for amendment cannot be allowed.

15. Sh. D.V. Sharma, learned Senior counsel representing defendant No.2, submitted that defendant No.2 had no privity of contract with the plaintiff and, therefore, under the circumstances, he could not be directed to execute the sale deed in favour of the plaintiff. It was submitted that defendant No.1 could not have passed a better title to the plaintiff when he himself had not acquired any valid title, and once no sale deed had been executed in favour of defendant No.1, he could not possibly execute a valid sale deed in favour of the plaintiff.

16. I have considered the submissions made by learned counsel for the parties.

17. As regards the scope of second appeal, it is now a settled proposition of law that in Punjab and Haryana, second appeals preferred are to be treated as appeals under Section 41 of the Punjab Courts Act, 1918 and not under Section 100 CPC. Reference in this regard can be made to the judgment of the Supreme Court in the case of **Pankajakshi (Dead) through LRs and others V/s Chandrika and others, (2016)6 SCC 157**, followed by the judgments in the case of **Kirodi (since deceased) through his LR V/s Ram Parkash and others, (2019) 11 SCC 317** and **Satender and others V/s Saroj and others, 2022(12) Scale 92**. Relying upon the law laid down in the aforesaid judgments, no question of law is required to be framed.

18. Before advertng to the merits of the case, it would be important to notice a few admitted facts and then examine the core issues in detail.



19. The execution of both agreement to sell No.1 and agreement to sell No.2 is admitted. The terms and conditions, including the total sale consideration, the date fixed for execution of the sale deed, earnest money etc. are also admitted. Further, execution of the document, vide which the date for execution of the sale deed was extended, is also admitted.

20. It would be important to make a reference to certain terms and conditions of both agreements to sell as well as the document vide which the date for execution of the sale deed was extended.

21. Agreement to sell No.1 (Ex.P-6) was executed on 01.06.2002. It contained a specific clause stipulating that the second party (defendant No.1) would be entitled to get the property transferred and mutated in his name or in the name of his nominee in the revenue records or with any other concerned authority, at his own cost, after full payment to the first party (defendant No.2). It was also mentioned that defendant No.2 would have no objection if defendant No.1 got the sale deed executed in his favour or in favour of his nominee:

“That the Second Party shall be entitled to get the said property transferred and mutated in his own name or in the name of his nominee (s) in the Revenue Records or any other concerned authority at their own cost after the full payments are made to party of the First Party.

That the First Party shall execute proper sale deed, as per the agreed terms and conditions with the Second Party, in respect of the aforesaid property in his or his nominee(s) name and First Party shall have no objection for the same. In case the First Party fails to complete their obligation as per the said terms of agreement, Second Party can get the same executed through the court of law. In case the Second Party fails to make



the payment to the First Party on the dates mentioned above the First Party forfeits the earnest money and the agreement stands cancelled.”

22. Agreement to sell No.2 was executed on 22.06.2002. It was executed on behalf of the plaintiff through its Director Vijay Kumar. It was duly mentioned that defendant No.1 had purchased land measuring 1500 sq. yards vide agreement to sell dated 01.06.2002, and that defendant No.1 would get the sale deed executed as regards 500 sq. yards in favour of the plaintiff on or before 30.11.2002, either directly from the recorded owner, i.e. defendant No.2, or after getting the land transferred in his own name and thereafter executing the sale deed in favour of the plaintiff. A similar stipulation was there as regards the balance land of 1000 sq. yards, for which the sale deed was to be executed on 31.12.2002:

“WHEREAS the Party of the First Part has purchased land measuring 1500 sq. yds. Approx., left side portion facing Ferozpur Road out of total land of 5700 sq. yds. Approx., comprising in Khewat No.561, Khatuni No.657, Khasra No.33/9/1, 12/1, 12/2/2, 19/1/1 with in the revenue estate of Village Sunet, Hadbast No.159 as shown in the Jamabandi for the year 1996-97 situated at Ferozpur Road, Opp. Milk Plant, Ludhiana from Sh. Harbans Singh S/o Sh. Dasaundha Singh R/o 14-B, Sarbha Nagar, Ludhiana vide Agreement dated 01.06.2002.

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3. That the party of the First Part shall get the Sale Deed of 500 sq.yds., executed and registered on or before 30-11-2002 on the receipt of price to this ratio after deducting proportional advance already paid, in favor of party of the Second Part either directly from the recorded owner i.e., Sh.



Harbans Singh or shall get it transferred in its name and then shall get the Sale Deed executed and Registered in favor of Second Part and shall deliver the actual physical possession of that portion with specific boundaries starting from the Ferozpur Road and demarcation at the spot.

4. That the balance sale consideration shall be payable at the time of registration of the sale deed for which a date is fixed as 31-12-2002 and party of the First Part shall get the sale deed executed or registered in the name of the party of Second Part either directly from the original owner Sh. Harbans Singh or shall get it transferred in his name and then shall get the sale deed executed and registered in the name of party of Second Part within the stipulated period and shall get the property demarcated at the spot.”

23. The aforesaid period within which the sale deed was to be executed was extended by mutual consent of the parties to 31.03.2003. Notably, this document (Ex.P8) was duly witnessed by defendant No.2 (Harbans Singh). There are certain handwritten paragraphs in this document as regards which a dispute exists between the parties. This aspect shall be dealt with during the discussion.

24. Coming to the law on the subject, it is well settled that matters should be decided on merits and parties should not be non-suited on mere technicalities. In the case of United Bank of India v. Naresh Kumar and others, 1997 AIR (SC) 3, the Supreme Court of India was examining a question as to whether the suit for recovery of money filed by the Union Bank of India was properly instituted or not? A suit for recovery had been instituted by the Bank in the trial Court at Ambala Cantt. In the written statement, apart from other pleas, the authority of one Sh. L.K. Rohtagi to



sign and file the plaint on behalf of the plaintiff was challenged. The trial Court dismissed the suit. In appeal, the Court of Additional District Judge, Ambala reversed the findings as regards the issue of recovery. However, the appeal was dismissed holding that Sh. L.K. Rohtagi had not produced any valid authority to file the suit. Thereafter, a Regular Second Appeal came to be filed before this Court, which was dismissed *in limine* thereby upholding the findings of both Courts. Subsequently, the matter reached the Hon'ble Supreme Court of India. The Supreme Court held that where suits are instituted by defendants on behalf of a public Corporation, public interest should not be defeated on mere technicalities. It was held that procedural defects which do not go to the root of the matter should not be permitted to defeat actions which have a valid cause. It was further held that as far as possible, substantive rights should not be allowed to be defeated on account of procedural irregularities which are curable. It was eventually held that in the absence of relevant documents, where pleadings had been signed by one of its officers, a Corporation can ratify its action of signing of evidence on record, and such ratification can be implied. It was held that the Court can, on the basis of the evidence on record and after taking all the circumstances of the case into consideration, come to the conclusion that the Corporation had ratified the act of signing the pleadings by its officer. Certain other observations were also made:

“8. In this appeal, therefore, the only question which arises for consideration is whether the plaint was duly signed and verified by a competent person.

9. In cases like the present where suits are instituted or defended on behalf of a public corporation, public interest



should not be permitted to be defeated on a mere technicality. Procedural defects which do not go to the root of the matter should not be permitted to defeat a just cause. There is sufficient power in the Courts, under the Code of Civil Procedure, to ensure that injustice is not done to any party who has a just case. As far as possible a substantive right should not be allowed to be defeated on account of a procedural irregularity which is curable. It cannot be disputed that a company like the appellant can sue and be sued in its own name. Under Order 6 Rule 14 of the Code of Civil Procedure a pleading is required to be signed by the party and its pleader, if any. As a company is a juristic entity it is obvious that some person has to sign the pleadings on behalf of the company. Order 29 Rule 1 of the Code of Civil Procedure, therefore, provides that in a suit by against a corporation the Secretary or any Director or other Principal officer of the corporation who is able to depose to the facts of the case might sign and verify on behalf of the company. Reading Order 6 Rule 14 together with Order 29 Rule 1 of the Code of Civil Procedure it would appear that even in the absence of any formal letter of authority or power of attorney having been executed a person referred to in Rule 1 of Order 29 can, by virtue of the office which he holds, sign and verify the pleadings on behalf of the corporation. In addition thereto and de hors Order 29 Rule 1 of the Code of Civil Procedure, as a company is a juristic entity, it can duly authorise any person to sign the plaint or the written statement on its behalf and this would be regarded as sufficient compliance with the provisions of Order 6 Rule 14 of the Code of Civil Procedure. A person may be expressly authorised to sign the pleadings on behalf of the company, for example by the Board of Directors passing a resolution to that effect or by a



power of attorney being executed in favour of any individual. In absence thereof and in cases where pleadings have been signed by one of it's officers a Corporation can ratify the said action of it's officer in signing the pleadings. Such ratification can be express or implied. The Court can, on the basis of the evidence on record, and after taking all the circumstances of the case, specially with regard to the conduct of the trial, come to the conclusion that the corporation had ratified the act of signing of the pleading by it's officer.

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13. The court had to be satisfied that Sh. L.K. Rohatgi could sign the plaint on behalf of the appellant. The suit had been filed in the name of the appellant company; full amount of court fee had been paid by the appellant bank; documentary as well as oral evidence had been led on behalf of the appellant and the trial of the suit before the Sub Judge, Ambala, had continued for about two years. It is difficult, in these circumstances, even to presume that the suit had been filed and tried without the appellant having authorised the institution of the same. The only reasonable conclusion which we can come to is that Sh. L.K. Rohatgi must have been authorised to sign the plaint and, in any case, it must be held that the appellant had ratified the action of Sh. L.K. Rohatgi in signing the plaint and thereafter it continued with the suit.”

25. It is also well settled that, normally, in contracts relating to the sale of immovable property, time is not the essence of the contract. It has been held that in case of sale of immovable property, there is no presumption as to time being the essence of the contract. However, even if it



is not the essence of the contract, the Court may infer that the contract must be performed within a reasonable time if such conditions are stipulated in the terms of the contract or they appear from the nature of the property or the surrounding circumstances connected with the object of making the contract. In the case of **Saradamani Kandappan v. S. Rajalakshmi** (2011) 12 SCC 18, it was held that with the change in times and increase in the prices of the property, it would inequitable to grant relief of specific performance where the purchaser does not step in to complete the sale within the agreed period and the vendor has not been responsible for any delay or non-performance. The situation that, therefore, emerges is that, normally, time would not be the essence of the contract but the terms and conditions of the contract, and the conduct of the parties, would have to be seen as to whether time was intended to be the essence of the contract or not.

Further, in **R.Kandasamy (Since Dead) and others v. T.R.K. Sarawathy and another**, 2025 (3) SC 513, the Hon'ble Supreme Court of India held that in cases of sale of immovable property, there is no presumption that time is essence of the contract. It was also held that even if it is not the essence of the contract, the Court may infer that the contract has to be performed within a reasonable time based on the express terms of the contract, the nature of the property, and the surrounding circumstances. Reliance was placed by the Hon'ble Supreme Court on the judgment of the Constitution Bench in the case of **Chand Rani v. Kamal Rani**, 1993 (1) SCC 159.

26. As regards readiness and willingness, Courts have repeatedly held that there has to be continuous readiness and willingness of a party



during all stages, including at all times during the pendency of the suit. Reference in this regard can be made to the judgments in the case of N.P. Thirugnanam v. R. Jagan Mohan Rao, 1995 (5) SCC 115; Prakash Chandra v. Angadial, 1979(4) SCC 393; Nirmala Anand v. Advent Corpn. (P) Ltd., 2002(8) SCC 146; Kamal Kumar v. Premlata Joshi, 2019(3) SCC 704; P. Daivasigamani v. S. Sambandan, 2022(14) SCC 793; and U.N. Krishnamurthy (Since Deceased) v. A.M. Krishnamurthy, 2023(11) SCC 775.

In the case of C.S.Venkatesh v. A.S.C.Murthy (D) By Lrs., 2020(3) SCC 280, the Hon'ble Supreme Court held as under:

“15. The words ‘ready and willing’ imply that the plaintiff was prepared to carry out those parts of the contract to their logical end so far as they depend upon his performance. The continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of performance. If the plaintiff fails to either aver or prove the same, he must fail. To adjudge whether the plaintiff is ready and willing to perform his part of contract, the court must take into consideration the conduct of the plaintiff prior, and subsequent to the filing of the suit along with other attending circumstances. The amount which he has to pay the defendant must be of necessity to be proved to be available. Right from the date of the execution of the contract till the date of decree, he must prove that he is ready and willing to perform his part of the contract. The court may infer from the facts and circumstances whether the plaintiff was ready and was always ready to perform his contract.



16. In N.P. Thirugnanam (Dead) by LRs. v. Dr. R. Jagan Mohan Rao and Others, it was held that continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant of the relief of specific performance. This circumstance is material and relevant and is required to be considered by the court while granting or refusing to grant the relief. If the plaintiff fails to either aver or prove the same, he must fail. To adjudge whether the plaintiff is ready and willing to perform his part of the contract, the court must take into consideration the conduct of the plaintiff prior to 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 necessarily be proved to be available.

17. In Pushparani S. Sundaram and Others v. Pauline Manomani James(deceased) and Others², this Court has held that inference of readiness and willingness could be drawn from the conduct of the plaintiff and the totality of circumstances in a particular case. It was held thus:

“So far these being a plea that they were ready and willing to perform their part of the contract is there in the pleading, we have no hesitation to conclude, that this by itself is not sufficient to hold that the appellants were ready and willing in terms of Section 16(c) of the Specific Relief Act. This requires not only such plea but also proof of the same. Now examining the first of the two circumstances, how could mere filing of this suit, after exemption was granted be a circumstance about willingness or readiness of the plaintiff. This at the most could be the desire of the plaintiff to have this property. It may be for such a desire this suit was filed raising such a plea. But Section 16(c) of the said Act



makes it clear that mere plea is not sufficient, it has to be proved.” 1995 (5) SCC 115 2002 (9) SCC 582.

18. Similar view has been taken by this Court in Manjunath Anandappa URF Shivappa Hanasi v. Tammanasa and Others and Pukhraj D. Jain and Others v. G. Gopalakrishna.”

27. Very recently, the Hon’ble Supreme Court of India again traced the entire law on the issue of readiness and willingness in the case of Sangita Sinha v. Bhawana Bhardwaj and others, (Civil Appeal No.4972 of 2025, decided on 25.04.2025) Law finder ID 2715344:

“16. It is settled law that under the Act, 1963, prior to the 2018 Amendment, specific performance was a discretionary and equitable relief. In Kamal Kumar vs. Premlata Joshi and Ors., (2019) 3 SCC 704, which has been followed in P. Daivasigamani vs. S. Sambandan, (2022) 14 SCC 793, this Court framed material questions which require consideration prior to grant of relief of specific performance. The relevant portion of the judgment in Kamal Kumar (supra) is reproduced hereinbelow:

“7. It is a settled principle of law that the grant of relief of specific performance is a discretionary and equitable relief. The material questions, which are required to be gone into for grant of the relief of specific performance, are:

7.1. First, whether there exists a valid and concluded contract between the parties for sale/purchase of the suit property;

7.2. Second, whether the plaintiff has been ready and willing to perform his part of contract and whether he



is still ready and willing to perform his part as mentioned in the contract;

7.3. Third, whether the plaintiff has, in fact, performed his part of the contract and, if so, how and to what extent and in what manner he has performed and whether such performance was in conformity with the terms of the contract;

7.4. Fourth, whether it will be equitable to grant the relief of specific performance to the plaintiff against the defendant in relation to suit property or it will cause any kind of hardship to the defendant and, if so, how and in what manner and the extent if such relief is eventually granted to the plaintiff;

7.5. Lastly, whether the plaintiff is entitled for grant of any other alternative relief, namely, refund of earnest money, etc. and, if so, on what grounds.

8. In our opinion, the aforementioned questions are part of the statutory requirements [See Sections 16(c), 20, 21, 22, 23 of the Specific Relief Act, 1963 and Forms 47/48 of Appendices A to C of the Code of Civil Procedure]. These requirements have to be properly pleaded by the parties in their respective pleadings and proved with the aid of evidence in accordance with law. It is only then the Court is entitled to exercise its discretion and accordingly grant or refuse the relief of specific performance depending upon the case made out by the parties on facts.”

17. It is trite law that ‘readiness’ and ‘willingness’ are not one but two separate elements. ‘Readiness’ means the capacity of the Respondent No.1- buyer to perform the contract, which would include the financial position to pay the sale consideration. ‘Willingness’ refers to the intention of the Respondent No.1-buyer as a purchaser to perform his



part of the contract, which is inferred by scrutinising the conduct of the Respondent No.1-buyer /purchaser, including attending circumstances.

18. Continuous readiness and willingness on the part of the Respondent No.1-buyer /purchaser from the date of execution of Agreement to Sell till the date of the decree, is a condition precedent for grant of relief of specific performance. This Court in various judicial pronouncements has held that it is not enough to show the readiness and willingness up to the date of the plaint as the conduct must be such as to disclose readiness and willingness at all times from the date of the contract and throughout the pendency of the suit up to the decree. A few of the said judgments are reproduced hereinbelow:-

A. In Gomathinayagam Pillai and Ors. vs. Palaniswami Nadar, (1967) 1 SCR 227, it has been held as under:-

“6. But the respondent has claimed a decree for specific performance and it is for him to establish that he was, since the date of the 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. As observed by the Judicial Committee of the Privy Council in Ardeshir Mama v. Flora Sassoon, SCC OnLine PC 43:

“In a suit for specific performance, on the other hand, he treated and was required by the Court to treat the contract as still subsisting. He had in that suit to allege, and if the fact was traversed, he was required to prove a continuous readiness and willingness, from the date of the contract to the time of the hearing, to perform the contract on his part. Failure to make good that averment brought with it the inevitable dismissal of his suit.” The respondent must in a suit for specific performance of an agreement



plead and prove that he was ready and willing to perform his part of the contract continuously between the date of the contract and the date of hearing of the suit....” (emphasis supplied) B. In Vijay Kumar and Others vs. Om Parkash, 2018 SCC OnLine SC 1913, it has been held as under:-

“6. In order to obtain a decree for specific performance, the plaintiff has to prove his readiness and willingness to perform his part of the contract and the readiness and willingness has to be shown throughout and has to be established by the plaintiff....” (emphasis supplied) C. In J.P. Builders and Another vs. A. Ramadas Rao and Another, (2011) 1 SCC 429, it has been held as under:-

“27. It is settled law that even in the absence of specific plea by the opposite party, it is the mandate of the statute that the plaintiff has to comply with Section 16(c) of the Specific Relief Act and when there is non-compliance with this statutory mandate, the court is not bound to grant specific performance and is left with no other alternative but to dismiss the suit. It is also clear that readiness to perform must be established throughout the relevant points of time. “Readiness and willingness” to perform the part of the contract has to be determined/ascertained from the conduct of the parties.” (emphasis supplied) D. In Umabai and Another vs. Nilkanth Dhondiba Chavan (Dead) by LRs and Another, (2005) 6 SCC 243, it has been held as under:-

“30. 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 under Section 16(c) of the Specific Relief 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 evidence brought on records.” (emphasis supplied) E. In Mehboob-Ur-Rehman (Dead) through Legal Representatives v. Ahsanul Ghani (supra), it has been held as under:- “16. Such a requirement, of necessary averment in the plaint, that he has already performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him being on the plaintiff, mere want of objection by the defendant in the written statement is hardly of any effect or consequence. The essential question to be addressed to by the Court in such a matter has always been as to whether, by taking the pleading and the evidence on record as a whole, the plaintiff has established that he has performed his part of the contract or has always been ready and willing to do so...” (emphasis supplied) F. In C.S. Venkatesh v. A.S.C. Murthy (Dead) by Legal Representatives & Ors. (supra), it has been held as under:- “16. The words “ready and willing” imply that the plaintiff was prepared to carry out those parts of the contract to their logical end so far as they depend upon his performance. The continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of performance. If the plaintiff fails to either aver or prove the same, he must fail. To adjudge whether the plaintiff is ready and willing to perform his part of contract, the court must take into consideration the conduct of the plaintiff prior, and subsequent to the filing of the suit along with other attending circumstances. The amount which he has to pay the defendant must be of necessity to be proved to be available. Right from the date of the execution of the



contract till the date of decree, he must prove that he is ready and willing to perform his part of the contract. The court may infer from the facts and circumstances whether the plaintiff was ready and was always ready to perform his contract.

17. In N.P. Thirugnanam v. R. Jagan Mohan Rao [N.P. Thirugnanam v. R. Jagan Mohan Rao, (1995) 5 SCC 115], it was held that continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant of the relief of specific performance. This circumstance is material and relevant and is required to be considered by the court while granting or refusing to grant the relief. If the plaintiff fails to either aver or prove the same, he must fail. To adjudge whether the plaintiff is ready and willing to perform his part of the contract, the court must take into consideration the conduct of the plaintiff prior to 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 necessarily be proved to be available.”

28. Reverting to the facts of the case, it is conceded that agreement to sell No.2 was executed by defendant No.1 in favour of the plaintiff. The plaintiff executed the agreement through its Director Vijay Kumar. At no point of time was any issue raised as regards the competence of Vijay Kumar to execute the contract. The extension (Ex.P8) was signed on behalf of the plaintiff by P.K. Gupta. Notably, P.K. Gupta was also one of the witnesses to agreement to sell No.2. Apart from P.K. Gupta, the extension was also signed by defendants No.1 and defendant No.2. The legal notice (Ex.P9) was issued through its Director Vijay Kumar. Similarly, all other



communications on record were executed through Vijay Kumar. The plaint was also filed through him as Director. The Memorandum and Articles of Association of the plaintiff is placed on record as Ex.P1 and the Certificate of Incorporation as Ex.P2. A perusal of the memorandum of articles of association shows that Vijay Kumar was not a Director, though his daughter Seema Garg, wife Arun Kumari and sons Dinesh Kumar and Amit Kumar are shown to be shareholders and Directors. Ex.P3 is the resolution passed in favour of Vijay Kumar, which is signed by him as a Director. However, there is another resolution dated 05.04.2003, which has been placed authorizing Vijay Kumar to engage an Advocate to institute the suit, or to verify the pleadings. The said resolution is signed by Vijay Kumar and Arun Kumari. In the considered opinion of this Court, the trial Court rightly held that Vijay Kumar was duly authorized to institute the suit:

“20. ...

After taking into consideration the submissions made by both the sides, I am of the considered view that the agreement to sell dt. 22.6.02 executed between Sarabjit Dhanda and Damini Resorts and Builders Pvt. Ltd., Company has duly been admitted by the defendant No. 1. From the perusal of written statement, it reveals that the defendant No. 1 has duly admitted the agreement to sell dt. 22.6.02 which has been executed between Sarabjit Dhanda defendant No. 1 and plaintiff. From the bare perusal of Ex. P7 i.e. agreement to sell dt. 22.6.02 has been specifically mentioned that Damini Resorts and Builders Pvt. Ltd company incorporated under the Companies Act, 1956 having its office at SCO 1, Basant Avenue Road,



Ludhiana through its Director Vijay Kumar. I am of the considered view that when the agreement to sell has duly been admitted by the defendant No.1 and the execution of the agreement of sale by Sarabjit Dhanda with the plaintiff company and at that time, the defendant No. 1 did not raise any objection that Vijay Kumar, is not the Director of the plaintiff Company. In the written statement, the defendant No. 1 has duly admitted regarding the contents of the agreement to sell dt.22.6.02, therefore, at this stage, taking plea by defendant No. 1 that Vijay Kumar is not the Director of the plaintiff company, therefore, he is not competent to file this suit and also the suit is not maintainable. From the bare perusal of the file i.e. Ex.P1 memorandum of association of Damini Resorts and Builders Pvt. Ltd., Ex.P3 which is true copy of resolution passed in the Board meeting dt. 5.4.03 wherein the resolution has been passed and Vijay Kumar has been authorised to sign and verify the pleadings and to do all the necessary acts and sign relating papers on behalf of the company. The authorities relied upon by Ld. Counsel for the defendant No. 1 i.e. Escorts Ltd., Vs. Sai Auto, 1991 CCC 363(Delhi). Nibro Ltd., Vs. National Insurance Co. Ltd., AIR 1991, Delhi, 25. Ashish C. Shah Vs. Seth Developers Pvt. Ltd., 2011(3), CCC 412(Bombay). Mukesh Kumar Vs. St. of Haryana, 2011(1), CCC 886(P&H). K. Bhaskar Rao Vs. K.A. Rama Rao, 2011(2), CCC 562 (Andhra Pradesh). State Bank of Travancore Vs. Kingston Computers(1) P. Ltd., 2011(3), R.A.J. 77(S.C) supra are not disputed one but the same are not applicable to the facts of the present case whereas the authorities relied upon by



Ld. Counsel for the plaintiff i.e. M. Iqbal and Company Vs. Someswara Cements Chemical Ltd., 1999(2), RCR(Civil), 21(Andhra Pradesh), and M/s Gupta Plastic Pvt. Ltd., Vs. Firm Amrish Plastics, 2010(6), RCR(Civil), 1057(Rajasthan) supra are fully applicable to the facts of the present case. Accordingly the contention of Ld. counsel for the defendant No. 1 that Vijay Kumar is not competent to file the present suit, cannot be taken into consideration.”

29. I do not find any illegality in the findings recorded by the trial Court. In the considered opinion of this Court, the first appellate Court adopted a hyper-technical approach and erroneously non-suited the plaintiff. After examining the judgment of the Hon’ble Supreme Court of India in the case of Union Bank of India v. Naresh Kumar and others (supra) and the judgment of a coordinate Bench of this Court in Daljit Singh v. Gurnam Singh and others (RSA No.5951 of 2016, decided on 28.07.2023), there remains no doubt in the mind of this Court that Vijay Kumar was duly authorized to file the suit. His acts were ratified by the Company. Till date there has been no objection on behalf of the Company as regards the authority of Vijay Kumar to file a suit. The Court cannot shut its eyes to the fact that Vijay Kumar is, in fact, the head of the family and that his wife, daughter and both sons are shareholders and Directors of the Company. The Court also cannot ignore the fact that agreement to sell No.2 was executed by the plaintiff through Vijay Kumar and no objection was raised by the defendants at any point of time qua his authority either at the time of execution of the agreement to sell or during the subsequent proceedings. It was only after the filing of the suit that objections were belatedly raised. As



was held in the judgments referred to above, parties should not be non-suited on mere technicalities. In view of the above, this Court holds that Vijay Kumar was duly authorized to institute the suit.

30. Coming to the issue of whether time was of the essence of the contract, it emerges that the sale deed qua 500 sq. yards was to be executed by 30.11.2002. For the said purpose, a legal notice (Ex.P9) was issued and the plaintiff appeared before the Sub Registrar on 29.11.2002. Demand drafts (Ex.P10 to P-19) were also prepared. When Vijay Kumar appeared in the witness-box, he deposed that the Company had always been ready and willing to perform its part of the contract and that it had sufficient funds in its account. It was also averred in the plaint that the plaintiff had always been ready and willing to perform its part of the contract. Subsequent communications, i.e. Ex.P21 etc. would also show that the plaintiff had been running after the defendants to get the sale deed executed but it was defendants No.1 and 2 who backed out from the same. Not only this, the final date for execution of the sale deed, after the agreed extension, was 31.03.2003, and the suit was instituted thereafter on 08.04.2003. The argument that because the plaintiff did not appear before the Sub Registrar on 31.03.2003, it would mean that he was not ready and willing to perform its part of the contract, is devoid of merit as he instituted the suit on 08.04.2003 that is merely one week after the last date fixed for execution of the sale deed, which itself shows that the plaintiff was ready and willing to perform its part of the contract.

30.1 The argument that court fee was not paid in time or that the plaintiff raised an issue as regards registration charges in the legal notice



(Ex.P9), is completely devoid of merit and is rejected. The issue of payment of court fee is a matter between the Court and the plaintiff. Further, merely because an issue was raised as regards registration charges would not, under any circumstance, mean that the plaintiff was not ready and willing to perform its part of the contract. In the considered opinion of this Court, if one goes through the sequence of events right from the execution of the agreement to sell to the issuance of the legal notice and execution of other documents, the promptness with which the civil suit was filed, and the consistent stand of the plaintiff, this Court has no hesitation in holding that the plaintiff had always been ready and willing to perform its part of the contract.

31. Another issue which was raised was that defendant No.2 had no privity of contract with the plaintiff. This argument is also totally devoid of merit in view of the categorical conditions laid down in both agreement to sell No.1 and agreement to sell No.2. Defendant No.2 cannot back out simply by saying that he had no privity of contract with the plaintiff. It was also held by the Hon'ble Supreme Court in the case of **Shyam Singh v. Daryao Singh (Dead) through LRs and others (supra)** that the expression 'any party thereto' or 'their representative-in-interest' includes transferees and assignees from the contracting party in whose favour the right exists. In that case, it was held that the agreement in question contained no express prohibition on transfer or assignment of rights by the original contracting parties to a third party and that the only question was whether such prohibition against assignment or transfer could be read in the documents by implication. After examining the terms and conditions, reference was made



by the Hon'ble Supreme Court of India to Section 15(b) of the 1963 Act. It was held that specific performance of the contract may be obtained by any party thereto or their representative-in-interest. It was held that this expression clearly included the transferees and assignees from the contracting party in whose favour the right exists.

32. As already discussed, there were specific clauses in both agreements to sell which clearly show that the sale deed could not have been executed straight away in favour of the plaintiff by defendant No.2 and, therefore, it would not lie in the mouth of defendant No.2 to say that there was no privity of contract between him and the plaintiff. A similar view has been taken in several decisions by various Courts, and the same is reiterated by this Court.

33. I have carefully gone through the judgments relied upon by learned counsel for the parties. In view of the findings recorded in the preceding paragraphs, and relying upon the law laid down by the Hon'ble Apex Court, the judgments cited by learned counsel for the respondents would not come to their aid, for, those judgments were passed based on the specific facts of each case. The ratio laid down in the said judgments though cannot be disputed.

34. The cumulative result of the aforesaid discussion leads this Court to the firm conclusion that both Courts erroneously non-suited the plaintiff. The basic principle that the grant of specific performance is the rule and the non-grant thereof is an exception, was not kept in mind.

35. That being so, the present appeal is allowed. The judgments and decrees under challenge are set aside. The suit filed by the plaintiff is



decreed as prayed for. The defendants are directed to execute the sale deed in favour of the plaintiff qua the suit land within a period of one month from today, after deposit of the balance sale consideration, failing which the plaintiff, in terms of the provisions of the agreement to sell, would be entitled to get the sale deed registered through the process of the Court.

36. Since the appeal has been allowed and the suit has been decreed, the necessity of dealing with the application for amendment of plaint would not arise and the same is accordingly dismissed.

37. Pending applications, if any, shall also stand disposed of.

(Vikram Aggarwal)
Judge

21.08.2025

Rajan

Whether speaking / reasoned:
Whether Reportable:

Yes/No
Yes/No