

**IN THE HIGH Court OF PUNJAB AND HARYANA AT CHANDIGARH****222****RSA-4204-2013 (O&M)****Reserved on: 13.02.2025****Pronounced on:18.03.2025****Tej Singh****...Appellant(s)****Vs.****Trilok Chand****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Akshay Bhan, Senior Advocate assisted by  
Mr. Santosh Sharma, Advocate and  
Mr. Varun Sandhu, Advocate  
for the appellant.

Mr. Adarsh Jain, Advocate with  
Ms. Amandeep Kaur, Advocate and  
Ms. Kamaldeep Kaur, Advocate  
for the respondent.

**\*\*\*****NIDHI GUPTA, J.**

The defendant is in second appeal against the concurrent judgments and decrees of the learned Courts below, whereby the suit for possession by way of specific performance of the Agreement to Sell dated 23.11.2005 filed by the plaintiff/ respondent herein, has been decreed by the learned trial Court vide judgment and decree dated 25.04.2012 holding the plaintiff entitled to money decree for return of earnest money of Rs. 8 lacs from the defendant with interest @ 6% per annum from the date of institution of suit till the realization of the amount. The Civil Appeal No. 66 dated 25.05.2012 filed by the defendant against the said judgment and decree dated 25.04.2012 was dismissed by the learned



Additional District Judge, Faridabad vide judgment and decree dated 26.04.2013; and the cross-objections filed by the plaintiff were allowed with costs decreeing the suit of the plaintiff; and the defendant was directed to clear the mortgage with the Syndicate Bank, Seekri, within 15 days of the passing of the said judgment and thereafter, he shall be liable to get the sale deed executed in favour of the plaintiff within 30 days thereof on payment of balance sale consideration by the plaintiff.

2. The parties shall hereinafter be referred to as per their status before the learned trial Court i.e. the appellant is the 'defendant'; and the respondent is the 'plaintiff'.

2. The brief facts of the case as set out in the plaint are that on 23.11.2005, the defendant entered into contract with the plaintiff to sell his agricultural land as detailed in para 1 of the plaint, situated within the revenue estate of Vill. Piala, Teh. Ballabgarh, Distt. Faridabad total measuring 8 kanal 13 marla for a sum of Rs.28,32,875/-. The defendant received a sum of Rs. 3 lacs on 23.11.2005 as part payment from the plaintiff and he executed an Agreement to Sell and receipt on the said date. The defendant on 25.11.2005 further received a part payment of Rs. 5 lacs from the plaintiff in which Rs. 4 lacs was paid in cash and Rs. 1 lac through cheque No. 051910 dated 25.11.2005. So the defendant received a total sum of Rs. 8 lacs from the plaintiff and he also executed a separate receipt on 25.11.2005 in favour of the plaintiff. The land in dispute was under mortgage with the Syndicate Bank, Seekri and as per terms and conditions of the Agreement, it was for the defendant to get the land free



from all kinds of encumbrances. The plaintiff was always ready and willing to perform his part of contract and is still ready and willing to perform his part of contract but the defendant did not perform his obligation despite repeated requests of the plaintiff. The sale deed was agreed to be executed and got registered on or before 30.05.2006 but the said day was a public holiday and so the plaintiff went in the office of Sub Registrar, Ballabgarh on 31.5.2006 along with balance sale consideration amount and miscellaneous expenses but the defendant did not turn up to perform his part of agreement. On 29.05.2006, the plaintiff had also obtained a copy of jamabandi and found that the land was still having lien of the bank and was not got released by the defendant. Thereafter a legal notice dated 30.5.2006, was also served upon the defendant to get the land released from the lien of the bank and execute the sale deed in favour of the plaintiff but in vain forcing the plaintiff to file the present suit.

4. Upon notice, the defendant appeared and filed written statement contesting the suit on various grounds *inter alia* stating that the target date of 30.05.2006 being public holiday, the defendant had duly reached the office of Sub Registrar for execution of sale deed on 31.05.2006 but the plaintiff did not reach the office of Sub-Registrar along with balance sale consideration amount and other miscellaneous expenses. It was further stated in the written statement that the defendant had received a notice dated 30.5.2006 through counsel of the plaintiff which was duly replied on 7.6.2006 requesting the plaintiff to deduct the mortgage amount and pay the balance amount to the



defendant and get sale deed executed in his favour on 22.06.2006; but again the plaintiff did not turn up in the office of Sub-Registrar on the said date to get the sale deed executed in his favour. It was the plaintiff who could not arrange for the balance payment and thus, failed to perform the terms and conditions of the Agreement dated 23.11.2005. So, the defendant was always ready to perform his part of contract; whereas plaintiff failed to pay the balance sale consideration amount due to which defendant also suffered in the Agreement to Sell.

5. No replication was filed to the written statement of the defendant.

6. From the pleadings of the parties following issues were framed by the learned trial Court vide order dated 24.02.2010:-

- 1) Whether the defendant had entered into an agreement to sell the suit property on 23.11.2005 for a sum of Rs.28,32,875/-? OPP.
- 2) Whether the defendant received a sum of Rs.3 lacs as part payment of earnest money from the plaintiff? OPP.
- 3) Whether the plaintiff was always ready and willing to perform his part of contract? OPP.
- 4) Whether the plaintiff is entitled a decree for specific performance? OPP.
- 5) Whether the plaintiff have no locus standi to file the present suit? OPD.
- 6) Whether the suit of plaintiff is not maintainable? OPD.
- 7) Relief.



7. Upon appraisal of the pleadings and the evidence led by the parties, the learned trial Court decided the issues No. 1, 2, 3, and 4 in favour of the plaintiff and against the defendant; issues No. 5 and 6 were decided against the defendant; and the learned trial court partly decreed suit of the plaintiff vide judgment and decree dated 25.04.2012 with costs holding the plaintiff entitled to money decree for return of the earnest money of Rs.8 lacs from the defendant along with interest @ 6% per annum from the date of institution of the suit till the realization of amount.

8. The Civil Appeal No. 66 dated 25.05.2012 filed by the defendant against the said judgment and decree dated 25.04.2012 was dismissed by the learned Additional District Judge, Faridabad vide judgment and decree dated 26.04.2013; and the cross-objections filed by the respondent/plaintiff were allowed with costs decreeing the suit of the plaintiff for possession by way of specific performance of the Agreement to Sell dated 23.11.2005. The defendant was directed to clear the mortgage with the Syndicate Bank, Seekri, within 15 days of the passing of the judgment and thereafter, he shall be liable to get the sale deed executed in favour of the plaintiff within 30 days thereof on payment of balance sale consideration by the respondent/plaintiff. Hence, the present second appeal by the defendant.

9. Vide order dated 8.10.2015, a Coordinate Bench of this Court had granted stay of execution of the judgment and decree of the learned trial Court subject to deposit of ₹8 lakhs with interest within four weeks. Ld. Senior counsel for the appellant has informed on instructions that the said



amount stands deposited. At the very outset, it is submitted by learned Senior Counsel for the defendant that defendant, at present, is aggrieved only of the judgment and decree dated 26.4.2013 of the learned first appellate Court directing specific performance of the contract. It is only on instructions, that the said amount of Rs. 8 lacs has been duly deposited by the appellant in pursuance of the order dated 8.10.2015 of this Court.

10. Learned Senior Counsel appearing on behalf of the appellant/defendant assails the judgment and decree dated 26.04.2013 by submitting that as the date set for execution of sale deed i.e. 30.05.2006 was declared a holiday, on 31.05.2006 both the parties had duly appeared before the Sub Registrar, Ballabgarh. However, prior to that on 30.05.2006 itself, the plaintiff had issued legal notice (Ex.D1) to the defendant. It is contended that the very fact that the plaintiff had immediately served notice upon the defendant demonstrated that he was not in possession of the funds necessary for performance of the contract. Nonetheless, the defendant had duly replied to the said legal notice vide reply dated 07.06.2006 (Ex.D2) thereby asking the plaintiff to deduct the mortgage amount and pay the balance amount to the defendant and get his sale deed executed on 22.06.2006. It is contended that however, as the plaintiff did not have the balance sale consideration, he had failed to put in appearance before the office of Sub-Registrar on 22.06.2006. Therefore, it was the plaintiff who had failed to perform his part of the contract dated 23.11.2005. It is further argued that even on 31.5.2006, despite the presence of both the parties before the Sub Registrar, the sale deed could



not be executed as the plaintiff did not have sufficient funds. It is contended that as such it was the plaintiff who had failed to demonstrate his readiness and willingness to perform the contract; and, therefore, the learned lower appellate Court is in patent error in decreeing the suit of the plaintiff.

11. Ld. Senior Counsel relies upon recent judgment of the Hon'ble Supreme Court in '**R. Shama Naik vs. G. Srinivasiah**' 2024 INSC 927, to submit that two specific ingredients are required to establish i.e. readiness and willingness: (a) presence in the Tehsil; (b) demonstrate availability of funds. However, as stated above, the plaintiff had failed to demonstrate availability of funds; and had therefore failed to establish his readiness and willingness to perform the contract.

12. To buttress his contention, learned Senior counsel refers to the cross-examination of the plaintiff as PW1 (available at page No. 229 of the LCR), as per which, it is contended that plaintiff was unable to prove the source of funds. Ld. Senior counsel refers to the cross-examination of the plaintiff wherein although the plaintiff had claimed that he had come to the office of the Sub-Registrar on 31.05.2006 with Rs. 20 lacs in cash, however he had been unable to satisfyingly disclose the source of the said money. The plaintiff had stated in his cross-examination that the said funds were obtained by him as he had got a registry done in respect of a piece of land owned by him. However, the plaintiff had admitted in his cross-examination that he did not have any paper of the said Registry, and that the entire amount was taken by him in cash. Simultaneously, in contradiction he had stated that he could not tell how much he had taken in cash and how much



by way of draft; that he did not remember the date of transaction. On a suggestion being put to the plaintiff, he had denied that he got the Registry done as he did not have the money. It is submitted that therefore the plaintiff had failed to demonstrate his readiness and willingness.

13. Learned Senior Counsel further submits that there was no error or defect in the request of the defendant in asking the plaintiff to redeem the mortgage and perform the contract in view of the judgment passed by a Coordinate Bench of this Court in '***Gamdoor Singh vs. Ajai Singh***' ***Law Finder Doc Id # 410592***.

14. It is further contended by learned Senior Counsel for the defendant that the learned Appellate court below has returned perverse findings to the effect that, as the land was not got redeemed prior to the target date of execution of the sale deed therefore, the plaintiff is entitled to decree. It is submitted that the Id. Courts below have failed to appreciate that the redemption of the mortgage was not a condition precedent for the purpose of execution of sale deed. It is contended that for the fault of plaintiff, the defendant cannot be made to suffer. Once the plaintiff has failed to prove the readiness and willingness on their part for execution of sale deed, they have lost every right to pray for specific performance as well as alternative relief return of earnest money.

15. It is further contended that both the learned Courts below have failed to appreciate that it is a duty of the plaintiff to stand it's case upon its legs. Once the plaintiff has failed to discharge the said onus, his suit was to be dismissed in toto. In the present case also when through the



reply to the legal notice, a specific date was given to the plaintiff for execution of sale deed and even on the said date, the plaintiff had admittedly failed to appear before the office of the Sub-Registrar thus the alternative relief of return of earnest money cannot be granted in his favour.

16. It is the last contention on the part of learned Senior Counsel representing the defendant that the Agreement to Sell was dated 23.11.2005; of which sale deed was to be executed on 30/31.05.2006; legal notice was received on 30.05.2006; reply by the defendant given on 07.06.2006, as per which target date was set for 22.06.2006. Learned Senior Counsel points out that, yet suit was filed almost 3 years thereafter on 27.05.2009, two days before limitation was to expire. It is contended that from the said conduct of the plaintiff, it is clear that he was not ready and willing to perform the contract. It is further submitted that the delay in filing of the civil suit is also a factor to draw adverse inference against the plaintiff.

17. In this regard, learned Senior Counsel relies upon the judgment passed by a Coordinate Bench of this Court in '**Sant Ram vs. Brij Mohan Kaura and another**' **Law Finder Doc Id # 120449**, wherein it is held that if the suit is filed after a long unexplained delay, even if the suit was filed within limitation, the Court will consider its effect and may grant alternate relief of refund of earnest money.



18. It is accordingly prayed that the present appeal be allowed; and the impugned judgments and decrees of the Id. Courts below be set aside.

19. Per contra, learned counsel for the plaintiff/ respondent vehemently opposes the prayer made on behalf of the appellant and submits that in the Agreement to Sell dated 23.11.2005 (Ex.P1), the specific stipulation of Clause 10 was that the suit land was mortgaged with the Bank and the appellant/defendant had to get it redeemed. It is contended that the question of readiness and willingness to perform the contract on part of the plaintiff would come *after* the fulfilment of the condition contained in the Agreement to Sell. It is submitted that it is an admitted fact on record that the defendant had failed to comply with the said condition; and, therefore, the defendant could not compel the plaintiff to deposit the remainder amount in performance of the contract. In this regard, learned counsel also refers to the provision of Section 13C of the Specific Relief Act, 1963.

20. Learned counsel for the plaintiff submits that as per terms of Section 13(c) of the Specific Relief Act the onus was on the defendant to redeem the mortgage. The plaintiff can mandate the defendant to discharge his onus; however, it is not for the defendant to mandate the plaintiff to deposit the money. Moreover, it is an admitted position that it was a bilateral agreement between the plaintiff and the defendant, as per which it was mutually agreed between the parties that the defendant would redeem the mortgage. Now by way of unilateral action or writing in the reply dated



07.06.2006, the defendant could not compel or dictate the plaintiff to pay the mortgage amount and deposit the remaining amount for performance of contract. It is accordingly submitted that the judgment and decree of learned lower appellate Court suffers from no error whatsoever; and, therefore, prays that the present appeal be dismissed.

21. No other argument is raised on behalf of the parties.

22. I have heard learned counsel for the parties and perused the case file, as also the lower court record in minute detail.

23. To briefly recapitulate, the admitted facts on record are that the plaintiff and the defendant entered into Agreement to Sell dated 23.11.2005 (Ex.P1), as per which the defendant had agreed to sell agricultural land measuring 8K 13M/suit land to the plaintiff for total sale price of Rs. 28,32,875/-. A sum of ₹8 lakhs was paid as earnest money in the manner described above, and as evident from the receipts Ex.P-2 and Ex. P-3. Target date for execution of sale deed was fixed for 30.5.2006. The same being a public holiday, the defendant went to the office of the Sub-Registrar on 31.5.2006, where his presence was marked as Ex.D3 & Ex.D4. The plaintiff was also present in the office of the Sub Registrar on 31.5.2006 and his presence is proved from his affidavit of presence (Ex.P7) (at page 87 of the lower Court record). However, upon receipt of information on 29.5.2006 by way of jamabandi (Ex.P8), the plaintiff knew that the suit land was still encumbered. As such, on 30.5.2006 itself, the plaintiff had served legal notice Ex. P-4 upon the defendant; to which he filed reply dated 7.6.2006 Ex. P-5. In the said reply, the defendant had offered to the plaintiff that



plaintiff should redeem the mortgage and adjust the amount payable; and further that defendant will remain present before office of Sub-Registrar on 22.6.2006 for execution of aforesaid sale agreement. However, plaintiff never appeared on the said date. Instead, the plaintiff filed the present suit on 27.5.2009. Vide judgment and decree dated 25.4.2012, the learned trial Court granted alternative relief of money decree in favour of the plaintiff. Against the said judgment and decree dated 25.4.2012, the defendant preferred appeal; and cross-objections were also filed by the plaintiff. Vide the impugned judgment and decree dated 26.04.2013 the Appeal of the defendant was dismissed and cross-objection of plaintiff was allowed, and suit for specific performance was decreed.

24. It has been submitted by learned Senior Counsel for the appellant that on 31.05.2006 when the defendant and the plaintiff had met at Tehsil, the defendant had orally conveyed to the respondent/plaintiff to redeem the mortgage and deduct the amount of mortgage and pay the balance sale consideration to the defendant in order to execute the sale deed. It has also been submitted on behalf of the defendant that the plaintiff had served legal notice dated 30.05.2006 (Ex.P4) (at page 93 of the lower Court record) upon the defendant, the relevant paras 6 and 7 read as follows:

*“6. That on 30.05.2006, my client was ready and willing to perform his part of contract, but the suit land was not clear from the loan of Syndicate Bank. My above said clients obtained copy of Jamabandi from the Patwari on 29.5.2006 in*



*which the entire land was under pledge with the Bank for a sum of Rs.9,50,000/-.*

*7. That through this notice, I call upon you to deposit the loan amount with the Syndicate Bank and obtained clearance certificate from the Syndicate Bank, Seekri and after that you execute and got registered the sale-deed in favour of my above said client as per agreement of sale dated 23.11.2005 within 15 days of the receipt of this notice, after intimation to my client by registered post, after clearing loan amount to the Bank. If you failed to comply the notice, in that case, you will be responsible for all the costs, expenses and damages of my client. Copy of this notice has been kept in my office.”*

25. It is the contention of learned Senior counsel for the defendant that the appellant had again duly apprised the plaintiff vide reply dated 07.06.2006 (Ex.P5) (available at page 95 of the lower Court record), that the plaintiff should redeem the mortgage and get the sale deed executed, as follows:-

*“6. That the para no. 6 of the legal notice is wrong and denied. Your client could not arrange the sale consideration, so the question of ready and willingness to perform his part of contract does not arise.*

*7. That the prayer clause of para no. 7 of the legal notice is not applicable upon my client. You advise your client to withdraw the said legal notice and get sale deed execute within 15 days. i.e upto 22.6.2006 to get the sale deed execute, after deducting loan amount from the sale consideration failing which your earnest money will be forfeited as per the terms and conditions of the agreement to sell dt. 23.11.2005.”*



26. It has been contended that therefore, as the defendant had asked the plaintiff to clear the mortgage, deduct the mortgage amount, and execute the sale deed, it was the plaintiff who had failed to perform the agreement.

27. I find no merit whatsoever in the said argument of learned Senior Counsel. It is undisputed that as per the clause 10 of the Agreement to Sell dated 23.11.2005 (Ex.P1) (available at page 79 to 81 of the lower Court record), the onus to free the suit land from encumbrances and redeem the mortgage was upon the defendant. The defendant cannot unilaterally alter the terms and conditions of the Agreement. Both parties are bound by the Agreement. Admittedly, on 29.05.2006 i.e. the day prior to the target date of 30.5.2006, the plaintiff had visited Tehsil office and had got jamabandi (Ex.P8) which reflected lien of Syndicate Bank upon the suit land still existed. There is nothing on record to indicate that the said lien had been cleared by the defendant on/ or by 31.5.2006. It is not even the case of the defendant that the land was free from encumbrances on 31.5.2006. As such, it was the defendant who had failed to comply with a condition precedent set in the Agreement itself.

28. In this regard, reference needs also be made to provision of Section 13C of the Specific Relief Act, 1963 which reads as follows: -

*“Where the vendor professes to sell unencumbered property, but the property is mortgaged for an amount not exceeding the purchase money and the vendor has in fact only a right to redeem it, the purchaser may compel him to redeem the mortgage and to obtain a valid discharge, and, where*



*necessary, also a conveyance from the mortgagee” (emphasis added)*

29. In view of the above clear stipulation of law, I am in agreement with the argument of learned counsel for the plaintiff that as per law, it is the plaintiff who can compel the defendant to pay the mortgage amount, and not the other way around.

30. Further, the defendant can derive no benefit from the relied upon judgment in case of ***Gamdoor Singh supra*** as in the said case, it was not a condition precedent stipulated in the Agreement in question that the mortgage upon the suit land would be redeemed by the defendant prior to execution of sale deed. Whereas, in the present case, it is undisputed that as per clause 10 of the Agreement to Sell dated 23.11.2005 (Ex.P1) the onus to free the suit land from encumbrances and redeem the mortgage was upon the defendant. In fact, reliance of learned Senior Counsel for the defendant upon judgment of ***Gamdoor Singh supra*** is based on a misreading thereof as, in para 12 it is held as follows:-

*“12. The bare argument that since the land was already mortgaged with Punjab & Sind Bank, therefore, the defendant had no right to sell the property, in this regard it may also be observed that the mere fact that the land was mortgaged with the bank, relief of specific performance could not be denied because the encumbrance attached to the land could be removed by the defendant before effecting the sale and no objection could be obtained from the bank or the prospective vendee stepping into the shoes of the mortgagor, is liable to*



*pay the mortgage money if the terms are so settled.*  
(Emphasis added)

31. Thus, even as per ***Gamdoor Singh supra***, plaintiff could have been asked to redeem the mortgage on the suit land '*if the terms are so settled.*' That is not so in the present case.

32. It has next been argued by Ld. Senior Counsel for the defendant that the plaintiff had failed to demonstrate his readiness and willingness to perform the contract. It has been argued on behalf of the defendant that despite the presence of both the parties in the Tehsil on 31.5.2006, sale deed was not executed as the plaintiff did not have the funds necessary to make the payment of loan amount of the Bank as also the funds necessary for performance of contract.

33. I find that the above argument is also liable to be rejected. It is my clear view that first and foremost, the question of ascertaining the readiness and willingness of the plaintiff to perform the contract would arise only after redemption of the mortgage by the defendant. In the present case, admittedly, defendant had failed to comply with condition precedent for execution of sale deed. As such, it was the defendant in the first instance, who had failed to perform the contract.

34. Moreover, despite vehement arguments to the contrary, I find there is nothing on record to establish that the plaintiff was not ready and willing to perform the contract. The plaintiff had admittedly come present in the office of Sub Registrar on 31.05.2006 as evident from his affidavit of presence (Ex.P7) (at page 87 of the lower Court record). A perusal of para



Nos. 4 and 5 of the said affidavit (Ex.P7) reveals that the plaintiff has categorically stated as under:-

*“4. I was always ready and willing to execute the sale deed. On 29.05.2006, I had gone to the Patwari from where I got copy of jamabandi as per which there is bank loan subsisting for an amount of about Rs.9.5 lacs. As such, till the said amount is not repaid, sale deed cannot be executed. I had told the vendor to repay the said loan yet, he has not done the needful.*

*5. Today on 31.05.2006, I am present to get the sale deed registered. But the land is not free from encumbrances nor of bank lien as such sale deed cannot be executed. **I am present here with remaining amount (mai bakaya rakam lekar haazir hoo).”***

35. Thus, it was the unequivocal assertion of the plaintiff that he was present in the office of the Sub Registrar on 31.5.2006 ‘with the balance sale consideration’.

36. In this regard, learned Senior Counsel has referred to the cross-examination of the plaintiff to submit that the plaintiff had failed to demonstrate availability of funds. However, the same is a tenuous argument as the plaintiff has categorically stated during his cross-examination that he had received the said amount of Rs.20 lacs in pursuance to execution of a sale deed registered by him by selling some land. The suggestion of the defendant to the effect that the plaintiff did not have a requisite sale consideration to execute the sale deed, has been specifically denied by the



plaintiff during his cross-examination. As such, this argument of the defendant is based on conjectures and surmises.

37. In any event, as already noticed above, the question of determining availability of funds with the plaintiff would arise only after the defendant has fulfilled his part of contract viz. that he has got the mortgage redeemed. It is the admitted case of the defendant that he had not got the mortgage redeemed. Merely to unilaterally mandate the plaintiff to get the mortgage redeemed and deduct the said amount and pay the balance amount to the defendant is not sufficient. In this regard, reference may be made to the fairly recent judgment of the Hon'ble Supreme Court in '**R. Lakshmi Kantham vs. Devaraji**' **Law Finder Doc Id # 1540938**. For context, the factual background of the said case, which is similar to the facts in the present case, is also being reproduced hereinbelow:-

*"3. By an agreement to sell dated 22.09.2002, the suit-property was to be sold for a sum of ₹3,65,000/-. Certain clauses of the agreement are important and are set out hereinbelow:*

- 1. The sale price of the property mentioned in the schedule hereunder shall be ₹3,65,000/-(Rupees Three Lakhs and Sixty Five Thousand only).*
- 2. The party of the second part has paid a sum of ₹5,000/-(Rupees Five Thousand only) towards advance by cash and the party of the first part hereby admit and acknowledge the receipt of the same.*
- 3. The balance sale consideration shall be paid by the party of the second part to the party of the*



*first part within three months from today. The party of the first part agrees to execute sale deed on the day on which the balance sale consideration is paid.*

*4. The party of the second part agrees to pay part of the sale consideration of ₹60,000/- (Rupees Sixty Thousand only) to the party of the first on or before 10th day of October.*

*5. The party of the first part had handed over the original title documents to the mortgagee and the party of the second part shall settle the loan, receive the documents from the mortgagee and keep the same in his custody.*

*XXX XXX XXX*

*8. If there is no encumbrance to the schedule property and when the party of the second part is willing to pay the balance sale consideration, the party of the first shall execute sale deed in favour of the party of the second part or her nominee. If the party of the first part refuses to do so, the party of the second part is entitled to take legal action.”*

*4. It is stated that at the time of the sale agreement, the suit property was worth roughly a sum of ₹6 lakhs, but the parties finally agreed and the defendant, in particular, agreed to sell the aforesaid property for ₹3.65 lakhs. A perusal of the agreement to sell would show that though clause 3 requires that the balance sale consideration will be paid within three months from the date of the agreement and that the seller will execute the sale deed on the date on which balance sale consideration was paid yet, clauses 5 and 8 clearly show that*



*the original title deeds which are with the mortgagee had yet to be handed over and the mortgage had yet to be redeemed. It is only when this is done that clause 3 would kick in, showing that the time of three months is obviously not of essence.*

*5. Soon after the agreement, the plaintiff sent a registered letter dated 18.12.2002 to the present address of the defendant reminding the defendant that ₹5000/- had been received on the date of signing the agreement and ₹60,000/- had been received on 14.10.2002. Despite this, the original title documents were not obtained from the mortgagee and hence the mortgage could not be discharged. The letter then goes on to state that repeated calls were made and that the plaintiff is ready with the balance money, and that the defendant should come forward immediately to discharge the mortgage, get all documents from the mortgagee, and register the sale deed. This registered A.D. letter was returned to the sender stating that the addressee did not receive the same for the past one week. The same was the fate of another legal notice on the very next date, i.e., 19.12.2002. Finally, on 07.07.2003, the plaintiff sent a legal notice referring to the earlier legal notice of 19.12.2002 and called upon the defendant to immediately comply with the terms of the agreement. To this notice, which was admittedly received by the defendant at the very same address, no reply was given. Thereafter, the present suit for specific performance was filed by the plaintiff in February, 2005.*

*6. Given these facts, the trial Court, by its judgment dated 12.09.2008, held that the suit agreement was proved and that three notices sent by the plaintiff were also proved, it being clear that the defendant was attempting to wriggle out of his obligations under the agreement. Though the suit was filed*



*belatedly, the trial Court felt that as the defendant did not furnish the address of his mortgagee or take steps to clear the mortgage, it was clear that the defendant was attempting to wriggle out of the agreement. Further, the plaintiff's readiness and willingness was proved by the fact that he has necessary funds as on the date of the agreement, and thereafter, as was stated by him in his letter dated 18.12.2002. This being the case, the Court ordered specific performance as the balance sale consideration had already been deposited into the Court on the date of the filing of the Suit. The first appeal from the aforesaid judgment was dismissed on 20.12.2010 by the Principal District Judge. The District Judge found concurrently for the plaintiff on all the points argued and hence dismissed the first appeal.*

*7. By the impugned judgment, the High Court reversed the concurrent judgments and held, on a construction of the agreement, that since only three months were given to complete the sale transaction, time was of essence. It also went on to hold that the two letters dated 18.12.2002 and 19.12.2002 could not have been said to have been served on the defendant and hence were not proved. The High court recorded the defendant's advocate's statement that it was not going into other aspects except that plaintiff was not ready and willing throughout to perform the sale agreement. Despite this, the High Court held that since the Suit itself was filed belatedly, it would not be enough for the plaintiff to show that he had the necessary funds. It would also have been necessary for him to show that he was otherwise ready and willing throughout, which cannot be said to be correct considering that there was a long time gap between 22.09.2002 and 07.07.2003 inasmuch as the intermediate letters/notices were not proved. The High Court also further stated that the property value was Rs.10*



*lakhs on the date of the sale agreement, though this was not proved by the defendant, and then went on to state that since readiness and willingness had to be held against the Plaintiff, and since the Suit itself was belated, specific performance cannot be granted on the facts of this case and, as stated earlier, reversed the concurrent findings of the Courts below.*

*8. We have heard learned counsel for the appellant.*

*9. The High Court has, in the second appeal, obviously gone wrong on a number of counts. First, to hold that time was of essence in the agreement, is wholly incorrect. Clause 3 has to be read along with clauses 5 and 8, which clearly show that in the nature of reciprocal promises, the promise made by the seller in clause 5 has to be performed first, viz., that the title documents have to be obtained from the mortgagee after the mortgage is cleared. It is only then that the consideration above Rs.70,000/-, being the balance consideration for the sale, has to be paid. Secondly, the High court is wholly incorrect in stating that the two letters of 18.12.2002 and 19.12.2002 cannot be said to have been proved. Both the letters were registered A.D. letters sent to the very address of the defendant, which the defendant states is the address on which it received the legal notice dated 07.07.2003. Further, the moment the registered letter once sent is returned with the remarks mentioned hereinabove, it shall be deemed to have been served on the defendant on the address so stated, unless the contrary is proved. The defendant did not come forward with anything to show that this was not the proper address. In fact, that this is the proper address is shown by the fact that he acknowledged the receipt of the legal notice dated 07.07.2003 on this very address.*



10. *The High Court order is not correct in stating that readiness and willingness cannot be inferred because the letters dated 18.12.2002 and 19.12.2002 had not been sent to the defendant. The High Court also erred in holding that despite having the necessary funds, the plaintiff could not be said to be ready and willing. In the aforesaid circumstances, the High Court was also incorrect in putting a short delay in filing the Suit against the plaintiff to state that he was not ready and willing. In India, it is well settled that the rule of equity that exists in England, does not apply, and so long as a Suit for specific performance is filed within the period of limitation, delay cannot be put against the plaintiff – See **Mademsetty Satyanarayana v. G. Yelloji Rao and others AIR 1965 Supreme Court 1405** (paragraph 7) which reads as under:*

*“(7) Mr. Lakshmaiah cited a long catena of English decisions to define the scope of a Court’s discretion. Before referring to them, it is necessary to know the fundamental difference between the two systems-English and Indian-qua the relief of specific performance. In England the relief of specific performance pertains to the domain of equity; in India, to that of statutory law. In England there is no period of limitation for instituting a suit for the said relief and, therefore, mere delay – the time lag depending upon circumstances – may itself be sufficient to refuse the relief; but, in India mere delay cannot be a ground for refusing the said relief, for the statute prescribes the period of limitation. If the suit is in time, delay is sanctioned by law; if it is beyond time, the suit will be dismissed as barred by time; in either case, no question of equity arises.” **emphasis supplied***



38. The above pronouncement also demolishes the argument of the defendant to the effect that the plaintiff had filed the suit at the fag end of expiry of limitation.

39. In the facts and circumstances of the present case, reference may be made to another judgment of the Hon'ble Supreme Court in '**Laxman Tatyaba Kankata and another vs. Smt. Taramati Harishchandra Dhatrak Law Finder Doc Id # 212000**'. The relevant paras read as under:-

*"10. The findings and the conclusions of fact and law arrived at by the Courts were affirmed by the High Court which sustained the decree passed by the First Appellate Court. The learned counsel appearing for the appellants vehemently argued that the decree for specific performance could not have been passed by the Courts against the appellants, as the property was mortgaged to the cooperative society, and the property being under the charge of the society, no title could be passed in favour of the respondent. Secondly, it was contended that the Courts have failed to appreciate the evidence in its correct perspective and the judgment under appeal is liable to be set aside. Lastly, it was contended that during the pendency of the proceedings, the value of the land has increased tremendously and it would be unjust and unfair to pass a decree for specific performance in favour of the respondent.*

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*13. In the present case, the appellants have neither claimed any issue nor led any evidence before the Court to substantiate even this plea. Furthermore, the learned First Appellate Court while relying upon the judgment of this Court in the case of **Nathulal v. Phoolchand [ AIR 1970 Supreme Court 546]**, had dealt with both these contentions rightly and in accordance with the law. We see no reason as to how a presumption can*



*be raised against the respondent on face of the fact that the appellants chose not to lead any evidence on either of these aspects. These contentions raised on behalf of the appellants are, therefore, without any substance. The learned counsel appearing for the appellants drew our attention to Section 13(1)(c) of the Specific Relief Act, 1963 (for short 'the Act'), which clearly postulates that where a person contracts to sell immovable property with an Imperfect title and the property is encumbered for an amount not exceeding the purchase money, the purchaser has the right to compel the seller to redeem the mortgage and obtain a valid discharge and then specifically perform the contract in its favour. Even from this point of view, the right of the present respondent is fully protected."*

40. Even the argument of learned Senior Counsel for the appellant to the effect that the target date of 30.05.2006 was not held sacrosanct by the plaintiff in view of the deeming extension given by the plaintiff is untenable in the face of admitted fact that 30.05.2006 was a public holiday; and, therefore, admittedly the plaintiff had made himself available on the immediate next date 31.05.2006.

41. Further, the relevant findings of the Id. first appellate Court are contained in paras 11, 12, 13, and 16 of the judgment and decree dated 26.04.2013, which read as under:-

*"11. The parties also admit that the target date fixed for execution of the agreement was 30.05.2006 which was a holiday on account of Maharana Partap Jayanti. Both parties contend that they appeared before the Sub Registrar, Ballabgarh to fulfill their part of the agreement and it was the other party which had not appeared due to which the sale-*



*deed could not be executed. In support of their claim, the respondent has placed on record affidavit, Ex. P-7, while the appellant has produced on record the affidavit, Ex. D-4. Both these documents have been duly attested by the office of the Sub Registrar, Ballabgarh. This Court is at a complete loss to appreciate how the office of the Sub Registrar, Ballabgarh could have attested both these affidavits on the same day. If both these parties were present on 31.05.2006 in the office of the Sub Registrar, there was no reason for not executing the sale-deed. This fact reflects the negligent working of the said office and the same is strongly deprecated.*

*Be that as it may, the fact remains that the parties had apparently gone to the office of the Sub Registrar, Ballabgarh but for reasons best known to them, the sale-deed was not executed as they claimed that they had not met each other. The respondent has produced on record copy of the Jamabandi for the year 2001-02, Ex. P-8, which reflects that the mortgage on the land had not been cleared by the owner Tej Singh when the said copy was issued on 29.05.2006. This means that even a day prior to the target date (30.05.2006), the appellant had not got the mortgage redeemed. There is nothing on record to show that he had got the mortgage redeemed before 31.05.2006 on which date the parties next appeared before the Sub Registrar. In fact, the version of the appellant is that he had called upon the respondent vide reply, Ex. D-2 (same as Ex. P-6) calling upon him to appear before the Sub Registrar on 22.06.2006 to get the sale-deed executed. However, there is nothing on record to show that the mortgage was redeemed by them or that it has even been redeemed as on date. In these circumstances, the Ld. Trial Court rightly rejected the version of the appellant.*



12. Further the contention of the appellant is that he would have cleared the mortgage after obtaining the balance payment from the respondent and there was an oral agreement between the parties to this effect. This is a completely unacceptable argument because as per clause(s) 10 of the agreement, Ex. P-1, the appellant was required to redeem the mortgage prior to the target dated 30.05.2006. No oral agreement between the parties could have over-ridden this clause. In any case, the respondent denied any such agreement and the appellant has failed to prove the same. In these circumstances, the contention of the appellant that it is the respondent who is responsible for not getting the sale-deed executed is completely false as per record, rather it is apparent that it is the appellant who had defaulted in getting the sale-deed executed.

13. The next argument of the appellant was that the respondent had never been ready and willing to perform his part of the agreement and that he never had sufficient money to get the sale-deed executed. This contention of the appellant is also liable to be rejected as the respondent was not bound to give a detailed a detailed account down to the last penny regarding the balance sale consideration. In any case, aside from the stray statement of the respondent in the cross-examination, there is no other corroborative material on record to show that he was lacking in funds to get the sale-deed executed. Thus the Ld. Trial Court rightly disbelieved the appellant on all the above issues and held that the respondent had always been ready and willing to perform his part of the agreement.

XXX XXX XXX XXX

16. In view of the foregoing discussion, the appeal is dismissed and the cross-objections are allowed with costs.



*Consequently, the suit filed by the respondent is decreed for possession by way of specific performance of the agreement to sell dated 23.11.2005. The appellant is directed to clear the mortgage with the Syndicate Bank, Seekri, within fifteen days of the passing of this judgment and thereafter, he shall be liable to get the sale-deed executed in favour of the appellant within thirty days thereof on payment of balance sale consideration by the respondent/plaintiff.*

*In case of the appellant/defendant's failure to redeem the mortgage within fifteen days from today, the respondent shall be entitled to clear the mortgage on the suit property by depositing the requisite amount with the Syndicate Bank, Seekri. The remaining amount of sale consideration due to the appellant after clearance of the mortgage shall be paid to him thereafter, and the appellant shall then be liable to execute the sale-deed of the suit land in favour of the respondent/plaintiff."*

42. I find no error whatsoever in the above reasoning of the learned First Appellate Court. In view of the above facts, the present regular second appeal is hereby **dismissed**.

43. Pending applications, if any, stand disposed of.

**18.03.2025**

Divyanshi

**(NIDHI GUPTA)  
JUDGE**

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No