

CASE NO.:
Appeal (civil) 4223 of 2006

PETITIONER:
Faquir Chand and Anr.

RESPONDENT:
Sudesh Kumari

DATE OF JUDGMENT: 21/09/2006

BENCH:
Dr. AR. Lakshmanan & Tarun Chatterjee

JUDGMENT:
JUDGMENT

Dr. AR. Lakshmanan, J.

Leave granted.

The unsuccessful defendant is the appellant before us. The respondent herein filed a suit for specific performance or in the alternative for damages. All the three courts below, on a consideration of the entire materials placed, both oral and documentary, decreed the suit for specific performance. Before us Mr. Amar Vivek, learned counsel for the appellants argued that in the absence of pleading to readiness and willingness to execute a sale deed; the suit for specific performance of an agreement cannot be decreed. We have carefully gone through the judgments rendered by the three courts below. The High Court on a consideration of the entire material placed before it was of the view that no interference was called for in the second appeal.

The learned counsel for the appellant at the time of hearing, placed reliance on Section 16 of the Specific Relief Act. In order to appreciate the rival submissions, Section 16(c) needs to be quoted along with explanation. The same reads as follows:

"16. Personal bars to relief :- * * * * *

(a) - (b) * * * * *

(c) Who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance which has been prevented or waived by the defendant.

Explanation - For the purposes of clause (c) -

(i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court;

(ii) the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction."

The language under Section 16(c) of the Act, in our view, does not require any specific phraseology but only that the plaintiff must aver that he has performed or has always been ready and willing to perform his part of the contract. Therefore, the compliance with the readiness and willingness has to be in spirit and substance and not in letter and form. The continuous readiness willingness could very well be seen in the instant case from the conduct of the plaintiff as a whole. The first agreement was entered into

between the parties on 17.6.1985 and the last date to execute the sale deed was 14.11.1985. The second agreement was executed on 9.4.1987 and the last date to execute the sale deed was 13.6.1987. Again, the time was extended at the instance of the defendant up to 30.10.1987. Since the sale deed was not executed, the respondent herein was compelled to file the suit on 26.11.1987. Thereafter, the appellant herein issued a notice to the plaintiff, respondent herein, on 7.1.1988 and at Exhibit 'P-5'. It is also not in dispute that the respondent herein has deposited the entire sale consideration into the Court on 18.5.1999. He was also present in the Registrar's office for registration of the document. However, the appellant-defendant was not present at the Registrar's Office. A careful perusal of the pleadings, the evidence and the documents filed in this case would only go to show that the respondent-plaintiff was ever ready and willing to perform his part of the obligation under the agreement. The decree passed by the High Court confirming the decree of the lower courts does not suffer from any infirmities. We, therefore, have no hesitation to dismiss the appeal.

The learned counsel for the appellant cited judgment of this court in *Kanshi Ram v. Om Prakash Jawal and Ors.*, reported in [1996] 4 SCC 593, and submitted that rise - in price of the property during the pendency of the suit should also be taken into consideration and the courts below ought to have refused to decree the suit for specific performance and ought to have exercised its jurisdiction in passing an order of granting alternative prayer for damages. It is now submitted that at the Bar that the property value has gone up several times and that if the property is sold it would fetch more than Rs. 65-70 lakhs. We do not propose to go into the correctness of this submission in regard to the valuation of the suit property. To some extent, the delay is also attributable to the respondent herein. Therefore, in our view, the appellant-defendant is to be suitably compensated. We therefore, direct the respondent herein to pay the appellant herein a sum of Rs.100,00/- (Rupees one lakh only) within three months from today, failing which the suit filed by the respondent herein for specific performance shall stand dismissed automatically. If the amount is paid within the time as stipulated, the appellant herein shall execute the sale deed in favour of the respondent herein without any further delay. We also make it clear that on execution of the sale deed, the appellant-defendant shall also handover peaceful, vacant possession of the suit property to the respondent herein. The appellant-defendant will be at liberty to withdraw the amount, which has already been deposited by the respondent in the Court.

The Civil Appeal stands disposed of accordingly with no orders as to costs.