
Before Ajay Kumar Mittal, J.

DHARAMPAL SOOD,—Appellant

versus

ATUL THAPAR,—Respondent

R.S.A. No. 2264 of 2005

21st February, 2006

Specific Relief Act, 1963—Sections 20 and 21—Execution of agreement to sell admitted—Defendant failing to perform his part of the contract—Concurrent findings of fact recorded by both the Courts below holding plaintiff entitled to specific performance of the agreement of sale—Discretion of the Court to decree a suit for specific performance—Court is not bound to pass such a decree merely because it is lawful to do so—Discretion has to be exercised keeping in view the facts of the case and to do justice between the parties—Plaintiff always ready and willing to perform his part of contract—Defendant failing to perform his part of contract—Default on the part of the defendant—Appeal dismissed, judgments and decrees of both the Courts below upheld.

Held, that a bare reading of Section 20 of the Act shows that the discretion has been conferred on the court to decree a suit for specific performance and the court is not bound to pass such a decree merely because it is lawful to do so but the discretion has to be exercised in a judicial and reasonable manner and should not be arbitrary. The discretion has to be exercised keeping in view the facts of the case and to do justice between the parties. Sub-Section (2) of the said Section clearly enumerates the cases in which the Court should not exercise discretion in passing a decree for specific performance. Sub-section (3) provides wherein the court may exercise discretion to decree specific performance where the plaintiff has done substantial acts and suffered losses in consequence of a contract which is capable of specific performance. The court under sub-section (4) shall not refuse specific performance merely on the ground that the contract is not enforceable at the instance of the other party. Section 21 of the Act provides for jurisdiction of the Court to award compensation in certain cases.

(Paras 16)

Further held, that the plaintiff-respondent before 1st December, 1993 had called upon the defendant—appellant through registered notice, under postal certificate and telegraphic notice conveying his willingness to pay the balance amount and also that the defendant should collect the amount and perform his part of contract. The plaintiff-respondent also got prepared two drafts of Rs. 4 lacs i.e. one draft of Rs. 3 lacs drawn on Canara Bank, Ludhiana and second draft of Rs. 1 lac drawn on Punjab National Bank, Ludhiana in favour of the defendant which were payable at Chandigarh. The plaintiff, however, did not receive any reply from the defendant. It was the defendant who asked for more time to perform his part of contract and the date was mutually extended till 4th December, 1993. The plaintiff had even sent a notice on 2nd December, 1993 calling upon the defendant to perform his part of contract but the defendant had failed. The findings of fact recorded by both the courts below that the plaintiff was ready and willing to perform his part of contract shows the *bona fide* of the plaintiff and there is no misreading or misappreciation of evidence warranting interference in the said findings in this regular second appeal. The courts below had, thus, rightly decreed the suit for possession by specific performance.

(Para 17 & 18)

Ashok Aggarwal, Senior Advocate with N.K. Joshi, Advocate
and Mukul Aggarwal, Advocate *for the appellant*.

A.K. Chopra, Senior Advocate with Sanjiv Sharma and
Deepinder Malhotra, Advocates *for the respondent*.

JUDGMENT

AJAY KUMAR MITTAL, J.

(1) This Regular Second appeal filed by the appellant-defendant (hereinafter referred to as “defendant”) is directed against the judgment and decree dated 14th March, 2005 passed by the District Judge, Ludhiana whereby the appeal preferred against the judgment and decree dated 20th December, 2001 passed by Civil Judge (Junior Division) Ludhiana decreeing the suit of the respondent-plaintiff (hereinafter referred to as “plaintiff”) for possession by specific performance, has been dismissed.

(2) Succinctly stated, the plaintiff filed a suit for decree of possession by specific performance of plot No. 68-D, measuring 250 square yards situated in Bhai Randhir Singh Nagar, Ludhiana shown in red colour in the site plan attached with the plaint and undisputedly, owned and possessed by the defendant. It was averred in plaint that the defendant with a view to sell the said plot to the plaintiff entered into an agreement for its sale/transfer in his favour for a consideration of Rs. Five lacs. A sum of Rs. One Lac was paid to the defendant as advance by the plaintiff. A written agreement containing all terms and conditions was executed between the parties, which was signed on 8th September, 1993. It was stipulated in the agreement that the balance amount of Rs. Four Lacs will be paid by 1st December, 1993 and all formalities and documents for effective transfer/sale shall be executed and the possession of the plot delivered at the time of payment of the balance amount. It was also agreed that all expenses in that regard will be borne by the plaintiff whereas the defendant shouldered the responsibility of completion of the documents. It was further averred that the deal to sell the plot was struck through the office of M/s Vikas House Building Company Private Limited, Ludhiana and the plaintiff was willing to perform his part of contract and ready with money. The plaintiff contacted the defendant at Chandigarh on 25th November, 1993 and also requested him to do the needful. But the defendant wanted more time and consequently the time limit as mentioned in the agreement dated 8th September, 1993 was extended to 4th December, 1993 in regard to which an endorsement was also made on the second page of the agreement which was signed by the parties and the witness. It was also averred that the plaintiff in performance of his part of contract got prepared two bank drafts i.e. one in the sum of Rs. Three Lacs and the other of Rs. One lac to show his *bona fide* in that regard. The plaintiff also issued registered notice as well as notice under Postal Certificate to the defendant informing him that the remaining amount of sale consideration was ready with him and also requested the defendant to reach the office of M/s Vikas House Building Company at 10 A.M. on 2nd December, 1993 so that remaining formalities were completed and documents executed. Since the defendant still failed to perform his part of the contract, the plaintiff issued registered notices to the defendant calling upon him to do the needful as agreed,—*vide* agreement to sell and, even contacted the defendant on 5th December, 1993 and also tendered a sum of

Rs. Four lacs to him, but he refused to perform his part of the contract. This led to the filing of the suit for decree of possession by specific performance.

(3) The defendant contested the suit by filing written statement. In the preliminary objections raised in the written statement, it was stated that the agreement relied upon by the plaintiff was invalid and void. The date for execution of the sale deed was neither settled nor stipulated in the alleged agreement as the father of the plaintiff told that a fresh agreement will be executed after consulting his son i.e. the present plaintiff as he himself was not authorized to settle all the terms and conditions. Since the alleged agreement was signed by the father of the plaintiff at Chandigarh, the Civil Court at Ludhiana had no jurisdiction. On merits, however, the defendant admitted having received a sum of Rs. One lac from the father of the plaintiff. It was stated to be incorrect and false that the remaining amount of Rs. Four Lacs was to be paid by the plaintiff to the defendant as per the alleged agreement. In fact, as per the said agreement, a sum of Rs. Three lacs and fifty thousand was to be paid by the plaintiff to the defendant by 1st December, 1993 and the remaining amount of Rs. 50,000 was to be paid when the formalities like obtaining No Objection Certificate and sanctioning of house plan were completed. It was specifically stated that the plaintiff never paid Rs. 3.50 lacs as stipulated. The defendant was always ready and willing to execute the sale deed and no other formalities, as alleged by the plaintiff, remained to be completed or complied with. It was also stated that question of delivery of possession of the plot in dispute did not arise as the plaintiff had failed to comply with the commitment regarding payment of the balance amount. It was further specifically denied that the plaintiff was ready and willing to perform his part of the contract and was also guilty of breach of the agreement and the amount of Rs. One Lac paid by the plaintiff stood forfeited on the date when the default was committed by him on 4th December, 1993. It was also stated that the defendant contacted the plaintiff at Chandigarh on 25th November, 1993 who told him that he had been able to arrange a sum of Rs. 2.5 lacs only and could not pay the amount as stipulated in the said agreement and therefore, the date of execution of sale deed be extended. Accordingly, the date of execution of sale deed was extended from 1st December, 1993 to 4th December, 1993. It was denied for want of knowledge that the plaintiff was ready

with money in the shape of bank drafts which fact has come to defendant's knowledge only after going through the plaint and this ground deemed to have been taken with a *mala fide* intention and to create a defence against the defendant. In the end it was stated that the suit filed by the plaintiff was misconceived and even if it was stated that the plaintiff could claim was that he can ask for refund of Rs. One lac paid by him in advance.

(4) The plaintiff filed a detailed replication controverting the pleas raised in the written statement and reiterating those taken in the plaint.

(5) These rival contentions between the parties gave raise to the following issues.

1. Whether the defendant had executed sale agreement dated 8th September, 1993 in favour of the plaintiff and had received Rs. One lac as earnest money ? OPP
2. Whether the plaintiff has been and still ready to perform his part of the contract ? OPP
3. Whether the plaintiff is entitled to the specific performance of the alleged sale agreement? OPP
4. Whether the agreement in dispute is invalid, void as alleged in the written statement ? OPD
5. Whether this court has no territorial jurisdiction to entertain and try the suit ? OPD
6. Whether the plaintiff has no cause of action to file the suit ? OPD
7. Relief."

(6) The trial Court decided issue No. 1 in favour of the plaintiff and issue No. 4 was decided against the defendant holding that the defendant had executed the agreement of sale dated 8th September 1993 in favour of the plaintiff and had received Rs. One lac as earnest money and further that once the defendant had admitted that he was bound by the terms and conditions of the said agreement and the question of that agreement being invalid or void did not arise. Under issue No. 2, it was found by the trial Court that the defendant was

not ready and willing to perform his part of the contract whereas the plaintiff was ready and willing to do so and was also ready with money for payment to the defendant. Issue No. 3 was decided in favour of the plaintiff holding that he was entitled to specific performance of the agreement of sale dated 8th September, 1993. Issues 5 and 6 were not pressed. On the basis of these findings, suit of the plaintiff was decreed with costs. The defendant was directed to get the sale deed executed within one month after the payment of balance sale consideration was made by the plaintiff and the plaintiff was also granted two months' time to make the payment of the balance sale consideration, from the date of the decree i.e 20th December, 2001.

(7) The findings returned by the trial court were affirmed by the first appellate Court and consequently the appeal filed by the defendant was dismissed. This is how, the defendant has preferred this second appeal.

(7-A) Mr. Ashok Aggarwal, learned senior counsel, submitted that under Sections 20 and 21 of the Specific Relief Act, 1963 (in short "the Act"), the Court has discretion whether or not to decree suit for specific performance and keeping in view the facts of the present case, the discretion has not been properly exercised by the courts below and the suit has been erroneously decreed. According to the learned counsel, the Courts below have failed to look into the admissions made by the plaintiff and, therefore, the findings are vitiated as failure to consider an evidence vitiates the findings. Lastly, the learned counsel submitted that the court should not decree a suit for specific performance merely when an execution of agreement and its breach is proved. The courts are duty bound to adhere to the provisions of Section 20 and 21 of the Act before deciding the suit and consider the various circumstances of the case and should decline the relief if it was inequitable to grant the same. Learned counsel cited the judgments reported in **A.C. Arulappan versus Ahalya Naik (Smt.) (1)** and **Veluyddhan Sathyadas versus Govindan Dakshyani (2)** in support of his submissions.

(8) Elaborating his submissions, he emphasized that as per clause 2 of the agreement, the stipulation clearly provided that the

(1) (2001) 6 S.C.C. 600

(2) 2003 (1) RCR (Civil) 28 (S.C.)

plaintiff was required to pay the entire consideration mentioned therein before 4th December, 1993 and admittedly, the plaintiff having failed to perform the said condition, the relief to the plaintiff was liable to be moulded under Sections 20 and 21 of the Act.

(9) He submitted that the respondent-plaintiff had himself failed to perform his part of the contract i.e. to tender the balance payment of sale consideration by due date whereas the obligation on the part of the defendant-appellant to obtain no objection certificate, sanctioning of house plan had been completed by him before the said date and this fact had been admitted by the plaintiff-respondent (PW-4) and, therefore the finding of the lower appellate court that the appellant-defendant did not take any step for performance of his part of the contract was factually incorrect and against the record.

(10) He referred to exceptions as provided under Section 20(2) of the Act and by referring to the conduct of the plaintiff-respondent submitted that the present case fell under those exceptions and the suit should not have been decreed. According to him, the plaintiff-respondent had no money to make the balance payment of sale consideration and in fact the demand drafts in question (Ex. P1/A) had been prepared from the account of M/s Vikas Housing Society. Moreover, the plaintiff-respondent himself admitted this fact in his testimony as P.W. 4. The demand drafts which were got prepared but never tendered were only to create evidence. Further, the story of preparation of demand drafts on 25th November, 1993 and 27th November, 1993 and notices and telegrams issued on 28th November, 1993 (Ex. P.W. 4/5 Ex. P.W. 4/7) before cut off date clearly proves the *mala fide* intention of the plaintiff respondent. He also laid stress on the plea that the plaintiff-respondent has knowingly sent the notice and telegram at the wrong address whereas he knew the correct address and visited the appellant-defendant there. Therefore, the case fell under exception to Section 20(2) of the Act.

(11) Alternatively, the counsel submitted that in view of clause 5 of the agreement (Ex.P1) which contained penalty clause in case of default on the part of the seller should have been invoked in this case in the present facts. He also submitted that since the terms of the agreement have been violated by the plaintiff, even Rs. One lac which was paid as earnest money was liable to be forfeited.

(12) Mr. A.K. Chopra, learned senior counsel for the respondent has vehemently opposed the appeal and submitted that both the courts below on appreciation of evidence on record have come to the unimpeachable finding of fact that the agreement dated 8th September, 1993 was executed between the parties and that the plaintiff was ready and willing whereas the default was on the part of the defendant not to perform his part of contract ; the courts below have rightly decreed the suit of plaintiff. He also submitted that this Court in second appeal would not exercise discretion under Sections 20 and 21 of the Act in favour of the defendant as suggested by the learned counsel for the defendant especially in the light of the fact that the overwhelming evidence shows the *bona fide* conduct of the plaintiff whereas the defendant-appellant did not act honestly.

(13) Learned counsel submitted that once an execution of agreement is admitted then it should be honoured and further the defendant never took any steps to inform the plaintiff about his willingness and change of address whereas a perusal of the written statement on the other hand shows that the defendant-appellant had made efforts to deny the agreement itself and the conduct of the defendant is thus *mala fide*. The conduct of the defendant and facts of the case warrant this court not to exercise discretion under Sections 20 and 21 of the Act as claimed by the appellant-defendant. Moreover, the plaintiff had prepared the demand drafts well before the due date.

(14) He also submitted that the defendant-appellant has referred to part of the statement of the plaintiff which was out of context and the entire statement should be read as a whole. He also submitted that the entire evidence of the plaintiff has been appreciated by the trial court in paras 43 to 47 and by the first appellate court in paras 22 and 26 of the judgment and both the courts below have concurrently recorded a finding of fact on that basis which should not be disturbed by this court in second appeal as neither there is any misreading nor is there non-consideration of material evidence. At the end he supported the judgments of both the courts below and prayed that this appeal may be dismissed as it did not raise any substantial question of law.

(15) I have heard learned counsel for the parties and with their assistance have perused the record.

Sections 20 and 21 of the Act read as under :—

20. Discretion as to decreeing specific performance.—(1) The jurisdiction to decree specific performance is discretionary, and the Court is not bound to grant such relief merely because it is lawful to do so ; but the discretion of the Court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a Court of appeal.
- (2) The following are cases in which the Court may properly exercise discretion not to decree specific performance—
- (a) where the terms of the contract or the conduct of the parties at the time of entering into the contract or the other circumstance under which the contract was entered into are such that the contract though not voidable gives the plaintiff an unfair advantage over the defendant ; or
 - (b) where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff ;
 - (c) where the defendant entered into the contract under circumstances which though not rendering the contract voidable, makes it inequitable to enforce specific performance.

Explanation 1. Mere inadequacy of consideration, or the mere fact that the contract is onerous to the defendant or improvident in its nature, shall not be deemed to constitute an unfair advantage within the meaning of clause (a) or hardship within the meaning of clause (b).

Explanation 2. The question whether the performance of a contract would involve hardship on the defendant within the meaning of clause (b) shall, except in cases where the hardship has resulted from any act of the plaintiff subsequent to the contract, be determined with reference to the circumstances existing at the time of the contract.

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- (3) The Court may properly exercise discretion to decree specific performance in any case where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.
- (4) The Court shall not refuse to any party specific performance of a contract merely on the ground that the contract is not enforceable at the instance of the other party.
21. *Power to award compensation in certain cases.*—(1) In a suit for specific performance of a contract, the plaintiff may also claim compensation for its breach, either in addition to, or in substitution of, such performance.
- (2) If, in any such suit, the Court decides that specific performance ought not to be granted, but that there is a contract between the parties which has been broken by the defendant, and that the plaintiff is entitled to compensation for that breach, it shall award him such compensation accordingly.
- (3) if, in any such suit, the Court decides that specific performance ought to be granted, but that it is not sufficient to satisfy the justice of the case, and that some compensation for breach of the contract should also be made to the plaintiff, it shall award him such compensation accordingly.
- (4) In determining the amount of any compensation awarded under this section, the Court shall be guided by the principles specified in section 73 of the Indian Contract Act, 1872 (9 of 1872).
- (5) No compensation shall be awarded under this section unless the plaintiff has claimed such compensation in his plaint :—

Provided that where the plaintiff has not claimed any such compensation in the plaint the Court shall, at any stage of the proceeding, allow him to amend the plaint, on such terms as may be just, for including a claim for such compensation.

Explanation.—The circumstance that the contract has become incapable of specific performance does not preclude the Court from exercising the jurisdiction conferred by this section.

(16) A bare reading of Section 20 of the Act shows that the discretion has been conferred on the court to decree a suit for specific performance and the court is not to decree a suit for specific performance and the court is not bound to pass such a decree merely because it is lawful to do so but the discretion has to be exercised in a judicial and reasonable manner and should not be arbitrary. The discretion has to be exercised keeping in view the facts of the case and to do justice between the parties. Sub-section (2) of the said section clearly enumerates the cases in which the Court should not exercise discretion in passing a decree for specific performance. Sub-section (3) provides wherein the Court may exercise discretion to decree specific performance where the plaintiff has done substantial acts and suffered losses in consequence of a contract which is capable of specific performance. The court under sub-section (4) shall not refuse specific performance merely on the ground that the contract is not enforceable at the instance of the other party. Section 21 of the Act provides for jurisdiction of the Court to award compensation in certain cases.

(17) The facts of the present case show that the plaintiff-respondent before 1st December, 1993 had called upon the defendant-appellant through registered notice, under postal certificate and telegraphic notice conveying his willingness to pay the balance amount and also that the defendant should collect the amount and perform his part of contract. The plaintiff-respondent also got prepared two drafts of Rs. 4 lacs i.e. one draft of Rs. 3 lacs drawn on Canara Bank, Ludhiana and second draft of Rs. 1 lac drawn on Punjab National Bank, Ludhiana in favour of the defendant which were payable at Chandigarh. The plaintiff, however, did not receive any reply from the defendant. It was the defendant who asked for more time to perform his part of contract and the date was mutually extended till 4th December, 1993. The plaintiff had even sent a notice on 2nd December, 1993 calling upon the defendant to perform his part of contract but the defendant had failed. Further, the learned lower appellate court in paras 22 to 26 has observed as under :—

“22. In paragraph No. 2 of his written statement the defendant-appellant has alleged that he was always ready and willing to execute the sale deed, whereas in paragraph No. 6 of his written statement he has asserted that even if it is held that the said agreement was valid, then the maximum

relief the plaintiff could claim was for refund of Rs. One lakh given as advance and another amount of Rs. One lakh for default and that the suit for specific performance could have not been filed and it does not lie. Obviously right from the beginning i.e. the date of filing of this written statement it was the intention of the defendant-appellant to back out from the performance of his part of the agreement, Ex. P1/A, dated 25th November, 1993 is a copy of the demand draft for a sum of Rs. 3 Lakhs in the name of Dharam Pal Sood (referring to the defendant-appellant). Ex. P2 purports to be a copy of another demand draft dated 27th November, 1993 for Rs. One lakh in favour of Dharam Pal Sood (defendant). Raj Kumar, P.W. 1. Record Keeper, Canara Bank, Rajpura Road, Ludhiana, while deposing from the record has solemnly affirmed that the demand draft No. 7447103, dated 25th November, 1993 for Rs. 3 lakhs was issued by Canara Bank, Rajpura Road, Ludhiana branch in favour of Dharam Pal Sood and it was account payee draft and that he has brought the original draft issuing register copy of which is Ex. P. 1. He has also proved Ex. P. 1/A Photo stat copy of the demand draft. Ved Parkash Nahar P.W. 2, Clerk, Punjab National Bank, Sarabha Nagar, Ludhiana, while deposing from the record has deposed that draft No. 243647 dated 27th November, 1993 for Rs. One Lakh in favour of Dharam Pal Sood payable at Punjab National bank, Chandigarh and that Ex. P.2. is photo stat copy of the same. Atul Thapar P.W. 4 plaintiff has testified that, "I have always remained ready and willing to perform my part of contract and I am still ready and willing to perform my part of the contract." So has been mentioned in the plaint. Ex. PW. 4/8 is a certified copy of the telegram to the address of Dharam Pal Sood (defendant) purporting to have been issued by the counsel for the plaintiff. As per the contents thereof the plaintiff had got prepared the drafts. By this telegram the defendant was called upon by the plaintiff through his counsel to reach the office of Vikas House Building Company at 10 A.M. on 2nd December, 1993 or at any time by 4th December, 1993. In identical terms is Ex. P.W. 4/7 the certified copy of the telegram. Further Ex. P.W. 4/9 copy

of notice purporting to have been issued by the plaintiff through his counsel to the defendant reveals that the defendant was informed that the plaintiff has got prepared drafts to perform his part of the contract and he was called upon to reach the above mentioned Company on 2nd December, 1993 or at any time by 4th December, 1993 under prior intimation. Ex. P.W. 4/6 is also a certified copy of the telegram. Ex. P.W. 4/5 is a copy of the notice dated 27th November, 1993 purporting to have been served by the plaintiff through his counsel upon the defendant. A glance through this copy of notice would reveal that this notice was sought to be served upon the defendant on two addresses i.e. House No. 123, Sector 42-B, Chandigarh or House No. 26, Sector 21-A, Chandigarh. Dharam Pal Sood defendant-appellant in his cross-examination has deposed that, I was living in Sector 42-B, House No. 1238 in September, 1993 in Chandigarh. I occupied the said house in January, 1993 and I vacated the same in the beginning of 1996. Prior to January, 1993, I was staying with my son in house No. 26, Sector 21-A, Chandigarh. For a little while if it is assumed that the defendant was not residing in House No. 26, Sector 21, when this notice was issued notwithstanding it might have been received by his son who by all means in the natural course of conduct would have informed his father with regard to the receipt thereof. In his further cross examination the defendant has deposed that I did not send any notice to the plaintiff regarding change of my address." This gives giving inkling that he was all out to back track from the sale agreement. Had he been willing to perform his part of the contract he was obligated to inform his present address to the plaintiff, though the plaintiff took every precaution to serve the notice upon him at his above mentioned both addresses.

23. The defendant in his further cross examination went on to say that this agreement dated 8th September, 1993 is no more in force and that he does not want to transfer the property to the plaintiff in case he pays balance amount. In his further cross-examination he went on to say that "I do not want to refund the money of the plaintiff as he has

backed out of the agreement and that he has decided to retain his money for the first time in January 1993 when the plaintiff failed to perform his part and that he never informed this fact to the plaintiff." Palpably, this evidence gives rise to the presumption that the defendant as a matter of act was disinclined to perform his part of the contract and he has gone to the extent to forfeit even earnest money as is so manifest from his above extracted evidence, though as noted supra in paragraph no. 6 of his written statement he has averred that even if it is held that the said agreement was valid, then a maximum relief the plaintiff could claim was for refund. This in my estimation he has taken vacillating stand or in other words he went on shilly shallying and this apart as emanates from the above discussion he also kept dilly dallying the performance of his part of the contract. Thus to say the least of it, his conduct is deplorable.

24. The above discussion leaves no scope for doubt that the plaintiff had always been ready and willing to perform his part of the contract and even got prepared the drafts and issued telegrams and notices from time to time to the defendant for completion of formalities, whereas the defendant did not pay heed to his requests. To crown it all, as noticed earlier and admitted by the defendant in his written statement, the defendant has become owner of the property in dispute. He has not produced any evidence worth the name revealing any step taken by him for performance of his part of the contract. So, in no manner it can be imputed to the plaintiff that he was not ready and willing to perform his part of the contract.
25. The defendant in his cross-examination has deposed that, "I had paid the entire instalments to Adarsh House Building Society before this bargain was struck with the plaintiff and nothing remained to be paid to the Society." On interpreting these words he had become owner of the property in dispute. In his further cross examination he has deposed that "I am bound by the terms written in this agreement." In view of this evidence he cannot be permitted to blow hot and cold in the same breath.

26. In re : **His Holliness Acharya Swami Ganesh Dass Ji** (*supra*) the Hon'ble Supreme Court was pleased to observe that by readiness may be meant the capacity of the plaintiff to perform the contract which includes his financial position to pay the purchase price and for determining his willingness to perform his part of the contract the conduct has to be properly scrutinised and that the court may infer from the facts and circumstances whether the plaintiff was ready and was always ready and willing to perform his part of the contract. Coming to the facts of the current case, the above discussed documentary evidence let in by the plaintiff coupled with his oral statement as also the other oral evidence led by him go a long way in proving that he has always been ready and willing to perform his part of the contract and even now he is ready and willing to perform his part of the contract, whereas on the other hand, the defendants conduct speaks through his above quoted cross examination resiling from the performance of his part of the contract. So, to my mind no hole can be picked in the findings returned by the learned trial Court on issue No. 2 and consequently the same are affirmed."

(18) The findings of fact recorded by both the courts below that the plaintiff was ready and willing to perform his part of contract shows the *bona fide* of the plaintiff and there is no misreading or misappreciation of evidence warranting interference in the said findings in this regular second appeal. The courts below had, thus, rightly decreed the suit for possession by specific performance.

(19) Now advertng to the case law relied upon by learned counsel for the appellant, the law enunciated by the Apex Court in **A.C. Arulappan and Veluyudhan Sathyadas's cases** (*supra*) is well recognized. However, in the facts of the present case as noticed above, the same is of no help to the appellant.

(20) In view of the above facts, no error or illegality could be found in the judgments and decrees of the courts below.

(21) Finding no merit in this appeal, the same is hereby dismissed. No costs.