

**Specific Relief Act, 1963, Section 16(c) - Specific performance of a contract for sale of an immovable property - Mortgage - Suit premises had a mortgage over it - Suit property was encumbered and the sale deed, free from encumbrances, had to be executed after payment of the consideration - Court noted that there was no communication of the plaintiff with the defendant till the date on which the transaction was to be completed, showing his lack of willingness to perform the contract - In evaluating whether the respondent-plaintiff had established that he was 'ready and willing' to perform the contract.**

Held:

*"8. As regards suit for specific performance, the law is very clear that the plaintiff must plead and prove his readiness and willingness to perform his part of the contract all through i.e. right from the date of the contract till the date of hearing of the suit. If Respondent 1 was well aware about the encumbrance and the parties had chosen that the balance consideration be paid to the appellant before 20-3-2001 so that the sale deed could be registered without any encumbrance, it was for Respondent 1 to have taken appropriate steps in that behalf for completion of transaction. The facts on record disclose that the first step taken by Respondent 1 after the suit agreement was well after four months, when further amount of Rs 2 lakhs was paid on 21-1-2001. Thereafter nothing was done till 20-3-2001 by which the transaction had to be completed. The record is completely silent about any communication sent around 20-3-2001 towards completion of transaction. As a matter of fact the first step thereafter was six months after the deadline, namely, on 22-9-2001 when the communication (Ext. A-6) was sent along with amount of Rs 10 lakhs. The written submissions filed on behalf of Respondent 1 also do not indicate any steps till this time so as to say that he was all the while ready and willing to complete the transaction. 9. The assertion made by Respondent 1 in Para 7 of the plaint is a mere assertion without any relevant details as to what exactly he had done towards fulfilment of his obligations and completion of the transaction."*

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