

Specific Relief Act 1963, S. 16 – Willingness to pay – Mortgage – Encumbrance – Discharge of – Non payment by the seller on account of Mortgage – Agreement did not specify when the seller should discharge their mortgage – Buyer has alleged that he did not pay the balance consideration as the seller failed to remove the encumbrance on the suit property – Agreement to sell the suit property did not specifically record the mortgage over the suit property – However, neither has the seller denied the existence of the mortgage nor has the buyer claimed that he was unaware of the encumbrance over the suit property at the time of entering into the agreement – The agreement did not expressly detail whose liability it is to discharge the mortgage – Agreement stipulated that the buyer was to pay the balance consideration within a period of six months and “on receipt of the balance consideration”, the appellants were to execute the sale deed “pertaining to the property free from all encumbrances” – It is evident from the agreement that the liability to deliver the property free from any encumbrance was on the seller – However, this obligation is prefaced by the condition that the seller would be required to execute the sale deed free from encumbrance on the receipt of the balance consideration – Thus, the agreement did not specify when the seller should discharge their mortgage : before the expiry of six months, after receipt of the advance amount, or after receipt of the balance consideration – It only obligated them to ensure that after the balance consideration is received, the sale deed executed should be free from encumbrances – Based on a plain reading of the agreement, we are unable to accept the buyer’s plea that he was willing to perform his obligations under the [contract](#) – Buyer was required to pay the remaining consideration (or indicate his willingness to pay) and only then could have sought specific performance of the contract – Payment of additional amount of Rs. 10,000 by the buyer was to meet urgent family expenses and even assuming that the same was for release of mortgage, the agreement still required the buyer to pay the balance consideration – Agreement clearly provided that the balance consideration would be paid and then the sale deed would be executed – How the seller chose to discharge the mortgage was for them to decide – The buyer had to prove his readiness and willingness to perform the contract which he has failed to do so.

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