2025 PLRonline 408867 **= (2025-2)217 PLR 797 (SC) (SN)**

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SUPREME COURT OF INDIA
Present: Justice J.B. Pardiwala and Justice Manoj Misra
ANNAMALAI – Appellant
Versus
VASANTHI AND OTHERS – Respondents
C.A. No. 013076 – 013077 / 2025 (Arising out of SLP (C) Nos. 26848-26849 of 2018)

(i) Specific Relief Act, 1963 — Sections 10 and 20; Contract Act, 1872 — Section 55 — Specific performance of agreement for sale — Time not essence of contract — Waiver by subsequent conduct — Readiness and willingness — In contracts for the sale of immovable property, time is not ordinarily the essence. Where vendors accept additional consideration after the expiry of the time stipulated for performance, they waive their right to terminate the agreement on grounds of delay and treat the contract as subsisting. Such conduct, coupled with the payment of over 90% of the total consideration by the purchaser, is sufficient to establish the purchaser's readiness and willingness to perform their obligations under the contract. [Paras 14, 18-20, 22-24]

(ii) Specific Relief Act, 1963 — Sections 10 and 20 — Suit for specific performance — Maintainability — Declaration regarding invalid termination not required — A suit for specific performance is maintainable without seeking a separate declaration that the termination of the contract is invalid, where the termination itself is a void act. If vendors have waived their right to terminate and subsequently breach the contract by selling the property to a third party before issuing a termination notice, the notice is a nullity. The aggrieved party can ignore the void termination, treat the contract as subsisting, and sue directly for specific performance. [Paras 25-28, 32-33]

(iii) Evidence Act, 1872 — Section 114 — Presumption as to endorsement on registered document — Burden of proof — Once the signatures on a document acknowledging the receipt of money are admitted, a presumption arises under Section 114 that the endorsement was made for good consideration. The burden to rebut this presumption is heavily on the party who claims their signatures were obtained on blank paper, particularly when the endorsement is on the reverse side of a registered document. [Paras 15, 17]

(iv) Civil Procedure Code, 1908 — Section 100 — Second appeal — Interference with findings of fact — A High Court, exercising its jurisdiction under Section 100, cannot interfere with a finding of fact returned by the first appellate court unless it concludes that the finding is perverse, based on a misreading of evidence, or is in ignorance of relevant evidence. The High Court exceeds its jurisdiction if it sets aside a plausible finding of fact, such as the payment of additional consideration, without holding that finding to be perverse. [Paras 16-17, 20]

(v) Specific Relief Act, 1963 — Section 20 (prior to 2018 amendment) — Discretionary relief — Grounds for refusal — Claim not proved versus false claim — The discretionary relief of specific performance should not be denied merely because a plaintiff's claim, such as for possession, was not ultimately proved. A claim is considered 'false' only when the maker knows it to be incorrect. Where a plaintiff has

paid the vast majority of the consideration and is ready and willing to perform the contract, denying the equitable relief of specific performance on the ground of an unproven averment would be unjust, especially since a decree for specific performance ultimately entitles the plaintiff to possession. [Paras 38-39]

(vi) Specific Relief Act, 1963 — Section 19(b) — Subsequent purchaser — Bona fide purchaser for value without notice — A subsequent purchaser who is a close relative of the vendor (e.g., a daughter) and who purchases the property with knowledge of the prior agreement for sale cannot be considered a bona fide purchaser for value without notice. In such circumstances, a decree for specific performance can be validly passed against both the original vendor and the subsequent transferee. [Paras 7, 39]

Cases Referred to:

1.(2017) 4 SCC 654, A. Kanthamani v. Nasreen Ahmed – Test for readiness and willingness requires showing contract treated as subsisting with preparedness to fulfill obligations. [Para 18]

2.(2008) 4 SCC 594, Anathula Sudhakar v. P. Buchi Reddy – Declaratory relief essential when doubt on plaintiff's right needs clearing for consequential relief. [Para 25]

3.AIR 1928 PC 208, Ardeshir H. Mama v. Flora Sassoon – Person claiming performance must satisfy court's conscience about treating contract as subsisting. [Para 18]

4.(1982) 1 SCC 525, Babu Lal v. Hazari Lal Kishori Lal – Plaintiff gains nothing by claiming possession in specific performance suit. [Para 38]

5.(2013) 15 SCC 27, I.S. Sikandar v. K. Subramani – Suit for specific performance not maintainable without seeking declaration when agreement validly terminated. [Para 28]

6.(2023) 1 SCC 355, Katta Sujatha Reddy v. Siddamsetty Infra Projects (P) Ltd. – 2018 Amendment to Specific Relief Act prospective, not applicable to prior transactions. [Para 34]

7.(2025) 2 SCC 417, OPG Power Generation Private Limited v. Enexio Power Cooling Solutions India Pvt. Ltd – Party can obtain specific performance by not recognizing breach as termination. [Para 27]

8.(2006) 5 SCC 353, Prem Singh v. Birbal – Void instrument can be ignored by court while granting relief based on subsisting right. [Para 25]

9.(2025) 3 SCC 513, R. Kandasamy v. T.R.K. Sarawathy – Higher court can examine jurisdictional facts even if trial court didn't frame issue. [Para 30]

10.(1970) 3 SCC 140, R.C. Chandiok v. Chuni Lal Sabharwal – Readiness and willingness determined from entirety of facts and parties' conduct. [Para 18]

11.(2013) 9 SCC 245, Ravinder Singh v. Sukhbir Singh – Statement false only when maker knows it incorrect. [Para 38]

12.(2004) 8 SCC 689, Swarnam Ramachandran v. Aravacode Chakungal Jayapalan – Court must examine real intention when notice treats time as essence. [Para 20]

13.(1999) 6 SCC 337, Syed Dastagir v. T.R. Gopalakrishna Setty – Opinion on readiness formed from entirety of proven facts and circumstances. [Para 18]

Facts:

The appellant instituted suit for specific performance of agreement for sale dated 08.01.2010 concerning property originally belonging to Ponnusamy and daughter Selvi.

Registered agreement fixed consideration at Rs.4,80,000, with Rs.4,70,000 paid in advance and balance Rs.10,000 payable within six months. Vendors subsequently demanded additional Rs.2,00,000, and appellant paid Rs.1,95,000 on 09.06.2010 with endorsement made on back of agreement. Vendors sent termination notice on 20.08.2010 after already selling property to respondent Vasanthi (vendor's daughter) on 17.08.2010. Trial court dismissed specific performance suit holding agreement was to secure loan. First appellate court reversed, decreeing specific performance. High Court in second appeal set aside decree directing refund of earnest money. Supreme Court allowed appeal, restored first appellate court's decree granting specific performance, holding vendors waived termination rights by accepting additional payment after stipulated period.

For Appellant: *Mr. S. Parthasarathi, Mr. M.P. Parthiban, Advocates.* ***For Respondents:*** *Mr. Naveen Nagarjuna, Ms. Priya Aristotle, Ms. B. Lekshmi, Advocates*

Specific Relief Act, 1963 — Sections 10, 14, 19, and 20 — Contract Act, 1872 — Section 55 — Evidence Act, 1872 — Section 114 — Civil Procedure Code, 1908 — Section 100 — Specific Performance — Agreement for sale — Time not of the essence — Readiness and willingness — Waiver of right to terminate — Unilateral termination — Declaratory relief — Discretionary relief — Presumption as to endorsement on registered document — Subsequent purchaser.

JUDGMENT

Manoj Misra, J. – (29-10-2025) – Leave granted.

2. These two appeal(s) arise from two suits, namely, O.S. No. 73 of 2010, which was instituted by the appellant (Annamalai) against Saraswathi (for short D-1), Dharmalingam (for short D-2) and Vasanthi (for short D-3), *inter-alia*, for specific performance of agreement for sale dated 08.01.2010, and O.S. No. 32 of 2011 (renumbered O.S. No. 60 of 2012), which was instituted by Vasanthi (first respondent) against the appellant (Annamalai) for declaration as well as injunction *qua* the property which was subject matter of the sale agreement. Trial court consolidated the two suits and decided them by a common judgment, whereby O.S. No. 73 of 2010 was dismissed and O.S. No. 60 of 2012 (old O.S. No. 32 of 2011) was decreed. Aggrieved therewith, the appellant filed two first appeal(s). The first appellate court vide common judgment dated 14.11.2014 allowed the appeal(s) and thereby decreed O.S. No.73 of 2010 and dismissed O.S. No. 60 of 2012 (old O.S. No.32 of 2011). Against the first appellate court's judgment and decree(s), two second appeal(s), namely, S.A. No. 465 of 2015 and S.A. No. 466 of 2015, were filed by Vasanthi (i.e., the first respondent) before the High Court of Judicature at Madras. Both the appeals were allowed vide impugned common judgment and order(s) dated 02.02.2018. As a result, the decree of specific performance of the agreement was set aside and defendant(s) were directed to refund the earnest money along with interest.

3. Being aggrieved by High Court's decision dated 02.02.2018, these appeal(s) have been filed with a prayer that the impugned judgment and decree(s) be set aside.

Suit No.73 of 2010

4. Appellant instituted O.S. No. 73 of 2010 alleging, *inter alia*, that the suit property originally belonged to Ponnusamy and his daughter Selvi; they executed registered power(s) of attorney (for short 'power') in favour of the appellant and Saraswathi (D-1); 'power' for the first item of the suit schedule property was with D-1 whereas 'power' for the second item was with the appellant; based on that 'power', second item was sold to D-1 and his son Dhamalingam (D-2) *vide* sale deed dated 07.07.2009;

thereafter, *vide* registered agreement for sale dated 08.01.2010, D-1, as 'power' holder of Ponnusamy and Selvi qua first item and as co-owner of second item, and D-2 agreed to sell both items to the appellant for Rs. 4,80,000; out of which, Rs. 4,70,000 was paid in advance and balance of Rs. 10,000 was to be paid within six months, though the possession of the property was handed over to the appellant on the date of the agreement; however, later, D-1 and D-2 demanded additional amount of Rs.2,00,000 against which, to buy peace, the appellant agreed to pay, and paid additional Rs.1,95,000 to D-1 and D-2 on 09.06.2010 and an endorsement to that effect was made by them on the back of the agreement; in consequence, the sale consideration increased from Rs.4,80,000 to Rs.6,75,000, out of which Rs.6,65,000 stood paid and Rs.10,000 remained to be paid on execution of sale deed; but, on 20.08.2010, D-1 and D-2 sent notice cancelling/terminating the contract; to which, the appellant responded, vide notice dated 04.09.2010, by demanding execution of the sale deed, *inter alia*, claiming that the appellant had been throughout ready and willing to pay the balance amount of Rs. 10,000; later, it came to the knowledge of the appellant that D-1 and D-2 had already sold the first item of the suit schedule property to D-3 on 17.08.2010; whereafter, the defendants tried to trespass the suit property, as a result a complaint was lodged with police authorities; and, ultimately, the suit was instituted.

4.1. In the written statement filed in O.S. No. 73 of 2010, defendants, *inter alia*, resiled from the agreement dated 08.01.2010 and claimed that it was an instrument to secure a loan. They also denied the possession of the appellant over the suit property.

Suit No.32 of 2011 (New No. 60 of 2012)

5. In O. S. No. 32 of 2011 (New No. 60 of 2012) Vasanthi (i.e., plaintiff therein – D-3 in O.S. No.73 of 2010) claiming herself as owner in possession of the suit property, being a bona fide purchaser thereof, sought a declaration and injunction to protect her possession over the suit property.

5.1. The appellant, who was sole defendant in the suit instituted by Vasanthi, *inter alia*, claimed that Vasanthi is neither in possession nor a *bona fide* purchaser for value; she, being daughter of Saraswathi (D-1 in O.S. No.32 of 2011), was fully aware of the prior agreement and, therefore, the sale in her favour is nothing but sham.

Trial Court's Decision

6. The aforesaid two suits were consolidated and decided by a common judgment and decree(s) dated 15.02.2013. O.S. No. 73 of 2010 was dismissed, *inter alia*, holding that – (a) the agreement for sale, dated 08.01.2010, was one to secure loan since it is unbelievable that after having paid Rs.4,70,000 out of a total consideration of Rs.4,80,000, a person would wait for six months for execution of sale deed; (b) the plaintiff was not ready and willing to perform his part under the agreement since no notice to execute a deed of sale was served on D-1 and D-2 within six months; (c) the endorsement regarding payment of extra consideration of Rs. 1,95,000 was prepared by using signature(s) of D-1 and D-2 obtained earlier; (d) the possession of the suit property was not handed over to Annamalai (the appellant) as there is no recital in the agreement evidencing transfer of possession; (e) even if the agreement dated 08.01.2010 is considered to be an agreement for sale, it was not acted upon within six months and time being the essence of the contract, it was justifiably terminated; hence, suit was liable to be dismissed.

6.1. As regards O.S. No. 32 of 2011 (new no. 60 of 2012), it was held that Vasanthi is owner in possession of the suit property purchased by her. Consequently, O.S. No.32 of 2011 was decreed.

First Appellate Court's decision

7. Aggrieved by trial court's verdict, Annamalai (the appellant herein) went in appeal. The first appellate court held that the view of the trial court that the agreement dated 08.01.2010 was to secure a loan is perverse more so when notice dated 20.08.2010 (Exb. A-4), sent on behalf of D-1 and D-2, acknowledges existence of the agreement for sale as well as receipt of advance consideration of Rs. 4,70,000. The first appellate court also accepted the endorsement (Exb.A-2) on the back of the agreement (Exb.A-1) as an acknowledgement of receipt of additional Rs. 1,95,000 and found thus: (a) the agreement dated 08.01.2010 is an agreement for sale; (b) out of a total of Rs.4,80,000 payable towards consideration, Rs.4,70,000 was paid in advance, but D-1 and D-2 sought additional Rs. 2,00,000; (c) plaintiff, however, agreed to pay Rs.1,95,000, which was paid to D-1 and D-2 who accepted the same and made an endorsement to that effect on the back of the agreement on 9.06.2010; (d) in such circumstances, the plaintiff has established his readiness and willingness to perform its part under the contract; and (e) D-3 (Vasanthi), being daughter of D-1, is not a *bona fide* purchaser for value more so when sale-deed was executed in her favour on 17.08.2010, that is, even before termination of the agreement dated 08.01.2010.

7.1. In consequence, the first appellate court reversed the decree passed by the trial court and decreed the suit of the appellant for specific performance; whereas, the suit of Vasanthi was dismissed.

High Court's decision

8. Against the judgment and decree(s) of the first appellate court, two second appeals were filed before the High Court, namely, (a) S. A. No. 465 of 2015 by Saraswathi (D-1), Dharmalingam (D-2) and Vasanthi (D-3) against Annamalai, emanating from O.S. No. 73 of 2010, and (b) S. A. No. 466 of 2015 by Vasanthi against Annamalai, emanating from O.S. No. 32 of 2011 (New No. 60 of 2012). High Court allowed both the appeals and directed refund of the advance consideration with interest. While allowing the second appeal(s), High Court, *inter alia*, found – (i) there is no oral or documentary evidence to show that Annamalai came into possession of the suit property pursuant to the sale agreement; (ii) Annamalai did not show any intention to execute the sale-deed within six months of the sale agreement, therefore, it could be taken that plaintiff was not ready and willing to perform its part under the contract; and (iii) the receipt of Rs. 1,95,000 (Exb. A-2) appears to have been created after termination notice (Exb. A-4) was served. Based on those findings, the High Court held Annamalai (i.e., the appellant) not entitled to the relief of specific performance. Consequently, the second appeal(s) were allowed, and the decree of specific performance was set aside with a direction to refund the earnest money.

9. We have heard learned counsel for the parties and have perused the record carefully.

Submissions on behalf of the appellant

10. On behalf of the appellant, it has been strenuously argued that findings of the first appellate court qua (i) execution of the agreement for sale; (ii) payment of advance consideration including additional amount of Rs. 1,95,000; and (iii) plaintiff being ready and willing to perform the terms and conditions of the contract, were based on appreciation of evidence on record and by no stretch of imagination could be considered perverse or illegal as to give rise to a substantial question of law warranting exercise of powers under Section 100 of the Code of Civil Procedure, 1908 (CPC). Further, in a contract to sell immovable property, ordinarily, time is not the essence of

the contract. Moreover, when more than 90% of the agreed sale consideration was already paid and the defendant(s) had accepted additional Rs.1,95,000, the question of plaintiff not being ready and willing does not arise. Besides above, having accepted additional amount of Rs.1,95,000, after expiry of six months, there was no occasion to terminate the agreement for delayed/non-payment of Rs.10,000. In such circumstances, it was not a case where the court could have declined the relief of specific performance, that too, when conduct of the defendants was not bona fide. Accordingly, it was prayed that the impugned judgment and decree(s) of the High Court be set aside and that of the first appellate court be restored.

Submissions on behalf of respondent(s)

11. Per contra, learned counsel for the respondent submitted that the appellant is not entitled to discretionary relief of specific performance, *inter alia*, because,- (i) a false case was set up that the possession of the property was handed over to the plaintiff at the time of entering the contract; (ii) a fabricated document showing receipt of an additional sum of Rs. 1,95,000 was set up; (iii) the appellant took no steps within six months of the agreement to seek execution of sale deed, therefore, plaintiff cannot be said to be ready and willing to perform its part under the agreement; (iv) once the contract was terminated, suit for specific performance was not maintainable without seeking a declaration that termination of the agreement was invalid. Based on above, the respondent(s) prayed that the appeal(s) be dismissed.

Issues for consideration

12. Upon consideration of the rival submissions and having regard to the facts of the case, in our view, following issues arise for our consideration:

A. Whether the High Court was justified in interfering with the finding of the first appellate court *qua* payment of additional amount of Rs. 1,95,000 by the plaintiff-appellant? If receipt of additional payment by D-1 and D-2 is proved, as found by the first appellate court, whether it could be held that plaintiff was not ready and willing to perform its part under the contract?

B. Whether the suit for specific performance was maintainable without seeking a declaration that termination of the agreement was invalid in law?

C. Whether in the facts of the case the plaintiff was entitled to the discretionary relief of specific performance?

Discussion/Analysis

13. Before we set out to address the aforesaid issues, it would be useful to notice the reasons recorded by the first appellate court to reverse trial court's finding that the agreement for sale was a document to secure a loan. Reasons are:

(a) agreement for sale is a registered document, therefore a presumption of correctness of the endorsement made by the Registrar regarding particulars entered therein would arise;

(b) there is no clear and cogent evidence to substantiate fraud or to dislodge the presumption; and

(c) notice dated 20.08.2010 (Exb. A-4) sent on behalf of Saraswathi (D-1) and Dharmalingam (D-2) acknowledges the instrument dated 08.01.2010 as an agreement for sale.

13.1. Importantly, the finding of the first appellate court that instrument dated 08.01.2010 (Exb. A-1) was an agreement for sale of immovable property fixing consideration at Rs.4,80,000 and acknowledging receipt of Rs. 4,70,000 by way of advance, has not been disturbed by the High Court. Rather, the High Court itself

directed for refund of the advance money.

Issue A

14. The High Court allowed the second appeal(s), *inter alia*, on the ground that, as per the agreement, the sale deed had to be executed within six months on payment of balance consideration, therefore time was of the essence of the contract, and since, within six months, neither balance amount was paid nor execution of sale deed demanded, the plaintiff (i.e., the appellant herein) cannot be considered ready and willing to perform its part under the agreement. While holding so, the High Court discarded the endorsement of receipt of Rs.1,95,000 (Exb. A-2) made on the back of the agreement (Exb. A-1) by observing that no evidence was led to prove the endorsement.

15. In our view, the High Court committed a mistake in discarding the endorsement (Exb.A-2). While discarding the same, it overlooked the finding of the first appellate court in paragraph 29 of its judgment which reflected that D-1 and D-2 had admitted their signature(s) on the page carrying the endorsement of receipt of Rs.1,95,000 by claiming that those were obtained on a blank paper. In our view, once existence of signature(s) on a document acknowledging receipt of money is admitted, a presumption would arise that it was endorsed for good consideration[(3)]. Therefore, a heavy burden lay on D-1 and D-2 to explain the circumstances in which their signatures or thumbmark, as the case may be, appeared there, particularly, when that endorsement was on the back of a registered document.

[(3) See: Section 114 of Indian Evidence Act, 1872 read with Illustration (c) thereto.]

16. Whether D-1 and D-2 were able to discharge the aforesaid burden is a question of fact which had to be determined by a court of fact after appreciating the evidence available on record. Under CPC, a first appellate court is the final court of fact. No doubt, a second appellate court exercising power(s) under Section 100 CPC can interfere with a finding of fact on limited grounds, such as, (a) where the finding is based on inadmissible evidence; (b) where it is in ignorance of relevant admissible evidence; (c) where it is based on misreading of evidence; and (d) where it is perverse. But that is not the case here.

17. In the case on hand, the first appellate court, in paragraph 29 of its judgment, accepted the endorsement (Exb. A-2) made on the back of a registered document (Exb. A-1) after considering the oral evidence led by the plaintiff-appellant and the circumstance that signature(s)/thumbmark of D-1 and D-2 were not disputed, though claimed as one obtained on a blank paper. The reasoning of the first appellate court in paragraph 29 of its judgment was not addressed by the High Court. In fact, the High Court, in one line, on a flimsy defense of use of a signed blank paper, observed that genuineness of Exb. A-2 is not proved. In our view, the High Court fell in error here. While exercising powers under Section 100 CPC, it ought not to have interfered with the finding of fact returned by the first appellate court on this aspect; more so, when the first appellate court had drawn its conclusion after appreciating the evidence available on record as also the circumstance that signature(s)/thumbmark(s) appearing on the document (Exb.A-2) were not disputed. Otherwise also, while disturbing the finding of the first appellate court, the High Court did not hold that the finding returned by the first appellate court is based on a misreading of evidence, or is in ignorance of relevant evidence, or is perverse. Thus, there existed no occasion for the High Court, exercising power under Section 100 CPC, to interfere with the finding of the first appellate court

regarding payment of additional Rs. 1,95,000 to D-1 and D-2 over and above the sale consideration fixed for the transaction.

18. Once the finding regarding payment of additional sum of Rs.1,95,000 to D-1 and D-2 recorded by the first appellate court is sustained, there appears no logical reason to hold that the plaintiff (Annamalai) was not ready and willing to perform its part under the contract particularly when Rs. 4,70,000, out of total consideration of Rs. 4,80,000, was already paid and, over and above that, additional sum of Rs.1,95,000 was paid in lieu of demand made by D-1 & D-2. This we say so, because an opinion regarding plaintiff's readiness and willingness to perform its part under the contract is to be formed on the entirety of proven facts and circumstances of a case including conduct of the parties[(4)]. The test is that the person claiming performance must satisfy conscience of the court that he has treated the contract subsisting with preparedness to fulfil his obligation and accept performance when the time for performance arrives[(5)].

[(4) See: *R.C. Chandiok and another v. Chuni Lal Sabharwal and others, (1970) 3 SCC 140*, paragraph 6; followed in *Syed Dastagir v. T.R. Gopalakrishna Setty, (1999) 6 SCC 337*, paragraph 13.]

[(5) *Ardeshir H. Mama v. Flora Sassoon, AIR 1928 PC 208 = 1928 SCC Online PC 43*; followed in *A. Kanthamani v. Nasreen Ahmed, (2017) 4 SCC 654*]

19. In the instant case, the plaintiff was required to pay only Rs.10,000, out of a total of Rs.4,80,000, within six months from the date of the agreement (i.e., 8.01.2010). However, within that period, D-1 & D-2 demanded additional Rs.2,00,000. To buy peace, additional Rs.1,95,000 was paid by the plaintiff on 09.06.2010 regarding which endorsement was made by D-1 and D-2 on the back of the agreement. No doubt, balance of Rs.10,000 remained but, by accepting additional amount after expiry of six months, D-1 and D-2 treated the agreement as subsisting and thereby waived their right to forfeit the earnest money on non-payment of balance consideration within six months from the date of the agreement.

20. Generally, time is presumed not to be the essence of the contract relating to immovable property. Therefore, onus to plead and prove that time was the essence of the contract is on the person alleging it. In cases where notice is given treating time as the essence of the contract, it is duty of the court to examine the real intention of the party giving such notice by looking at the facts and circumstances of each case(6). Here, D-1 and D-2 accepted additional payment of Rs.1,95,000 after expiry of the period of six months stipulated for making payment of balance amount of Rs.10,000, and made endorsement to that effect on the back of the agreement, thereby signifying that they treat the agreement as subsisting by waiving their right to forfeit the earnest money on non-payment of balance consideration within six months(7). In such circumstances, in our view, non-issuance of notice by the plaintiff, requesting performance within six months, would not be fatal to the suit for specific performance and, likewise, it would not be determinative of whether the plaintiff was ready and willing to perform its part under the contract. Consequently, if the first appellate court held that the plaintiff was ready and willing to perform its part under the contract, no fault can be found with its view. In our view, the High Court exceeded its jurisdiction under Section 100 CPC by interfering with the finding(s) of the first appellate court regarding (a) payment of additional Rs.1,95,000 by plaintiff to D-1 and D-2 and (b) plaintiff being ready and willing to perform its part under the contract. Issue A is decided in the aforesaid terms.

[(6) *Swarnam Ramachandran (Smt.) and another v. Aravacode Chakungal*

Jayapalan, (2004) 8 SCC 689.]

[(7) See: Section 55 of the Contract Act, 1872.]

<u>Issue B</u>

21. Regarding maintainability of the suit for specific performance without seeking a declaratory relief *qua* subsistence of the contract, at the outset, we may observe that no specific plea to that effect was raised in the written statement and no issue was struck in respect thereof. However, as the issue was raised during arguments, we shall address the same.

22. To appropriately address the said issue, we must recapitulate the facts. Agreement for sale was entered on 08.01.2010. Sale consideration was fixed at Rs.4,80,000. Rs.4,70,000 was paid in advance. Balance Rs.10,000 had to be paid within six months. Although the agreement, translated copy of which is placed on record, neither speaks of automatic termination of contract nor confers right on the vendors (i.e., D-1 and D-2) to unilaterally terminate the same for non-payment of balance consideration within the specified period of six months, stipulates that if balance consideration is not paid within six months, the vendee would lose its earnest money. That is, it speaks of forfeiture of earnest money for non-deposit of balance consideration. Assuming that vendor(s) had a right to terminate the contract and forfeit the earnest money for non-payment of balance amount within six months, nothing of the kind was done by the vendor. Rather, as found above, the vendor(s) (i.e., D-1 and D-2) took additional amount of Rs.1,95,000 after expiry of six months and made an endorsement to that effect on the back of the agreement.

23. Section 55 of the Indian Contract Act, 1872 provides for effect of acceptance of performance at a time other than agreed upon. It says:

> "If, in case of a contract voidable on account of the promisor's failure to perform his promise at the time agreed, the promisee accepts performance of such promise at any time other than agreed, the promisee cannot claim compensation for any loss occasioned by the non-performance of the promise at the time agreed, unless, at the time of acceptance, he gives notice to the promiser of his intention to do so."

24. In the case on hand, there was no notice of the kind as envisaged by Section 55 (supra) issued by the vendor(s). In fact, the termination notice itself was issued on 20.08.2010 when D-1 and D-2 had already breached the contract by transferring part of the property agreed to be sold to D-3 on 17.08.2010. Moreover, in our view, by making an endorsement of receipt of Rs.1,95,000 at the back of the contract on 09.06.2010, the vendors not only acknowledged the subsistence of the contract but also waived their right to terminate the same or forfeit the advance payment of Rs.4,70,000 on non-payment of balance Rs.10,000 within six months from the date of the contract. In this context, we will have to consider whether the termination notice dated 20.08.2010 created a cloud on the right of the plaintiff that necessitated a declaratory relief. If it did, whether in absence of a declaration, a decree of specific performance could be passed.

<u>When a declaratory relief is essential</u>

25. A declaratory relief seeks to clear what is doubtful, and which is necessary to make it clear. If there is a doubt on the right of a plaintiff, and without the doubt being cleared no further relief can be granted, a declaratory relief becomes essential because without such a declaration the consequential relief may not be available to the plaintiff[(8)]. For example, a doubt as to plaintiff's title to a property may arise because of

existence of an instrument relating to that property. If plaintiff is privy to that instrument, Section 31 of Specific Relief Act, 1963 enables him to institute a suit for cancellation of the instrument which may be void or voidable *qua* him. If plaintiff is not privy to the instrument, he may seek a declaration that the same is void or does not affect his rights. When a document is void ab initio, a decree for setting aside the same is not necessary as the same is non est in the eye of law, being a nullity. Therefore, in such a case, if plaintiff is in possession of the property which is subject matter of such a void instrument, he may seek a declaration that the instrument is not binding on him. However, if he is not in possession, he may sue for possession and the limitation period applicable would be that as applicable under Article 65 of the Limitation Act, 1963 on a suit for possession[(9)]. Rationale of the aforesaid principle is that a void instrument/transaction can be ignored by a court while granting the main relief based on a subsisting right. But, where the plaintiff's right falls under a cloud, then a declaration affirming the right of the plaintiff may be necessary for grant of a consequential relief. However, whether such a declaration is required for the consequential relief sought is to be assessed on a case-to-case basis, dependent on its facts.

[(8) See: *Anathula Sudhakar v. P. Buchi Reddy (dead) by L.R.s. and others, (2008) 4 SCC 594*]

[(9) See: *Prem Singh v. Birbal, (2006) 5 SCC 353*; followed in *Shanti Devi (since deceased) through LRs v. Jagan Devi and others, 2025 SCC Online SC 1961*]

26. A breach of a contract may be by non-performance or by repudiation, or by both. In *Anson's Law of Contract* (29th Oxford Edn.), under the heading "Forms of Breach Which Justify Discharge", it is stated thus:

"The right of a party to be treated as discharged from further performance may arise in any one of three ways: the other party to the contract (a) may renounce its liabilities under it; (b) may by its own conduct make it impossible to fulfill them, (c) may fail to perform what it has promised. Of these forms of breach, the first two may take place not only in the course of performance but also while the contract is still wholly executory i.e., before either party is entitled to demand a performance by the other party of the other's promise. In such a case the breach is usually termed an anticipatory breach. The last can only take place at or during the time for performance of the contract."

27. Ordinarily, for a breach of contract, a party aggrieved by the breach i.e., failure on the part of the other party to perform its part under the contract can claim compensation or damages by accepting the breach as a termination of the contract, or/and, in certain cases, obtain specific performance by not recognizing the breach as termination of the contract[(10)]. In a case where the contract between the parties confers a right on a party to the contract to unilaterally terminate the contract in certain circumstances, and the contract is terminated exercising that right, a mere suit for specific performance without seeking a declaration that such termination is invalid may not be maintainable. This is so, because a doubt/cloud on subsistence of the contract is created which needs to be cleared before grant of a decree enforcing contractual obligations of the parties to the contract.

[(10) See: *OPG Power Generation Private Limited v. Enexio Power Cooling Solutions India Pvt. Ltd and another, (2025) 2 SCC 417*, paragraph 106.]

28. Now we shall consider few decisions of this Court where the question of grant of relief of specific performance of a contract in teeth of termination of the contract

without seeking a declaration qua subsistence of the contract was considered. In *I.S. Sikandar v. K. Subramani, (2013) 15 SCC 27*, the agreement for sale stipulated sale within a stipulated time frame; on failure of the plaintiff to respond to the notice seeking execution of sale, the agreement was terminated. In that context, this Court held:

> "36. Since the plaintiff did not perform his part of contract within the extended period in the legal notice referred to supra, the agreement of sale was terminated as per notice dated 28-3-1985 and thus, there is termination of the agreement of sale between the plaintiff and defendants 1-4 w.e.f. 10-4-1985
>
> 37. As could be seen from the prayers sought for in the original suit, the plaintiff has not sought for declaratory relief to declare the termination of agreement of sale as bad in law. In the absence of such prayer by the plaintiff the original suit filed by him before the trial court for grant of decree for specific performance in respect of the suit scheduled property on the basis of agreement of sale and consequential relief of decree for permanent injunction is not maintainable in law.
>
> 38. Therefore, we have to hold that the relief sought for by the plaintiff for the grant of decree for specific performance of execution of sale deed in respect of the suit scheduled property in his favor on the basis of non-existing agreement of sale is wholly unsustainable in law."

29. In *A. Kanthamani*[(12)] (supra), the decision in I.S. Sikandar (supra) was considered, and it was held:

> [(12) See: Footnote 5]
>
> "30.3. Third, it is a well settled principle of law that the plea regarding the maintainability of suit is required to be raised in the first instance in the pleading (written statement) then only such plea can be adjudicated by the trial court on its merits as a preliminary issue under Order 14, Rule 2 CPC. Once the finding is rendered on the plea, the same can be examined by the first or/and second appellate court. It is only in appropriate cases, where the court prima facie finds by mere perusal of plaint allegations that the suit is barred by any express provision of law or is not legally maintainable due to any legal provision; a judicial notice can be taken to avoid abuse of judicial process in prosecuting such suit. Such is, however, not the case here.
>
> 30.4. Fourth, the decision relied on by the learned counsel for the appellant in I.S. Sikandar turns on the facts involved therein and is thus distinguishable."

30. In *R. Kandasamy (since dead) and others v. T.R.K. Sarawathy and another, (2025) 3 SCC 513*, this Court considered both I.S. Sikandar (supra) and A. Kanthamani (supra), and clarified the law by observing as under:

> "47. However, we clarify that any failure or omission on the part of the trial court to frame an issue on maintainability of a suit touching jurisdictional fact by itself cannot trim the powers of the higher court to examine whether the jurisdictional fact did exist for grant of relief as claimed, provided no new facts were required to be pleaded and no new evidence led."

31. From the aforesaid decisions what is clear is that though a plea regarding maintainability of the suit, even if not raised in written statement, may be raised in appeal, particularly when no new facts or evidence is required to address the same, the issue whether a declaratory relief is essential or not would have to be addressed on the facts of each case.

32. In our view, a declaratory relief would be required where a doubt or a cloud is there on the right of the plaintiff and grant of relief to the plaintiff is dependent on removal of that doubt or cloud. However, whether there is a doubt or cloud on the right of the plaintiff to seek consequential relief, the same is to be determined on the facts of each case. For example, a contract may give right to the parties, or any one of the parties, to terminate the contract on existence of certain conditions. In terms thereof, the contract is terminated, a doubt over subsistence of the contract is created and, therefore, without seeking a declaration that termination is bad in law, a decree for specific performance may not be available. However, where there is no such right conferred on any party to terminate the contract, or the right so conferred is waived, yet the contract is terminated unilaterally, such termination may be taken as a breach of contract by repudiation and the party aggrieved may, by treating the contract as subsisting, sue for specific performance without seeking a declaratory relief qua validity of such termination.

Plaintiff-appellant was not required to seek a declaration

33. At the cost of repetition, we may observe that in the case on hand, by accepting Rs.1,95,000 after expiry of six months, D-1 and D-2, firstly, waived their right, as available to them under the contract, to forfeit the advance consideration/earnest money, secondly, by such acceptance and endorsement on the back of the agreement they treated the contract as subsisting and, thirdly, by transferring part of the subject matter of the agreement in favour of D-3, even before serving a forfeiture notice, they committed a breach of the contract. In such circumstances, in our view, the plaintiff had an option to treat the contract as subsisting and sue for specific performance more so when termination was a void act, no longer permissible under the varied contract. In our view, therefore, the suit for specific performance was maintainable even without seeking a declaration that termination of the contract was invalid in law. Issue B is answered accordingly.

Issue C

34. Prior to comprehensive amendments brought by Act 18 of 2018 to Sections 10, 14 and 20 of the Specific Relief Act, 1963 (for short the 1963 Act), with effect from 01.10.2018, Section 10 of the 1963 Act specified cases in which specific performance of contract is enforceable. In *Katta Sujatha Reddy v. Siddamsetty Infra Projects (P) Ltd., (2023) 1 SCC 355*, this Court held that 2018 Amendment to the 1963 Act is prospective and cannot apply to those transactions that took place prior to its coming into force. No doubt, this decision was reviewed and recalled in *Siddamsetty Infra Projects (P) Ltd. v. Katta Sujatha Reddy, 2024 INSC 861 = 2024 SCC Online SC 3214*, See paragraph 32 but in the review order/judgment this Court did not specifically hold that the amended provisions would govern suits instituted prior to the 2018 Amendment (see paragraph 32 of the review judgment). Rather, in review, this Court proceeded to decide the matter by assuming that the grant of specific performance continued to be discretionary to a suit instituted before the date of the amendment. Besides above, the judgment impugned in this appeal was passed on 02.02.2018 i.e., before the amendment came into effect. Therefore, we proceed to address issue C based on law that existed on the date when the impugned judgment was passed.

35. Section 10 of the 1963 Act as it existed prior to 2018 Amendment provided that the specific performance of any contract may, in the discretion of the court, be enforced, inter alia, when there exists no standard for ascertaining actual damage caused by the non-performance of the act agreed to be done. Explanation to Section 10

clarified that unless the contrary is proved, the court shall, *inter alia*, presume that the breach of a contract to transfer immovable property cannot be adequately relieved by compensation in money. Section 14 of 1963 Act as it stood prior to the amendment specified following contracts which cannot be specifically enforced, namely, (a) a contract for the non-performance of which compensation in money is an adequate relief; (b) a contract which runs into such minute or numerous details or which is so dependent on the personal qualifications or volition of the parties, or otherwise from its nature is such, that the court cannot enforce specific performance of its material terms; (c) a contract which in its nature determinable; and (d) a contract the performance of which involves the performance of a continuous duty which the court cannot supervise.

36. In the case on hand, the contract does not fall in category (a) (supra) in view of Explanation to Section 10 of the 1963 Act as it stood prior to the 2018 Amendment. It also does not fall in category (b) (supra), (c) (supra) and (d) (supra). While deciding issue B we have already seen that there was no clause in the contract conferring a right to terminate the agreement and insofar as the right of forfeiture was concerned that stood waived. Consequently, there was no bar of Section 14 operating against specific enforcement of the contract. As far as personal bar to the relief of specific performance is concerned, while deciding issue A, we have already held that the finding of the first appellate court that the plaintiff was ready and willing to perform its part under the contract was not liable to be interfered with by the High Court in exercise of its power under Section 100 of CPC. Therefore, what now remains to be considered is whether the Court should decline the discretionary relief of specific performance in exercise of its discretionary power vested in it by Section 20[(16)] of the 1963 Act, as it stood prior to the 2018 Amendment.

[(16) Section 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 other circumstances 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; or]

[(c) where the defendant entered into the contract under the 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.]

[(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 party.]

37. In the case on hand, the High Court declined discretionary relief of specific performance on two counts: (a) time was the essence of contract, no steps were taken by the plaintiff to get the sale deed executed within six months; and (b) the plaintiff could not prove payment of additional Rs.1,95,000 and had set up a false plea of being in possession of the suit property therefore, it had not approached the court with clean hands which disentitled the plaintiff/appellant for a decree of specific performance.

38. In our view, both grounds to decline the relief of specific performance are not sustainable. Because, while deciding issue A (supra), we have already held that High Court erred in law by setting aside finding of fact returned by the first appellate court that D-1 and D-2 were paid additional Rs.1,95,000, which they acknowledged by making an endorsement on the back of the agreement. In our view, acceptance of additional money not only signified waiver of the right to forfeit advance money/consideration but also acknowledged subsistence of the agreement. Hence, High Court's conclusion that plaintiff had set up a false case of additional payment is unsustainable and, therefore, cannot be a ground to decline discretionary relief of specific performance. Insofar as plaintiff's case of him being in possession of suit schedule property is concerned, the same was not accepted on the ground that there was no recital in the agreement regarding handing over of possession. But that by itself would not be sufficient to hold that the plaintiff made a false claim of being in possession. A claim, if not proved, does not make it false. A statement is false when its maker knows the same is incorrect[(17)]. Otherwise also, the plaintiff stands to gain nothing substantial by claiming possession over the suit schedule property in a suit for specific performance in as much as a decree of specific performance would ultimately entitle him to possession[(18)].

[(17) *Ravinder Singh v. Sukhbir Singh and Others, (2013) 9 SCC 245*, see paragraphs 18 and 20]

[(18) *Babu Lal v. Hazari Lal Kishori Lal, (1982) 1 SCC 525*]

39. In the instant case, there is evidence on record that the Tehsildar had reported regarding possession of the plaintiff over the suit property though that report was subject to final adjudication in the suit. In such circumstances, merely because plaintiff's claim that property was in his possession was not accepted, the relief of specific performance cannot be declined, particularly, when the plaintiff had already paid over 90% of the agreed consideration and paid additional amount also as demanded by D-1 and D-2. Further, D-3 was a related party of D-1 and D-2 and, therefore, not a bona fide purchaser. We are, therefore, of the firm view that this was not a fit case where discretionary relief of specific performance should have been denied.

40. For the aforesaid reasons, we are of the considered view that the High Court erred in law by interfering with the decree of specific performance passed by the first appellate court. These appeals are therefore allowed. The judgment and decree(s) of

the High Court is/are set aside and that of the first appellate court is/are restored. As it is not clear from the record before us as to whether the plaintiff has deposited the balance amount of Rs.10,000 for execution of the sale deed, in terms of Order XX Rule 12 A of CPC, we deem it appropriate to direct that the plaintiff-appellant shall deposit the balance amount, if not deposited already, in the execution court, within a period of one month from today.

41. Parties to bear their own costs.

42. Pending applications, if any, shall stand disposed of.

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