2021 SCeJ 1118

SUPREME COURT OF INDIA

Before: Justice M.R. Shah, Justice A.S. Bopanna.

K. KARUPPURAJ – Appellant,

Versus

M. GANESAN – Respondent.

Civil Appeal Nos. 6014-6015 of 2021

04.10.2021

(i) Civil Procedure Code, 1908 (V of 1908) Order XLI Rule 31, S. 96 – First Appeal - High Court has neither re- appreciated the entire evidence on record nor has given any specific findings on the issues which were even raised before the learned Trial Court – High Court has failed to exercise the jurisdiction vested in it as a First Appellate Court; the High Court has not at all re-appreciated the entire evidence on record; and not even considered the reasoning given by the learned Trial Court, in particular, on findings recorded by the learned Trial Court on the issue of willingness - Therefore, as such, the impugned judgment and order passed by the High Court is unsustainable. [Para 6, 7] #2021 SCeJ 1118

Held, There is a total non-compliance of the Order XLI Rule 31 of CPC. While disposing of the appeal, the High Court has not raised the points for determination as required under Order XLI Rule 31 CPC. High Court being the First Appellate court has not discussed the entire matter and the issues in detail and as such it does not reveal that the High Court has re-appreciated the evidence while disposing of the first appeal. High Court has disposed of the appeal preferred under Order XLI CPC read with Section 96 in a most casual and perfunctory manner. High Court has not framed the points for determination as required under Order XLI Rule 31 CPC, it appears that even the High Court has not exercised the powers vested in it as a First Appellate Court. [Para 6]

(ii) Suit for specific performance of the contract - Readiness and Willingness - Trial Court held the issue of readiness in favour of the plaintiff - However, refused to pass the decree for specific performance of the contract on the ground that the plaintiff was not willing to purchase the property with tenants – As per the case of the original plaintiff, the defendant was required to evict the tenants and hand over the physical and vacant possession at the time of execution of the sale deed on payment of full sale consideration - Suit notice issued by the plaintiff, called upon the defendant to evict the tenants and thereafter execute the sale deed on payment of full consideration from the plaintiff - Even when we consider the pleadings and the averments in the plaint, it appears that the plaintiff was never willing to get the sale deed executed with tenants and/or as it is - It was the insistence on the part of the plaintiff to deliver the vacant possession after evicting the tenants - There were no pleadings in the plaint that he is ready and willing to purchase the property and get the sale deed executed of the property with tenants and the specific pleadings were to hand over the peaceful and vacant possession after getting the tenants evicted and to execute the sale deed - Trial Court rightly held the issue of willingness against the plaintiff.[Para 8] #2021 SCeJ 1118

Held,

The plaintiff was never ready and willing to purchase the property and/or get the sale deed executed of the property with tenants. It was for the first time before the High Court in the affidavit filed before the High Court and subsequently when the learned Trial Court held the issue of willingness against the plaintiff, the plaintiff came out with a case that he is ready and willing to purchase the property with tenants. For the purpose of passing the decree for specific performance, the plaintiff has to prove both the readiness and willingness. Therefore, once it is found on appreciation of evidence

that there was no willingness on the part of the plaintiff, the plaintiff is not entitled to the decree for specific performance. Therefore, in the present case, the learned Trial Court was justified in refusing to pass the decree for specific performance. [Para 8]

(iii) Civil Procedure Code, 1908 (V of 1908) – S. 96 read with Order 41 R. 31 - In first appeal affidavit filed without amendment - Affidavit in a First Appeal by which virtually without submitting any application for amendment of the plaint under Order VI Rule 17 CPC - High court straightaway relied upon the affidavit without amending the plaint and the pleadings – Is wholly impermissible under the law. #2021 SCeJ 1118

Held,

Therefore, such a procedure adopted by the High Court is disapproved – Before the High Court, in first appeal, plaintiff filed an affidavit stating that he is now ready and willing to get the sale deed executed with respect to the property with tenants and unfortunately, the High Court relying upon the affidavit in the first appeal considered that as now the plaintiff is ready and willing to purchase the property with tenants and get the sale deed executed with respect to the property in question with tenants, the High Court has allowed the appeal and decreed the suit for specific performance - Aforesaid procedure adopted by the High Court relying upon the affidavit in a First Appeal by which virtually without submitting any application for amendment of the plaint under Order VI Rule 17 CPC, the High Court as a First Appellate Court has taken on record the affidavit and as such relied upon the same - Such a procedure is untenable and unknown to law - First appeals are to be decided after following the procedure to be followed under the CPC - The affidavit, which was filed by the plaintiff and which has been relied upon by the High Court is just contrary to the pleadings in the plaint - There were no pleadings in the plaint that he is ready and willing to purchase the property and get the sale deed executed of the property with tenants and the specific pleadings were to hand over the peaceful and vacant possession after getting the tenants evicted and to execute the sale deed - The proper procedure would have been for the plaintiff to move a proper application for amendment of the plaint in exercise of the power under Order VI Rule 17 CPC, if at all it would have been permissible in a first appeal under Section 96 read with Order XLI CPC. [Para 8]

(iv) Suit for specific performance of the contract - Readiness and Willingness – Handing over of possession of property without tenants - Submission on behalf of the plaintiff that in the agreement a duty was cast upon the defendant to evict the tenants and to handover the vacant and peaceful possession, which the defendant failed and, therefore, in such a situation, not to pass a decree for specific performance in favour of the plaintiff would be giving a premium to the defendant despite he having failed to perform his part of the contract - The aforesaid seems to be attractive but for the purpose of passing a decree for specific performance, readiness and willingness has to be established and proved and that is the relevant consideration for the purpose of passing a decree for specific performance - Trial Court rightly held the issue of willingness against the plaintiff. [Para 9] #2021 SCeJ 1118

JUDGMENT

M.R. Shah, J. – (04.10.2021) - Feeling aggrieved and dissatisfied with the impugned judgment and order dated 27.11.2017 passed by the High Court of Judicature at Madras in Appeal Suit No. 94 of 2010 by which the High Court has allowed the said appeal by quashing and setting aside the judgment and decree passed by the learned Trial Court dismissing the suit for specific

performance and consequently decreeing the suit, the original defendant has preferred the present Civil Appeal No. 6014 of 2021.

1.1 Feeling aggrieved and dissatisfied with the judgment and order dated 06.01.2020 rejecting the Review Application No. 71 of 2019 in Appeal Suit No. 94 of 2010, the defendant as review applicant has preferred the present Civil Appeal No. 6015 of 2021.

2 The facts leading to the present appeals in a nutshell are as under:-

2.1 An agreement for sale of the property situated in Kaspa Coimbatore was entered into between the plaintiff and the defendant wherein the defendant agreed to sell the same for a sale consideration of Rs. 16.20 lakhs to the plaintiff. A part sale consideration of Rs.3,60,001/- was paid at the time of execution of the agreement to sell. There were certain conditions stipulated in the agreement to sell. One of the conditions was that the defendant as original owner was required to evict the tenants from the property in question and thereafter to execute the sale deed on receipt of the full sale consideration. The plaintiff sent a legal notice to the defendant asking to evict the tenants from the property in question and to execute the sale deed on receipt of the balance sale consideration vide notice dated 01.07.2006.

2.2 That thereafter the plaintiff filed the present suit before the learned Trial Court for specific performance of the contract. It was the case on behalf of the plaintiff that he was ready and willing to perform his part of the contract but the defendant did not evict the tenants and come forward to execute the sale deed. Therefore, it was averred in the plaint that the defendant has to evict the tenants and perform his part of the contract and execute the sale deed. It was pleaded on behalf of the plaintiff that he was ready with the cash in his savings account and, therefore, he was always ready to perform his part of the contract. The defendant contested the suit by filing the written statement. Readiness and willingness on the part of the plaintiff and to perform the specific part of the contract was specifically denied. It was submitted that vacant possession was already known to the plaintiff as the tenants had been vacated and inspite of such the plaintiff was not ready to pay the remaining consideration. The learned Trial Court framed the following issues:-

"1. Whether the plaintiff is entitled for specific performance?

2. Whether the plaintiff was ready and willing to purchase the property?

3. To what relief?"

2.3 Both the sides led the evidence, documentary as well as oral. On appreciation of evidence and considering the pleadings in the plaint, the learned Trial Court held the issue of readiness on the part of the plaintiff in favour of the plaintiff, however, held that the plaintiff was not willing to get the sale deed executed as it is, and, therefore, held the issue of willingness against the plaintiff. The Trial Court also held that the defendant has failed to prove that tenants had vacated the suit property as claimed, however, the learned Trial Court held on willingness against the plaintiff by observing that the plaintiff has not shown the willingness to purchase the property with the tenants and there are no such pleadings in the plaint and that the plaintiff has not elected to purchase the property as its nature. Therefore, the Trial Court on appreciation of the evidence ultimately held that the plaintiff was not at all willing to purchase the property with the tenants. Accordingly, the learned Trial Court dismissed the suit and refused to pass the decree for specific performance of the contract and directed the defendant to refund the advance amount of Rs.3,60,001/- with interest @ 18% p.a. from the date of agreement till the date of realization, to be paid within a period of two months. The learned Trial Court also directed that there shall be a charge over the property till such

amount is realized by the plaintiff from the defendant.

2.4 Feeling aggrieved and dissatisfied with the judgment and decree passed by the learned Trial Court dismissing the suit for specific performance, the plaintiff filed the appeal suit before the High Court. By the impugned judgment and order, relying upon the affidavit filed before the High Court in which for the first time the plaintiff stated that he is ready and willing to purchase the property with the tenants, the High Court without even re-appreciating the entire evidence on record and even without framing the points for determination has allowed the appeal by the impugned judgment and order and has set aside the judgment and decree passed by the learned Trial Court, and consequently has decreed the suit for specific performance of the contract.

2.5 Feeling aggrieved and dissatisfied with the impugned judgment and order/decree passed by the High Court – First Appellate Court allowing the appeal and consequently decreeing the suit for specific performance of the contract, the original defendant has preferred the present appeal being Civil Appeal No.6014 of 2021. After the impugned judgment and order/decree, the defendant filed the review application before the High Court, which has been dismissed, which is the subject matter of Civil Appeal No.6015 of 2021.

3. Shri Ratnakar Dash, learned senior counsel appearing for the appellant/defendant has vehemently submitted that in the facts and circumstances of the case, the High Court has materially erred in allowing the appeal and decreeing the suit for specific performance of the contract.

3.1 It is vehemently submitted by the learned senior counsel appearing for the appellant that the impugned judgment and order passed by the High Court as a First Appellate Court cannot be sustained. It is submitted that as such the High Court has not exercised the appellate jurisdiction vested in it, particularly, while exercising the jurisdiction under Section 96 read with Order XLI Rule 31 of the Civil Procedure Code. It is submitted that the High Court has not at all re-appreciated the evidence on record and without even discussing the evidence on record and even without raising the points for determination on the basis of the issues which were framed by the learned Trial Court, the High Court has allowed the appeal and has decreed the suit for specific performance, which otherwise is not permissible.

3.2 It is further submitted by learned senior counsel appearing on behalf of the appellant that there is no re-appreciation of evidence on the issue of willingness on the part of the plaintiff, which was dealt with and considered by the learned Trial court in detail and the issue which was held against the plaintiff.

3.3 It is submitted that even the High Court has erred in passing the impugned judgment and order relying upon the affidavit of the respondent-plaintiff, which was filed before the High Court in which for the first time the plaintiff came out with a case that he is ready and willing to purchase the property with tenants. It is submitted that such a course adopted by the High Court is wholly impermissible under thelaw.

3.4 It is submitted that what was not pleaded by the plaintiff in the plaint on willingness to purchase the property with tenants has now been permitted by the High Court relying upon the affidavit filed before the High Court for the first time. It is submitted that the affidavit filed by the plaintiff before the High Court that he is ready and willing to purchase the property with tenants is just contrary to the pleadings in the plaint and even the findings recorded by the learned Trial Court.

3.5 It is further submitted by learned senior counsel appearing for the appellant that as such the plaintiff never agreed to purchase the property with tenants and as per the case of the plaintiff and so averred in the plaint, it was pleaded that it was the responsibility of the defendant to evict the

tenants and hand over the peaceful vacant possession and execute the sale deed. It is submitted that, therefore, thereafter it was not open on the part of the plaintiff to submit that he is ready and willing to purchase the property with tenants and that too by an affidavit for the first time filed before the High Court.

3.6 It is submitted that without even permitting the plaintiff to amend the plaint, the course adopted by the High Court permitting to change his stand by way of an affidavit is unknown to law and the procedure to be followed under the provisions of the CPC. Making above submissions and relying upon the decisions of this Court in the case of **B.V. Nagesh v. H.V. Sreenivasa Murthy, (2010) 13 SCC 530, H. Siddiqui (Dead) by LRs. v. A. Ramalingam (2011) 4 SCC 240** and **State Bank of India v. Emmsons International Limited and Anr. (2011) 12 SCC 174**, it is prayed to allow the present appeal and quash and set aside the impugned judgment and order passed by the High Court and consequently dismiss the suit.

4. Present appeal is vehemently opposed by Mr. Navaniti Prasad Singh, learned senior counsel appearing on behalf of the respondent – original plaintiff.

4.1 It is vehemently submitted by learned senior counsel appearing on behalf of the respondent - plaintiff that as such as per the condition inthe agreement to sell, it was the responsibility of the defendant to evict the tenants and thereafter to hand over the peaceful and vacant possession and execute the sale deed on receipt of the balance sale consideration. It is submitted that in the present case admittedly the defendant did not perform his part of evicting the tenants. It is submitted, therefore, that to allow the suit and pass the decree for specific performance will tantamount to giving a premium to the defendant, who has failed to perform his part under the agreement to sell.

4.2 It is submitted that as such against the total sale consideration of Rs.16.20 lakhs, defendant paid only Rs. 3,60,001/- at the time of execution of agreement to sell. It is submitted that, therefore, when subsequently the learned Trial Court held that plaintiff did not elect to get the sale deed executed with tenants, the defendant rightly filed an affidavit before the High Court and stated that he is ready and willing to get the sale deed executed even with tenants. It is submitted, therefore, that by allowing the defendant to file the affidavit to contend that he is ready and willing to get the sale deed executed and to purchase the property with tenants, the High Court has done the substantial justice so as to not to permit the defendant to take the benefit of his own wrong in not evicting the tenants.

4.3 It is further submitted by learned senior counsel appearing on behalf of the respondent - plaintiff that even the defendant has not returned the amount of part consideration paid, i.e., Rs.3,60,001/- with interest @ 18% p.a. to the plaintiff though directed by the learned Trial Court. In the alternative, it is submitted by the learned senior counsel appearing on behalf of the respondent that the technicalities shall not come in the way of the plaintiff and, therefore, the matter may be remitted to the High Court and permit the plaintiff to amend the plaint in exercise of powers under Order VI Rule 17 of the CPC.

4.4 Alternatively, it is also submitted that if this Court is of the opinion that the High Court ought not to have disposed of the appeal without determining the points for determination on the issues framed by the learned Trial Court, in that case, the matter may be remitted to the High Court for fresh consideration and to decide and dispose of the appeal afresh after framing the points for determination as required under Order XLI Rule 31 of the CPC. Making above submissions, it is prayed to dismiss the present appeal.

5. Heard the learned counsel for the respective parties at length.

6. In the present case, the original plaintiff instituted a suit for specific performance of the contract. On appreciation of evidence, the learned Trial Court held the issue of readiness in favour of the plaintiff. However, refused to pass the decree for specific performance of the contract on the ground that the plaintiff was not willing to purchase the property with tenants. Therefore, the issue with respect to willingness was held against the plaintiff. In an appeal filed before the High Court under Section 96 read with Order XLI by the impugned judgment and order, the High Court has allowed the said appeal and has quashed and set aside the decree passed by the learned Trial Court dismissing the suit and consequently has decreed the suit for specific performance. Having gone through the impugned judgment and order passed by the High Court, it can be seen that there is a total non-compliance of the Order XLI Rule 31 of CPC. While disposing of the appeal, the High Court has not raised the points for determination as required under Order XLI Rule 31 CPC. It also appears that the High Court being the First Appellate court has not discussed the entire matter and the issues in detail and as such it does not reveal that the High Court has re-appreciated the evidence while disposing of the first appeal. It also appears that the High Court has disposed of the appeal preferred under Order XLI CPC read with Section 96 in a most casual and perfunctory manner. Apart from the fact that the High Court has not framed the points for determination as required under Order XLI Rule 31 CPC, it appears that even the High Court has not exercised the powers vested in it as a First Appellate Court. As observed above, the High Court has neither re- appreciated the entire evidence on record nor has given any specific findings on the issues which were even raised before the learned Trial Court.

6.1 In the case of **B.V. Nagesh and Anr. (supra),** this Court has observed and held that without framing points for determination and considering both facts and law; without proper discussion and assigning the reasons, the First Appellate Court cannot dispose of the first appeal under Section 96 CPC and that too without raising the points for determination as provided under Order XLI Rule 31 CPC. In paragraphs 3 and 4, it is observed and held as under:-

> *"**3.** How the regular first appeal is to be disposed of by the appellate court/High Court has been considered by this Court in various decisions. Order 41 CPC deals with appeals from original decrees. Among the various rules, Rule 31 mandates that the judgment of the appellate court shall state:*
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> *(a) the points for determination;*
>
> *(b) the decision thereon;*
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> *(c) the reasons for the decision; and*
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> *(d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled.*
>
> ***4.** The appellate court has jurisdiction to reverse or affirm the findings of the trial court. The first appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate court. Sitting as a court of first appeal, it was the duty of the High Court to deal with all the issues and the evidence led by the parties before recording its findings. The first appeal is a valuable right and the parties have a right to be heard both on questions of law and on facts and the judgment in the first appeal must address itself to all the issues of law and fact and decide it by giving reasons in support of the findings. (Vide Santosh Hazari v. Purushottam Tiwari [(2001) 3 SCC 179], SCC p. 188, para 15 and Madhukar v. Sangram [(2001) 4 SCC 756] , SCC p. 758, para 5.)"*

62 In the case of **Emmsons International Limited and Anr. (supra)** while considering the scope and ambit of exercise of powers under Section 96 of CPC by the Appellate Court and after considering the decisions of this Court in the cases of **Madhukar v. Sangram, (2001) 4 SCC 756; H.K.N. Swami v. Irshad Basith (Dead) by LRs., (2005) 10 SCC 243** and **Jagannath v. Arulappa and Anr., (2005) 12 SCC 303**, it is held that sitting as a Court of First Appeal, it is the duty of the Appellate Court to deal with all the issues and the evidence led by the parties before recording its findings.

63 In the case of **H. Siddiqui (Dead) by LRs. (supra)**, it is observed and held in paragraph 21 as under:-

> ***"21.*** *The said provisions provide guidelines for the appellate court as to how the court has to proceed and decide the case. The provisions should be read in such a way as to require that the various particulars mentioned therein should be taken into consideration. Thus, it must be evident from the judgment of the appellate court that the court has properly appreciated the facts/evidence, applied its mind and decided the case considering the material on record. It would amount to substantial compliance with the said provisions if the appellate court's judgment is based on the independent assessment of the relevant evidence on all important aspects of the matter and the findings of the appellate court are well founded and quite convincing. It is mandatory for the appellate court to independently assess the evidence of the parties and consider the relevant points which arise for adjudication and the bearing of the evidence on those points. Being the final court of fact, the first appellate court must not record mere general expression of concurrence with the trial court judgment rather it must give reasons for its decision on each point independently to that of the trial court. Thus, the entire evidence must be considered and discussed in detail. Such exercise should be done after formulating the points for consideration in terms of the said provisions and the court must proceed in adherence to the requirements of the said statutory provisions. (Vide Sukhpal Singh v. Kalyan Singh [AIR 1963 SC 146] , Girijanandini Devi v. Bijendra Narain Choudhary [AIR 1967 SC 1124], G. Amalorpavam v. R.C. Diocese of Madurai [(2006) 3 SCC 224] , Shiv Kumar Sharma v. Santosh Kumari [(2007) 8 SCC 600] and Gannmani Anasuya v. Parvatini Amarendra Chowdhary [(2007) 10 SCC 296 : AIR 2007 SC 2380] .)"*

7. Applying the law laid down by this Court in the aforesaid decisions, if the impugned judgment and order passed by the High Court is considered, in that case, there is a total non-compliance of the provisions of the Order XLI Rule 31 CPC. The High Court has failed to exercise the jurisdiction vested in it as a First Appellate Court; the High Court has not at all re-appreciated the entire evidence on record; and not even considered the reasoning given by the learned Trial Court, in particular, on findings recorded by the learned Trial Court on the issue of willingness. Therefore, as such, the impugned judgment and order passed by the High Court is unsustainable and in normal circumstances we would have accepted the request of the learned senior counsel appearing on behalf of the respondent to remand the matter to the High Court for fresh consideration of appeal. However, even on other points also, the impugned judgment and order passed by the High Court is not sustainable. We refrain from remanding the matter to the High Court and we decide the appeal on merits.

8 It is required to be noted that as per the case of the original plaintiff, the defendant was required to evict the tenants and hand over the physical and vacant posses-

sion at the time of execution of the sale deed on payment of full sale consideration. Even in the suit notice issued by the plaintiff, the plaintiff called upon the defendant to evict the tenants and thereafter execute the sale deed on payment of full consideration from the plaintiff. Even when we consider the pleadings and the averments in the plaint, it appears that the plaintiff was never willing to get the sale deed executed with tenants and/or as it is. It was the insistence on the part of the plaintiff to deliver the vacant possession after evicting the tenants. Therefore, on the basis of the pleadings in the plaint and on appreciation of evidence, the learned Trial Court held the issue of willingness against the plaintiff. However, before the High Court, the plaintiff filed an affidavit stating that he is now ready and willing to get the sale deed executed with respect to the property with tenants and unfortunately, the High Court relying upon the affidavit in the first appeal considered that as now the plaintiff is ready and willing to purchase the property with tenants and get the sale deed executed with respect to the property in question with tenants, the High Court has allowed the appeal and decreed the suit for specific performance. The aforesaid procedure adopted by the High Court relying upon the affidavit in a First Appeal by which virtually without submitting any application for amendment of the plaint under Order VI Rule 17 CPC, the High Court as a First Appellate Court has taken on record the affidavit and as such relied upon the same. Such a procedure is untenable and unknown to law. First appeals are to be decided after following the procedure to be followed under the CPC. The affidavit, which was filed by the plaintiff and which has been relied upon by the High Court is just contrary to the pleadings in the plaint. As observed hereinabove, there were no pleadings in the plaint that he is ready and willing to purchase the property and get the sale deed executed of the property with tenants and the specific pleadings were to hand over the peaceful and vacant possession after getting the tenants evicted and to execute the sale deed. The proper procedure would have been for the plaintiff to move a proper application for amendment of the plaint in exercise of the power under Order VI Rule 17 CPC, if at all it would have been permissible in a first appeal under Section 96 read with Order XLI CPC. However, straightaway to rely upon the affidavit without amending the plaint and the pleadings is wholly impermissible under the law. Therefore, such a procedure adopted by the High Court is disapproved.

The learned Trial Court held the issue of willingness against the plaintiff by giving cogent reasons and appreciation of evidence and considering the pleadings and averments in the plaint. We have also gone through the averments and the pleadings in the plaint and on considering the same, we are of the opinion that the learned Trial Court was justified in holding the issue of willingness against the plaintiff. The plaintiff was never ready and willing to purchase the property and/or get the sale deed executed of the property with tenants. It was for the first time before the High Court in the affidavit filed before the High Court and subsequently when the learned Trial Court held the issue of willingness against the plaintiff, the plaintiff came out with a case that he is ready and willing to purchase the property with tenants. For the purpose of passing the decree for specific performance, the plaintiff has to prove both the readiness and willingness. Therefore, once it is found on appreciation of evidence that there was no willingness on the part of the plaintiff, the plaintiff is not entitled to the decree for specific performance. Therefore, in the present case, the learned Trial Court was justified in refusing to pass the decree for specific performance.

9. The submission on behalf of the plaintiff that in the agreement a duty was cast upon the defendant to evict the tenants and to handover the vacant and peaceful possession, which the defendant failed and, therefore, in such a situation, not to pass a decree for specific performance in favour of the plaintiff would be giving a

premium to the defendant despite he having failed to perform his part of the contract. The aforesaid seems to be attractive but for the purpose of passing a decree for specific performance, readiness and willingness has to be established and proved and that is the relevant consideration for the purpose of passing a decree for specific performance.

10. Now, so far as the submission on behalf of the plaintiff that even the defendant has not refunded the amount of Rs.3,60,001/- with interest @ 18% as ordered by the learned Trial Court concerned, the order passed by the learned Trial Court is very clear and the defendant is saddled with the law to pay the interest @ 18% till its realization. Therefore, the plaintiff is compensated by awarding 18% interest. His not refunding the amount of part sale consideration with 18% interest as ordered by the learned Trial Court cannot be a ground to confirm the impugned judgment and order passed by the High Court. The plaintiff as such could have filed an execution petition to execute the judgment/decree passed by the learned Trial Court. Further, we propose to issue a direction to the appellant – original defendant directing him to refund the amount of Rs.3,60,001/- with 18% interest from the date of the agreement till the date of realization within a period of eight weeks from today.

11. In view of the above and for the reasons stated above, both the appeal succeeds. The impugned judgment and order passed by the High Court of judicature at Madras in Appeal Suit No. 94 of 2010 is hereby quashed and set aside and the judgment and decree passed by the learned Trial Court stands restored. However, in the facts and circumstances of the case, the appellant herein original defendant is directed to refund the amount of Rs.3,60,001/- with 18% interest from the date of agreement till realization within a period of eight weeks from today. Appeals are allowed to the aforesaid extent, however, there shall be no order as to costs.

Pending applications, if any, also stand disposed of.

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