



May 2023

Supreme Court reiterates that the relief of specific performance of a contract can only be granted when the party claiming such relief shows its readiness and willingness to perform its obligations under the contract.

A 2 (two) judge bench of the Supreme Court of India (“**Supreme Court**”) has in *Gaddipati Divija and Another v. Pathuri Samrajyam & Ors.*¹ *inter alia* reiterated that specific performance of a contract under Section 16 (c) of the unamended Specific Relief Act, 1963 (“**Specific Relief Act**”) can only be allowed if the party seeking specific performance avers and proves that it has always been ready and willing to perform its obligations under the contract. The Supreme Court further reiterated that in a suit for specific performance of a contract concerning the sale of immovable property, time would not usually be of the essence unless it is shown from the express terms of the contract that time was of the essence.

Brief Facts

An agreement of sale was entered into between Mrs. Pathuri Samrajyam (“**Respondent No.1**”) and one Mr. Rao whereby Mr. Rao had agreed to sell the suit property to Respondent No. 1 for a total price of INR 11,88,000 (Indian Rupees eleven lakh eighty-eight thousand) (“**Agreement**”). Respondent No. 1 paid an amount of INR 4,00,000 (Indian Rupees four lakh) to Mr. Rao as advance. As per the Agreement, Mr. Rao agreed to execute the sale deed in favour of Respondent No. 1 after demarcating the land and receiving the balance sale consideration within 3 (three) months.

Upon the expiry of the 3 (three) month period, Mr. Rao issued a notice to Respondent No. 1 demanding the balance consideration of INR 7,88,000 (Indian Rupees seven lakh eighty-eight thousand), failing which the Agreement would stand cancelled and the advance amount would be forfeited. Respondent No. 1 issued a reply to this notice denying the allegations of non-payment and stated that she had discovered that the suit property had been attached in a separate suit filed against Mr. Rao for recovery of monies. By this notice, Respondent No. 1 called upon Mr. Rao to have the property measured and have the attachment removed, following which she would pay the balance consideration and have the property registered in her name. Mr. Rao issued a rejoinder notice denying that the land had not been measured and stated that the boundaries had in fact been duly fixed. Mr. Rao once again called upon Respondent No. 1 to pay the balance consideration.

Subsequently, Mr. Rao passed away and was survived by his minor children (“**Appellants**”), wife and mother (collectively, “**Legal Heirs**”). Respondent No. 1 issued a notice to the Legal Heirs and informed them that she had always been ready and willing to perform her part of the contract by paying the balance consideration and that the Legal Heirs had delayed executing the sale deed. By this notice, Respondent No. 1 called upon the Legal Heirs to clear the attachment over the suit property, receive the balance consideration and execute the sale deed, failing which she would institute a suit for specific performance.

¹ 2023 SCC OnLine SC 442

Respondent No. 1 instituted a suit against the Appellants and the wife of Mr. Rao seeking specific performance of the Agreement. The trial court held that Respondent No. 1 was not entitled to seek specific performance of the Agreement and was merely entitled to recover the advance sale consideration paid to Mr. Rao. Respondent No.1 filed an appeal before the High Court of Andhra Pradesh (“**Andhra HC**”) to challenge this order of the trial court. The Andhra HC allowed the appeal and *inter alia* directed the Appellants to execute the sale deed by duly demarcating the land. The Appellants filed an application seeking review of this order before the Andhra HC, however, the same came to be dismissed.

Aggrieved by the order passed by the Andhra HC in the appeal filed by Respondent No. 1 as well as the order dismissing the review application, the Appellants preferred the present appeal before the Supreme Court *inter alia* on the ground that specific performance of the Agreement could not be allowed given that Respondent No.1 had failed to prove that she was ready and willing to perform her part of the Agreement by paying the balance sale consideration within 3 (three) months as provided in the Agreement. Respondent No. 1 contended that the present appeal was liable to be dismissed *inter alia* on the ground that Mr. Rao and subsequently, the Appellants, had failed to perform their part of the contract by demarcating the land within 3 (three) months from the date of the Agreement.

Issue

Whether the Andhra HC was justified in allowing Respondent No. 1’s appeal and decreeing the suit for specific performance by holding that the deceased Mr. Rao and his Legal Heirs (including the Appellants) failed to perform their obligation with regard to getting the property measured and demarcated, while Respondent No. 1 was always ready and willing to perform her part of the contract by paying the balance sale consideration.

Analysis and findings:

The Supreme Court dismissed the appeal and observed as follows:

1. Given the decision in *Katta Sujatha Reddy v. Siddamsetty Infra Projects (P) Ltd*², which held that the Specific Relief (Amendment) Act, 2018³ was prospective in nature, the provisions of the unamended Specific Relief Act would be applicable to the present case since the Agreement in question dated back to 2002.
2. As per Section 16 (c) of the unamended Specific Relief Act, the primary requirement for the plaintiff to seek specific performance is to aver and prove that he is ready and willing to perform his part of the contract.
3. The explanation to Section 16 of the Specific Relief Act clarifies that in a contract involving payment of money, the plaintiff need not actually deposit any money with the defendant and is only required to aver that he has performed or is ready and willing to perform the contract according to its true construction.
4. Respondent No. 1 had specifically averred and proved that she always ready and willing to pay the balance consideration and perform her part of the Agreement, whereas the Appellants had failed to perform their obligation of having the land measured and demarcated.
5. Mere stipulation of time would not make time the essence of the contract and in cases of sale of immovable property, normally time would not be of the essence. As such, when specific performance of the terms of the contract has not been undertaken, the question of time being of the essence does not arise.

JSA Comment

Under Section 16 (c) of the amended Specific Relief Act, a party seeking specific performance of a contract is only required to prove its readiness and willingness to perform the contract.

² 2023 1 SCC 355

³ Effective October 1, 2018

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