



**REPORTABLE**

**IN THE SUPREME COURT OF INDIA  
EXTRAORDINARY APPELLATE JURISDICTION**

**SPECIAL LEAVE PETITION (CIVIL) NO.13933 OF 2021**

**R. SHAMA NAIK**

**Petitioner(s)**

**VERSUS**

**G. SRINIVASIAH**

**Respondent(s)**

**O R D E R**

1. This petition arises from the judgment and order passed by the High Court of Karnataka at Bengaluru in Regular First Appeal No. 1017 of 2013 dated 01-07-2021 by which the Regular First Appeal filed by the original defendant came to be allowed thereby quashing and setting aside the judgment and decree of specific performance passed by the trial court in favour of the petitioner herein-original plaintiff.

2. It appears that the petitioner herein original plaintiff instituted a suit for specific performance of contract based on agreement of sale dated 3<sup>rd</sup> March 2005.

3. The total sale consideration fixed in the Agreement of sale is Rs.30,00,000/- (Rupees Thirty lakh only).

Rs.12,50,000/- (Rupees Twelve lakh fifty thousand only) came to be paid by the petitioner herein towards earnest money at the time of execution of the agreement of sale.

4. It is the case of the petitioner that he was always ready and willing to perform his part of the contract but it is the respondent herein original-defendant who was not inclined to execute the sale deed despite accepting the amount of Rs.12,50,000/- (Rupees Twelve lakh fifty thousand only) towards earnest money.

5. In such circumstances, referred to above, the petitioner herein instituted Original Suit No.1101 of 2008 praying for a relief of specific performance or in the alternative for refund of the earnest money.

6. The trial court allowed the suit and passed a decree for specific performance. The defendant went in appeal before the High Court. The High Court allowed the appeal of the defendant on the issue of readiness and willingness on the part of the plaintiff in performing his part of the contract.

7. We have heard the learned counsel appearing for the parties and have also perused the materials on record.

8. Section 16(C) of the Specific Relief Act, 1963 (prior to amendment w.e.f. 1.10.2018) bars the relief of the specific

performance of a contract in favour of a person who fails to aver readiness and willingness to perform his part of the contract.

9. There is a legion of precedents on the subject of readiness and willingness.

10. The law is well settled. The plaintiff is obliged not only to make specific statement and averments in the plaint but is also obliged to adduce necessary oral and documentary evidence to show the availability of funds to make payment in terms of the contract in time.

11. There is a fine distinction between readiness and willingness to perform the contract. Both the ingredients are necessary for the relief of specific performance.

12. While readiness means the capacity of the plaintiff to perform the contract which would include his financial position, willingness relates to the conduct of the plaintiff.

13. The High Court in first appeal upon appreciation of the evidence on record both oral and documentary has arrived at the conclusion that the plaintiff has failed to establish that he was always ready and willing to perform his part of the contract.

14. This being a finding of fact and cannot be termed as perverse, there is no good reason for us to interfere with the impugned judgment.

15. In the result, the petition fails and is hereby dismissed.

16. Pending application(s), if any, stand disposed of.

.....J.  
[J.B. PARDIWALA]

.....J.  
[R. MAHADEVAN]

NEW DELHI,  
NOVEMBER 28<sup>th</sup>, 2024