VERDICTUM.IN

2026:DHC:9361

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Reserved on: 06th August,2026***
Pronounced on 16th October, 2026
Uploaded on: 16th October, 2026

\# **CNR No. DLHC010294302021**

\+ **RFA 330/2021 &CM APPL. 32746-32747/2021**

SHRI RAM PAL SAINI (AGED ABOUT 70 YEARS),
S/o Late Shri Jug Lal
R/o 254, Village Shalimar,
Delhi-110088 .....Appellant

Through: Mr. T S Ahuja, Mr. Varun Ahuja, Ms. Yukta Batra, Ms. Yashika Suneja, Advocates.

versus

SHRI ANIL KUMAR
S/o Late Shri Ganga Ram
R/o House No.133, Village Shalimar
Delhi -110088 .....Respondent

Through: Ms Tanvi Madan, Advocate.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The present **Regular First Appeal** under Section 96 of the Code of Civil Procedure, 1908 *(hereinafter referred to as 'CPC')* has been filed on behalf of the *Plaintiff/Appellant, Sh. Ram Pal Saini,* against the Judgment and Decree dated **30.10.2019**, whereby the learned *Additional District Judge*

VERDICTUM.IN

has directed the refund of **Rs. 4,15,000/-** along with interest at the rate of 6% per annum, paid by the Plaintiff pursuant to the Agreement to Sell dated **01.11.2007,** in the favour of the Plaintiff.

2. The Plaintiff filed the ***Suit Bearing CS No. 578170/2016 for Specific Performance*** of Agreement to Sell dated **01.11.2007 and in the alternative recovery of Rs. 8,30,000/-**, **being double the amount paid under the Agreement to Sell**.

3. The ***facts in brief***, as stated in the **Plaint**, are that the Plaintiff entered into an Agreement to Sell dated **01.11.2007** with the Defendant, for the purchase of the property bearing No. 258, Village Shalimar, Delhi *(hereinafter referred as the "suit property")* admeasuring 300 sq. yards, for a total sale consideration of **Rs. 30,00,000/-**. The Plaintiff paid a sum of **Rs. 2,00,000/-** as *earnest money* and **Rs. 1,00,000/- twice** *vide* Receipt dated **03.11.2007** and **09.01.2008**.

4. The Plaintiff also paid **Rs. 50,000/-** *vide* Receipt dated **15.04.2008** for; **Rs. 65,000/- vide** Receipt dated **20.06.2011**; and for **Rs. 1,00,000/-vide** Receipt dated **25.08.2011**. The Plaintiff asserted that *vide* these three Receipts, he further made a payment of **Rs. 2,15,000/-.** Also, the Defendant had sought extension of time for completion of sale, through these Receipts.

5. The Plaintiff stated that both the Parties had agreed that rest of the payment will be made to the Defendant within six months of the suit property being mutated by the Defendant in his favour. The Plaintiff kept on waiting for the Defendant to get the property mutated in his name, but the Defendant failed to inform till date as to whether the property has been mutated in Defendant's favour or not.

VERDICTUM.IN

6. The Plaintiff approached the Defendant several times for completion of the terms of the Agreement to Sell and made several personal, as well as, telephonic request for compliance of Agreement to Sell dated **01.11.2007**. The Plaintiff had even informed the Defendant that a payment was lying ready with him, for getting the Sale Deed executed.

7. However, the Defendant informed the Plaintiff that the *Probate proceedings bearing* ***PC No. 40 of 2006*** was initiated by him in the Court of learned *ADJ, Delhi*, in respect of the suit property. One *Smt. Beena Devi* had filed the Objections in the Probate Petition and an *interim injunction* had been granted restraining the Defendant from creating third party interest in the suit property. The Defendant, therefore, informed the Plaintiff that since the suit property is in dispute and there was an *interim injunction*, the Sale Deed cannot be executed and hence, sale cannot be completed. Subsequently, the *Probate Petition was decreed in favour of the Defendant, vide order dated* ***16.04.2007***, against which an Appeal was preferred by *Smt. Beena Devi, in which similar* injunction order, was passed.

8. On account of the Appeal, the suit property cannot be mutated nor the Sale Deed could be executed. The Appeal was decided in the favour of the Defendant, despite which he avoided executing the Sale Deed, on one pretext or the other.

9. The Plaintiff claimed that he had already arranged the money and was losing interest on the said amount. The Plaintiff had always being ready and willing to perform his part of the contract. The Plaintiff sent Legal Notice dated **24.05.2013** to the Defendant, to which the Defendant sent a false and *malafide* Reply dated **30.05.2013**.

VERDICTUM.IN

10. The Plaintiff thus, filed a ***Suit for Specific Performance*** of Agreement to Sell dated **01.11.2007** and for directing the Defendant to accept the balance sale consideration of **Rs. 25,85,000/-** and to transfer the suit property, as per the terms of the Agreement to Sell dated **01.11.2007,** in favour of the Plaintiff and *hand over the vacant and peaceful possession of the suit property to the Plaintiff* or in the alternative, without prejudice, the Plaintiff sought *an alternative relief for refund of Rs. 8,30,000/- i.e.* the double the amount paid under the Agreement to Sell along with the interest @ 15% per annum from 01.11.2007, till the payment was made.

11. The *Defendant/Respondent, Sh. Anil Kumar,* in his **Written Statement** took the *preliminary objections* that when the Defendant asked him to pay the balance sale consideration and complete the sale, the Plaintiff himself in **January, 2012** asked the Defendant to return the earnest money and terminate the Agreement to Sell dated **01.11.2007**. The Defendant claimed that there exists no enforceable agreement between the Parties since, the Agreement to Sell has been already terminated by the Plaintiff.

12. The Defendant asserted that the Appeal against grant of Letter of Administration was decided in his favour and the Interim Order passed therein, came to an end on **14.12.2010** with the dismissal of **FAO No. 130 of 2008,** by this Court. The Plaintiff thereafter, for a period of more than 2½ years did not take any action, despite the repeated requests of the Defendant for the completion of the sale. The Defendant asserted that the sudden interest of the Plaintiff in the suit property is, because of the manifold increase in the price of real estate in the locality.

13. ***On merits***, the Defendant admitted that the Agreement to Sell dated **01.11.2007** was executed *inter se* the Parties, but it was reiterated that the

VERDICTUM.IN

Agreement to Sell was terminated by the Plaintiff himself in January, 2012 and the Defendant was asked to return the *earnest money*. After **14.12.2010**, there was no restraint on the Defendant for transferring the suit property. It was asserted that if the Plaintiff intended to pay the balance sale consideration, there was nothing which prevented him from doing so.

14. The Defendant claimed that the Plaintiff did not have arrangement of the entire balance consideration and wanted to pay the remaining consideration in parts, to which the Defendant did not agree. Consequently, the Plaintiff terminated the Agreement to Sell and showed his unwillingness to perform the Agreement.

15. The Defendant asserted that after **14.12.2010**, there was no restraint on the Defendant to transfer the suit property, therefore the assertion made by the Plaintiff that the Defendant sought extension of time for the completion of the sale, was denied.

16. The Defendant asserted that since he was not highly literate and was not aware of the authority and the procedure for getting the suit property mutated, he had requested the Plaintiff several times to help him in getting the suit property mutated in the records of the relevant authority, but he flatly refused nor informed the Defendant, about the concerned authority.

17. The Defendant denied that the Plaintiff approached the Defendant repeatedly and made requests personally or through telephone, to get the Agreement to Sell dated **01.11.2007** executed. The Defendant claimed that the Plaintiff's assertion are, *in fact*, contrary to assertion in Plaint that ***he was waiting for Defendant to get the property mutated, in his name***. The Defendant further asserted that the Plaintiff had full knowledge of the Appeal proceedings before this Court, as the Plaintiff and his son used to

VERDICTUM.IN

attend the hearings. Further, the counsel who represented the Defendant in the proceedings before this Court, was arranged by the Plaintiff, and therefore, the Plaintiff had knowledge about the dismissal of the Appeal on **14.12.2010**. It was thus, asserted that there was no merit in the Suit of the Plaintiff and was liable to be dismissed.

18. The Plaintiff filed his ***Replication,*** wherein he re-affirmed the averments made in the Plaint and denied the allegations made in the Written Statement. The Plaintiff asserted that that he never terminated the Agreement to Sell dated **01.11.2007** in January, 2012 and also that the Defendant never intimated him about the dismissal of the Appeal.

19. The Plaintiff claimed that the Defendant had purchased court fee of **Rs. 70,040/-** on **10.11.2007** and **Rs. 3040/-** on **28.03.2008** for Letter of Administration, but was unable to obtain the same from the court as the Objector, *Smt. Beena Devi* had filed the Appeal in this Hon'ble Court.

20. The Plaintiff asserted that the Letters of Administration were obtained by the Defendant on **14.02.2011** and the possession of the suit property was received by the Defendant from the Objector on **30.05.2013,** through Execution Proceedings. The Plaintiff asserted that no prudent person would believe that the Defendant was unaware about the concerned office of the mutation department, as the Defendant is a person who himself fights the cases even before this Court.

21. It was denied that the Plaintiff and his son used to attend the proceedings in this Court or that the Plaintiff had arranged a counsel for the Defendant, to represent him. However, the Plaintiff admitted that he had provided monetary help to the Defendant to defend the case and had also borne the other expenses, as the Plaintiff was interested in purchasing the

VERDICTUM.IN

suit property, but neither the Defendant nor his counsel, informed him about the outcome of the Appeal.

22. The Plaintiff asserted that as per the terms of the Agreement to Sell dated **01.11.2007**, it was agreed between the parties that vacant and peaceful possession of the property will be handed over at the time of the execution of the Sale Deed. The vacant possession of the property was received by the Defendant only on **30.05.2013** and thus, the sale deed should have been executed within six months from **30.05.2013**, but the defendant declined to execute the sale deed.

23. The following ***Issues* were framed by the Learned *ADJ***, *vide* Order dated **11.10.2017**:

1. *Whether the Agreement dated 01.11.2007 was terminated by the plaintiff himself, as alleged? OPD*
2. *Whether the plaintiff is/was ready and willing to perform remaining part of the Agreement dated 01-11-2007? OPP*
3. *Whether the plaintiff is entitled to decree of specific performance thereby directing the execution of sale deed after receiving the balance consideration as claimed? OPP*
4. *Whether the plaintiff is entitled to decree of possession as claimed? OPP*
5. *If the plaintiff is not found entitled to decree of specific performance, then in the alternative whether he is entitled for refund of the double of the amount paid to the defendant with interest as claimed? OPP*

24. The Plaintiff examined himself as **PW-1** and tendered his evidence by way of Affidavit. He reiterated the averments made in the Plaint. He proved

VERDICTUM.IN

the Agreement to Sell dated 01.11.2007 as **EX-PW-1/1**; receipts dated 03.11.2007, 09.01.2008, 15.04.2008, 20.06.2011 and 25.08.2011 as **EX-PW-1/2, EX-PW-1/3, EX-PW-1/4, EX-PW-1/5** and **EX-PW-1/6** respectively. He also examined **PW-2**, his brother *Mr. Dharmpal Saini*, who was the attesting witness to the Agreement to Sell dated **01.11.2007**.

25. The Defendant examined himself as **DW-1** and tendered his evidence by way of Affidavit. He reaffirmed the defence taken by him, in the Written Statement.

26. The **learned *ADJ*, on appreciation of the evidence, *vide* Judgement dated 30.10.2019** held that the Plaintiff was unable to prove his readiness and willingness to perform the Agreement to Sell dated **01.11.2007**. The Plaintiff failed to disclose the specific date and month when he made the request to the Defendant for the execution of the sale deed. Moreover, in his cross-examination, he admitted that he did not remember if he had made any telephone call to the Defendant in this respect. It was also observed that the Plaintiff had failed to explain why only part amount of **Rs. 65,000/-** *vide* receipt dated **20.06.2011** and **Rs. 1,00,000/-** *vide* Receipt dated **25.08.2011** was paid to the Defendant, if he was ready with the entire balance sale consideration amount on these two dates and why he had not asked the Defendant to execute the sale deed in his favour.

27. The Plaintiff had not given the details of the available balance sale consideration in the Plaint, but produced his Bank Statement from **02.05.2013** to **10.06.2013,** in the cross-examination. However, he failed to produce his Bank Statement for the period of 2011 and 2012, to corroborate that he had the balance sale consideration ready for payment to the Defendant.

VERDICTUM.IN

28. The learned *ADJ* further observed that the Plaintiff was unable to explain his silence from 25.08.2011 i.e. date on which last payment of **Rs. 1,00,000/-** was made by him, till 24.05.2013 i.e. date on which the Legal Notice was sent by him and as to why he had not taken any steps to get the document executed, if he was having the balance consideration ready with him. In these circumstances, the claim of the Defendant that the Plaintiff had terminated the Agreement in January 2012, was *accepted to be probable*.

29. In view of the aforesaid, the learned *ADJ* concluded that the Plaintiff was not ready and willing to perform his part of the Agreement and consequently, ***was not entitled to a Decree of Specific Performance of the Agreement to Sell dated 01.11.2007***.

30. The Plaintiff, in alternative relief, had sought **Rs. 8,30,000/- i.e.** double the amount paid by him to the Defendant. However, the learned *ADJ* decreed in the favour of the Plaintiff for refund of **Rs. 4,15,000/-**, which he had paid to the Defendant under the Agreement to Sell, along with the interest @ 6% per annum from the date of Notice i.e. **30.05.2013** till the date of realisation.

31. Aggrieved by the impugned Judgment dated **30.10.2019** wherein the claim of the Plaintiff for Specific Performance of the Agreement to Sell dated **01.11.2007** was dismissed, ***the Plaintiff/Appellant preferred the present First Regular Appeal.***

32. The Plaintiff/Appellant was not aggrieved by the decision of grant of the alternative prayer. In this Appeal, the Plaintiff has claimed that he was entitled for the grant of the main relief of Decree for Specific Performance of Agreement to Sell, dated **01.11.2007**.

VERDICTUM.IN

33. The first **ground of challenge** is that learned *ADJ* did not appreciated the pleadings, evidence and other relevant provisions of law relating to Specific Performance of Agreement, which were interpreted incorrectly. The *bonafide/*genuine claim of the Plaintiff has been rejected on the false, frivolous and fictitious defence stated by the Defendant.

34. It was contended that there was specific admission of the Defendant in his cross-examination, about the Plaintiff not having issued any Notice for termination of Agreement to Sell or that Defendant had never sent any Letter or served any Legal Notice on the Plaintiff for completion of the sale of the suit property. Further, no notice of forfeiture of the earnest money paid by the Plaintiff, had been issued by the Defendant.

35. It was proved from the evidence on record that there was never any termination of contract at any point in time; much less in January 2012 as alleged by the Defendant in his reply to the Legal Notice. The false allegations of Defendant, have been taken as gospel true, which were against the well-established principles of law, practice and procedure. The observations made by the learned *Trial Court* was contradictory and contrary to the records and was based on concoctions, conjectures and surmises having nothing to do with the reality.

36. The ***second challenge*** is that the Issues No. 3 and 4 have been decided on the basis of finding in Issues No. 1 and 2 in favour of the Defendant, without assigning any reason whatsoever. It was contended that the Plaintiff should have been granted the Decree of Specific Performance of Contract in his favour and the impugned judgment is liable to be set aside.

37. The policy of pick and choose and approbate and reprobate has been followed, in interpreting the terms and conditions of Agreement to Sell

VERDICTUM.IN

dated **01.11.2007**. There was no provision in Agreement to Sell regarding forfeiture of the money paid by the Plaintiff and the claim of the Defendant for forfeiture of the earnest money of **Rs. 2,00,000/-** and part payments of **Rs. 2,15,000/-,** had been rightly declined.

38. The prayer of the Plaintiff for payment of double amount of **Rs. 8,30,000/-** had been claimed because it was specifically so provided in the Agreement to Sell. The Defendant was, therefore, under a legal obligation to pay double the amount paid by the Plaintiff.

39. The Plaintiff has relied on ***Satya Jain vs. Anis Ahmed Rushdie, (2013) 8 SCC 131, K. Prakash v. B.R. Sampath, (2015) 1 SCC 597 and Zarine Siddiqui v. A. Ramalingam, (2015) 1 SCC,*** wherein it has been held that Section 20 of the Specific Relief Act provides that Courts with a discretion to grant the relief of Specific Performance, but such discretion is not to be exercised in an arbitrary manner; it must be exercised in accordance with sound and reasonable judicial principles.

40. The ***fourth challenge*** is that the Plaintiff and the Defendant, were neighbours, who were residing in the same Village, at a short distance from each other. The Plaintiff had made part payments till the end of August, 2011 and there was no reason for the Plaintiff, to have terminated the Agreement in January, 2012 and that too, without any written Notice or any correspondence. The story of the Defendant that the Plaintiff himself had cancelled the Agreement to Sell, is an afterthought and cooked-up story, to run away from performing his part of the contract.

41. The ***fifth challenge*** is that the balance sale consideration, was to be paid to the Defendant, within six months of the mutation of the suit property in the name of the Defendant. Till date, the Defendant has not got the

VERDICTUM.IN

property mutated in his name. The learned *ADJ*, did not consider that the Defendant himself has admitted that there was litigation ongoing in respect of the suit property and the same could not be transferred in the name of the Plaintiff, till the ongoing litigation was settled. If there would have been no stay, then also the property could not have been transferred, on account of the doctrine of *Lis Pendens*.

42. It was asserted that the learned *ADJ* wrongly held that that the Plaintiff was required to prove that he had sale consideration ready in 2011 or 2012. The Defendant had received the possession of the suit property in the end of May 2013 i.e. **30.05.2013** and even if the Plaintiff would have sought possession on the execution of the Sale Deed, the Defendant would not have been able to hand over the possession, since he himself was not in possession till May 2013.

43. As per Clause 3 of the Agreement to Sell dated **01.11.2007**, the Defendant had agreed to hand over the possession of the suit property to the Plaintiff, at the time of execution of Sale Deed in favour of the Plaintiff. When the Defendant came into the possession only in the end of May 2013, he was not in a position to hand over the vacant possession of the suit property to the Plaintiff, in 2011 or 2012. It was therefore, submitted that the impugned judgement be set aside and he be granted Specific performance of the Agreement to Sell.

44. The ***Written synopsis was filed by the Plaintiff/Appellant*** reiterating the assertions made in the grounds of Appeal.

45. The ***Defendant/Respondent, in his Written Submissions***, reiterated the assertions made in the Written Statement. It was therefore submitted that there is no merit in the Appeal, which is liable to be dismissed.

VERDICTUM.IN

Submissions heard and the record perused.

46. It is an admitted case of the parties that the Plaintiff entered into an Agreement to Sell dated **01.11.2007,** for purchase of the suit property. It is also admitted that the following amounts were paid by the Plaintiff to the Defendant:

Amount	***Vide Receipt dated***	***As***
Rs. 1,00,000	03.11.2007	Earnest Money
Rs. 1,00,000	09.01.2008	
Rs. 50,000	15.04.2008	Part Payment towards Balance Consideration
Rs. 65,000	20.06.2011	
Rs. 1,00,000	25.08.2011	
Aggregate Payment Received: Rs. 4,15,000/-		
Total Sale Consideration: Rs. 30,00,000/-		

47. The ***first aspect*** for consideration is *whether there was any impediment to the execution of the Sale Deed*. In this context, the Agreement to Sell dated **01.11.2007**, **EX-PW-1/1** may be considered, which was admittedly entered into between the parties. It was clearly mentioned in this Agreement to Sell that the Probate Case bearing **PC No. 40 of 2006** in respect of the Will dated **17.03.1999**, had been probated, *vide* Judgment dated **16.04.2007** and the Probate had been granted in favour of *Mr. Anil Kumar, the Defendant*. It was further noted that the Probate had been

VERDICTUM.IN

granted subject to filing of valuation report and requisite court fees and the Administration Bond.

48. In this context, it would be pertinent to note that when the Parties entered into the Agreement to Sell dated **01.11.2007**, the Probate Case bearing PC No. 40 of 2006 had already been decided in favour of the Defendant, of which, there is a mention in the Agreement to Sell itself. However, the same was challenged by *Smt. Beena Devi*, by way of an Appeal bearing **FAO No. 130 of 2008**, which also got dismissed on **14.12.2010**. After the dismissal of the Appeal, the Letter of Administration was issued in favour of the Defendant on **14.02.2011**. It is, therefore, evident that after the dismissal of the Appeal on **14.12.2010**, there was no impediment in the execution of the Agreement to Sell.

49. The ***second aspect*** is the Clause 5 of the Agreement to Sell dated **01.11.2007**, which mentioned that the Defendant had undertaken to get the property mutated in his name before the execution of the Sale Deed, after obtaining the necessary Letter of Administration/Probate from the Court. Admittedly, the Defendant claimed that he was not aware about the authority or procedure for the mutation of the suit property as he is not highly literate; the property has not been mutated till date.

50. It is evident that the Plaintiff was aware of the dismissal of the Appeal on **14.12.2010** and of the issuance of the Letter of Administration in favour of the Defendant. He, in fact, thereafter made payment of **Rs. 65,000/-** and **Rs. 1,00,000/-** on **20.06.2011** and **25.08.2011,** respectively. However, there is not a single notice or any evidence to show that the Defendant ever sought the extension of time for the completion of the Sale Deed or the Plaintiff had asked the Defendant to get the sale deed executed in favour of Plaintiff.

VERDICTUM.IN

Mere plea of ignorance by the Plaintiff of whether the suit property ever got mutated in the name of the Defendant, cannot ensure to the Plaintiff's benefit considering that it the Plaintiff was aware of the dismissal of the Appeal. The Plaintiff did not give any notice whatsoever to the Defendant, for execution of the Sale Deed. Furthermore, even if the property was not mutated, at least, the Plaintiff could have called upon the Defendant, to get it mutated as part of the conditions stipulated in the Agreement to Sell dated **01.11.2007**.

51. The ***third aspect*** was that the possession of the suit property, was with *Smt. Beena Devi* and the Defendant got the possession only on **30.05.2013**. Pertinently, the Legal Notice had been issued by the Plaintiff, prior to the said date i.e. on **24.05.2013** and therefore, his assertion that since the possession was not with the Defendant, the same could not have been executed, is without any merit. In this regard, it is also pertinent to produce the relevant clause of Agreement to Sell, which reads as under:-

> *"And Whereas the said portion of the property No.258, Village Shalamar, Delhi is in possession one Smt. Beena and the First Party has instituted a suit for recovery of possession against her which is pending in the court of Shri Paramjit Singh, ADJ, Delhi.* ***Thus the First shall deliver the possession of the property after obtaining the same from said Smt. Beena at his risk and responsibility."***

52. From the bare reading of this Clause, it is evident that the handing over of the physical possession, was not a condition precedent for execution of the Sale Deed. The Clause merely provided that it would be the obligation of the Defendant, to obtain the possession from *Smt. Beena Devi* and thereafter, to hand it over to the Plaintiff. It cannot be overlooked that when

VERDICTUM.IN

the Plaintiff entered into this Agreement to Sell dated **01.11.2007**, he was well aware of the litigation between the Defendant and *Smt. Beena Devi*, as it clearly finds mention in the Agreement to Sell itself. Therefore, it is quite evident from the Clause in regard to the possession, that the handing over of physical possession, was no impediment or a pre-condition for the execution of the Sale Deed.

53. The main element in the Agreement to Sell dated **01.11.2007** which is required to be proved, is that the *Plaintiff had readiness and willingness to perform his part of the Agreement to Sell* since the day of execution of this Agreement to Sell, till the Suit has filed and even thereafter, till the Decree of Specific Performance is passed, as has been held in the case of *H.P. Pyarejan v. Dasappa (Dead) By L.Rs. & Ors.*, (2006) 2 SCC 496.

54. The averments in the Plaint as a whole, must clearly indicate the readiness and the willingness. Section 16(c) of the Specific Relief Act, 1963 mandates the plaintiff not only to make averments in the plaint but also to establish fact by evidence *aliunde* about his readiness and willingness to perform the Contract.

55. The Legislature has chosen to use two phrases, namely "***readiness***" and "***willingness***". While the "***willingness***" indicates his state of mind which is determined through the conduct of the plaintiff, the "***readiness***" indicates the financial capacity of the plaintiff which is required to be proved through evidence that he had the financial capacity to perform the Agreement.

56. *In Syed Dastagir v. T.R. Gopalakrishna Setty*, (1999) 6 SCC 337, the Apex Court while construing the connotation of readiness and willingness, observed that the compliance of "*Readiness and willingness has to be in spirit and substance and not in letter and form. So to insist for mechanical*

VERDICTUM.IN

production of the exact words of a statute is to insist for the form rather than essence. So absence of form cannot dissolve an essence if already pleaded." It was also observed that the plea of readiness and willingness is not an expression of art and science, but an expression through words to place fact and law of one's case for a relief. In order to gather true spirit behind a plea it should be read as a whole and to test whether the plaintiff has performed his obligations, one has to see the pith and substance of the plea.

57. The statute *"specifically require a plea to be made in any particular form, it can be in any form. No specific phraseology or language is required to take such a plea*." Further, to establish "***readiness***", the Plaintiff is required to be proved through evidence that he had the financial capacity, as has been explained in the case of *K.V. Balan (Dead) Through Legal Representatives v. Bhavyanath (supra)*.

58. The connotation of readiness is not that the intending purchaser has to produce the money or to vouch a concluded scheme for financing the transaction; it is sufficient for the purchaser to establish that he has the capacity to pay, as was explained in the case of *Raghunath Rai & Another v. Jageshwar Prashad Sharma*, (1999) 50 DRJ 751.

59. The financial capacity has to be however, proved strictly and self-serving statements cannot discharge the burden of proving existence of financial capacity, as noted by this Court in the case of *Baldev v. Bhule*, (2012) 132 DRJ 247.

60. The Supreme Court in Madhukar Nivrutti Jagtap v. Pramilabai Chandulal Parandekar, 2019 SCC OnLine SC 1026 held that the requirement to prove readiness and willingness is not that the plaintiff should continuously approach the defendant with payment or make incessant

VERDICTUM.IN

requests for performance. The requirement of readiness and willingness of the plaintiff is not theoretical in nature, but is essentially a question of fact which needs to be determined in reference to the pleadings and the evidence led by the parties.

61. The aspects to be established for proving the readiness, are crystallized, as under:

(i) *It should be clearly stated it the Plaint that the plaintiff was, is ready and also explain his financial capacity;*

(ii) *it is sufficient for the purchaser to establish that he has the capacity to pay, and is not required to prove the ready cash in hand; and*

(iii) *The financial capacity has to be however, proved strictly and self-serving statements cannot discharge the burden of proving existence of financial capacity.*

62. In the present case, it would be pertinent to refer to the Plaint wherein while the Plaintiff has asserted in **Paragraph 6** of the Plaint that "*the Plaintiff was waiting after arranging huge money and had been losing interest on the said amount*". Further, he stated that he has always been ready and willing to perform his part of the contract and is still ready and willing to perform his part of the contract. Mere mechanical reproduction of the statutory language in the plaint does not suffice, but some details of the availability should have been explained, which was significantly, missing.

63. The second aspect is whether the Plaintiff was also to corroborate and prove his statement in the Plaint that he had a huge money ready on which he was losing interest, and has also been deposed by him as **PW-1** to the same effect. The Plaintiff did not produce any ***cogent proof that he indeed,***

VERDICTUM.IN

had the balance sale consideration amount in cash ready to pay to the Defendant for execution of the Sale Deed.

64. The assertion of the Defendant is that the Plaintiff did not have the requisite money, is proved from his bald assertion of losing interest on huge amount, thereby implying that he was having money in cash, but the Plaintiff did not disclose any source of money from where he had arranged the balance sale consideration.

65. It is pertinent to note that it was only during the cross-examination, the Plaintiff produced his Bank Statement, **EX-PW-1/DX1**, which was for the period **01.05.2013** to **12.06.2013** i.e. after the institution of the Suit on **09.07.2013**. While the Plaintiff may have been able to show that in May 2013, he had the requisite amount in the Bank *vide* Bank Statement, but the Plaintiff was required to show his liquidity from the date of execution of the Agreement to Sell dated **01.11.2007** or in any case, from December 2010 when the Appeal was dismissed and February, 2011 when Letter of Administration was issued, in the favour of Defendant.

66. Thus, while it emerges that the Plaintiff evidently asserted that at the time of institution of the Suit, Plaintiff was referring to cash, which he has not been able to prove. During the evidence, he produced the Bank Statement, but it was from after the institution of the Suit, thereby confirming that he did not have the sufficient funds at the relevant time to pay under the Agreement to Sell.

67. The Defendant had also asserted that, in fact, the Plaintiff was not ready with the requisite money and had been requesting the Defendant to accept the remaining consideration in parts, to which, the Defendant did not agree and asked the entire sale consideration for execution of the Sale Deed.

VERDICTUM.IN

68. That the Plaintiff did not have the requisite money, is also established from the fact that he paid **Rs. 65,000/-** and **Rs. 1,00,000/-** *vide* receipts dated **20.06.2011** and **25.08.2011** respectively. By then, the litigation had gotten over and even the Letter of Administration had been issued to the Defendant on **14.02.2011**. The very fact that he was making payments in instalments despite all impediments being removed, also corroborates that the Plaintiff indeed did not have the requisite balance sale consideration amount to pay to the Defendant.

69. The learned *ADJ*, therefore, has rightly observed that the Plaintiff was unable to prove his readiness and willingness to perform the Agreement to Sell dated **01.11.2007**, which is a pre-requisite for any Suit for Specific Performance to be decreed.

70. ***The Suit for Specific Performance has been rightly, dismissed.***

71. The ***last aspect*** was the refund of the *earnest money* and part payments of **Rs. 4,15,000/-** made by the Plaintiff under the Agreement to Sell.

72. Section 22 of the Specific Relief Act, 1963 is as under:-

> *"22. Power to grant relief for possession, partition, refund of earnest money, etc.—*
>
> *(1) Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908 (5 of 1908), any person suing for the specific performance of a contract for the transfer of immovable property may, in an appropriate case, ask for—*
>
> > *(a) possession, or partition and separate possession, of the property, in addition to such performance; or*

VERDICTUM.IN

(b) ***any other relief to which he may be entitled, including the refund of any earnest money or deposit paid or made by him, in case his claim for specific performance is refused.***

(2) No relief under clause (a) or clause (b) of sub-section (1) shall be granted by the court unless it has been specifically claimed:

Provided that where the plaintiff has not claimed any such relief in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just for including a claim for such relief.

(3) The power of the court to grant relief under clause (b) of sub-section (1) shall be without prejudice to its powers to award compensation under section 21."

73. The term **"advance/part-payment"** means money, in whole or in part, forming part of the consideration of an Agreement, paid before the same becomes fully payable. On the other hand, "**earnest money**" means a sum of money given for the purpose of binding a contract, which is forfeited in case the contract does not materialise.

74. In the case of *Chiranjeet Singh vs. Har Swarup*, AIR 1926 PC 1, the nature of earnest money was explained in the terms, that it is part of the purchase price when the transaction goes forward and it is forfeited when the transaction falls through, by reason of the fault or failure of the purchaser.

75. This concept of earnest money, was succinctly explained in the case of *Shree Hanuman Cotton Mills vs. Tata Air Craft Ltd.*, (1969) 3 SCC 522, as under:-

"21. ..., the following principles emerge regarding "earnest":

VERDICTUM.IN

(i) It must be given at the moment at which the contract is concluded.

(ii) It represents a guarantee that the contract will be fulfilled or, in the other words, "earnest" is given to bind the contract.

(iii) It is part of the purchase price when that transaction is carried out.

(iv) It is forfeited when the transaction falls through by reason of the default of failure of the purchaser.

(v) Unless there is anything to the contrary in the terms of the contract, on default committed by the buyer, the seller is entitled to forfeit the earnest."

76. The Apex Court again in the case of *Videocon Properties Ltd. vs. Bhalchandra Laboratories*, (2004) 3 SCC 711, examined the nature and character of the earnest money deposit and observed that earnest money fulfils a dual purpose; ***first***, it operates as part-payment of the purchase price and; ***secondly***, as security for the performance of the contractual obligations. Thus, its true character and purpose can only be examined on a close reading of the agreement, and the relevant contextual factors. Further, the words used in the agreement alone cannot be determinative of the true nature of the amount advanced. Instead, the intention of the parties and the surrounding circumstances serve as more appropriate indicators. The relevant observations are reproduced herein below:

"14. […….] Further, it is not the description by words used in the agreement only that would be determinative of the character of the sum but really the intention of parties and surrounding circumstances as well, that have to be looked into and what may be called an

VERDICTUM.IN

advance may really be a deposit or earnest money and what is termed as "a deposit or earnest money" may ultimately turn out to be really an advance or part of purchase price. Earnest money or deposit also, thus, serves two purposes of being part-payment of the purchase money and security for the performance of the contract by the party concerned, who paid it."

77. The three-judge Bench of the Apex Court in the *Case of Central Bank of India vs. Shanmugavelu*, (2024) 6 SCC 641, reiterated the difference between the "earnest money" and the "advance money". It was held that if earnest money is adjusted towards the sale consideration, it loses its character of earnest money and becomes part-payment. It was held that the earnest money can be treated as part-payment of sale consideration, only if the contractual terms under the Agreement are honoured. An advance is a part to be adjusted at the time of final payment. If the promisee defaults to carry out the contract, he loses the earnest money, but may recover part payment leaving untouched the promisor's right to recover the damages.

78. From the admitted case, it has emerged in the present case that Rs. 2,00,000/- was paid under the Agreement to Sell, while Rs. 2,15,000/- was paid from time to time, as part payment towards the balance sale consideration, which was essentially advance money under the Agreement to Sell.

79. **Clause 2** of the Agreement to Sell read as under:

> *"That in case the First Party shall fail to honour its commitment for sale of the property consequent to the payments to be made by the Second Party within time in terms of this Agreement, the First Party shall pay double the amount of the earnest money to the Second Party and upon*

VERDICTUM.IN

such payment the Second Party shall not be left with any right, title, interest or claim qua the said property in any manner whatsoever."

80. The Agreement to Sell dated **01.11.2007**, **Ex. PW-1/1**, *does not contain any stipulation for forfeiture of the earnest money or the part payments in the event of default by the purchaser.* The only stipulation in regard to breach is that if the Defendant failed to execute the Sale Deed, he would pay double the earnest money to the Plaintiff. There is, thus, no sum named in the contract as payable by the Plaintiff in case of his breach. The Defendant's claim to retain the amount could, therefore, rest only upon proof of the loss suffered by him in terms of Section 73.

81. Having so held, the next question that arises is whether the Defendant is entitled to forfeit the entire amount. In this regard, it would be pertinent to refer to Sections 73 and 74 of the Indian Contract Act, 1872, which read as under:

> ***"73. Compensation for loss or damage caused by breach of contract.—****When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.*
>
> *Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.*
>
> *…*
>
> ***74. Compensation for breach of contract where penalty stipulated for.—****When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party*

VERDICTUM.IN

*complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for.***"**

82. A plain reading of Section 73 makes it evident that the party who suffers by the breach is entitled to compensation only for the loss or damage caused to him thereby. Section 74 further makes it evident that even where a sum is named in the contract, it does not become automatically recoverable merely upon proof of breach. The aggrieved party is entitled only to *"reasonable compensation not exceeding"* the sum named or the penalty stipulated.

83. The Constitution Bench of the Supreme Court in *Fateh Chand v. Balkishan Das*, (1964) 1 SCR 515, held that the words *"whether or not actual damage or loss is proved"* merely dispense with proof of the precise quantum of loss, and do not dispense with the existence of legal injury. Section 74 *"does not justify the award of compensation when in consequence of the breach no legal injury at all has resulted".*

84. The principles were comprehensively restated by the Supreme Court in *Kailash Nath Associates v. Delhi Development Authority*, (2015) 4 SCC 136, wherein it was held as under:

> **"***43.3. Since Section 74 awards reasonable compensation for damage or loss caused by a breach of contract, damage or loss caused is a sine qua non for the applicability of the Section.*
>
> *…*
>
> *43.6. The expression 'whether or not actual damage or loss is proved to have been caused thereby' means that where it is possible to prove*

VERDICTUM.IN

actual damage or loss, such proof is not dispensed with. It is only in cases where damage or loss is difficult or impossible to prove that the liquidated amount named in the contract, if a genuine pre-estimate of damage or loss, can be awarded.

43.7. Section 74 will apply to cases of forfeiture of earnest money under a contract. Where, however, forfeiture takes place under the terms and conditions of a public auction before agreement is reached, Section 74 would have no application."

85. Thus, the forfeiture of earnest money paid under an Agreement to Sell, is not an automatic consequence of breach. Even the right of the seller to forfeit the earnest money on the default of the purchaser, as recognised in *Shree Hanuman Cotton Mills* (supra), is subject to Section 74. The amount named in the contract operates only as the outer limit of compensation. The party seeking to retain it must establish that legal injury has resulted from the breach, and where the loss is capable of proof, it must be proved.

86. In the present case, there is not an iota of evidence led by the Defendant to show that on account of non-performance of the Agreement to Sell, he suffered any loss. Rather, the Defendant himself asserted that the price of real estate in the locality had increased manifold, and the suit property continues to remain with him. Therefore, once there is no loss, which has been shown to have accrued to the Defendant, he was not entitled to forfeit the amount of **Rs. 4,15,000/-** that had been received by him under the Agreement to Sell, whether as earnest money or as part payment.

87. Furthermore, the Defendant asserted that the Plaintiff had terminated the contract orally in January, 2012 but there is not an iota of evidence to corroborate his assertion. It is pertinent to note that had the contract been terminated, there is no reason why the Plaintiff would not have sought

VERDICTUM.IN

recovery of the amount paid under the Agreement to Sell dated **01.11.2007**, or soon thereafter.

88. Furthermore, the Defendant, who has claimed that the contract stood terminated, neither issued any letter nor informed the Plaintiff about the alleged forfeiture of the money paid by the Plaintiff under the Agreement to Sell. **Therefore, it is clear that there was no termination of the Agreement to Sell by the Plaintiff, as alleged by the Defendant.** The observation of the learned *ADJ* that the plea of termination in January, 2012 appeared probable, therefore, cannot be sustained.

89. Since the Agreement to Sell was never terminated, and the Defendant has failed to establish either a contractual right of forfeiture or any loss suffered by him, he cannot retain the amount received by him under the Agreement to Sell dated 01.11.2007, which never fructified into a Sale Deed. ***The Plaintiff is, therefore, entitled to the refund of Rs. 4,15,000/-.***

90. The Plaintiff had, in the alternative, claimed **Rs. 8,30,000/-,** being double the amount paid by him. In terms of *Kailash Nath Associates* (supra), even the sum so named would operate only as the outer limit of reasonable compensation, and the Plaintiff has neither pleaded nor proved any loss beyond the deprivation of the money paid by him, which stands compensated by the refund along with interest. *The learned ADJ was, therefore, justified in declining the claim for double the amount*.

91. Therefore, the learned *ADJ* was right in decreeing the Suit in favour of the Plaintiff, for refund of the amount of **Rs. 4,15,000/-** along with the interest @ 6% p.a. from the date of Notice i.e. **30.05.2013**, till the date of realisation.

VERDICTUM.IN

92. There is **no merit** in the present Appeal, ***which is hereby, dismissed and disposed of accordingly***.

93. The pending Applications are disposed of accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

OCTOBER 16, 2026/ds/RS