

Non-Reportable

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3336 OF 2019  
(Arising out of S.L.P.(C) No.1701 of 2016)

BHAVYANATH REPRESENTED BY  
POWER OF ATTORNEY HOLDER ... APPELLANT(S)

VERSUS

K.V. BALAN (DEAD) THROUGH LRS. ... RESPONDENT(S)

J U D G M E N T

K.M. JOSEPH, J.

1. The appeal by Special Leave is directed against the judgment passed by the High Court of Kerala at Ernakulam dated 08.10.2015 in RFA No.869 of 2013. The appellant is the plaintiff in a suit for specific performance which has been decreed by the trial Court but on appeal by the defendant dismissed by the impugned judgment of the High Court. For the sake of convenience, the parties would be referred hereinafter

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ASHA SUNDARAYAL  
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as per their status shown in the plaint before the trial Court.

## THE AGREEMENT

2. There is no dispute that the plaintiff and the defendant have indeed entered into an agreement on 25.04.2007. The agreement (marked as A1), inter alia, provided as follows; The property, which was agreed, to be sold was mentioned as 75  $\frac{3}{4}$  cents held by the defendant as per assignment deed No.1405 of 1975. The property agreed to be sold included all improvements thereon including an incomplete RCC house building, Well, motor shed etc. Payment of Rs.2,00,000/- as advance was recorded. Towards balance consideration the plaintiff was to pay the minimum amount of Rs.3,00,000/- within four months from 25.04.2007. It is further recited that on such payment, the defendant will assign land equivalent to Rs.3,00,000/- in favour of the person nominated by the plaintiff for the portion agreed by both the parties. The consideration was fixed at Rs.34,000/- per cent of property to be found on actual measurement. The time limit was fixed as "till the 24th day of March, 2008". Time limit was expressly mentioned as an essential part of the agreement. The assignment was to be executed either in

favour of the plaintiff or any other person nominated by him in writing. Before the execution of the assignment deed, the contract further provided that the plaintiff shall be convinced of the title of the property and other connected things.

### DEVELOPMENTS AFTER THE AGREEMENT

3. It is not in the region of dispute that the plaintiff paid Rs.3,00,000/- by cheque on 25.08.2007 and it is also endorsed in the agreement. Thereafter, on 25.01.2008 the defendant sent a lawyers notice to the plaintiff. Therein it is stated that the defendant holds 75  $\frac{3}{4}$  cents as per the assignment deed, already referred to, which property was agreed to be sold for Rs.34,000/- in terms of the agreement and the last date of the agreement was fixed as 24.03.2008. It is further stated that the plaintiff was to give balance consideration by deducting the advance within the stipulated time for which the defendant is ready and he called upon the plaintiff to get ready for the same by that time. It is further stated that the plaintiff had orally offered to the defendant in the presence of witnesses that he will take assignment of the property

even before the stipulated date for which the defendant is ready.

4. The plaintiff caused a reply notice to be sent to the aforesaid lawyers notice. The reply notice sent was dated 18.03.2008. Therein it is relevant to notice certain statements. After referring to Ext.A1 agreement, it is stated that the lawyers notice was sent by the defendant without getting the property measured or producing and convincing the plaintiff about the original title deed No.1405/1975 as well as prior documents. It is stated that the plaintiff was and is continuously ready and willing to perform his part of the agreement right from the beginning till then and in future. The statement in the notice, sent by the defendant, is denied that the plaintiff will take the assignment before the agreed date and it was agreed so in the presence of witnesses. It is alleged that defendant sent the notice with ulterior motive concealing that property had not been measured and without producing the original title deed. The plaintiff pointed out that the defendant consented to measure the property only three days before that date

i.e. on 16.03.2008 (it may be noticed that reply notice is dated 18.03.2008 and it was sent only later). It was further stated that the defendant told the plaintiff that the total extent of property, as per the document, found on measurement was only 70.950 cents. The case sought to be set up further is that, according to the plaintiff, 1 ½ cents of property was not in the possession or ownership of the defendant. Out of the 70.950 cents of property one cent on the southern boundary was alleged to belong to one Kochammu and another ½ cent of property on the northern boundary belonged to some one else. This information was got by plaintiff from reliable source. The plaintiff complains in the reply notice that the defendant was insisting that he will assign the property only if the consideration in full for the said 70.950 cents was paid. Objection was taken to the same by the plaintiff. Thereafter, it is, inter alia, stated that the plaintiff is ready and willing to take the assignment of the entire property available as per the original document No.1405/1975. The insistence on the part of the defendant in withholding the original document is stated to be ill-motivated. The plaintiff thereafter

states that he wished to construct residential house building for his own occupation adjacent to the property as per agreement which is very close to his proposed residence. Plaintiff is alleged to have made solid arrangement for the same. It was specifically, inter alia, stated that the plaintiff had arranged balance consideration and he was continuously ready and willing to take the assignment right from the date of the agreement i.e. on 24.03.2007 and thereafter in future as well.

We further notice that on 24.03.2008, which as per Ext.A1 agreement, was to be the "last date" under the agreement, the plaintiff and the defendant claimed that they were present at the office of the Sub Registrar. According to the plaintiff, the defendant was elusive and could not be contacted over the phone and he was unavailable. The plaintiff filed a complaint before the police on 24.03.2008 in the evening. He also followed it up with a petition before the Sub Registrar on 25.03.2008. Within three days from 24.03.2008, that is on 27.03.2008, the present suit came to be instituted, claiming specific performance. In the plaint, after referring to the agreement, the plaintiff has alleged

that he was always ready and willing to perform his obligations. The blame was put at the doorstep of the defendant for breaching the contract. The defendant in his written statement on the other hand blamed the plaintiff for breach and it was his case that plaintiff was not ready and willing and he was not ready with the funds.

#### PROCEEDINGS BEFORE THE TRIAL COURT

5. The trial Court struck the following issues; (1) whether the plaintiff was ready and willing to perform his part of the contract, (2) whether the defendant committed breach and (3) whether the plaintiff is entitled to get a decree for specific performance. The trial Court, inter alia, found as follows.

"8. It is true that plaintiff has not produced any document to show that he was having ready cash covering the balance consideration, payable by him under Ext.A1, at the relevant time. Of course, certain documents are produced to show that presently he is having some ready cash in the form of fixed deposits and in the form of share certificates etc. I do not think that any of these documents are much relevant in this case for the reason that in the nature of the dispute the plaintiff has to prove his capacity to pay the balance consideration within the period shown in Ext.A1. Production of these documents which are admittedly after

the suit may not have much evidentiary value."

6. The trial Court further holds that it is not the requirement of law that a vendor in a contract for sale has to carry the balance consideration with him always till the expiry of the agreement. It is sufficient that he has enough source to raise the funds as and when required. Rejecting the contention of the defendant, that plaintiff did not have money even when he entered Ext.A1 agreement, it was noticed that admittedly on the date of agreement Rs.2,00,000/- was paid and subsequently Rs.3,00,000/- was paid. The explanation of plaintiff as to why he did not take the proportionate extent on payment of Rs.3,00,000/-, as provided in the agreement, was accepted. It was found that the extent was not found sufficient on the advise of the engineer to start the construction. The case of the plaintiff, in fact, is that the idea to purchase the plaint schedule property was to start a tuition center by making a partnership between himself and his family members. Thereafter, it is found as follows in paragraph 12:

"12. Plaintiff has given clear evidence to the effect that he had sufficient money with him for completing his part. As already stated by him, he did not carry the ready cash with him through out the period of the agreement. The total amount of consideration comes to Rs.25,67,000/-, even if the extent is taken as 75 3/4 cents. It is contended that plaintiff was only a student at the time of Ext.A1. He is so described in Ext.A1 also. PW1 says that even at that time he was employed. True, one cannot expect that from his employment alone he could have mobilized the balance consideration. The income tax returns filed by him show his salary and prove the above fact. But there is ample evidence to show that his father was actively involved in the transaction. PW1 has deposed that his family members were possessing gold ornaments worth Rs.25,00,000/- and he was having cash amount of Rs.8,00,000/- at the relevant time. The defendant has no case that the plaintiff was not supported by his father. In fact, the active involvement of his father in the transaction is rather admitted by defendant himself. Plaintiff has produced several documents to show that his parents are having sufficient properties and gold ornaments. Of course, most of them are after suit documents. But there is an admission made by DW1 that after Ext.A1, the plaintiff has purchased an adjacent plot measuring 10 cents. Considering the totality of the evidence available, I am inclined to hold that the plaintiff was having capacity to raise the balance consideration had the necessity arisen. Therefore, I am inclined to accept the evidence of PW1 that he was ready with the balance consideration or at least he was capable of raising the balance consideration as and when required."

7. The trial Court thereafter also rendered findings on the issue as to whether the defendant had committed breach. The contention of the plaintiff that the lawyers notice dated 25.01.2008 sent by the defendant was issued with ulterior motive was accepted. It was found that under Ext.A1 agreement the property was to be measured and the actual extent was to be ascertained. Before sending lawyers notice, the defendant had not got the property measured. It was for the defendant to get the property measured. Referring to the admissions made by the defendant, it was found that he had not taken any step for measuring the property. The admission that the defendant was aware on the date of Ext.A1 agreement that the entire extent of 75  $\frac{3}{4}$  cent was not available is referred to. The case of the defendant that the property was measured by the plaintiff on 16.05.2007 was found unacceptable. The case of the plaintiff was that on 16.05.2007 he along with engineer inspected the site to find out the possibility of construction in the extent falling proportionately to the amount of Rs.3,00,000/- was explored. Defendant was to convince the plaintiff regarding the title deed and the tax receipt. The

plaintiff had got marked Ext.A9 and A10, encumbrance certificate. They revealed that mortgage was created by the defendant over the property in the year 1983. No entry regarding the clearance of the mortgage was found. The case of the defendant that he had obtained the release deed was found unacceptable by noting that the release deed was neither produced nor there is any evidence to prove that fact. Thus, the defendant had breached his obligation under the contract. The plaintiff got the property measured through the village officials on 16.03.2008 in the presence of the defendant. The trial Court relied on Ext.A42, the copy of the counter, filed by the defendant to interlocutory application, filed by the plaintiff, wherein the defendant has averred that the plaintiff and his father got convinced to the actual extent as 70.950 cents by measuring the property. The trial Court found this to be a case of the defendant accepting that the measurement was done on 16.03.2008. The measurement on 16.03.2008 was arranged and paid for by the plaintiff. It again, according to the trial Court, indicated the readiness and willingness on the part of the plaintiff and that the defendant was negligent in performing his

part. In Court, the property was got measured by the Commissioner with the help of Taluk Surveyor. Ext.C2 is the report and Ext.C2(a) is the survey plan prepared by Commissioner. They show that extent in possession of the defendant on the strength of the title deed is 71.70 cents. 4.25 cents has been taken out from the property of the defendant for road. Another extent of 0.375 cents was found to be in the possession of a third party. These facts are found to be admitted by defendant as DW1. Measurement in such circumstances was found absolutely necessary for the completion of the sale transaction. As regards both, the plaintiff and defendant, asserting that they were before the Sub Registrar on 24.03.2008, the trial Court found no meaning in the same. Both sides were aware that without measurement it would not have been possible to complete the transaction. The plaintiff found on measurement that only lesser extent is available. Appearance before the Sub Registrar could not be considered as an act showing the readiness and willingness, it was found both for the plaintiff and the defendant. Dehors this act, the trial Court found there were other circumstances which proved readiness and willingness

of the plaintiff. No default on the part of the plaintiff being found and breach being found on the part of the defendant and still further finding no undue hardship even being complained of by the defendant, the trial Court decreed the suit by directing specific relief against the defendant. Defendant appealed.

#### FINDINGS OF THE HIGH COURT

8. The High Court, inter alia, has entered into the following findings. It referred to para '8' of the judgment of the Trial court, which we have extracted.

In paragraphs 23 and 24, the High Court proceeded to discuss the question whether the defendant was in breach and this is what the Court proceeded to say:

"23. In so far as the condition requiring measurement of the amount is concerned, averments in the plaint itself show that on 16.3.2008, the land was measured. Although it is case of the respondent that it was he who got the land measured, the appellant contended that it was at his instance, the land was measured. Though evidence is lacking to conclude this dispute either way, for the purpose of this case, we do not think it necessary to resolve this controversy for the reason that irrespective of who got the land measured, fact remains that the land was measured and the parties are in agreement that on measurement, the extent found was

only 71.750 cents. In other words, this shows that as a result of the measurement carried out on 16.3.2008, one of the conditions for performance of the agreement was satisfied.

24. In so far as the title of the appellant is concerned, even the respondent plaintiff has no case that the appellant did not have title or that it was defective and the question of handing over the title deeds arise only at the time of execution of the sale deed. This, therefore, means that no fault could have been attributed on the part of the appellant and therefore, the court could have granted a decree for specific performance of the agreement only if the respondent had satisfied the requirements of section 16(c) of the Specific Relief Act. In so far as this aspect of the matter is concerned, the question is whether the respondent has proved his readiness and willingness to perform the agreement."

9. After referring to various decisions of this Court and of the High Court, the High Court proceeded to find that a finding of breach by the vendor in performing his obligations would not be sufficient for a Court to decree specific performance. The breach by the defendant, in other words, would not absolve the plaintiff to allege and prove his readiness and willingness to perform his obligations under the contract. "Readiness" relates to financial capacity to pay consideration whereas "willingness relates to the

state of mind. Following are the findings which we may refer to:

"25. While readiness indicates the fiscal capacity of the respondent to perform the agreement, willingness indicates his state of mind. In so far as readiness is concerned, the further question that is required to be proved is whether readiness has been proved on the evidence available. We have already referred to paragraph 8 of the judgment and the oral evidence of PW1 which, to our mind, do not help the respondent plaintiff to prove his case of readiness or his capacity to perform the agreement. Turning to the documents that are relied on, those documents include Exts.A22 and A23 valuation certificates of the gold allegedly possessed by the respondent's mother and wife, which were marked through PW4. Ext.A24 series and A25 marked through PW8 are the certificates issued about the properties allegedly owned by them. These are documents which were obtained after 24.3.2008 and are regarding the assets owned by the father, mother and wife of the respondent plaintiff. The owners of these assets have not tendered any evidence whether they actually possessed these properties at the time when the agreement was to be performed and even if they had possessed these assets, whether they were willing to part with it in order to enable the respondent plaintiff to generate funds out of it towards the sale consideration payable under Ext.A1. There is also no averment in the plaint to that effect.

26. In so far Exts.A11 to A16 are concerned, these again are fixed deposit receipts issued in the year 2012, which also cannot help the respondent plaintiff to prove his capacity as on 24.3.2008 or any time before that. Among the other documents which were relied on by the learned counsel for the respondent to

contend that the readiness was proved by him, Exts.A17 and A20 show that his father had sold certain shares on 3.11.2010. Similarly, Ext.A18 shows that the respondent had sold his shares on 31.8.2010. Ext.A19 is yet another document which show that on 26.12.2011 his mother had sold certain shares. Exts.A26 and 27 are certificates issued by the Canara Bank and Union Bank again in 2013 when the trial was pending, which show that his father had certain funds available with him. As in the case of Exts.A11 to A16, A22, A23, A24 and A25, all these documents would not show that funds were available with either of the respondent or his parents on 24.3.2008 or any time prior thereto. Therefore, these documents also will not help the respondent to contend that his readiness and willingness were proved by him to substantiate his prayer for specific performance of Ext.A1 agreement."

10. On the above reasoning, High Court allowed the appeal and decree of the trial Court was set aside.

11. We have heard Shri K.V. Viswanathan learned senior counsel for the appellant/plaintiff besides Shri P.N. Ravindran learned senior counsel for the respondent/defendant.

12. Learned senior counsel for the plaintiff points out that High Court committed error in interfering with the judgment of the trial Court. The principles

relating to compliance with Section 16(c) which enshrines the concept of readiness and willingness on the part of the plaintiff has not been properly appreciated. He submitted that plaintiff had sufficient capacity which is what mattered. The law cannot be disputed that in a suit for specific performance, the plaintiff need not have the amount in cash. What is crucial is whether he has the financial capacity to perform his obligations. He drew our attention to the fact that the plaintiff along with members of his family, which consisted of his father, mother and his wife, had enough resources. An amount of Rs.5,00,000/- was already paid. Even the gold ornaments having regard to their value (valued at Rs.24,00,000/-) besides about Rs.8,00,000/- in cash held by the plaintiff himself would suffice. The Court need not even go into the aspect relating to landed properties and other assets available. As regards the finding of the High Court about the certificates relating to landed property, being later in point of time, it is pointed out that lands were very much with the members of the family as on the date of the agreement and the date when the sale was to be executed. The fact that the certificates were

of a later date did not take away the availability of these assets. He pointed out that, in fact, the dispute actually centered around the extent of property and the financial capacity was not in dispute as such.

13. Per contra, Mr. P.N. Ravindran, learned senior counsel drew our attention in paragraph 8 of the trial Court which we have already referred to. He further submitted that as regards the gold ornaments, the plaintiff has not chosen to examine the members of his family and without their testimony showing their willingness to make available their valuables, apart from the availability of the assets, it could not be said that the High Court fell into error.

14. Before we advert to the facts it is appropriate to discuss a few decisions of this Court. In Man Kaur (Dead) by Lrs. v. Hartar Singh Sangha - (2010) 10 SCC 512, this Court dealt with the contention of the purchaser in that case that the vendor had committed the breach and there is no need for the plaintiff to prove his readiness and willingness. This is what the Court held in paragraph 40:

"40. This contention has no merit. There are two distinct issues. The first issue is the breach by the defendant - vendor which gives a cause of action to the plaintiff to file a suit for specific performance. The second issue relates to the personal bar to enforcement of a specific performance by persons enumerated in section 16 of the Act. A person who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him (other than the terms the performance of which has been prevented or waived by the defendant) is barred from claiming specific performance. Therefore, even assuming that the defendant had committed breach, if the plaintiff fails to aver in the plaint or prove that he was always ready and willing to perform the essential terms of contract which are required to be performed by him (other than the terms the performance of which has been prevented or waived by the plaintiff), there is a bar to specific performance in his favour. Therefore, the assumption of the respondent that readiness and willingness on the part of plaintiff is something which need not be proved, if the plaintiff is able to establish that defendant refused to execute the sale deed and thereby committed breach, is not correct. Let us give an example. Take a case where there is a contract for sale for a consideration of Rs.10 lakhs and earnest money of Rs.1 lakh was paid and the vendor wrongly refuses to execute the sale deed unless the purchaser is ready to pay Rs.15 lakhs. In such a case there is a clear breach by defendant. But in that case, if plaintiff did not have the balance Rs.9 lakhs (and the money required for stamp duty and registration) or the capacity to arrange and pay such money, when the contract had to be performed, the plaintiff will not be entitled to specific performance, even if he proves breach by defendant, as he was not

"ready and willing" to perform his obligations."

(Emphasis supplied)

15. Taking up the issue relating to measurement of the property, let us examine the matter in some detail. In Ext.A1 agreement the defendant had agreed to sell 75  $\frac{3}{4}$  cents acquired under document No.1405/1975. The price was fixed as Rs.34,000/- per cent. The extent was no doubt to be found on actual measurement. The trial Court found that though it is not stipulated as to who will carry measurement, but the defendant being in possession he was, to undertake the measurement. The defendant, when he was examined as DW1, has inter alia stated as follows; For the purpose of determination of sale consideration property had to be measured. He further states that after one week of the date of execution of the agreement Gopi brought a person and measured the property. When he saw the measuring activity, he went to the property and asked for a copy of the measurement details, but was not given. We proceed on the basis that the reference to Gopinath, is none other than the father of the plaintiff. He admits that these facts are not stated in the written

statement. He states that he did not know about the measurement of the property on 16.03.2008. There was no opportunity to get the plaint schedule property measured before the same was to be assigned. He specifically states that he has not convinced them the actual measurement of the plaint schedule property. He further states that no measurement of the plaint schedule property was done before the expiry of the agreement period. He further states that he has not got measured the extent of property after execution of the agreement. He states that he does not remember about the statement in Ext.A42 about the extent of the property being convinced of by the plaintiff and his father to be 70.950 cents. He specifically states that it is not right to say that the plaint schedule property has been got measured on 16.03.2008. He states that he was not present at that time. We would think that the High Court was in error in holding that on measurement being carried on 16.03.2008, one of the conditions for the performance of agreement was satisfied if it is meant to find that the defendant had carried out the obligations under the contract. It is noticed from paragraph 23 of the impugned judgment that contrary to

his deposition, which we have adverted to as DW1, it was contended on behalf of the defendant that the measurement on 16.03.2008 was at his instance. It is noticed that under Ext.A1 agreement the extent was stated to be 75  $\frac{3}{4}$  cents, under a particular assignment deed. The consideration was undoubtedly fixed with regard to the actual extent at the rate of Rs.34,000/- per cent. It is clear that the measurement was essential for executing the conveyance and the performance of further mutual obligations. When the lawyers notice was caused to be sent on 24.01.2008 by the defendant, he adverts to 75  $\frac{3}{4}$  cents. There is no reference of any measurement having been done on 16.05.2007. We are inclined to find that it was the plaintiff who took the initiative and the property indeed was measured on 16.03.2008. We are further inclined to agree with the trial Court that the plaintiff, it is who financed the measurement by making payment as he claimed. Testimony of the witness accepted by the trial Court, which has had opportunity to watch the demeanour of the witness is not to be likely shaken by the appellate court.

16. Still further the next finding by the High Court is contained in paragraph 24 of its judgment. The Court proceeds to hold that even the plaintiff has no case that the defendant did not have title or that it was defective and the question of handing over title deed arises only on the execution of the sale deed and therefore no fault could be attributed to the defendant.

17. In this regard there are two aspects which we would think has not been considered by the High Court. We have adverted to the statements in the reply notice sent dated 18.03.2008 by the plaintiff. The measurement took place on 16.03.2008. On measurement it appears to have been found that the extent available with the defendant was 70.950 cents. However, plaintiff found that one cent out of the 70.950 cents was not with the defendant and instead was with one Kochammu and half of cent was with somebody else in the northern side. However, when this was brought to the notice of defendant, according to plaintiff, he wanted payment on the basis that he had the whole of 70.950 cents. Therefore, the said question related to the title of

the defendant, a question relating to the exact extent available for being conveyed. Secondly and far more importantly, admittedly there was a mortgage over the plaintiff schedule property created in 1983 by the defendant. Encumbrance certificates produced by the plaintiff has been relied upon by the trial Court to find that the mortgage had not been cleared. The defendant in his evidence as DW1 sets up the case that the mortgage was cleared and release deed was available with him. It is at his home. On the one hand, the encumbrance certificates did disclose the mortgage and they did not reveal the clearing of the mortgage. The defendant on the other hand, though setting up the case that the debt was paid of and mortgage was got released but did not choose to produce the evidence which was in his possession.

18. The High Court has overlooked this aspect and came to the conclusion that there was no dispute relating to the title. Under Ext.A1 agreement, it was incumbent upon the defendant to convince the plaintiff about the title of the property and other connected things. No doubt, the plaintiff had made a demand for the original

title deeds relating to the property, as he wanted to use them for the purpose of taking a loan in connection with his proposed construction. This we do not think he was entitled under the contract and if the defendant refused the title deeds we would not be in a position to blame him. We are, therefore, of the view that the High Court has fallen into an error in reversing the finding that the defendant was in breach of his obligations.

19. We have noticed the law to be that it does not suffice for the plaintiff in a suit for specific performance to establish that the defendant was in breach to seek a decree for specific relief. The plaintiff must further establish, if it is contested that he was ready and willing from the date of the contract to perform his obligations.

20. In a contract, a contract usually embodies mutual obligations. The order of performance of obligations by the parties to the contract would have an impact on the aspect relating to readiness and willingness undoubtedly. In fact, readiness and willingness on the part of plaintiff makes its appearance right from the

time of the reply notice sent by the plaintiff and continued in his pleadings. We are, however, concerned in this case only with the aspect relating whether he has proved despite what he might have established against the defendant that he was ready to perform his obligations. To begin with, the plaintiff has filed the suit on 27.03.2008. It must be remembered that under Ext.A1 agreement, the last date for executing the sale deed was 24.03.2008. This means on the third day of the date fixed under the contract on the allegation that the defendant resiled from the promise to execute the sale deed, the plaintiff has knocked at the doors of the Court seeking specific relief.

21. The second thing which no doubt appears in favour of the plaintiff is that on the date of the agreement, which was 25.04.2007, admittedly an amount of Rs.2,00,000/- was paid as advance within four months of the agreement, again, indisputably a further sum of Rs.3,00,000/- came to be paid by the plaintiff and accepted by the defendant. The further question that arises, however, is whether the High Court was right in holding that the plaintiff was not in a position to

perform the financial obligations under the contract. At this juncture, let us examine the state of the evidence adduced by the parties.

22. The plaintiff has examined himself as PW1 and further examined eight other witnesses. He has also marked Ext.A1 to A42. The defendant has examined himself as DW1. There are other Court exhibits which are related to financial position of the plaintiff.

23. Not unnaturally, we must first look to what the plaintiff has deposed before the Court. The plaintiff says, inter alia, as follows in his cross-examination; During the period of Ext.A1 agreement I was a student. He added that he had a part time teaching job and consultancy service. The plaintiff claimed that he was a teacher in an academy. He produced income tax returns. He was asked the following questions. At the time of the filing of the suit, you have not produced any document showing availability of money required for taking assignment of the property. Whether there is any specific reason for the same (Question)? There is no specific reason for the same (Answer). Is there any

reason for not stating in the plaint in what way the amount required was arranged (Question)? No special reasons (Answer). How much amount was arranged by you on 24.03.2008 to take assignment of plaint schedule property (Question)? There was gold jewelry worth Rs.24,00,000/- held by myself and my family members. Besides, about Rs.8,00,000/- was arranged in cash also (Answer). He states that he has understood that the main dispute in this case is that he was not having the capacity to raise the consideration as per Ext.A1 agreement. Another question which was put to the plaintiff is as follows. Apart from producing certain documents on 02.02.2013 showing availability of funds, you have not produced any other document before that to show funds (Question)? No (Answer).

24. We must notice that Shri K.V. Viswanathan, learned senior counsel would submit that High Court has appreciated aforesaid question and answer erroneously. He pointed out that actually when the plaintiff answered 'no', it should be understood the meaning was that he was denying the suggestion that the plaintiff had not produced any document to show funds. He would

submit that had the answer been yes, it could be inferred that there was no document. The plaintiff continues and states six documents being Ext.A11 to A16 are of the year 2012. The number of shares are not mentioned in Ext.A17. The plaintiff has further apparently, with reference to income tax returns Ext.35 and 36, stated that income has been shown as Rs.1,18,000/- and Rs.1,32,000/- for the assessment years 2007-08 and 2008-09 respectively. No doubt there is no mention about his investments and shares in the income tax returns. Plaintiff claimed that during the year 2004-05 his income was about Rs.30,000/- and during 2005 the same was around Rs.60,000/-. He joined an academy as a teacher in the year 2006. He resigned from the same during the year 2011. During the period 2006-08 he purchased and sold 22 cents of land. Plaintiff does not remember the price at which the property was purchased. He denied the suggestion that he was not having the money to purchase the property admeasuring 70.950 cents or as reduced by 1 ½ cents. He was having required amount then and now and he was ready and willing to take the property, he deposed.

25. PW2 is a Managing Director of financial company. He has produced and marked Ext.A19 certificate relating to shares held by the mother of the plaintiff.

26. PW3 is a Depository Participant of a broker. He was examined to prove the shares held by his mother. He states that he came to depose on being asked to do so by Gopinathan (father of the plaintiff).

27. PW4 is a Government Gold Valuer of Income Tax department and he has proved Ext.A22 valuation report issued to the mother of the plaintiff after examining her gold ornaments. He has also proved Ext.A23 valuation report, issued to the wife of the plaintiff, after examining her gold ornaments. In cross-examination he would also state that he has not received summons from the court, but was asked by Gopinathan (father of the plaintiff). He states that he has previous acquaintance with Gopinathan. He came for valuation and thus he knew him. He states further in cross-examination that the mother and wife of the plaintiff came to him for valuation along with Gopinathan. He further states that they neither

produced nor he demanded the bills or receipts relating to the gold ornaments he valued that day. He further states that they did not produce any document showing ownership of the gold ornaments mentioned in Ext.A22 and A23 jewelery produced for valuation. In reexamination, he points out that Gopinathan, who came on the date of the gold valuation was sitting in the Court.

28. PW5 is the Branch Manager of the Syndicate Bank. He has marked Ext.A41. In cross-examination he states that the loans were availed on 14.07.2012 and 22.03.2012. He further states that Syndicate Bank advances loan at the rate of Rs.2100/- per gram of gold. The two loans were given for agricultural purposes.

29. PW6 is the Manager of Union Bank and he approved Ext.A27. Again he is produced to prove gold loan which is issued for agricultural purposes. The loan was issued on 12.01.2013. The loan was given at the rate of Rs.2000/- per gram of gold.

30. PW7 is the Chairman and Managing Director of Financial Chits Company. He proved Ext.A17, 18, 20 and 21. In cross-examination he states he knows Gopinathan. He states that he (Gopinathan) is practising as an accountant and auditor in the next building. He states that the shares held by him as per Ext.A20 was transferred from his name on 03.11.2010. At present Gopinathan and his son, the plaintiff, did not hold any shares in the companies. The value of one share he states is Rs.100/-. The plaintiff is not having any share as per Ext.A17. He is holding only 250 shares.

31. PW8 has proved Ext.A24 and A25 reports. He claims to be the valuer of property. He has valued as on 2008. He denied the allegation that the present fair value is less than the value shown in the report. When he was asked what is the fair value of the properties, as determined by the government, the answer was that he has to verify. On similar lines was the answer in respect of another piece of land. In answer to the question whether he was ever verified the fair value of the survey, the answer is in negative. Gopinathan was known to him since last 12 years and he described

him as an auditor. He says that he is not acquainted to his son (apparently the plaintiff).

32. PW-9 is the Manager of Canara Bank and he proved Ext.A26 certificate. Apparently, it related to a gold loan.

33. Coming to the evidence of defendant, we notice the following inter alia; He was aware that as on the date of agreement the extent of plaint schedule property did not have an extent of 75  $\frac{3}{4}$  cents. He says that he knew right from the date of the agreement that the plaintiff is not having money to purchase the plaint schedule property. When he was asked what was the reason for sending the lawyers notice on 25.01.2008, his answer was as follows: It was heard that plaintiff is trying to resell the plaint schedule property to third parties as he was not having money to purchase the same, hence, the said notice was sent. He further states that he did not know anything about the schedule of witnesses submitted in the Court by him including the names of witnesses as (1) Rajesh and (2) Muhammed. He says that he does not remember the fact that in the counter to the injunction petition, he had stated that the

plaintiff told Rajesh to find prospective buyers for reselling the plaint schedule property on piecemeal basis. He further states that anyhow Rajesh and Muhammed were not examined as witnesses before the Court. He denies that plaintiff was ready with the money to purchase the plaint schedule property.

34. The plaintiff on the date of the suit in the year 2007 was 21 years. The agreement would show that the witnesses to the agreement are one Manoharan, who is none other than the son of the defendant and the other witness is Gopinathan, the father of the plaintiff. The trial Court has entered a finding that Gopinathan was actively involved in the contract. We have eluded to the fact that Gopinathan was a witness to the agreement to safely conclude that the father of the plaintiff was in the know of things and he was involved in the transaction. We have referred to Gopinathan, figuring in the deposition to arrive at the conclusion that the plaintiff, though the actual party to the agreement, the moving force and one who intended to support the plaintiff was his father. The assets which are relied on by the plaintiff to establish his financial capacity

would appear to belong to the close relatives of the plaintiff, namely, his father, his mother and his wife. We must recall that in his deposition PW1, when he was asked as to on what basis he would claim that he had the financial capacity on 24.03.2008, his answer was that he had gold ornaments which were worth about Rs.24,00,000/- and he had about Rs.8,00,000/- in cash having regard to the payment of Rs.5,00,000/- by way of advance and further payment to be made, after making the advance, if Rs.24,00,000/- worth of gold being in the possession of the plaintiff's family members besides Rs.8,00,000/- was there, certainly that would suffice to establish the case of the plaintiff about his financial capacity and readiness to perform the contract. The law is certainly not that the purchaser in a suit for specific relief must prove that he was having cash with him from the date of the agreement till the relevant date. What is important is that he had the capacity to allow the deal to go through. If gold was available, as claimed, we would think that on a pragmatic view of the matter, it may be idle to contend that it could not be converted into cash either by immediate sale or by raising a loan.

35. We must, however, deal with certain other contentions before we come to a conclusion in this regard. The defendant has undoubtedly a case that the gold ornaments though claimed to be that of the mother and the wife of the plaintiff, without examining them as witnesses and without their deposition showing that they had those gold ornaments in their possession and that they were willing to employ them for the purpose of generating funds for the plaintiff, the Court cannot conclude the matter in favour of the plaintiff. We would think that it may be true that in a case of this nature and in view of the context, it may have been more appropriate that the relatives were examined. Their non-examination, however, may not be fatal to the plaintiff. It must be realized that the relatives involved are none other than the mother and the wife of the plaintiff. Though subsequent their inclination can be inferred from their going to the valuer PW4. In such circumstances, we would think, it may be carrying matters a little too far to decline specific relief, particularly which was granted by the trial Court in its discretion to contend that the mother and the wife

have not come forward to express their willingness to make available ornaments for the purpose of the plaintiff. In fact, no suggestion is seen put to the plaintiff about the same.

36. The further question may, however, arise as on the relevant date whether the gold ornaments having the value of Rs.24,00,000/- was available with the mother and the wife of the plaintiff. We have noticed the deposition of PW4. He has stated that neither the bills nor receipts relating to the gold ornaments were produced. No documents relating to the ownership of the gold ornaments were also produced. Could it be said, therefore, that the gold ornaments never belonged to the mother and the wife of the plaintiff and the valuation report is therefore robbed of any value that might otherwise be attached to it.

37. It is here we may notice that the family of the plaintiff was possessed of considerable assets even otherwise in terms of landed property. We further notice that the plaintiff has proceeded to purchase another 10 cents during the period when the contract

was in existence (relied upon by the trial Court to establish the readiness and willingness in terms of capacity apparently).

38. A1 contract is dated 25.04.2007. Plaintiff was, no doubt, 21 years of age. His father Gopinathan was a witness to A1. Knowing these facts, defendant entered into the agreement, and what is more, received Rs.2 lakhs on the date of the agreement. Further, a sum of Rs.3 lakhs was received under the agreement on 25.08.2007. The property is measured on 16.03.2008. On the third day from 24.03.2008, which was the last day for the execution of the sale deed, i.e., on 27.03.2008, the suit came to be filed. After the advance paid by the plaintiff is deducted, the balance amount including the stamp duty and expenses would not exceed Rs.24 lakhs. There was the testimony of the plaintiff as to how he intended to pay the consideration on 24.03.2008. There was evidence of plaintiff having gold ornaments with him and family members worth about Rs.24 lakhs and cash of about Rs.8 lakhs. It also appeared that one of the family members of the appellant had lands in her name. Even the

appellant purchased other land during the period of contract. In regard to the statement by the plaintiff that gold ornaments worth about Rs.24 lakhs were held by him and family members and there was cash of about Rs. 8 lakhs, the plaintiff is not cross-examined as such. At any rate, there is no serious dispute raised when he was cross-examined in this regard. There is no question raised about the family members not making available the gold ornaments or that it was not available with them. The non-availability of bills relating to the gold jewellery to prove ownership as such may not be in the facts of this case fatal to the plaintiff.

39. Having regard to the totality of the facts present, we are of the view that the High Court erred in interfering with the decree passed by the Trial Court. We notice that the appellant has deposited the sum of Rs.19,37,8000/- (balance amount) with the Government Treasury immediately after judgment dated 10.06.2013. While we are inclined to direct specific relief in favour of the appellant, we are of the view that we should also direct that interest at the rate of 6 per

cent on Rs.19,37,8000/- from 27.03.2008 (date of suit) till date of deposit (in Government Treasury) should be directed to be paid over and above the balance amount to the respondents in exercise of our power under Article 142 of the Constitution of India. Hence, we allow the appeal, set aside the judgment of the high Court and restore the decree passed by the Trial Court, subject to the following modifications.

40. We further direct that appellant shall pay a sum calculated at 6 per cent per annum on Rs.19,37,800/- from 27.03.2008 till the date of deposit in Government Treasury in 2013 also, apart with the balance to be paid. The respondents can withdraw the balance payment (i.e., Rs.19,37,800/-) as also amount calculated at 6 per cent on Rs.19,37,800/- as aforesaid. The balance, if any, in the Government Treasury, can be withdrawn by the appellant. If the amount in the Government Treasury does not attract interest, the appellant shall deposit the amount of interest as calculated within 10 weeks from today which can be withdrawn by the respondents. It is only after payment of interest as aforesaid, that the conveyance deed need be executed.

41. The parties shall bear their own costs.

.....J.  
(ASHOK BHUSHAN)

.....J.  
(K.M. JOSEPH)

New Delhi,  
September 12, 2019.