



**RELIEF OF SPECIFIC  
PERFORMANCE FOR A CONTRACT  
FOR SALE OF AN IMMOVABLE  
PROPERTY**

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**ABSTRACT**

The COVID-19 pandemic and the ensuing lockdown affected every aspect of our life including our financial state. A large number of contracts that concluded in the pre-pandemic time might have been breached because the parties didn't have the money necessary to fulfill their monetary obligations or due to the impediments or obstructions caused due to nation-wide lockdown and an agreement of sale of an immovable property is of no exception.

In this research paper, the author has talked about the relief the innocent party is entitled to in a contract for sale of an immovable property i.e., the relief of specific performance. The author has given the requirements that should be satisfied in order to obtain the relief of specific performance, the effect of not expressly mentioning specific performance as the relief in an event of breach, effect of the provision for liquidated damages on the party's right to claim the relief of specific performance. The author has elaborately discussed the requirement of willingness and readiness to perform the contract with specific emphasis on the capacity to perform the monetary obligations of the party. The author has also covered how the suit for specific performance could be affected if the parties intended to make time as an essence to the contract and the limitation period within

which the suit of specific performance should be filed.

The author has strived to provide an in-depth and comprehensive article on this aspect of the law explaining the nuances of it with precedents and illustrations and the author hopes that the readers might find it helpful.

**RELIEF OF SPECIFIC PERFORMANCE-  
INTRODUCTION:**

The relief of specific performance is an equitable relief granted by the court of law which compels the breaching party to the contract to perform their obligations under the contract instead of allowing the innocent party to recover monetary compensation for the loss suffered due to the breach which is considered to be inadequate considering the nature of the contract.

**WHY THE RELIEF OF SPECIFIC  
PERFORMANCE IS GRANTED FOR THE  
CONTRACT FOR SALE OF AN  
IMMOVABLE PROPERTY?**

Not all contracts for whose breach, the relief of specific performance could be granted. Section 10 of The Specific Relief Act, 1963 specifically talks about those contracts for whose breach, a relief of specific performance could be granted. Explanation (i) of Section 10 clearly states that the breach of a contract for sale of an immovable property cannot be adequately relieved by monetary compensation. Hence, both the party to the contract for sale of an immovable property are entitled to sue for specific performance of the contract. As regards to the vendor's obligation, the reason traditionally given for this is that each piece of land is unique and cannot readily be replaced in the market. And, as regards the purchaser's obligation to pay the price, the reasoning appears to be that the vendor should be



entitled to a reciprocal remedy (not least because, by reason of the availability of specific performance, the purchaser acquires under the contract an immediate equitable interest in the land)<sup>1</sup>.

#### REQUIRMENTS TO BE FULFILLED FOR GRANTING THE RELIEF OF SPECIFIC PERFORMANCE:

In the case of *Man Kaur v. Hartar Singh Sangha*<sup>2</sup>, the court laid down the requirements which the plaintiff should fulfil to succeed in a suit for specific performance of the contract for sale of an immovable property. The requirements are as follows:

*'17. To succeed in a suit for specific performance, the plaintiff has to prove:*

*(a) that a valid agreement of sale was entered into by the defendant in his favour and the terms thereof;*

*(b) that the defendant committed breach of the contract; and*

*(c) that he was always ready and willing to perform his part of the obligations in terms of the contract'*

Requirement of fulfilling the condition of 'willing' and 'ready' under Section 16(c)<sup>3</sup> of the Specific Relief Act, 1963, is a condition precedent for obtaining the relief of specific performance<sup>4</sup>.

Before the Specific Relief (Amendment) Act, 2018, Section 16(c) contained the term "fails to aver and prove" in its verbatim instead of

the current phrase "fails to prove" which made it mandatory for the plaintiff to make necessary averments in his plaint regarding his willingness and readiness to perform the contract. The court, on several occasions, have denied to grant the relief on the reason that the plaintiff failed to aver in his plaint. In the case of *Ouseph Varghese v. Joseph Aley*<sup>5</sup>, it was held that: *'it is well-settled that in a suit for specific performance the plaintiff should allege that he is ready and willing to perform his part of the contract and in the absence of such an allegation the suit is not maintainable'*

After the said amendment, the stringent requirement as to the requirement of making the necessary averment was done away with and proving his willingness and readiness to perform his contract is enough to obtain the relief of specific performance and mere non-mention of averments will not itself will disentitle the plaintiff from claiming the relief.

The meaning and distinction between the term 'readiness' and 'willingness' is covered in the next section.

#### MEANING AND DISTINCTION BETWEEN THE TERM 'READY' AND 'WILLING':

On the face of it, both these terms might appear synonymous but they represent two different legal parameters that needs to be proved in a suit for specific performance. The High court in the case of *Palaniammal v.*

*essential terms of the contract which are to be performed by him, other than terms of the performance of which has been prevented or waived by the defendant.*

<sup>1</sup> J Beatson, A Burrows, J Cartwright, Anson's Law of Contract, Oxford University Press, New York, 29<sup>th</sup> edition, 2010, Pg no. 577

<sup>2</sup> (2010) 10 SCC 512

<sup>3</sup> (c) [who fails to prove] that he has performed or has always been ready and willing to perform the

<sup>4</sup> *Ramathal v. Maruthathal* (2018) 18 SCC

<sup>5</sup> (1969) 2 SCC 539



*K.R.C. Anbalagan*<sup>6</sup> clearly stated the meaning of the term ‘ready’ and ‘willing’ and succinctly laid down the distinction between the same. The relevant paragraph of the judgement is as follows:

*‘31. The definition between the readiness and willingness is that the former has reference to financial capacity and latter on the conduct of the Plaintiffs wanting Specific Performance. While willingness is merely mental process, readiness is something do with translating that will into action and is preceded by necessary preparation of being in a position to be ready. In other words, while willingness, may be something to do mainly with a person's mental process to do an act, his readiness implies close proximity of such willingness, and its ultimate physical manifestation. Readiness must, in all cases, be backed by willingness and its imminent physical action is demonstrated when it is about to be put into action’*

The Supreme Court in the case of *JP Builders v. A. Ramadas Rao*<sup>7</sup> on the meaning of terms ready and willing opined that:

*‘The words “Ready” and “Willing” imply that the person was prepared to carry out the terms of the contract. The distinction between “Readiness” and “Willingness” is that the former refers to financial capacity and the latter to the conduct of the plaintiff wanting performance. Generally, readiness is backed by willingness’.*

Hence, in a contract of sale of an immovable property, a party is said to be willing if the cumulative conduct of the party manifests his bonafide mental intention to perform his part

of the contract whereas a party is said to be ready if he has the capacity to arrange the necessary funds to be in a position to pay the consideration agreed upon in the contract.

#### CONTINUOUS ‘READINESS AND WILLINGNESS’:

The party seeking the relief of specific performance should prove that he was willing and ready to perform the contract at all relevant times right from the date of the agreement till the date of decreeing the suit. Since, the relief of specific performance is an equitable relief and the court is vested with discretionary powers with regards to granting or refusing to grant the said relief, the court is usually guided by the principles of equity and the court will not grant the relief in favour of the party who was not continuously willing and ready to perform the contract, who at some point of time has abandoned the contract or was not in a position to perform the contract itself and decreeing the suit of specific performance in the favour of those who were not serious about performing the contract themselves, is unfair at its least and total injustice at its worse.

The Apex court in the case of *N.P. Thirugnanam v. Dr. R. Jagan Mohan Rao*<sup>8</sup> held that:

*‘The continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of specific performance...Right from the date of the execution till date of the decree he must prove that he is ready and has always been willing to perform his part of the contract. As stated, the factum of his readiness and willingness to perform his part of the contract is to be*

<sup>6</sup> 2013 (3) CTC 477 139

<sup>7</sup> (2011) 1 SCC 429 Para 22

<sup>8</sup> [(1995) 5 SCC 115 Para 5



*adjudged with reference to the conduct of the party and the attending circumstances. The court may infer from the facts and circumstances whether the plaintiff was ready and was always ready and willing to perform his part of the contract’.*

Readiness and willingness must have an element of continuity. It was held that in assessing the question of readiness and willingness of the party to perform his/her part of the contract, the court can legitimately take into account the long, unexplained silence and inaction on the part of the plaintiff<sup>9</sup>. The plaintiff (vendee) who remained silent for two long years before sending a legal notice at the fag end of the limitation period for whom the court refused to grant the relief stating that the readiness and willingness on the part of the plaintiff cannot be inferred merely because at the fag end of the period of limitation, a notice was issued calling upon the vendors to execute the sale deed and the conduct of plaintiff by remaining totally inactive for more than two years indicated the lack of continuous willingness to perform

The date of execution of the sale was fixed on 2006 but the plaintiff (purchaser) remained inactive for more than 18 months before sending a legal notice and did not try to establish any correspondence with the defendant (owner) whatsoever within the said period. The court was of the opinion that if the plaintiff was genuinely willing to carry out his part of the contract, he would at the time when the conveyance deed was to be registered and the transaction was to be finalised, unequivocally informed the defendants that he has the requisite funds to

complete the transaction and other processes regarding preparation of documents, purchase of stamp papers etc, would be attempted to be completed<sup>10</sup>. The inactiveness and his ignorance to contact the defendant for an unreasonable amount of time led to an inference that the plaintiff was no longer continuously willing to perform the contract and hence he was disentitled of the relief.

Hence, the court might conclude that the plaintiff was not continuously willing to perform his obligations from the fact of the plaintiff remained inactive for a longer period of time due to unexplained delay in performing the contract. The court decrees the relief in favour of those individuals whose conduct is blemishless throughout the relevant period of time<sup>11</sup> and any conduct which blemishes the plaintiff’s bonafide intention would disentitle the party from claiming the relief.

#### CAPACITY TO PAY AND PROOF OF READINESS:

Section 16(c) envisages that the party seeking the relief of specific performance should not only make necessary averments in the plaint as to his readiness and willingness, but also corroborate it with satisfactory evidence. As stated in Palaniammal case, readiness is interpreted as the capacity or the ability to fulfill one’s obligations with regards to payment. To prove one’s financial capacity to fulfill obligations involving money, it is not necessary that he should have hard cash with him all the time. It is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so

<sup>9</sup> Sardar Amarjeet Singh v. Nandu Bai (1998) 5 ALT 412 at page 183

<sup>10</sup> Sangit Agrawal v. Praveen Anand ILR (2013) 4 Del 3218 at page 3224

<sup>11</sup> H.P. Pyarejan v. Dasappa (2006) 2 SCC 496



directed by the court<sup>12</sup> to prove his financial capacity. The Honourable Apex Court in the case of *Sukhbir Singh v. Brij Pal Singh*<sup>13</sup> laid down the general proposition of law as to how the party seeking to specifically enforce the contract could prove his financial capacity. The relevant para of the judgement is as follows:

*'5. Law is not in doubt and it is not a condition that the respondents should have ready cash with them. It is sufficient for the respondents to establish that they had the capacity to pay the sale consideration. It is not necessary that they should always carry the money with them from the date of the suit till the date of the decree'*

A very similar proposition of the law was enunciated by the Apex court in the case of *R. Lakshmikantham v. Devaraji*<sup>14</sup>, wherein it was held that, *'The preparedness may not, however, be a mere verbal show of readiness to do his part. The first respondent/plaintiff need not go about jingling money to demonstrate his capacity to pay the purchase price and that what the first respondent/plaintiff has to do in such a situation is, to be ready and willing to purchase the property when time for doing so comes and to have means to arrange for payment of the consideration payable by him'*

Hence, to prove his readiness in the matter, the plaintiff is not required to carry around hard cash but he should adduce positive evidence to satisfy the judicial conscience as to his ability to pay the consideration due under the contract. Mere averments in the

plaint stating his financial capacity to perform the contract without any proof won't establish his readiness in the matter. The generally accepted forms of evidence that may indicate the financial capability of the party in question are bank statements, income tax returns or any other property details that could be liquidated<sup>15</sup>. The court held that the plaintiff proved she had the requisite financial capacity to pay the balance sale consideration to the defendant inasmuch as she had arranged the funds by obtaining loan from LIC<sup>16</sup>.

When the plaintiff was delaying the sale on one pretext or the other and failed to demonstrate his ability to pay the consideration nor did he give any satisfactory reason for not performing his obligations within the prescribed time. The court held that where the plaintiff neither had the capacity to perform his part of the contract as he had no financial capacity to pay the consideration nor he was acting promptly within the stipulated where time was of the essence, it is inferred that he is not ready and willing and is disentitled of the relief<sup>17</sup>.

The plaintiff who is the purchaser didn't have the money while sending the legal notice to the defendant (owner of the suit property) and at the time of filing his suit. The plaintiff even got into an agreement with X who is a 3<sup>rd</sup> party and X agreed to pay the consideration directly to the defendant on behalf of the plaintiff and X testified, while getting deposed, that the plaintiff got into an agreement with him because he didn't have necessary funds to pay the balance

<sup>12</sup> Section 16 Explanation (ii)

<sup>13</sup>(1997) 2 SCC 200 at page 202

<sup>14</sup> (2019) 8 SCC 62, Para 12

<sup>15</sup> Laxmi Devi v. Mahavir Singh, 2012 SCC OnLine Del 2478

<sup>16</sup> *A. Kanthamani v. Nasreen Ahmed* (2017) 4 SCC 3

<sup>17</sup> His Holiness Acharya Swami Ganesh Dassji v. Sita Ram Thapar, (1996) 4 SCC 526



consideration due under the contract with the defendant. The plaintiff failed to adduce satisfactory evidence to show his financial capability to pay the balance consideration but he relied on the sum of money he had before the agreed date of execution to show his financial soundness. The court refused to accept his argument and stated that ‘the said amount should be shown to have been available also on the date when the demand was made by issuance of legal notice and further when the suit was filed and specific performance was sought. In the absence of the same, a temporary arrangement made to have certain funds in the account on a relevant date alone cannot be considered as the financial resource being available to complete the transaction when in addition to the said amount, further sum was required’<sup>18</sup>. The author would like to specifically draw attention on how the court insists on continuous readiness in this case also. The plaintiff relied on his financial capacity of the past to show his readiness to perform the financial obligations of the future but such arguments were rejected by the court as the plaintiff has expressly tried to fasten his obligations to X and failed to adduce evidence to prove his financial capacity at the relevant time.

Sometimes, the conduct of the party under question might express his readiness in the matter like how other proofs like bank statement would do. The fact that they attended the Sub-Registrar's office to have the sale deed executed and waited for the petitioners to attend the office of the Sub-Registrar is a positive fact to prove that they had necessary funds to pass on consideration

and had with them the needed money with them for payment at the time of registration<sup>19</sup>.

The plaintiff in his plaint made averments that he has an overdraft limit of over 7 crores which is enough to fulfil his obligations under the contract with regards to payment. The requisite aspect of financial capacity had to be proved to the satisfaction of the judicial conscience of the Court and the failure to submit documentary evidence corroborating the averments led to an inference that the party is not ready to perform the terms of the contract<sup>20</sup>. Party who merely avers in the plaint as to his financial capacity and not backing it with adequate proof would be considered to have not discharged his onus under Section 16(c) and he fails in his suit for specific performance.

The appellant has not produced any income tax record or the bank statement in support of her plea of financial capacity so as to be ready and willing to perform the contract. Therefore, mere fact that the bank has assessed the financial capacity of the appellant while granting loan earlier in respect of another property is not sufficient to discharge of proof of financial capacity in the facts of the present case to hold that the appellant was ready and willing to perform her part of the contract<sup>21</sup>.

#### TIME AS THE ESSENCE OF THE CONTRACT:

Section 55 of the Indian Contract Act talks about the effect of delay in fulfilling time-bound obligations when the time is of essence to the contract. According to this section, if the intention of the parties was that time

<sup>18</sup> Abdullakoya Haji v. Rubis Tharayil, (2019) 17 SCC 2166

<sup>19</sup> Supra note 14

<sup>20</sup> Gulshan Kumar v. Shyam Lal, 2018 SCC OnLine Del 8605

<sup>21</sup> Ritu Saxena v. J.S. Grover, (2019) 9 SCC 132 7



should be the essence of the contract, then a failure to perform at the agreed time renders the contract voidable at the option of the opposite party<sup>22</sup>.

The Apex court in the case of *Chand Rani v. Kamal Rani*<sup>23</sup>, while considering the question of applicability of this rule in contract relating to sale of property, held that;

*'19. It is a well-accepted principle that in the case of sale of immovable property, time is never regarded as the essence of the contract. In fact, there is a presumption against time being the essence of the contract.'*

Specific performance of a contract will ordinarily be granted, notwithstanding default in carrying out the contract within the specified period, if having regard to the express stipulations of the parties, nature of the property and the surrounding circumstances, it is not inequitable to grant the relief<sup>24</sup>.

Hence, normally in contract for sale, there is a heavy presumption that the time is not an essence to the contract and hence not fulfilling the obligations within the prescribed time cannot itself lead to a conclusion that the party was not willing and ready to perform his obligations. But this heavy presumption can be rebutted and the circumstances under which the court infers that the party intended to make time as an essence are as follows:

*'Even if it is not of the essence of the contract the Court may infer that it is to be performed in a reasonable time if the conditions are:*

1. *From the express terms of the contract;*
2. *from the nature of the property; and*
3. *from the surrounding circumstances, for example: the object of making the contract*<sup>25</sup>

The effect of each of these conditions are discussed in detail in the subsequent sections.

#### FROM THE EXPRESS TERMS OF THE CONTRACT:

In the case of *Chand Rani v. Kamal Rani*<sup>26</sup>, the Apex court while dealing with the question of how to determine whether the parties intended time to be as an essence of the contract from the language of the contract held that:

*Law looks not at the letter but at the substance of the agreement. It has to be ascertained whether under the terms of the contract the parties named a specific time within which completion was to take place, really and in substance it was intended that it should be completed within a reasonable time. An intention to make time the essence of the contract must be expressed in unequivocal language'.*

To ascertain the intention of the party to make time as the essence of the contract, the contract as a whole should be looked into along with its substance instead of looking at that particular stipulation which stipulates time-limit for performance of the contract. Any stipulation in the contract to make time as an essence to have that effect, the language of such stipulation must show that the intention was to make the rights of the parties depend on the observance of the time-limits

<sup>22</sup> Dr Avtar Singh, Contract & Specific Relief, Eastern Book Company, Lucknow, 12<sup>th</sup> edition, 2017, Pg no. 377

<sup>23</sup> [(1993) 1 SCC 519],

<sup>24</sup> Indira Kaur v. Sheo Lal Kapoor 1988 (2) SCC 188

<sup>25</sup> Supra note 23

<sup>26</sup> Supra note 23



prescribed in a fashion which is unmistakable. The language will have this effect if it plainly excludes the notion that these time-limits were of merely secondary importance in the bargain, and that to disregard them would be to disregard nothing that lay as its foundation<sup>27</sup>.

It is settled law that the mere fixation of the period within which the contract has to be performed does not make the stipulation as to time the essence of the contract<sup>28</sup>. Mere incorporation in the written agreement of a clause imposing penalty in case of default does not by itself evidence an intention to make time of the essence<sup>29</sup>. Even where the parties have expressly provided that time is of the essence of the contract such a stipulation will have to be read along with other provisions of the contract<sup>30</sup>. For instance, if the contract were to include clauses providing for extension of time in certain contingencies or for payment of fine or penalty for every day or week, the work undertaken remains unfinished on the expiry of the time provided in the contract, such clauses would be construed as rendering ineffective the express provision relating to the time being of the essence of contract<sup>31</sup>. The inference that could be drawn from the presence of such provisions giving alternative options when the time-bound obligations are not complied with, is that the parties intended to make time-limits as subservient to the main purpose of the contract. The presence of terms with an effect of giving an option of extension of time or

penalty for delay in fulfilling the time-bound obligations instead of treating the failure to perform the obligation within the prescribed time as a breach of contract, will manifest the intention of the parties to not make time as an essence of the contract because if the parties intended to make time as an essence of the contract, then the agreement would've had stipulation with an effect of repudiating the contract when the time-bound obligations are not performed within the prescribed time implying that the rights of the parties under the contract depends on the observance of prescribed time-limits.

In an agreement to sell, existence of such default clause providing that if the purchaser fails to fulfil his obligations within the prescribed time, then the earnest money will be forfeited, led to an inference that the parties never intended to make time as an essence to the contract<sup>32</sup>.

Where the agreement to sell clearly lays out the dates at which the installments were to be paid and states that the agreement would be cancelled if the installments are not paid on the fixed date, such stipulation evidenced the party's intention to make time as an essence of the contract<sup>33</sup>.

#### FROM THE NATURE OF THE PROPERTY:

Of late, the sweeping rule that the time is not of essence in contracts relating to sale of immovable property has been subjected to various criticisms and the application of the

<sup>27</sup> *Tilley v. Thomas* [(1867) 3 Ch App 61]

*Roberts v. Berry* [(1853) 3 De GM & G 284]

<sup>28</sup> *Govind Prasad Chaturvedi v. Hari Dutt Shastri* [(1977) 2 SCC 539]

<sup>29</sup> *Gomathinayagam Pillai and Ors vs Pallaniswami Nadar* 1967 (1) SCR 227 at pages 231 to 233

<sup>30</sup> *Hind Construction Contractors v. State of Maharashtra*, (1979) 2 SCC 70, p. 77, para 8.

<sup>31</sup> *Supra* note 30

<sup>32</sup> *Balasaheb Dayandeo Naik ... vs Appasaheb Dattatraya Pawar* (2008) 4 SCC 464

<sup>33</sup> *Sardami Kandappan v S Rajalakshmi* (2011) 12 SCC 18



rule has been relaxed for contract relating to the sale of an urban immovable property. We ought to advert to the economic circumstances under which such sweeping rule was propounded to understand the criticism. The principle was formulated when the market value of the immovable properties were relatively stable and the phenomena of inflation was unknown at that time. The assumption was that grant of specific performance would not prejudice the vendor financially as there would not be much difference in the market value of the property even if the contract was performed after a few months. But the circumstances have changed now with the prices of the immovable properties changing drastically due to inflation. The circumstance under which this principle was formulated no longer exist and the direct application of this rule in many cases lead to some undesirable results and it has exposed the principle's shortcoming. The steep increase in prices is a circumstance which makes it inequitable to grant the relief of specific performance where the purchaser does not take steps to complete the sale within the agreed period, and the vendor has not been responsible for any delay or non-performance. A purchaser can no longer take shelter under the principle that time is not of essence in performance of contracts relating to immovable property, to cover his delays, laches, breaches and 'non readiness'<sup>34</sup>. The Supreme Court in the case of *Vidyanadam v. Vairavan*<sup>35</sup> held that:

*'The rigor of the rule evolved by courts that time is not of the essence of the contract in the case of immovable properties - evolved in times when prices and values were stable and inflation was unknown - requires to be*

*relaxed, if not modified, particularly in the case of urban immovable properties'.*

Where the plaintiff remained totally inactive for 2 $\frac{1}{2}$  years when the time fixed for paying the balance consideration by the agreement was six months, he was disentitled from claiming the relief on account of sharp rise of price of the suit property situated in an urban area during the plaintiff's dormancy and plaintiff's dishonest attempt to buy the property at a discount after abandoning the agreement for more than two years<sup>36</sup>. The court refused to apply this relaxation to contracts involving the sale of agricultural land or rural land<sup>37</sup>. This exception is specifically applicable only in the case of urban immovable property.

FROM THE SURROUNDING CIRCUMSTANCES:

The court may infer that the time was of the essence to contract from the surrounding circumstances under which the contract was made. The intention to make time stipulated for payment of balance consideration will be considered to be essence of the contract where such intention is evident from the express terms or the circumstances necessitating the sale, set out in the agreement. If for example, the vendor discloses in the agreement of sale, the reason for the sale and the reason for stipulating that time prescribed for payment to be the essence of the contract, that is, say, need to repay a particular loan before a particular date, or to meet an urgent time bound need (say medical or educational expenses of a family member) time stipulated

<sup>34</sup> Supra note 23

<sup>35</sup> 1997 (3) SCC 1

<sup>36</sup> Supra note 35

<sup>37</sup> Supra note 32



for payment will be considered to be the essence<sup>38</sup>.

Where the seller stipulated that the part-payment should be made within five months from the date of execution of the agreement to sell in order to enable the seller to find a suitable alternate accommodation by utilizing the sum and to deliver the vacant possession of the suit property in favor of the purchaser, the court inferred that the time was of the essence to the contract based on the surrounding circumstances as the failure to fulfill the time-bound obligation might seriously affect the seller's right to find a suitable accommodation and consequently intention of the party to make time as an essence is clearly visible<sup>39</sup>.

#### EFFECT OF ABSENCE OF SPECIFIC TERM FOR SPECIFIC PERFORMANCE:

If the agreement to sell an immovable does not contain any express provision to the effect of entitling the non-breaching party to the relief of specific performance, in an event of breach, the non-breaching party is entitled to the relief of specific performance, then absence of such clause won't affect the non-breaching party's right to seek the relief of specific performance. In other words, the absence of any specific term for specific performance in the contract will not disentitle the non-breaching party from claiming the relief of specific performance<sup>40</sup>.

#### LIQUIDATED DAMAGES- NO BAR TO THE RELIEF OF SPECIFIC PERFORMANCE:

In the case of *Man Kaur v Hartar Singh Sangha*<sup>41</sup>, the Apex court while considering effect of the provision for liquidated damages in a suit for specific performance held that:

*'It is evident from Section 23 of the Act that even where the agreement of sale contains only a provision for payment of damages or liquidated damages in case of breach and does not contain any provision for specific performance, the party in breach cannot contend that in view of specific provision for payment of damages, and in the absence of a provision for specific performance, the court cannot grant specific performance. But where the provision naming an amount to be paid in case of breach is intended to give to the party in default an option to pay money in lieu of specific performance, then specific performance may not be permissible'*

The author wishes to give some illustrations to better explain the application of the law. In scenario A, the agreement of sale of an immovable property has a provision to the effect of laying down the fixed sum of money the innocent party is entitled in an event of breach and the agreement is silent on the relief of specific performance. In such a case, it is inferred that the provision for liquidated damages is only for the purpose of securing performance of the contract and notwithstanding the absence of any specific term for specific performance, the court can grant the relief of specific performance. In scenario B, if the agreement expressly states the innocent party will only be entitled to liquidated damages and not to the relief of specific performance, then from the terms of the contract, it could be inferred that the parties intended to bar the relief of specific

<sup>38</sup> Supra note 33

<sup>39</sup> PR Deb & Associates v Sunanda Roy (1996) 4 SCC 423

<sup>40</sup> Supra note 2

<sup>41</sup> Supra note 2



performance and in such a case liquidated damages only would be granted. In scenario C, the agreement gives the breaching party an option to pay liquidated damages instead of specific performance and the breaching party opts to pay the liquidated damages, then the innocent party is not entitled to the relief of specific performance as the terms of the agreement expressly states the intention of the parties to give the party in default an option to pay the fixed sum of money.

#### LIMITATION PERIOD FOR FILING THE SUIT OF SPECIFIC PERFORMANCE:

Article 54 of the Limitation Act states the period within which the suit for specific performance should be filed to specifically enforce a contract for sale. In the case of *A. Kanthamani v. Nasreen Ahmed*<sup>42</sup>,

*'23. Article 54 of the Limitation Act provides a period of 3 years for filing a suit for specific performance of contract/agreement. A period of 3 years is required to be counted from the date fixed by the parties for the performance, or if no such date is fixed, when the plaintiff has noticed that the performance is refused.'*

Hence, either the time for limitation period is calculated from date of performance mentioned in the contract or from the date in which the performance was refused and the party cannot maintain a suit for specific performance after the expiry of the three years.

#### CONCLUSION:

The author has discussed about various nuances of the law in respect to this subject-matter. The party who is claiming the relief

of specific performance should prove his continuous willingness and readiness in performing the contract right from the date of agreement till the date of the decree and proving these two legal parameters by adducing satisfactory evidence are condition precedent in obtaining the relief of specific performance. The term 'willing' connotes to the party's mental willingness to perform the terms of the contract whereas the term 'ready' is interpreted as the party's ability to perform the monetary obligations with regards to payment. Total inaction or unexplained delay for a long time after the expiry of the date stipulated for the performance on the part of the party claiming the relief might lead to an adverse inference against him that he was not continuously willing to perform the contract and hence he might be disentitled of the relief.

With regards to readiness, merely averring in the plaint about his financial capacity to perform his monetary obligations won't discharge the onus to prove his readiness in the matter. He should adduce satisfactory evidence to prove the readiness and it is not mandatory for the party to carry around hard cash with him to prove that. Like willingness, the element of readiness should be proved to exist continuously throughout all relevant points of time. When the party lacks the financial capacity to pay the balance consideration at the time of legal notice or at the time of filing the suit, he would be disentitled from claiming the relief.

In the next section the author has talked about the effect of such terms of the contract stipulating the time within which the contract should be performed. Ordinarily, time is not an essence to the contract for sale of an

<sup>42</sup> Supra note 14



immovable property but such presumption can be rebutted if a contrary inference could be drawn based on the express terms of the contract, nature of the property or the surrounding circumstances under which the contract was made. To ascertain the intention of the party to make time as an essence from the express terms of the contract, the contract should be read as a whole and merely stipulating the time within which the contract should be performed will not itself lead to a conclusion that the time is of essence as on reading the contract as a whole, there may be other terms giving an option for extension of time or penalty for delay which evidences the party's intention to make the time-limits for performance as subservient to the main object of the contract. Similarly, the court might infer that the contract should be performed within a reasonable time if the subject matter of the contract is an urban immovable property because of the drastic change of price which might affect the party's interest negatively. The circumstances (like dire need of cash for the vendor) under which the contract was made can also lead to an inference that the parties intended time as an essence to the contract.

The author also covered the effect of non-mention of specific term for specific performance. Mere absence of such term won't disentitle the party from claiming the relief of specific performance. The author also covered the effect of the provision for liquidated damages in the suit for specific performance and also the limitation period within which the suit for specific performance should be filed. The Limitation act stipulates the period of three years for filing the suit for specific performance from the date of refusal to perform but if the party files the suit in the fag end of the limitation

period and there was no correspondence between the parties for nearly three years might lead to a conclusion that the party claiming the relief lacks continuous willingness. Hence, the party trying to specifically enforce should express his willingness and readiness to perform the contract through legal notice at relevant time which is a form of written communication.

The author has tried to cover all aspects of the law in this subject matter with brevity, accuracy and comprehensiveness by stating various precedents and illustration and tried his best to present the content in a lucid and engaging manner for the readers and hopes that this paper enlightens the minds of the readers.

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