

Neutral Citation No. - 2024:AHC-LKO:79394

Reserved

AFR

Court No. - 4

Case :- SECOND APPEAL No. - 112 of 2023

Appellant :- Rama Kant And Others

Respondent :- Smt. Prema Devi And Others

Counsel for Appellant :- Ashok Kumar Srivastava, Atul Kumar Srivastava

Counsel for Respondent :- Sharad Pathak, Piyush Pathak, Vipul Tripathi

Hon'ble Rajnish Kumar, J.

1. Heard, Shri G.S. Srivastava, Advocate holding brief of Shri Ashok Kumar Srivastava, learned counsel for the appellants and Sri Sharad Pathak, learned counsel for the respondents.

2. This second appeal under Section 100 of the Civil Procedure Code, 1908 (here-in-after referred as C.P.C.) has been filed assailing the judgment and decree dated 10.11.1987 passed in Regular Suit No.111 of 1984 (Shiv Nayak (dead) and Others Vs. Shiv Dularey (dead) and others) by the First Additional Civil Judge, Raibareli and judgment and decree dated 27.02.2023 passed in Civil Appeal No.11 of 1991 (Shiv Dularey (Dead) and Others Vs. Shiv Nayak (Dead) and Others) by the First Additional District Judge, Raibareli.

3. Learned counsel for the defendant-appellants, while assailing the two judgments passed by the courts below, submitted that the trial court in a suit for specific performance of contract failed to frame the specific issue regarding readiness and willingness in terms of Section 16 (c) of The Specific Relief Act, 1963 (here-in-after referred as the Act of 1963). Even the lower appellate court ignored the aforesaid aspect and decided the appeal without framing points of determination, therefore, the appellants had filed Second Appeal

No.205 of 1992 before this Court, which was allowed by means of the judgment and order dated 09.05.2022, whereby this Court had remanded the matter to the lower appellate court directing it to frame points of consideration and thereafter decide the appeal on merits. It was further argued that the lower appellate court despite the clear order of this Court, though, framed the points for determination but decided the case on the basis of already existing evidence and did not permit the parties to lead fresh evidence which is in violation of Order-41, Rule-25 C.P.C. apart from the fact that the opportunity of hearing has been lost to the appellant.

4. Learned counsel for the appellant had further submitted that the issue of readiness and willingness is absolutely imperative and without its compliance, the suit for specific performance of contract could not have been decreed apart from the fact that the defendant-appellants had also raised an objection that the agreement was an outcome of fraud. But no replication was filed. No evidence of payment of advance of Rs.200/- was adduced. Even otherwise, since the date of receipt of advance 06.10.1982 was mentioned in the plaint, therefore, without amendment in the plaint no evidence could have been adduced and accepted by the courts below contrary to the pleadings. He further submitted that the PW-2 has denied the payment of advance. PW-3 has also stated that the advance was not paid before him. The readiness and willingness has not been proved by any of the witnesses with the evidence of financial capacity of the plaintiff-respondents. There is also no correspondence in this regard prior to the notice and the notice was also not served and it was not in accordance with law.

5. He further submitted that even after remand, the provisions of Order 14 C.P.C. have not been complied and the impugned judgment and decree has been passed by the learned lower appellate court in violation of Order-41, Rule-25 C.P.C. without framing of the issue of

readiness and willingness and proof thereof with the financial capacity, therefore, the decree for specific performance of contract could not have been passed. Thus, the learned counsel for the defendant-appellants submitted that the impugned judgment and decrees are not sustainable in the eyes of law and liable to be set-aside and the suit filed by the plaintiff-respondents is liable to be dismissed with cost.

6. Per contra, learned counsel for the plaintiff-respondents submitted that the predecessor-in-interest of the defendant-appellants had entered into an agreement for sale and executed the registered agreement after receiving advance of Rs.200/- out of the agreed sale consideration of Rs.50,000/-. The sale deed was to be executed within a period of one year after receipt of the remaining sale consideration. Despite repeated requests made by the predecessor-in-interest of the plaintiff-respondents, it was not executed, therefore, he gave a registered notice dated 27.08.1983 for performance of the contract disclosing his readiness and willingness to comply his part of the agreement. The notice was deliberately returned because it has been admitted by the predecessor-in-interest of the defendant-appellants that he had heard that a notice was sent by predecessor-in-interest of the plaintiff-respondents but no reply to the notice was given, therefore, the suit for specific performance was filed disclosing therein the readiness and willingness of the plaintiff-respondents for performance of their part of the agreement to sale, which was not specifically denied. Though specific issue in regard to readiness and willingness was not framed but while considering the issue no.1, the trial court considered the issue recording that for specific performance of contract readiness and willingness to perform his part of contract by plaintiff is an essential element. Thus, the issue was considered by the trial court and after considering the pleadings and evidence available on record, the suit was decreed by means of the judgment

and decree dated 10.11.1987. The same was challenged by the defendant-appellants in civil appeal before the lower appellate court and the lower appellate court, after remand from this court by the order passed in second appeal filed by the defendant-appellants, passed a fresh order in accordance with the direction issued by this court and framing the points for determination and confirmed the judgment and decree passed by the trial court. The lower appellate court dealt with the grounds raised by the defendant-appellants and also issue of readiness and willingness.

7. He further submitted that the specific pleadings in regard to the payment of advance of Rs.200/- and readiness and willingness of the plaintiff-respondents has not been specifically denied. Thus, the question of framing of issue under Order-14, Rule-1 C.P.C. does not arise. He further submitted that since there was no denial of specific pleadings, therefore, the same stands admitted under Order-8, Rule-3 and 4 C.P.C. There was no specific reply to the plea of readiness and willingness in para-6 of the plaint. He further submitted that the pleadings for specific performance are in conformity with Form-47 and 48 of Appendix- A C.P.C. The written statement is not as per Order-8, Rule-2 C.P.C. He further submitted that the plea of violation of Order-41, Rule-25 C.P.C. has already been turned down by this Court, by means of the order dated 31.07.2023, while admitting the appeal and formulating the substantial question of law, which is unchallenged. Thus, there is no illegality or infirmity in the impugned judgment and decrees. The appeal has been filed on misconceived and baseless grounds. The substantial question of law formulated in this appeal does not arise in this case and the appeal is liable to be dismissed with cost.

8. I have considered the submissions of learned counsel for the parties and perused the records.

9. The suit for specific performance was filed by the predecessor-in-interest of the plaintiff-respondents Shiv Nayak (now dead) alleging therein that the predecessor-in-interest of the defendant-appellants Shiv Dulary (now dead) is the owner and in possession of plot nos.583mi./0-2-0, 312/1-2-8, 325/0-3-11, 326mi./0-5-6, 329/4-2-8, 574/0-2-13, 590/0-0-15, 580/0-6-2, 329/0-1-0 total measuring measuring 6 Bigha, 6 Biswa, 3 Biswansi situated in Village- Chilauli, Pargana- Inhauna, Tehsil- Maharajganj, District- Raibareli now Amethi as Bhumidhar. The predecessor-in-interest of the defendant-appellants Shiv Dularey (now dead) executed a registered agreement for sale on 06.10.1982 after taking advance Rs.200/- in favour of the predecessor-in-interest of the plaintiff-respondents in village Chilauli for sale of the aforesaid plots in consideration of Rs.50,000/-. As per the terms and conditions of the agreement, the predecessor-in-interest of the plaintiff-respondents would arrange money within a year of the execution of the agreement and the predecessor-in-interest of the defendant-appellants would get the income tax clearance and thereafter he would execute the sale deed in favour of the plaintiff-respondents after receiving the remaining sale consideration. The plaintiff-respondents asked to the defendant-appellants for executing the sale deed after receiving the remaining sale consideration many times but he ignored the same, whereas the plaintiff-respondents were always ready and willing to get the sale deed executed in terms of the agreement and it is known to the defendant-appellants. The plaintiff-respondents gave a registered notice dated 27.08.1983 through their advocate to the defendant-appellants for executing the sale deed in accordance with the agreement, which was deliberately not received by the defendant-appellants. Consequently the suit was filed.

10. The predecessor-in-interest of the defendant-appellants filed a written statement admitting himself the owner and in possession of the aforesaid plots. He also admitted the execution of the agreement

but contested the same on the ground that he is of 72 years old and he is not physically and mentally fit. In his family there are five members; his wife and two minor sons and two minor daughters, out of which except one daughter, all are unmarried and the source of livelihood of his family is only agricultural land and his whole family is dependent on it. It has further been stated that the defendant-appellants have neither made any agreement for sale in favour of the plaintiff-respondents nor received the advance of Rs.200/-. He further stated that the real maternal uncle of Shiv Nayak i.e. the plaintiff is Shiv Pratap and both are very rebellious and their terror is in the nearby area. Thakur Ram Singh of village- Pichauli, Police Station- Subeha, District- Barabanki was murdered on 07.10.1997, in which the aforesaid two and six others were convicted and punished with life imprisonment on 09.04.1979 by the Sessions Judge, Barabanki under Sections- 147/148/149 and 302 I.P.C. During conviction the plaintiff Shiv Nayak threatened to the defendant to transfer his land to him otherwise he would have to face dire consequences. The plaintiff Shiv Nayak alongwith his maternal Uncle Shiv Pratap caught the defendant and took him to Tehsil- Maharajganj, District- Raibareli and with undue pressure got the agreement executed. They also threatened that if he would make any complaint to any officer, then his children would become orphan. Accordingly, it was stated that the agreement is illegal and it has been obtained with undue influence and he has never been given the advance and he has no intention to sale the land in dispute. It was also stated by the defendant-appellants that on account of terror of the plaintiff-respondents, he is residing in village- Nevli in District- Faizabad leaving the village- Chilauli and his family is managing agriculture from there. It was also stated that the cost of the land in dispute was Rs.1,000,00/- and it has been shown very less in the agreement. The father of the plaintiff-respondents Anant Ram had made forceful possession on one of the plots of the defendant-

appellants and keeping his animals on the same. On objection being raised he is being threatened. Thus, the suit is liable to be dismissed with cost.

11. On the basis of the pleadings of the parties, the following two issues were framed:-

"1. क्या प्रतिवादी ने विक्रय हेतु कथित अनुबंध पत्र, जैसाकि वादोत्तर में कहा गया है, उत्पीड़ित होकर, हानि की अभिज्ञास से भयाक्रान्त होकर, अनुचित बल और प्रभाव में आकर तथा बिना किसी प्रतिफल के जिष्पादित किया? यदि हाँ तो इसका प्रभाव?

2. वादी गण किस अनुतोष का, यदि कोई हो, पाने के अधिकारी हैं?"

12. While considering the issue no.1, the trial court recorded that for specific performance of agreement, an essential element is that the plaintiff was always ready and willing to perform the conditions of contract. Thereafter, after considering the pleadings of the parties and material on records came to the conclusion that the plaintiff-respondents had neither made any coercion on the defendant-appellants for execution of the agreement nor tried to harm nor it has been got written by force and influence. It is also established that the agreement was executed after payment of Rs.200/- as advance. The agreement was executed by defendant-appellants without any undue influence with free will in favour of the plaintiff-respondents and consequently, a direction can be issued to the defendant-appellants for performance of the contract. The suit was decreed by means of the judgment and decree dated 10.11.1987. The judgment and decree passed by the trial court was challenged in Civil Appeal No.11 of 1991. The civil appeal was allowed, by means of the judgment and decree dated 29.02.1992, confirming the aforesaid judgment and decree passed by the trial court. The said judgment and decree was challenged before this Court in Second Appeal No.205 of 1992; Shiv Dularey Vs. Shiv Nayak and Others. The second appeal was allowed by means of the order dated 09.05.2022 on the ground that appellate court has failed to frame the questions for consideration and has further failed to take into consideration the evidence of the case. The

matter was remanded back to the lower appellate court for deciding it a fresh on merits in accordance with law after taking into consideration each and every points of consideration with regard to the case and evidence of the same. In deference to the order passed by this Court, the lower appellate court decided civil appeal filed by the defendant-appellants by means of the impugned judgment and decree dated 27.02.2023. Hence, this second appeal has been filed which has been admitted on the following substantial question of law.

"Whether the two Courts were justified in decreeing the suit for specific performance of contract without considering the issue of readiness and willingness which is sine qua non for the grant of decree?"

13. For considering the aforesaid substantial question of law, Section-16(c) of the Act of 1963 is required to be considered. For ready reference, the same is extracted here-in-below:-

16. Personal bars to relief.—Specific performance of a contract cannot be enforced in favour of a person—

(a)

(b)

(c) [who fails to 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 terms the performance of which has been prevented or waived by the defendant.

Explanation.—For the purposes of clause (c),—

(i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court;

(ii) the plaintiff [must prove] performance of, or readiness and willingness to perform, the contract according to its true construction.

14. In view of the aforesaid Section-16(c) of Act of 1963, specific performance of a contract can not be enforced without proof by the person, who claims it that he has performed or has always been ready and willing to perform essential terms of the contract which are to be performed by him, other than the terms of performance of which has

been prevented or waived by the defendant. The Explanation-1 to clause (C) provides that where a contract is for payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in the court any money except without an order of the court. According to the Explanation-2 to clause (C) the plaintiff must prove performance of, or readiness and willingness to perform, the contract according to its true construction. Thus, a decree of specific performance of contract can not be passed unless the person, who prays for a decree for specific performance of contract, proves that he has performed or always ready and willing to perform the essential terms and conditions of the contract, which were to be performed by him, therefore, it is sine qua non for grant of a decree of specific performance of contract. It has to be determined on the basis of entirety of facts, relevant circumstances and the intention and conduct of the parties and financial capacity of the party.

15. The Hon'ble Supreme Court, in the case of **Jagjit Singh (D) Through LR's. Vs. Amarjit Singh; 2018 (36) LCD 2787**, has held that it is settled law that a plaintiff who seeks specific performance of contract is required to plead and prove that he was always ready and willing to perform his part of the contract. The relevant paragraph-4 is extracted here-in-below:-

"4. It is settled law that a plaintiff who seeks specific performance of contract is required to plead and prove that he was always ready and willing to perform his part of the contract. Section 16(c) of the Specific Relief Act mandates that the plaintiff should plead and prove his readiness and willingness as a condition precedent for obtaining relief of grant of specific performance. As far back as in 1967, this Court in Gomathinayagam Pillai and Ors. v. Pallaniswami Nadar² held that in a suit for specific performance the plaintiff must plead and prove that he was ready and willing to perform his part of the contract right from the date of the contract up to the date of the filing of the suit. This law continues to hold the field and has been reiterated in the case of J.P. Builders and Anr. v. A. Ramadas Rao and Anr.³ and P. Meenakshisundaram v. P. Vijayakumar & Ors.⁴. It is the duty of the plaintiff to plead and then lead evidence to show that the plaintiff from the date he entered into an agreement till the stage of filing of

the suit always had the capacity and willingness to perform the contract."

16. The Hon'ble Supreme Court, in the case of **Sukhwindar Singh Vs. Jagroop Singh and Others; AIR 2020 SC 4865**, has held that the suit being the one for specific performance of the contract on payment of the balance sale consideration, the readiness and willingness was required to be proved by the plaintiff and was to be considered by the Courts below as a basic requirement if a decree for specific performance is to be granted.

17. The Hon'ble Supreme Court, in the case of **Shenbagam and Others Vs. K.K Rathinavel; (2022) SCC Online SC 71**, has held that Section 16 of the Specific Relief Act provides certain bars to the relief of specific performance. These include, inter alia, a person who fails to aver and ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented and waived by the defendant. It has further been held that in evaluating whether the respondent was ready and willing to perform his obligations under the contract, it is not only necessary to view whether he had the financial capacity to pay the balance consideration, but also assess his conduct throughout the transaction. The "readiness" refers to whether he was financially capable of paying the balance consideration. It has also been held that the decree of specific performance is discretionary relief and in deciding whether to grant the remedy of specific performance, specifically in suits relating to suits of immovable property, the courts must be cognizant of the conduct of the parties, the escalation of the price of the suit property, and whether one party will unfairly benefit from the decree and the remedy provided must not cause injustice to a party, specifically when they are not at fault.

18. The Hon'ble Supreme Court, in the case of **P. Ravindranath and Another Vs. Sasikala and Others(arising out of SLP (C)**

No.2246 of 2017); 2024 SCC OnLine SC 1749, has held that relief of specific performance of contract is a discretionary relief. As such, the Courts while exercising power to grant specific performance of contract, need to be extra careful and cautious in dealing with the pleadings and the evidence in particular led by the plaintiffs. Section 16 of the Act of 1963 requires the readiness and willingness to be pleaded and proved by the plaintiff in a suit for specific performance of contract. The said provision has been widely interpreted and held to be mandatory.

19. The Hon'ble Supreme Court, in the case of **Sukhbir Singh and Others Vs. Brij Pal Singh and Other; (1997) 2 SCC 200**, has held that 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.

20. Similar views have been taken by the Hon'ble Supreme Court, in the cases of **U.N. Krishnamurthy (since deceased) through LRs. Vs. A.M. Krishnamurthy(Civil Appeal No.4703 of 2022); (2023) 11 SCC 775**, **Sugani (MST) Vs. Rameshwar Das and Another; (2006) 11 SCC 587**, **Rameshwar Prasad (dead) by LRS. Vs. Basanti Lal; (2008) 5 SCC 676** and **Biswanath Ghosh (dead) by Legal Representatives and Others Vs. Gobinda Ghosh alias Gobindha Chandra Ghosh and Others; (2014) 11 SCC 605**.

21. The Hon'ble Supreme Court, in the case of **Kalyan Singh Chouhan Vs. C.P. Joshi; (2011) 11 SCC 786**, has held that the object of framing issues is to ascertain/shorten the area of dispute and pinpoint the points required to be determined by the court. The issues are framed so that no party at the trial is taken by surprise. It is the issues fixed and not the pleadings that guide the parties in the matter of adducing evidence. The court should not decide a suit on a matter/point on which no issue has been framed. Similar view has

been taken by a coordinate bench of the Himachal Pradesh High Court in the case of **Dr. Om Prakash Rawal Vs. Justice Amrit Lal Bahri; (1993) SCC Online HP 13.**

22. The Hon'ble Supreme Court, in the case of **V.S. Ramakrishnan Vs. P.M. Muhammad Ali (Civil Appeal Nos.8050-8051 of 2022); (2022) SCC OnLine SC 1545**, has held that though there was no specific issue framed by the learned Trial Court on readiness and willingness on the part of the plaintiff, the Trial Court has given the findings on the same and has non-suited the plaintiff by observing that the plaintiff was not having sufficient funds to make the full balance consideration on or before 12.01.2006. Such a finding could not have been given by the learned Trial Court without putting the plaintiff to notice and without framing a specific issue on the readiness and willingness on the part of the plaintiff. The relevant paragraph 8 is extracted here-in-below:-

"8. Now the findings and the reasoning given by the learned Trial Court refusing to pass a decree for specific performance is concerned it appears that though there was no specific issue framed by the learned Trial Court on readiness and willingness on the part of the plaintiff, the Trial Court has given the findings on the same and has non-suited the plaintiff by observing that the plaintiff was not having sufficient funds to make the full balance consideration on or before 12.01.2006. Such a finding could not have been given by the learned Trial Court without putting the plaintiff to notice and without framing a specific issue on the readiness and willingness on the part of the plaintiff. There must be a specific issue framed on readiness and willingness on the part of the plaintiff in a suit for specific performance and before giving any specific finding, the parties must be put to notice. The object and purpose of framing the issue is so that the parties to the suit can lead the specific evidence on the same. On the aforesaid ground the judgment and order passed by the learned Trial Court dismissing the suit and refusing to pass the decree for specific performance of the agreement to sell confirmed by the High Court deserves to be quashed and set aside and the matter is to be remanded to the learned Trial Court to frame the specific issue with respect to the readiness and willingness on the part of the plaintiff. On remand the parties be permitted to lead the evidence on the readiness and willingness on the part of the plaintiff to perform his part of the contract, more particularly, whether the plaintiff was ready and willing to pay the full consideration and whether the plaintiff was having sufficient

funds and/or could have managed the balance sale consideration."

23. In view of above, in a suit for specific performance of contract, the issue of readiness and willingness of the person claiming the relief of specific performance of contract is required to be framed so that he may know that he has to prove the readiness and willingness to perform his part of contract and the other party may prove that the person claiming was not ready and willing to perform his part of contract, however the issues can be framed on the basis of pleadings of the parties.

24. Learned counsel for the plaintiff-respondents had also submitted that the pleadings in the plaint were in accordance with the Form No.47 and 48 of C.P.C. in which, the formats of pleadings of suit for specific performance has been given. According to the Form No.47, it is to be stated that the plaintiff has applied to the defendant specifically to perform the agreement on his part, but the defendant has not done so and the plaintiff has been and still is ready and willing specifically to perform the agreement on his part of which the defendant has had notice. It is further required to be pleaded that the plaintiff claims that the Court will order the defendant specifically to perform the agreement and to do all acts necessary to put the plaintiff in full possession of the said property [or to accept a transfer and possession of the said property] and to pay the costs of the suit. As per Form No.48, it is to be stated that the plaintiff is still ready and willing to pay the purchase-money of the said property to the defendant and the plaintiff claims that the defendant transfers the said property to the plaintiff by a sufficient instrument following the terms of the agreement. Thus the plaintiff has to plead his readiness and willingness to perform his part of contract. It is also noticed here that Form No.13 of appendix A regarding the written statement provides for defence for the suit for specific performance, according to which it is to be pleaded in the written statement that the plaintiff has not

performed which of the conditions and as to whether the plaintiff has been guilty of delay, fraud or misrepresentation and as to whether the agreement is unfair or entered into by mistake.

25. The Hon'ble Supreme Court, in the case of **Syed Dastagir Vs. T.R. Gopalakrishna Shetty; (1999) 6 SCC 337**, has dealt with the pleadings to be made with reference to Section 16 (c) of the Specific Relief Act. The relevant paragraph-9, 11 and 12 are extracted here-in-below:-

"9. So the whole gamut of the issue raised is, how to construe a plea specially with reference to Section 16(c) and what are the obligations which the plaintiff has to comply with in reference to his plea and whether the plea of the plaintiff could not be construed to conform to the requirement of the aforesaid section, or does this section require specific words to be pleaded that he has performed or has always been ready and is willing to perform his part of the contract. In construing a plea in any pleading, courts must keep in mind that a plea 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. Such an expression may be pointed, precise, sometimes vague but still it could be gathered what he wants to convey through only by reading the whole pleading, depending on the person drafting a plea. In India most of the pleas are drafted by counsel hence the aforesaid difference of pleas which inevitably differ from one to the other. Thus, to gather true spirit behind a plea it should be read as a whole. This does not distract one from performing his obligations as required under a statute. But to test whether he has performed his obligations, one has to see the pith and substance of a plea. Where a statute requires any fact to be pleaded then that has to be pleaded maybe in any form. The same plea may be stated by different persons through different words; then how could it be constricted to be only in any particular nomenclature or word. Unless a statute specifically requires a plea to be in any particular form, it can be in any form. No specific phraseology or language is required to take such a plea. The language in Section 16(c) does not require any specific phraseology but only that the plaintiff must aver that he has performed or has always been and is willing to perform his part of the contract. So the compliance of "readiness and willingness" has to be in spirit and substance and not in letter and form. So to insist for a mechanical production of the exact words of a statute is to insist for the form rather than the essence. So the absence of form cannot dissolve an essence if already pleaded.

11. Section 16(c) of the Specific Relief Act, 1963 is quoted hereunder:

It is significant that this explanation carves out a contract which involves payment of money as a separate class from Section 16(c). Explanation (i) uses the words "it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court". (emphasis supplied) This speaks in a negative term what is not essential for the plaintiff to do. This is more in support of the plaintiff that he need not tender to the defendant or deposit in court any money but the plaintiff must [as per Explanation (ii)] at least aver his performance or readiness and willingness to perform his part of the contract. This does not mean that unless the court directs the plaintiff cannot tender the amount to the defendant or deposit in the Court. The plaintiff can always tender the amount to the defendant or deposit it in court, towards performance of his obligation under the contract. Such tender rather exhibits the willingness of the plaintiff to perform his part of the obligation. What is "not essential" only means need not do but does not mean he cannot do so. Hence, when the plaintiff has tendered the balance amount of Rs 120 in court even without the Court's order it cannot be construed adversely against the plaintiff under Explanation (i). Hence, we do not find any merit in the submission of the learned counsel for the respondents.

12. In interpreting a pleading wherever there be two possible interpretations, then the one which defeats justice should be rejected and the one which subserves to justice should be accepted."

26. The Order-8, Rule-1 C.P.C. provides for written statement of his defence by the defendant. Rule-2 provides that the defendant must raise all grounds of defence as, if not raised, would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the plaint, as, for instance, fraud, limitation, release, payment, performance or facts showing illegality. Rule-3 provides that it shall not be sufficient for a defendant in his written statement to deny generally the grounds alleged by the plaintiff, but the defendant must deal specifically with each allegation of fact of which he does not admit the truth, except damages. Rule 4 provides that the denial should not be evasive. Rule-5 (1) provides that every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability. However, as per proviso the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission. Sub

rule (2) of Rule 5 provides that where the defendant has not filed a pleading, the court may pronounce judgment on the basis of the facts contained in the plaint, except as against a person under a disability, but the Court may require any such fact to be proved. Thus, the defence in the written statement should be specific and it should not be evasive.

27. The Hon'ble Supreme Court, in the case of **Gian Chand and Brothers and Another Vs. Rattan Lal alias Rattan Singh; 2013 2 SCC 606**, has held that Rules 3, 4 and 5 of Order VIII form an integral code dealing with the manner in which allegations of fact in the plaint should be traversed and the legal consequences flowing from its non-compliance. It is obligatory on the part of the defendant to specifically deal with each allegation in the plaint and when the defendant denies any such fact, he must not do so evasively but answer the point of substance.

28. The Hon'ble Supreme Court, in the case of **Jaspal Kaur Cheema and Another Vs. Industrial Trade Links and Others; (2017) 8 SCC 592**, has held that a defendant is required to deny or dispute the statements made in the plaint categorically, as evasive denial would amount to an admission of the allegation made in the plaint in terms of Order 8 Rule 5 of the Code.

29. Rule-1 of Order-XIV of C.P.C provides about framing of issues. Sub-rule (1) provides that issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other. Sub-rule (5) provides that at the first hearing of the suit the Court shall, after reading the plaint and the written statements, if any, and after examination under rule 2 of Order X and after hearing the parties or their pleaders, ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears

to depend, therefore the issues are required to be framed at the first hearing of the suit on the basis of the pleadings made in the plaint and the written statement on which right decision of the case appears to depend. Rule 2 (1) of Order-XIV provides that notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues. Sub Rule (2) of Rule 2 provides the order in which the issues may be decided. Rule 3 of order XIV provides as to from what material, the issues may be framed. Rule 4 order XIV provides that the court may examine witnesses or documents before framing issues. Rule-5(1) of Order-XIV provides that the Court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties shall be so made or framed. Sub Rule (2) of Rule 5 of the Order XIV provides that the Court may also, at any time before passing a decree, strike out any issues which may be wrongly framed or introduced. In view of above, after filing of plaint and written statement, the Court has to frame the issues on which the parties are at variance in their pleadings, as per the procedure provided in Order-XIV of C.P.C., which are required to be decided.

30. Adverting to the facts of the case, the trial court, after recording the aforesaid essential element of specific performance of contract and considering the pleadings and evidence on record and averments in paragraph-6 of the plaint and on the basis of the notice dated 27.08.1993, held that plaintiff-respondents has always been ready and willing to get the sale deed executed of the land mentioned in paragraph-1 of the plaint. The same was also proved by the plaintiff-respondent no.1 Shiv Nayak Mishra through his evidence stating that in pursuance of the agreement executed by the defendant-appellant, he and his brother are ready for the execution of sale deed in their favour,

which has not been denied by the defendant-appellants. The only plea has been taken that the agreement was got executed through undue influence and coercion and threatening, however, the same could not be proved. The trial court, thereafter considering the pleadings, evidence and material on record, considered as to whether the agreement to sale was executed as stated by the defendant-appellants or not, came to the conclusion that the agreement to sale was executed by the defendant-appellants without undue influence and threat with his sweet will.

31. The lower appellate court, after remand of the matter by this Court, framed four points of determinations, which are extracted here-in-below:-

"1- क्या प्रतिवादी ने विक्रय करार दिनांकित-06-10-1982 बिना स्वतन्त्र सम्मति के निष्पादित किया है?

2 क्या वादीगण संविदा के विनिर्दिष्ट अनुपालन हेतु तैयार व तत्पर रहे हैं?

3- क्या वादीगण विक्रय करार दिनांकित 06.10.1982 में उल्लिखित सम्पत्ति का प्रतिवादी से बैनामा करा पाने के अधिकारी हैं?

4. क्या विद्वान अवर न्यायालय द्वारा पारित किया गया प्रश्नगत निर्णय पत्रावली पर उपलब्ध साक्ष्य के विपरीत है?"

32. This Court, while formulating the aforesaid substantial question of law, held that in the instant appeal, the issue of readiness and willingness, whether it has been pleaded and proved in accordance with law is the only question that arises for consideration. In so far as the submissions made by the learned counsel for the appellant that no fresh evidence was permitted in terms of Order-41, Rule-25 C.P.C is concerned, the same is misconceived for the reason that from the perusal of the judgment and order dated 09.05.2022, the appellate court merely directed the lower appellate court to frame the points for determination, it did not permit any framing of fresh issues in pursuance whereof fresh evidence was required, therefore, turning down the submissions made by the learned counsel for the appellant in this regard, the appeal was admitted on the aforesaid sole

substantial question of law. The said order has not been challenged by the appellant. Thus, the issue raised in regard to the opportunity of evidence after framing of the issue of readiness and willingness thereon is misconceived and not tenable.

33. In view of above, though no issue of readiness and willingness for specific performance of agreement was framed by trial court, however the same was dealt by the trial court and the appellate court, on remand by this Court, decided the appeal after making the said point of determination and considered the issue, therefore, it is to be examined by this Court as to whether it has rightly been considered by the courts below or not.

34. The perusal of the record indicates that the plaintiff-respondents has stated in paragraph-2 of the plaint that the defendant-appellants had executed the agreement for sale for consideration of Rs.50,000/- after receiving Rs.200/- as advance on 06.10.1982 and got it registered. In paragraph-3 it has been stated that it was agreed between the parties that the plaintiff-respondents would arrange the money for sale deed within a year and the defendant-appellants Income Tax Clearance. In paragraph-4 it has been stated that the plaintiff-respondents, time and again, requested to the defendant-appellants to execute the sale deed after receiving the remaining sale consideration but they avoided, therefore, as stated in paragraph-5 a registered notice dated 27.08.1983 was sent through an advocate. In paragraph-6 it has been stated that the plaintiff-respondents are ready to get the sale deed executed on the basis of the agreement to sale dated 06.10.1982 but the defendant-appellants are avoiding the same. Thus, the pleadings does not indicate that the plaintiff-respondents have arranged the money and they are ready to pay the same, though in the notice dated 27.08.1983 it was stated that the plaintiff-respondents have arranged the money. This suit was filed after more than a year of the aforesaid notice dated 31.10.1984, therefore, in

view of the aforesaid discussions and law on the issue, it was incumbent upon the plaintiff-respondents to specifically state in the plaint that they have arranged the remaining money of sale consideration and ready to pay the same and prove it. Though specific reply to the same has not been given in written statement. However paragraph-4 has been denied. Even otherwise, he is not entitled for any benefit of weakness of case of defendant-appellants.

35. Perusal of the evidence adduced by the predecessor-in-interest of the plaintiff-respondents Shiv Nayak, who appeared as PW-1 also does not indicate that he has arranged the money and having the same and ready to pay the same to the defendant-appellants. In regard to readiness and willingness to comply his part in terms of the agreement to sale by the plaintiff-respondents, no evidence has been adduced by other witnesses. The notice dated 27.08.1983 was not served and no other correspondence was made by the plaintiff-respondents during one year of agreement or thereafter. Even otherwise, the aforesaid notice does not indicate that any place or time was indicated for compliance. However, without considering the aforesaid pleadings, material and evidence on record, the trial court only on the basis of above notice dated 27.08.1983, which was not served on the defendant-appellants, held that he was ready and willing to perform his part in the agreement. This Court is of the view that no such finding could have been recorded.

36. The learned lower appellate court initially dismissed the civil appeal filed by the defendant-appellants confirming the judgment and decree passed by the trial court without framing the point of determination (consideration) in the appeal. However, after remand of the matter by this Court in the second appeal filed by the defendant-appellants, made the aforesaid points of determination and considered the same on the basis of pleadings and evidence on record. Even after considering the same the learned lower appellate court failed to

consider the aforesaid pleadings, material and evidence on record and only relying on the findings recorded by the trial court dismissed the appeal and confirmed the judgment and decree passed by the trial court. Thus, this Court is of the view that the court's below have failed to consider the case in terms of provision made in Section 16(C) of the Act of 1963 and the law on the point and allowed the suit filed by the plaintiff-respondents without appropriately considering and analyzing the evidence and material on record, while recording the findings of readiness and willingness on the part of the plaintiff-respondents. Thus, the impugned judgments are not sustainable in the eyes of law.

37. It is also noticed that though the pleading was made by the plaintiff-respondents in the plaint that the agreement to sale was executed by the predecessor-in-interest of the defendant-appellants after receiving Rs.200/- as advance on 06.10.1982 but in the evidence adduced before the trial court he stated that Rs.200/- was paid by him on 05.10.1982 when the parties had agreed for sale of the land in dispute in a consideration of Rs.50,000/-. Therefore, the evidence in regard to the advance paid by the plaintiff-respondents is contrary to the pleading, which can not be accepted as per law. Other witnesses of plaintiff-respondents have also either denied or shown ignorance about payment of advance. No other evidence of payment of advance has been adduced.

38. It is also noticed that the allegation of the defendant-appellants is that the predecessor-in-interest of the plaintiff-respondents Shiv Nayak and his maternal uncle Shiv Pratap are rebellious person and got the agreement to sale executed by undue influence and coercion on the threat of gun. Shiv Nayak has admitted in his evidence that he went to the house of his maternal uncle Shiv Pratap in the evening of 05.10.1982 to ask him that tomorrow he has to come to Maharajganj and he reached their directly. The witness of the plaintiff-respondents

have shown their ignorance as to whether the predecessor-in-interest of the plaintiff-respondents and his maternal uncle had gun with them at the time when the agreement to sale was executed or not. Thus, the allegation of the defendant-appellants also does not seem to be without any basis.

39. The Hon'ble Supreme Court, in the case of **Prem Singh and Others Vs. Birbal and Others; (2006) 5 SCC 353**, has held that there is a presumption that a registered document is validly executed and a registered document, therefore, prima facie would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption. However, in a case of specific performance of contract/agreement, merely registration of an agreement does not give right for a direction for performance unless the readiness and willingness is shown and proved, which the plaintiff-respondents have failed to do in this case. Even otherwise as discussed above, the same also does not seem to have been validly executed.

40. In view of above and considering the over all facts and circumstances of the case and section 99 C.P.C., this Court is of the view that the impugned judgment and decrees are not sustainable in the eyes of law and liable to be set-aside. Since there is no proof of payment of Rs.200/-, therefore, the question of refund also does not arise.

41. The Second Appeal No.112 of 2023 is **allowed** with cost. The impugned judgment and decree dated 10.11.1987 passed in Regular Suit No.111 of 1984 (Shiv Nayak (dead) and Others Vs. Shiv Dularey (dead) and others) by the First Additional Civil Judge, Raibareli and judgment and decree dated 27.02.2023 passed in Civil Appeal No.11 of 1991 (Shiv Dularey (Dead) and Others Vs. Shiv Nayak (Dead) and

Others) by the First Additional District Judge, Raibareli are hereby set aside.

(Rajnish Kumar, J.)

Order Date :- 29.11.2024
Haseen U.