2025:KER:25141

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

TUESDAY, THE 25TH DAY OF MARCH 2025 / 4TH CHAITHRA, 1947

RFA NO. 175 OF 2003

AGAINST THE DECREE AND JUDGMENT DATED 11.12.2002 IN O.S. NO.668 OF 1994 OF I ADDITIONAL SUB COURT, ERNAKULAM

APPELLANTS/DEFENDANTS 1,2 & 6 TO 8:

1 P.A. THOMAS (DIED)
AGED 66 YEARS
S/O.LATE P.V.ANTHAPPAN, PULICKAL HOUSE, M.G ROAD, ERNAKULAM. PIN 682016, REPRESENTED BY HIS LEGAL REPRESENTATIVES APPELLANT 3 TO 5.

2 P.A.JOSEPH,
S/O.LATE P.V.ANTHAPPAN, PULIKKAL HOUSE, KARSHAKA ROAD, ERNAKULAM

3 ROSALIND THOMAS,
W/O. LATE P.A.THOMAS, PULICKAL HOUSE, TRIPUNITHURA 682 306.

4 P.T.ANTONY
S/O. LATE P.A.THOMAS, PULICKAL HOUSE, TRIPUNITHURA - 682 306.

5 P.T.PRIYA,
D/O. LATE P.A THOMAS, PULICKAL HOUSE, TRIPUNITHURA 682 306.

(THE CAUSETITLE OF THE APPEAL MEMORANDUM IN RFA 175/2003 IS AMENDED AS PER ORDER DATED 16/02/2024 IN IA 1/2024)

BY ADVS.
S.R. DAYANANDA PRABHU
K.S.RAJESH

RESPONDENTS/PLAINTIFFS/DEFENDANTS 3 TO 5:

1 M/S.SOUTHERN HOUSING CORPORATION LTD
193, PYCROFTS ROAD, ROYAPETTAH, MADRAS 14 REPRESENTED BY DIRECTOR, MARIMUTHU.

2 THE COURT RECEIVER,
HIGH COURT, BOMBAY REPRESENTED BY K. MURALIDHARAN AGENT OF COURT RECEIVER, HIGH COURT BOMBAY IN CIVIL SUIT NO.3337 OF 1995 W.120 3RD AVENUE, 1ST FLOOR ANNA NAGAR, CHENNAI - 600 040.

3 ARAVIND KUMAR
S/O. GOVINDALU, M.G.ROAD, RAVIPURAM ERNAKULAM.

4 REGINA TOMY,
W/O. TOMY, GIRINAGAR, ERNAKULAM.

5 T.P. TOMY,
S/O. THALIATH PAULOSE, GIRINAGAR, ERNAKULAM.

ADDL R6 INDIA HOUSING FINANCE AND DEVELOPMENT LTD
REP. BY ITS REGIONAL MANAGER, C1-IHFD NAGAR, ADHANUR,
UREAPAKKAM, VANDALUR CHENNAI – 48.

(IMPLEADED AS PER ORDER IN I.A.NO.3653/2005 DATED 31.3.2016)

R1 BY ADVS.
SRI.K.JAYAKUMAR (SR)
SRI.M.SREEKUMAR
R2 BY ADV.
SRI.SAJU S.POONTHODATHU
R3 BY ADV.
SRI.P.R.VENKATESH
R4 & R5 BY ADVS.
SRI.SUNIL N.SHENOI
SRI.P.VISWANATHAN
ADDL.R6 BY ADVS.
SRI.C.S.AJITH PRAKASH
SRI.D.ANIL KUMAR

THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON 04.03.2025 ALONG WITH R.F.A. NO.209/2003, THE COURT ON 25.03.2025 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

TUESDAY, THE 25TH DAY OF MARCH 2025 / 4TH CHAITHRA, 1947

RFA NO. 209 OF 2003

AGAINST THE DECREE AND JUDGMENT DATED 11.12.2002 IN O.S. NO.668 OF 1994 OF SUB COURT, ERNAKULAM

APPELLANTS/ADDITIONAL DEFENDANTS 3 TO 5:

1 ARAVIND KUMAR,
S/O. GOVINDALU, RESIDING AT CC 39/4226, M.G. ROAD, RAVIPURAM, ERNAKULAM, KOCHI-11.

2 REJINA TOMY,
NO. 191, GIRI NAGAR, KOCHI-20.

3 T.P. TOMMY,
S/O. THALIATH POULOSE, NO. 191, GIRI NAGAR, KOCHI-20.

BY ADVS.
P.VISWANATHAN (SR.)
AJITH VISWANATHAN

RESPONDENTS/PLAINTIFFS 1 AND 2 AND DEFENDANT NO.2 & ADDL DEFENDANTS 6 TO 8:

1 SOUTHERN HOUSING CORPORATION LIMITED,
(PREVIOUSLY KNOWN AS IHFD CONSTRUCTIONS LIMITED), 103, PYCROFTS ROAD, ROYAPETTAH, MADRAS-14, TAMIL NADU, REPRESENTED BY ITS DIRECTOR (TECHNICAL) MR. K. RAJENDRAN.

2 THE COURT RECEIVER,
HIGH COURT, BOMBAY REPRESENTED BY K. MURALEEDHARAN, AGENT OF COURT RECEIVER, HIGH COURT BOMBAY IN CIVIL SUIT NO. 3337/1995 W.120, 3RD AVENUE, 1 FLOOR, ANNA NAGAR, CHENNAI-600040.

3* P.A. JOSEPH,
S/O. LATE P.V. ANTHAPPAN, ANTROSE, PULICKAL HOUSE, KARSHAKA ROAD, COCHIN-16. [ADDRESS CORRECTED]
*(ADDRESS OF THE 3RD RESPONDENT CORRECTED AS 'P.A.JOSEPH, S/O LATE D.V.ANTHAPPAN ANTROSE, PULIKAL HOUSE, KARSHAKA ROAD, COCHIN-16' VIDE ORDER DATED 19.01.2024 IN I.A.NO.2026/2023)

4 ROSELIND THOMAS,
AGED ABOUT 50 YEARS, WIDOW OF P.A. THOMAS, 6/91, PULICKAL HOUSE, SHRAYAS NAGAR, NEAR KANNAMPUZHA NORTH ROAD, TRIPUNITHURA-682306.

5 P.T. ANTONY,
6/91, PULICKAL HOUSE, SHRAYAS NAGAR, NEAR KANNAMPUZHA NORTH ROAD, TRIPUNITHURA-682306.

6 P.T. PRIYA,
6/91, PULICKAL HOUSE, SHRAYAS NAGAR, NEAR KANNAMPUZHA NORTH ROAD, TRIPUNITHURA-682306.

ADDL R7 JUSTINE MENDEZ
AGED 34, S/O. JOSEPH MENDEZ, RESIDING AT CC 31/88-3B, VYTTILA, KOCHI-9. (ADDITIONAL R7 IS IMPLEADED AS PER ORDER DATED 21/11/2006 IN IA 4046/2006)

ADDL R8 JOSEPH JACOB (DIED)
S/O JACOB JOSEPH ,CHARTERED ACCOUNTANT ,HOUSE NO.C.C.58/9275,PAYYANAT HOUSE ,T.D.ROAD ,COCHIN 35

ADDL R9 SUSAN GEORGE
PARATHUVAYALIL ,WORKING IN SREE SANKARA UNIVERSITY COLLEGE OF SANSKRIT KALADY [ADDITIONAL RESPONDENTS 8&9 IMPLEADED VIDE ORDER DATED 15/12/2023 IN IA 487/2007]

ADDL R10 P. A.JOSEPH
S/O LATE D.V.ANTHAPPAN ANTHROSE, PULIKKAL HOUSE,KARSHAKA ROAD ,KOCHIN-16 (ADDL R10 IMPLEADED VIDE ORDER DATED 30.01.2024 IN I.A. NO.2027/2003)

ADDL R11 LINCY THOMAS
AGED 56, W/O.LATE JOSEPH JACOB, RESIDING AT PAYYANATT HOUSE, HARMONY ENCLAVE CHILAVANOOR ROAD, KANAYANNUR TALUK ERNAKULAM VILLAGE, KADAVANTHRA DESOM, KADAVANTHRA P.O., KOCHI, PINCODE - 682020.

ADDL R12 JACOB TOM JOSEPH,
AGED 30, D/O.LATE JOSEPH JACOB, RESIDING AT PAYYANATT HOUSE, HARMONY ENCLAVE CHILAVANOOR ROAD, KANAYANNUR TALUK ERNAKULAM VILLAGE, KADAVANTHRA DESOM, KADAVANTHRA P.O., KOCHI, PINCODE - 682020.

ADDL R13 MARYAN JOSEPH
AGED 26, D/O.LATE JOSEPH JACOB, RESIDING AT PAYYANATT HOUSE, HARMONY ENCLAVE CHILAVANOOR ROAD, KANAYANNUR TALUK ERNAKULAM VILLAGE, KADAVANTHRA DESOM, KADAVANTHRA P.O., KOCHI, PINCODE - 682020.

ADDL R14 REENA ANNA JOSEPH
AGED 21, D/O.LATE JOSEPH JACOB, RESIDING AT PAYYANATT HOUSE, HARMONY ENCLAVE CHILAVANOOR ROAD, KANAYANNUR TALUK ERNAKULAM VILLAGE, KADAVANTHRA DESOM, KADAVANTHRA P.O., KOCHI, PINCODE - 682020. (LEGAL HEIRS OF DECEASED ADDL .8TH RESPONDENT ARE IMPLEADED AS ADDITIONAL RESPONDENTS 11 TO 14 VIDE ORDER DATED 16/2/2024 IN IA 1/2024

BY ADVS.
S.R.DAYANANDA PRABHU
M.V.JOHN
RENJU JOHN
B.JAYAPARAKASH
K.S.RAJESH
V.V.ASOKAN (SR.)
S.AMINA
K.V.SOHAN (FOR ADDL R9 IN I.A.1196/2005 IN I.A.1221/2003 IMPLEADED VIDE ORDER DATED 31.07.2006 IN I.A.1481/2006)
M.SREEKUMAR
SREEJA SOHAN K.
K.JAYAKUMAR (SR.)
A.K.SHESHADRI

THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON 04.03.2025 ALONG WITH R.F.A. NO.175/2003, THE COURT ON 25.03.2025 DELIVERED THE FOLLOWING:

“C.R”

COMMON JUDGMENT

Dated this the 25th day of March, 2025

R.F.A. No.175 of 2003 has been filed by defendants 1 and 2 and additional defendants 6 to 8 in O.S. No.668/1994 on the files of the Sub Court, Ernakulam, under Section 96 read with Order XLI Rule 1 of the Code of Civil Procedure, 1908, challenging the decree and judgment in the above case dated 11.12.2002. The respondents herein are the plaintiffs and additional defendants 3 to 5.

2. R.F.A. No.209 of 2003 is also filed challenging the decree and judgment in O.S. No.668/1994, at the instance of additional defendants 3 to 5, arraying the plaintiffs and other defendants as the respondents.

3. Heard the respective senior counsel for the appellants and the learned counsel appearing for the respondents, in detail. Also heard the learned counsel for the additional 9th respondent in I.A. No.1196 of 2005 in R.F.A. No.209 of 2003, who filed I.A. No.1884/2006 in I.A. No.1480/2006 in I.A. No.1221/2003 in R.F.A. No.209 of 2003

and this Court passed order dated 31.07.2006. Perused the verdict under challenge and the records of the trial court and the decisions placed.

4. Parties in these appeals shall be referred with reference to their status before the trial court.

5. The suit has been filed by the 1st plaintiff (originally only one plaintiff, M/s Southern Housing Corporation Ltd. represented by its Director and subsequently 2nd additional plaintiff, the Court Receiver also impleaded) seeking performance of Ext.A2 agreement, which is, in fact, continuation of Ext.A1 agreement executed between the 1st plaintiff and defendants 1 and 2. As per Ext.A1 agreement, it was agreed to sell 178.5 cents of property for a total sale consideration of Rs.5,750/- per cent and 180 cents of property for a total consideration of Rs.7,750/- per cent. Thereafter, Ext.A2 agreement was executed between the same parties and the covenants therein read as under:

> *2. The total sale consideration of the property is Rs. 18,63,375/- and the sale shall be completed within 9 months from this date.*

3. The purchaser shall prepare the plan in accordance with the rules and regulations of GCDA or any other competent authorities for promoting flats at the above said land and shall submit the papers duly getting signatures from the vendors, wherever required, to the appropriate authoroties and all expenses will be borne by the purchaser for getting approval. The planning permit will be obtained in 'Vendors' name and shall be transferred in 'Purchaser' name or its nominees' name as may be required by the purchaser.

4. The vendors shall sign all the documents needed, in the 'Purchaser's effort to get the approval from the authorities concerned and shifting of transformer if necessary so as to enable the 'Purchaser' to launch the housing projects within reasonable period.

5. The vendors agree and undertake to give vacant possession of the said plots and unequivocally permit the purchaser to proceed with the development and constructions activities in the said plots with effect from the date on which this agreement is entered into between the vendors and purchasers.

6. The vendors shall agree to register the land either in parts or in full in favour of the purchasers or their nominees in proportion to the sale consideration received from the purchaser from time to time. The vendors undertakes to obtain all

necessary approvals required from Income Tax and other authorities for the purpose to registration of the above land.

7. Upon receipt of the entire sale consideration the vendors agree to give en irrevocable Power of Attorney to the purchasers if the purchaser so demand.

8. After discharging Union Bank of India loan, out of the money received from the purchaser, the vendors will create mortgage of the above mentioned property as security to the Purchasers Bank by way of mortgage so as to enable the purchaser to get necessary finance for the above scheme and/or will provide the landed property by way of security to any housing finance institution as may be required by the 'Purchaser' for the purpose of promoting housing scheme at the above mentioned land.

9. The vendor shall allow the purchaser to advertise in news-papers for the sale of flats proposed to be constructed in the above said land and authorise the purchaser to collect money from the allottees for promoting the housing scheme.

10. The sale consideration shall be completed within the period stipulated by the purchaser in clause 2 otherwise the purchaser shall pay 24% interest for the money due to the vendors. Similarly if there is any delay on the part of the Vendors in discharging their obligation, the vendor shall pay

24% interest on the monies received by them till that date.

6. The 1st plaintiff specifically pleaded in the plaint that, he has been always ready and willing to execute the sale deed and according to the 1st plaintiff, he has paid Rs.12,01,279/- (i.e. 65% of the total consideration) towards advance sale consideration on various occasions.

7. Defendants 1 and 2 filed written statement admitting execution of Exts.A1 and A2 agreements and denying receipt of Rs.12,01,279/- as advance sale consideration. According to defendants 1 and 2, the total amount of advance sale consideration received was Rs.10,80,000/- as detailed in paragraph No.11 of the written statement. The specific case of defendants 1 and 2 raised in the written statement is that, the 1st plaintiff miserably failed to perform his part of contract and he was not ready and willing to execute the sale deed.

8. Defendants 3 to 5 also filed written statement contending that they are bonafide purchasers of the plaint schedule properties, without knowing the sale agreements and also the case in between the plaintiffs and defendants

1 and 2.

9. The trial court ventured the matter, after raising necessary issues. PW1 was examined and Exts.A1 to A38 were marked on the side of the plaintiffs. DWs 1 to 3 were examined and Exts.B1 to B53 were marked on the side of the defendants. Ext.C1 was also marked as court exhibit.

10. Finally, the trial court granted decree of specific performance. Now, the said verdict is under challenge.

11. While challenging the verdict of the trial court, the learned Senior counsel appearing for defendants 1 and 2 and additional defendants 6 to 8, narrated the genesis of the case based on Exts.A1 and A2 agreements. According to the learned senior counsel, there was willful negligence on the part of the 1st plaintiff to execute the sale deed and in order to buttress this contention, he has pointed out the attitude of the 1st plaintiff after the execution of Ext.A2 mentioning that, the suit was filed on 25.07.1994, on the last day of limitation. Thereafter, summons was ordered on 02.08.1994 and for which steps were taken by the plaintiff only on 22.12.1994. Accordingly, the 1st defendant received

summons on 05.01.1995 and the 2nd defendant received summons on 04.01.1995.

12. According to the learned senior counsel for defendants 1 and 2 and additional defendants 6 to 8, as could be noticed from Exts.B43 to B53 documents, whereby defendants 1 and 2 sold the properties in favour of defendants 3 to 5, all the sale deeds were executed before 01.12.1994 starting from 24.10.1994. Thus, defendants 3 to 5 were not aware of the suit filed, at the time of execution of Ext.B43 to B53.

13. In addition to that, the learned senior counsel for defendants 3 to 5 would submit that, on perusal of the body of the plaint, it could be gathered that, even though the suit was filed on 25.07.1994, the same was filed without paying proper court fee and on paying only Rs.2/- as court fee. Accordingly, the Chief Ministerial Officer noted defect and returned the plaint, then the plaint was re-presented on 30.07.1994, after curing defects. The point argued by the learned senior counsel for defendants 3 to 5 is that, the filing of the plaint in such a manner itself would indicate

that the 1st plaintiff was not ready to execute the sale deed and the 1st plaintiff did not even have money as on 25.07.1994 to pay the court fee for the suit amount. It is also pointed out that, this attitude of the 1st plaintiff is to be read along with dishonor of Exts.B23, B26 and B29 cheques for a total sum of Rs.6,61,645.25 issued as part of payment of balance consideration and as per Exts.B24, B27 and B30 dishonor memos issued by Union Bank of India dated 27.02.1993, 25.02.1993 and 20.02.1993 the same got dishonored with endorsement 'insufficient funds'. According to the learned senior counsel for defendants 3 to 5, in this matter, the evidence available would suggest that defendants 1 and 2 were ready to execute the sale deed in terms of Ext.A2. But the sale deed could not be executed because of the laches on the part of the 1st plaintiff.

14. The sum and substance of the contention raised by the counsel for defendants is that, the 1st plaintiff was not ready and willing to execute the sale deed and thereby its execution could not be materialized, even though defendants 1 and 2 were ready to execute the same.

Another contention raised is that, even otherwise, defendants 3 to 5 are bonafide purchasers of the plaint schedule properties for valid consideration and therefore Exts.B43 to B53 have to be held as sale deeds under the head ‘bonafide purchasers’.

15. The learned senior counsel for defendants 3 to 5 placed decision of the Apex Court reported in ***[2018 KHC 6786 : ILR 2018 (4) Ker.525] Vijay Kumar and Others v. Om Prakash***, with reference to paragraph Nos. 7 and 8, to contend that the plaintiff has to prove his readiness and willingness to perform his part of contract and the readiness and willingness has to be shown throughout and has to be established by the plaintiff. Further, the relief of specific performance is purely discretionary in nature. Paragraph Nos.7 and 8 reads as under:

> *7. In order to obtain a decree for specific performance, the plaintiff has to prove his readiness and willingness to perform his part of the contract and the readiness and willingness has to be shown through out and has to be established by the plaintiff. In the case in hand, though the respondent -plaintiff has filed the suit*

for specific performance on 29th April, 2008, the respondent plaintiff has not shown his capacity to pay the balance sale consideration of Rs.22,00,000 (Rupees Twenty Two Lakhs). In his evidence, the respondent - plaintiff has stated that he has borrowed the amount from his friends and kept the money to pay the balance sale consideration. As rightly pointed out by the Trial Court, the respondent - plaintiff could not produce any document to show that he had the amount of Rs.22,00,000 (Rupees Twenty Two Lakhs) with him on the relevant date; nor was he able to name the friends from whom he raised money or was able to raise the money. Further more, as rightly pointed out by the Trial Court, the respondent - plaintiff could have placed on record his Accounts Book, Pass Book or the Statement of Accounts or any other negotiable instrument to establish that he had the money with him at the relevant point of time to perform his part of the contract. We are, therefore, in agreement with the view taken by the Trial Court that the respondent - plaintiff has not been able to prove his readiness and willingness on his part.

8. The relief for specific performance is purely discretionary. Though the respondent -

plaintiff has alleged that he was ready and willing to perform his part of the contract, the First Appellate Court ought to have examined first whether the respondent - plaintiff was able to show his capacity to pay the balance money. In our considered view, the First Appellate Court as well as the High Court has not properly appreciated the evidence and the conduct of the parties. The First Appellate Court as well as the High Court, in our view, was not right in reversing the judgment of the Trial Court and the impugned order cannot be sustained and liable to be set aside.

16. Another decision of this Court in ***Rafeeq v. Abdul Bari*** reported in ***[2018 (2) KHC 276 : 2018 (2) KLJ 530]*** also has been highlighted, with reference to paragraph No.16, wherein it has been held that, *Clause (c) of S.16 of the Specific Relief Act, 1963, lays down the conditions precedent to the enforcement of specific performance of a contract. S.16(c) of the Act is couched in a negative form. It mandates that specific performance of a contract cannot be enforced in favour of a person who has failed to aver and prove his readiness and willingness to*

perform his part of the contract. A bare perusal of this provision shows that the plaintiff has the obligation not only to aver that he has always been ready and willing to perform the essential terms of the contract but also to prove so. The basic principle behind S.16(c) of the Act read with Explanation (ii) is that any person seeking the benefit of specific performance of contract must manifest that his conduct has been blemishless throughout, entitling him to the specific relief (Aniglase Yohannan v. Ramlatha, 2005 KHC 1419 : AIR 2005 SC 3503: 2005 (7) SCC 534: 2005 (4) KLT 280).

17. Another decision of the Apex Court reported in ***[2022 KHC 6698 : 2022 KHC OnLine 6698] Krishnamurthy (Since Deceased) Thr. Mrs. U.N. v. A.M. Krishnamurthy,*** has been placed by the learned counsel for defendants 3 to 5, with reference to paragraph Nos.47 and 48 to assert the point that, deposit of any amount in court at the Appellate stage by the plaintiff by itself could not establish his readiness and willingness to perform his part of the contract within the meaning of

Section 16(c) of the Specific Relief Act. Paragraph Nos. 47 and 48 reads as under:

> *47. In this case, the Respondent Plaintiff has failed to discharge his duty to prove his readiness as well as willingness to perform his part of the contract, by adducing cogent evidence. Acceptable evidence has not been placed on record to prove his readiness and willingness. Further, it is clear from the Respondent Plaintiff's balance sheet that he did not have sufficient funds to discharge his part of contract in March 2003. Making subsequent deposit of balance consideration after lapse of seven years would not establish the Respondent Plaintiff's readiness to discharge his part of contract. Reliance may be placed on Umabai v. Nilkanth Dhondiba Chavan (supra) where this Court speaking through Justice SB Sinha held that deposit of amount in court is not enough to arrive at conclusion that Plaintiff was ready and willing to perform his part of contract. Deposit in court would not establish Plaintiff's readiness and willingness within meaning of S. 16(c) of Specific Relief Act. The relevant part of the judgment is reproduced below: -*
>
> *"45. ...Deposit of any amount in the court at the*

appellate stage by the plaintiffs by itself would not establish their readiness and willingness to perform their part of the contract within the meaning of S.16(c) of the Specific Relief Act..."

48. It is, therefore, patently clear that the Respondent Plaintiff has failed to prove his readiness to perform his part of contract from the date of execution of the agreement till date of decree, which is a condition precedent for grant of relief of specific performance. This Court finds that the Respondent Plaintiff was not entitled to the relief of specific performance.

18. It is argued by the learned counsel for defendants 1 and 2 that, as per Ext.A33 balance statement of the 1st plaintiff company, the balance outstanding as per schedule No.3 is shown as only Rs.3,45,389/- at hand and Rs.1,69,324/- at the bank account and the same would show that the 1st plaintiff did not have means to pay the balance consideration to execute the sale deed, during the relevant time.

19. The learned counsel for additional respondent No.9 in I.A. No.1196 of 2005, who filed I.A. No.1884/2006 in I.A. No.1480/2006 in I.A. No.1221/2003 in R.F.A. No.209 of

2003, also supported the arguments raised by the learned senior counsel for defendants 3 to 5, on the assertion that the status of additional respondent No.9 in I.A. No.1196 of 2005 in R.F.A. No.209 of 2003 is similar to that of defendants 3 to 5 being bonafide purchaser. Therefore, his right also be protected.

20. In response to this argument, the learned counsel for the 1st plaintiff would submit that, as far as additional respondent No.9 is concerned, when there is an interim injunction order was passed by this Court as per order dated 20.06.2006 in I.A. No.1480/2006, the additional respondent No.9 filed I.A. No.1884/2006 to modify the order dated 20.06.2006 in I.A. No.1480/2006 and he obtained permission to continue the construction in the plot which do form part of the plaint schedule properties, by filing affidavit to the effect that *"I hereby undertake that if I am allowed to proceed with the construction, I will not claim any value of improvements from the plaintiff or any equitable relief against the plaintiff. I also make it clear that further constructions I make is at my risk and cost"*.

Therefore, no protection is available to additional respondent No.9 in I.A. No.1196 of 2005.

21. The learned counsel for the 1st plaintiff referred the vital documents including Exts.A1 and A2 as well as A7 to A10, A13, A15 to A17, A19, Exts.A29 and A33 to A35 to contend that the 1st plaintiff has been ready and willing to perform their part of the contract and the same could not be materialized because of the reluctance on the part of defendants 1 and 2, in complying the conditions in the sale agreements, viz. obtaining Tax clearance Certificate as mandated under Section 230 of the Income Tax Act, then in force. Further, they also failed to remove the transformer and evict the tenants in time. It is pointed out by the learned counsel for the 1st plaintiff further that, periodically there was communication in between the 1st plaintiff and defendants 1 and 2 and the bonafides of the 1st plaintiff to execute the sale deed could be gathered from the said documents.

22. It is pointed out by the learned counsel for the 1st plaintiff further that, in a suit for specific performance,

cancellation of subsequent documents are not necessary and he has placed reliance on the decision of the Apex Court reported in ***[2022 KHC 6401 : 2022(3) KHC SN 15] Ramasubbamma P. v. V. Vijayalakshmi and Others***, with reference to paragraph No.5 and submitted that, in the instant case, grant of discretionary relief of specific performance by the trial court is to be justified following the ratio in the above decision. Paragraph No.5 reads as under:

> *Considering the fact that original defendant No. 1 - vendor - original owner admitted the execution of agreement to sell dated 12/04/2005 and even admitted the receipt of substantial advance sale consideration, the learned Trial Court decreed the suit for specific performance of agreement to sell dated 12/04/2005. Once the execution of agreement to sell and the payment/receipt of advance substantial sale consideration was admitted by the vendor, thereafter nothing further was required to be proved by the plaintiff - vendee. Therefore, as such the learned Trial Court rightly decreed the suit for specific performance of agreement to sell. The High Court, was not*

required to go into the aspect of the execution of the agreement to sell and the payment/receipt of substantial advance sale consideration, once the vendor had specifically admitted the execution of the agreement to sell and receipt of the advance sale consideration; thereafter no further evidence and/or proof was required.

it is also required to be noted that on appreciation of evidence, the learned Trial Court has specifically given the finding that the alleged sale consideration paid by defendant Nos. 3 and 4 to original defendant No. 2 for executing sale deeds dated 03/05/2010 have not been established and proved by defendant Nos. 2 to 4. Therefore, there was a specific finding given by the learned Trial Court on appreciation of evidence that sale deeds dated 03/05/2010 were nominal sale deeds. The High Court has brushed aside the same on the ground that even in agreement to sell dated 12/04/2005, the amount was alleged to have been paid by cash. However, it is required to be noted that so far as receipt of substantial advance sale consideration mentioned in the agreement to sell dated 12/04/2005 has been specifically

> *admitted by defendant No. 1. Therefore, when it was specifically alleged that defendant No. 2 executed sale deeds in favour of defendant Nos. 3 and 4, who are his sisters-in-law, with a view to defeat the rights of the plaintiff and defendant No. 1 and when it was alleged that they were nominal sale deeds, thereafter, defendant No. 2 was required to prove the receipt of sale consideration mentioned in the sale deeds dated 03/05/2010, which defendant Nos. 2 to 4 have failed to do so.*

23. Similarly, another decision of the Apex Court reported in ***[2019 KHC 6577 : 2019 (6) SCC 233] Beemanenimaha Lakshmi v. Gangumalla Appa Rao (since dead) by legal representatives***, has been placed by the learned counsel for the 1st plaintiff with reference to paragraph No.10, to buttress his argument. Paragraph No.10 reads as under:

> *Therefore, on conjoint reading of Ex. A1 and the reply to the notice by the defendant dated 14.04.1987 and the cross examination of the defendant - vendor, both the learned trial Court and the High Court have rightly observed and held that*

it was the appellant vendor that did not perform her part of the contract. Once, the finding is recorded that it was the appellant - vendor that did not perform her part of the contract, thereafter as rightly observed by the High Court, the failure on the part of the vendee to "demonstrate" that he was having sufficient money with him to pay the balance sale consideration under Ex. A1 by the date of his evidence is not much of consequence. Even otherwise, it is required to be noted that the plaintiff deposited the entire balance sale consideration as directed by the learned trial Court within the extended period of time. It is required to be noted that as it was submitted on behalf of the defendant before the learned trial Court that the plaintiff does not have any capacity to pay the balance sale consideration, to test his bona fides the learned trial Court directed the plaintiff to deposit the balance sale consideration which the plaintiff did deposit. Merely because the said amount was deposited out of the fund /amount received by him by selling the property in the year 1993, by that itself cannot be presumed and / or inferred that at the time of execution of the agreement to sell and / or thereafter even at the time of the notice, the plaintiff was not having sufficient fund to pay the balance sale consideration. It is required to be noted that an agreement to sell is dated 30.12.1985 and the

plaintiff was directed to deposit the amount in the year 1993. It is not expected from the plaintiff that he would continue to deposit the same with the bank all these years. What is required to be considered is as and when he is called upon to make the deposit, he has deposited the amount to show his bona fides or not? Therefore, as such, both the learned trial Court as well as the High Court have rightly passed a decree for specific performance.

24. Apart from that, he has placed decision of the Apex Court reported in ***[2023 ICO 885] Gaddipati Divija & Anr v. Pathuri Samrajyam & Ors***, with reference to paragraph No.30, wherein the Apex Court held as under:

30. In light of the aforementioned Aniglase Yohannan judgment (supra), and as held by the High Court, the primary requirement to seek relief under Section 16(c) of the Act is that the Plaintiff was ever ready and willing to perform his part of the contract. It is clear from the facts of the case at hand that the Plaintiff (Respondent No.1 herein) was ever ready and willing to pay the balance sale consideration. In the sale agreement, it was clearly mentioned that within three months the deceased G. Venugopala Rao will get the suit schedule property measured and

demarcated and the Plaintiff (Respondent No.1 herein) shall pay the balance sale consideration. It appears that, at first, the deceased G. Venugopala Rao while agreeing to sell 90 cents of land, concealed that he is the owner of only 50 cents of the land. Subsequently, he failed to measure and demarcate the land. On the other hand, the Plaintiff (Respondent No.1 herein), from the outset, has been clear and blemishless in his conduct. She had paid the advance sale consideration of Rs.4,00,000/-. When the deceased G. Venugopala Rao failed to measure and demarcate the land, the question of the Plaintiff (Respondent No.1 herein) paying the balance sale consideration does not arise. However, even then the averments of the Plaintiff, her conduct and the testimony of her husband show that the Plaintiff, since the signing of the sale agreement, was ever ready and willing to pay the balance consideration.

25. It is pointed out by the learned counsel for the 1st plaintiff by placing decision of the Apex Court reported in ***[2021 KHC 6649 : 2021 KHC OnLine 6649] Sughar Singh v. Hari Singh (dead) through LRs. and Others***, that when substantial portion of sale consideration has

been paid and the vendee specifically stated in his pleadings and evidence that he has been ready and willing to execute the sale deed, no finding that vendee was not having no means to generate consideration could be found, with reference to paragraph No.6.1. In Paragraph No. 6.1, after referring an earlier decision reported in ***[(1999) 6 SCC 337] Syed Dastagir v. T.R. Gopalakrishna Setty***, the Apex Court observed as under:

> *6.1. 9. So the whole gamut of the issue raised is, how to construe a plea specially with reference to S.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 S.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."

26. The learned counsel for the plaintiff also placed decision of the Apex Court reported in ***[2020 KHC 6552 : 2020 (5) KLT 645] Santoshamma B. and Another v. Sarala D. and Another***. In paragraph No.87 of the decision it has been held as under:

87. S.12 of the SRA is to be construed and interpreted in a purposive and meaningful manner to empower the Court to direct specific performance by the defaulting party, of so much of the contract, as can be performed, in a case like this. To hold otherwise would permit a party to a contract for sale of land, to deliberately frustrate the entire contract by transferring a part of the suit property and creating third party interests over the same.

27. In view of the rival submissions the points arise for consideration are:

1. Whether the finding of the trial court that the suit is not barred by limitation is correct?

2. Whether the finding of the trial court that the plaintiff has been ready and willing to execute Ext.A2 sale agreement, in continuation of Ext.A1 is erroneous?

3. Whether the contention raised by defendants 1 and 2 to the effect that they are ready and willing to execute the sale deed and the same could not be executed because of the laches of the plaintiff is sustainable?

4. Whether the claim raised by defendants 3 to 5 as well as additional respondent No.9 in I.A. No.1196 of 2005 in R.F.A. No.209 of 2003 would succeed treating them as bonafide purchasers?

5. Whether the decree and judgment of the trial court would require interference?

6. Reliefs and cost.

28. In addition to the documents marked by the trial court, two commission reports dated 24.06.2005 and 20.06.2006 were obtained by this Court also marked as Exts.C2 and C3.

29. Point No.1:- In this case, defendants 1 and 2

raised contention that the suit is barred by limitation. The trial court addressed the same and answered in favour of the 1st plaintiff, holding that the suit is not barred by limitation. In fact, the question of limitation is argued before this Court also, on the premise that the date of the agreement as per Ext.A2 is 21.10.1990 referring the date shown in Ext.B2, a duplicate copy of Ext.A2. The learned counsel for defendants 1 and 2 brought out the dates in Ext.B2 and Ext.A2 to assert that the suit is barred by limitation. But, it is perceivable from Ext.A2 that, without any correction and over writing the date of agreement is stated as 25.10.1990 therein and not 21.10.1990, as contended by defendants 1 and 2, as written in Ext.B2, after erasing the earlier entry. Since the suit has been filed as on 25.07.1994, the same is well within the period of limitation, where the time for the execution of the sale deed was fixed within nine months from the date of execution of Ext.A2. Therefore, the finding of the trial court that the suit is not barred by limitation is only to be confirmed. In view of this finding, the initial filing of the suit

without paying sufficient court fee, its return for curing the defect and its re-presentation thereafter have no legal consequences.

30. Point Nos.2 to 6:- In this matter, the 1st plaintiff is M/s Southern Housing Corporation Ltd represented by its Director. According to the 1st plaintiff, pursuant to execution of Ext.A2 in continuation of Ext.A1 agreement, 65% of the total consideration to the tune of Rs.18,63,375/- i.e. Rs.12,01,279/- was paid to defendants 1 and 2 on various occasions. The contention raised by the defendants 1 and 2 is that, the amount paid as advance was Rs.10,80,000/- only. While addressing this dispute, the trial court relied on the evidence of PW1 supported by Exts.A1, A2, A3, A7, A10, A17, A26, A33 to A37 as well as Exts.B3 and B4 letters issued by the 1st plaintiff to defendants 1 and 2. Apart from that, Exts.B10, B23, B26 and B29 were also relied by the trial court. Accordingly, the trial court found that, Exts.A1 and A2 would reveal that Rs.4,00,000/- was paid by way of cheques. As per Ext.A3 letter dated 13.10.1990, the 1st plaintiff requested defendants 1 and 2 not to present the

cheque before Ext.A2. Ext.A7 and A10 would reveal that Rs.3.75 lakhs was deposited in Union Bank of India. Ext.A26 would reveal that Rs.30,000/- was paid on 26.11.1991 by D.D. Admittedly Rs.75,000/- paid on 25.10.1991 and Rs.2,00,000/- by cheque paid on 14.8.1992. Ext. A33 to A37 are the annual report of the 1st plaintiff company during 1988 to 1990 which would reveal that the 1st plaintiff had substantial assets to pay off the entire balance consideration. Ext.B3 letter dated 10.2.1990 and Ext.B4 letter dated 10.3.1990 addressed to defendants would reveal that there was offer and demand for payment of Rs.5,00,000/- prior to execution of Ext.A2. Ext.B10 is the letter dated 17.12.1991 demanding to send the amount by D.D. Ext.B23, B26 and B29 are the cheques for Rs.2,00,000/- each and Rs.2,61,645.25 drawn on 5.11.1992, 23.11.1992 and 10.12.1992 respectively in favour of defendants 1 and 2. These cheques returned dishonoured for the reason ‘funds insufficient’ evident by the dishonour memos dated 27.2.1993, 4.3.1993, 25.2.1993, 5.3.1993, 20.2.1993 and 27.2.1993 marked as

Ext.B24, 25, 27, 28, 30, 31 respectively. Ext.B19 is the letter dated 26.11.1992 informing dishonour. Ext.B32 to 34 and B20 are the acknowledgment cards. It was thereafter that defendants 1 and 2 issued letter dated 13.11.1993, rescinding the contract evidenced by Ext.B35. Ext.B36 and 37 are the postal articles pertaining to Ext.B35. Ext. B21 letter dated 5.12.1992 issued to the 1st plaintiff by defendants 1 and 2, as a last reminder. B22 is the postal acknowledgment.

31 Finally, the trial court found that the amount paid as advance would come to Rs.12,01,279/- and not Rs.10,80,000/- as contended by defendants 1 and 2. On perusal of the documents along with payment made by the 1st plaintiff to defendants 1 and 2, the said finding appears to be convincing. Therefore, payment of Rs.12,01,279/- (65% of the total consideration) by the 1st plaintiff as the advance amount, as found by the trial court, is only to be confirmed.

32. Ext.B35 is a document for which much reliance has been given by the learned counsel appearing for

defendant Nos.1 and 2, to contend that as on 13.11.1993, the 1st defendant issued a letter to the Director of the 1st plaintiff Corporation stating that since the 1st plaintiff miserably failed to act as agreed, the agreement, actions, proceedings and commitments in respect of the entire land transactions stood cancelled by the conduct of the 1st plaintiff and by the inability to pay the entire sale consideration. According to the learned counsel for defendants 1 and 2, in view of Ext.B35 letter, reluctance on the part of the 1st plaintiff to execute the sale deed could be seen.

33. Repelling this contention, the learned counsel for the 1st plaintiff argued that, there was no reluctance on the part of the 1st plaintiff in the matter of execution of the sale deed, since they have already paid 65% of the total sale consideration as advance and had sufficient means to pay the balance consideration. It is pointed out that, in respect of the total extent of property offered to be sold, defendants 1 and 2 failed to obtain Tax Clearance Certificate as mandated under Section 230 of the Income

Tax Act, then in force. According to him, as per Exts.A34 and 35, there was sufficient balance in the account of the 1st plaintiff company to purchase the property and the sale deed could not be executed because of the reluctance on the part of defendants 1 and 2, in complying the conditions in the agreement, inclusive of removal of transformer and eviction of the tenants from the property. Even though, the learned counsel for defendants 1 and 2 was asked to justify as to whether the Tax Clearance Certificate as mandated under Section 230 of the Income Tax Act then in force, obtained in respect of the entire extent of the plaint schedule property, he could not point out such Tax Clearance Certificate for the whole plaint schedule property. It is relevant to note that, as per Ext.B43 to B53 documents, the plaint schedule properties were sold in piece meal to avoid the mandate of getting Income Tax Certificate. The same would show that defendants 1 and 2 failed to obtain Tax Clearance Certificate in respect of the entire property, despite having done something with regard to the other conditions belatedly and also obtaining Tax

Clearance Certificate in relation to 107.408 cents of property. So, without obtaining Tax Clearance Certificate as mandated under Section 230 of the Income Tax Act, the sale deed could not be executed in respect of the entire property. If so, reluctance on the part of defendants 1 and 2 is to be found in the matter of execution of the sale deed.

34. Even though, as per schedule No.3 in Ext.A33 balance statement of the 1st plaintiff company, the balance outstanding is shown as only Rs.3,45,389/- at hand and Rs.1,69,324/- at the bank account, as pointed out by the learned counsel for the 1st plaintiff, Exts.B33 to B37 annual report of the 1st plaintiff company would show that it has substantial assets to pay off the entire consideration. Moreover, the 1st plaintiff company paid an amount of Rs.1,00,000/- each by way of cheque dated 26.5.1988 and 13.10.1988 in favour of defendants 1 and 2 respectively. A cheque for Rs.2,00,000/- was drawn in favour of 2nd defendant on 6.11.1990. An amount of Rs.3,75,000/- was remitted by the plaintiff company in Union Bank of India, Perumannoor on 11.4.1991. An amount of Rs.75,000/-was

remitted on 25.10.1991. The 2nd defendant also received an amount of Rs.30,000/- on 26.11.1991 and Rs.2,00,000/- on 14.8.1992. Thus, altogether defendants 1 and 2 received an amount of Rs.12,01,279/- as already found. It is true that the plaintiffs issued 3 cheques on 5.11.1992, 23.11.1992 and 10.12.1992 for an amount of Rs.2,61,645.25. But the cheques were dishonoured for the reason insufficiency of funds. Thus, it has to be held that, even without obtaining Tax Clearance Certificate in respect of the whole plaint schedule properties, the sale deed in respect of the properties could not be executed and the same is the reason for non execution of the same.

35. It is true that, as per Exts.B43 to B53, the properties were sold prior to getting notice to defendants 1 and 2 in the suit. But the said period also is within the period of limitation to execute Ext.A2. Therefore, mere non receipt of summons in a suit by itself would not justify execution of Exts.B43 to B53 sale deeds in favour of defendants 3 to 5 by defendants 1 and 2, since the suit has been filed within the period of limitation.

36. It is relevant to note that, one among the conditions to be satisfied by defendants 1 and 2 to execute sale deed in respect of plaint schedule properties is clearing off the liability with the Union Bank of India. In paragraph Nos.22 to 23 of the judgment, the trial court considered the readiness and willingness on the part of the 1st plaintiff to execute the sale deed. Paragraph Nos. 22 and 23 reads as under:

> *22. Then the question is as to whether the plaintiff has ever been ready and willing to take the sale deed on the strength of Ext. A1 and 2. As enlightened by the learned counsel for the plaintiff the court should look into the totality of of the circumstances, the conduct of parties and the allegations in the plaint to come to a conclusion in this regard. Under Sec.16(c) of the Specific Relief Act any person seeking for specific performance of the contract has to plead and prove his readiness and willingness to perform his part of contract. PW1 would depose that the defendants did not comply with the terms and conditions to Ext.A2 in time and that there was inordinate delay in handing over vacant possession by removing*

the transformer and by evicting the tenants. They did not measure out the properties nor did they release mortgage and to obtain title deeds from the Union Bank of India. They did not care to verify the draft sale deed no did they obtain the incometax clearance certificate in time. DW1 on the other would say that the plaintiff could not take the sale deed due to paucity of funds, But they could obtain permit for construction even without the removal of the transformer. Ext.B35 is the letter dt. 13.11.93, addressed to plaintiff intimating that the Ext.A2 stands cancelled by non-performance. Ext.A36 and 37 are the postal articles which would reveal that there was proper notice. Infact plaintiff sent no reply to Ext. B35. Either sides produced a series of letters of correspondence to show that Ext.A1 and A2 fell out not due to their fault. Admittedly, the plaintiff engaged in housing flat construction and Ext. A1 and A2 would reveal that plaint schedule was intended to be purchased for that purpose. Ext.A2 would further reveal that there is a transformer situate in plaint schedule.

23. Ext.B5 is the letter dt. 22.2.90 addressed to the plaintiff which would reveal

that the defendants have applied for shifting the transformer and the hightension power lines crossing the property towards the northern boundary of the plaint schedule to facilitate the construction of the a building. And the plaintiff was requested to give a no-objection certificate to the KSEB for that purpose. It was thereafter that the parties have entered into Ext.A2 agreement stipulating the removal of the transformer by the defendants. Had the case set up by the defendants that they applied for removal of the transformer sufficiently earlier true it would not have incorporated in Ext.A2. And Ext. A4 is the letter dt. 29.10.90 addressed to the defendants by the plaintiff requesting them to shift the transformer expeditiously as possible. It was followed by Ext.B6 the letter dt. 1.3.91, addressed the plaintiff in which he was requested to apply for shifting of the transformer in accordance with the sketch appended to in Ext.B5 and to issue NOC to KSEB. Infact no sketch appended to Ext.B5. Ext.A19 is the letter dt. 22.10.92, issued to defendants 1 and 2 which would reveal that so far the defendants did not apply for shifting the transformer. Ext. A20 is the letter dt. 27.7.93

> *addressed to the 2nd defendant by the plaintiff, which would reveal that the transformer still remained in the properties. DW1 would depose that he signed all papers to apply for shifting of the transformer and that the plaintiff could obtain sanction without its removal. The fact that it is one of the obligations cast upon D1 and 2 as per Ext.A2 not disputed. Testimony of DW1 and Ext.A2, 4, 19, 20 and Ext.B5 and 6 would reveal that the defendants did not succeed to shift the transformer in time within the period stipulated in Ext.A2. DW2 is the addl. 5th defendant and he would depose that at the time when he purchased the plaint schedule the transformer was standing on the western side by the side of road. DW3 is the addl. 3rd defendant and would depose that there was no transformer in the property which ofcourse cannot be believed even for a moment.*

37. It was found by the trial court further that, admittedly there were four tenants occupying the plaint schedule properties at the time of Ext.A2 and as per Ext.A5 letter dated 20.11.1990, the 1st plaintiff demanded the 2nd defendant to make arrangements for vacating the tenants

and to handover the possession of the plaint schedule properties. In reply to the same, Ext.A6 letter dated 23.11.1990 was issued by the 1st plaintiff and the same would show that, when the architect of the 1st plaintiff company visited the property to survey the property, the tenants obstructed the same. Thereafter, Ext.A9 letter, it was informed by the defendants to the 1st plaintiff that the tenants would be evicted within 15 to 20 days. In fact, Ext.A2 provides for vacant possession within nine months. But, the evidence of PW1 supported by Exts.A6, A9, A12, A26, B8 and B9 would show that the tenants were evicted only after one year. Thereafter, as evident from Ext.A23 and A24 letters dated 07.07.1993 and 15.07.1993, that the 1st plaintiff had proposed to depute two watchmen to the plaint schedule properties to protect the building site. Anyhow, as per the available evidence, the tenants were not vacated by defendants 1 and 2, within nine months, as agreed.

38. Regarding the liability with the Union Bank of India, Ext.A29 is a letter dated 13.11.1990 issued by the 2nd

defendant to the 1st plaintiff and the same would show that when the parties have met in Madras and discussed about the liability to the bank, defendants 1 and 2 had assured to offer the plaint schedule properties as security and requested the 1st plaintiff to clear off the liability. As per Ext.A8 letter dated 21.02.1991 addressed to Union Bank of India, the 1st defendant requested that his financial position was unsafe and he agreed to pay Rs.3.5 Lakh only towards the loan liability.

39. According to the learned counsel for the 1st plaintiff, instead of closing the loan liability by repaying the amount due to the Bank, as per Ext.A8 defendants 1 and 2 requested the Bank to reduce the amount substantially and bargained to reduce the amount and thereby delayed the execution of the sale deed. As per Ext.A12 letter dated 28.05.1991, it was revealed that defendants 1 and 2 not only failed to release the title deeds, but also failed to deposit the amount in the Bank to facilitate the 1st plaintiff to avail loan as agreed upon in Ext.A2 with a warning to invoke the default clause in Ext.A2. Anyhow, as on

25.10.1991, as per Ext.B7 letter, issued to Union Bank of India, there was acknowledgment regarding receipt of title deed by the 1st plaintiff. Thus, it appears that at a later stage, the liability was cleared with Union Bank of India and the original title deed of the plaint schedule properties was entrusted to the 1st plaintiff.

40. Regarding the Tax Clearance Certificate from the authorities to facilitate the registration of sale deed and also to execute an irrevocable power of attorney to the 1st plaintiff for the purpose of further transaction, if so required by him, are concerned, Ext.A15 letter dated 04.05.1992, the 1st plaintiff requested defendants 1 and 2 to arrange the Income Tax Clearance Certificate. As per Ext.A28 dated 13.03.1992 addressed to the 1st plaintiff by defendants 1 and 2, they assured to sent the power of attorney for phases 1 and 2 out of plaint schedule along with draft sale deed before 30.03.1992. They acknowledged the receipt of Rs.8.80 lakhs and requested for payment of the balance consideration. Ext.B11 is the letter dated 4.5.1992, addressed to the defendants by the 1st plaintiff in which it

was informed that the 1st plaintiff should complete the transaction by 15.5.1992 and they were requested to arrange the income tax clearance certificate. Ext.A13 is the previous letter dated 20.12.1991 issued for the same purpose. It was followed by Ext.B12, the letter dated 10.5.1992 issued to the plaintiff in reply to Ext.B11 in which the defendants requested for draft sale deed for submitting application for Income Tax Clearance Certificate. It would further reveal that the defendants 1 and 2 have also received draft power of attorney, but they were awaiting for the bill of balance sale consideration, and to comply with the same before 15.5.1992. Ext.B13 and 14 are the Income Tax Clearance Certificates dated 23.6.1992 and 25.6.1992 issued in the name of the defendants for alienation of 107.408 cents in Sy.624/1, 623, 1, 2 and 7 of Elamkulam Village. Ext.B15 is the letter dated 13.7.1992, issued to the 1st plaintiff informing the receipt of Ext. B13 and 14. Ext.A16 is the letter dated 8.9.1992, addressed to the defendants 1 and 2 by the 1st plaintiff requesting to send the income tax clearance certificate of phase 1 and 2 by

return post and to arrange the income tax clearance for 3rd phase to be sent before 19.9.1992. Ext.B18 is the telegram dated 15.10.1992 from the defendants 1 and 2 to the 1st plaintiff which was sent as a reminder that the income tax clearance would expire on 22.10.1992. Ext.A17 is the letter dated 17.10.1992 addressed to the defendants 1 and 2 by the 1st plaintiff which would reveal that the 1st plaintiff has sent 3 cheques for Rs.6,61,645.25 for full and final settlement and the defendants were directed to execute a power of attorney and also to obtain income tax clearance for phase 3. In fact, the contents in A17 not disputed. Ext.A18 is the letter dated 19.10.1992, addressed to the defendants 1 and 2, which would reveal that the draft power of attorney was sent to the defendants for registration and also requested to arrange the Income Tax Clearance for the 3rd phase. Ext. A21 is the letter dated 22.3.1993, addressed to the defendants 1 and 2 by the 1st plaintiff which also would reveal that the draft power of attorney was sent to them for approval and execution. But sofar they did not execute the power of attorney nor did

they produce the income tax clearance certificate for the 3rd phase. They were requested to present the cheques referred to in Ext. A17 for encashment only after executing the general power of attorney. Ext.B42 series are the letters dated 7.12.1994 of Deputy Director, Income Tax addressed to 2nd defendant in which he was requested to sent the particulars with respect to the property in which he has put up the building. Ext.A25 is the Advocate's notice dated 4.3.1993 issued to the 1st plaintiff that the cheques issued under Ext.A17 returned dishonoured and the 1st plaintiff was directed to pay the full amount within 15 days. Thus, the Exts.A17, 18, 21, 25 and B18 would suggestively gather the inference that the defendants 1 and 2 have also failed to obtain the income tax clearance certificates as well as to execute the general power of attorney as stipulated in Ext.A2 in time anticipating the payment of entire balance consideration. PW1 deposed that he had paid Rs.12,01,279/- towards 65% of the sale consideration for the 1st phase and 100% was paid for the 2nd phase, and it was due to failure of the defendants to obtain the income

tax clearance certificate for the 3rd phase that he could not execute the sale. When DW1 was cross-examined he deposed that the draft sale deed for the 1st phase to an extent of 107.408 cents was given to him on 1.6.1992 only on the basis of which he applied for income tax clearance certificate and on receipt of the same it was informed to the 1st plaintiff. But it was due to latches of the 1st plaintiff the sale deed could not be executed. In fact, no scrap of paper has been produced from the side of defendants 1 and 2 to convince the fact that he was ready and willing to execute the sale deed in respect of the 1st and 2nd phase. On the other hand, the discussions above would reveal that defendants 1 and 2 were not willing to execute the sale deed or to apply for income tax clearance certificate for the 3rd phase but were insisting for the payment of whole balance sale consideration.

41. Thus, it is evident that DW1 admitted during cross-examination that the draft sale deed for the 1st phase to an extent of 107.408 cents was given to him on 01.06.1992, only on the basis of which he applied for

Income Tax Clearance Certificate and on receipt of the same it was informed to the 1st plaintiff. But, it was due to laches of the 1st plaintiff, he could not execute the sale deed. Thus, it appears that as far as 107.408 cents of property is concerned, nothing remains to be completed to execute the sale deed, since defendants 1 and 2 received sale consideration for the said extent of land and in excess of that and all the liabilities were cleared. But, defendants 1 and 2 would say that it was due to laches of the 1st plaintiff, they could not execute the sale deed and this aspect is not digestible. It is true that, regarding the 2nd phase in respect of the sale of the remaining property, no Income Tax Clearance certificate even applied by defendants 1 and 2, solely on the ground that three cheques viz. Ext.B23, B26 and B29 for Rs.6,61,645.25 were dishonored. According to the 1st plaintiff, those cheques were dishonored for the reason 'stop payment', because of the reluctance on the part of defendants 1 and 2 to co-operate with the procedure for sale, though it is argued by the learned counsel for defendants 1 and 2 that, the cheques were

dishonored for the reason ‘insufficient funds’. Anyhow, after analyzing the entire evidence, the trial court found that the 1st plaintiff has been ready and willing to execute sale deed, despite that due to the laches of defendants 1 and 2, sale deed could not be executed. Thereby, the discretionary relief by itself was granted by the trial court.

42. As far as the legal position governing the grant of discretionary relief, the decisions cited by both sides will hold the field. In order to obtain a decree for specific performance, the plaintiff has to prove readiness and willingness to perform his part of the contract and the readiness and willingness has to be shown throughout and has to be established by the plaintiff. Clause (c) of S.16 of the Specific Relief Act, 1963, lays down the conditions precedent to the enforcement of specific performance of a contract. S.16(c) of the Act is couched in a negative form. It mandates that specific performance of a contract cannot be enforced in favour of a person who has failed to aver and prove his readiness and willingness to perform his part of the contract. In terms of S.16(c), 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.

43. On evaluation of the evidence discussed in detail, it could be gathered that, insofar as execution of sale deed in respect of 107.408 cents of property is concerned, the 1st plaintiff and defendants 1 and 2 mutually performed their part, even though, some delay on the part of the defendants 1 and 2 could be noticeable. Thus, with regard to 107.408 cents

of property, defendants 1 and 2 failed to execute the sale deed, even after receipt of sale consideration in excess of the said extent of property as already observed. Similarly, regarding the remaining extent of property, defendants 1 and 2 never obtained Income Tax Clearance Certificate to execute the sale deed. Therefore, even though the 1st plaintiff has been ready and willing to execute the sale deed, the same could not be executed because of non-obtainment of Income Tax Clearance Certificate and defendants 1 and 2 are reluctant in getting the same as per the evidence already discussed. In such view of the matter, the discretion exercised by the trial court in granting specific relief itself, in a case where 65% of the sale consideration was received by defendants 1 and 2 need not require interference. Therefore, the said finding is confirmed.

44. The next question is whether defendants 3 to 5, are bonafide purchasers? As admitted in the written statement filed by defendants 1 and 2 and as per Ext.B7, the original title deed pertaining to the plaint schedule

property has been in the custody of the 1st plaintiff and the same was obtained by them from the Union Bank of India, after clearing the loan liability. When considering the question as to whether defendant 3 to 5 are bonafide purchasers of the plaint schedule property for valid consideration, even though they purchased the property by giving a slight increase in the consideration agreed upon between the 1st plaintiff and defendants 1 and 2, they obtained sale deeds in respect of the property, without seeing the original title deed of the same. When a party purchases property, normally a duty is cast upon the purchaser to ensure that the property is one wherein no liability lies and the same is free from encumbrance. In cases of creation of equitable mortgage by deposit of title deeds with the Bank or when the title deed is entrusted to another party on executing a sale agreement to sell the same in favour of another party etc. the absence of original title deed in the custody of the vendor is a matter to be noted by the vendee and when the original title deed when failed to be showed and the vendee takes the risk to

purchase the property even without seeing the original title deed, the vendee could not be put under the status of bonafide purchaser, in any manner.

45. That apart, as observed by the trial court, no scrap of papers had been produced to show that defendants 3 to 5 have paid amounts in Ext.B43 to B53, in a uniform manner. On perusal of Ext.B43 to B53, the sale consideration shown in respect of different extent of land are one and the same, except in one of the document. Therefore, the testimony of DWs 2 and 3 and the contention raised by defendants 3 to 5 that they are bonafide purchasers of the plaint schedule property could not be found in their favour. Therefore, the testimony of DWs2 and 3 to the effect that they have bonafidely purchased the property, is not convincing.

46. In the instant case, as already referred, the additional 9th respondent in I.A. No.1884/2006 in R.F.A. No.209/2003, being the subsequent purchaser from defendants 3 to 5, made constructions in the plot which do form part of the plaint schedule property, with undertaking

as extracted in paragraph No.20. Therefore, the additional 9th respondent in I.A. No. 1884/2006 has no right to retract from his undertaking as averred in the affidavit. Commission reports dated 24.06.2005 and 20.06.2006 obtained by this Court during the pendency of these appeals, got marked as Exts.C2 and C3, it is seen that during the pendency of this appeal, an interim injunction restraining further construction was ordered and the same is in force. In fact, as per Exts.C2 and C3, only a few persons constructed buildings in the plaint schedule property initially, that too during the pendency of the suit and majority of the constructions were made thereafter in violation of the interim order of injunction. Therefore, the other defendants as well as the additional 9th respondent in I.A. No.1884/2006 in R.F.A. No.209/2003 also would not get protection as bonafide purchasers.

47. Summarizing the discussion, it is held that the trial court rightly exercised its discretion by granting decree of specific performance. Therefore, the verdict impugned would not require any interference.

48. In the result, these regular first appeals are liable to fail and the same stand dismissed. Having considered the nature of these cases, the 1st plaintiff is entitled to the cost of the proceedings to be realized from the contesting defendants.

49. Since, the balance consideration as per the trial court decree was deposited on 10.01.2003 before the trial court, defendants 1 and 2 are directed to execute the sale deed in respect of plaint schedule property, within a period of one month from today and on failure to do so, the 1st plaintiff is at liberty to execute the sale deed through process of court.

All interlocutory orders stand vacated and all interlocutory applications pending in these regular first appeals stand dismissed.

Sd/-

A. BADHARUDEEN
JUDGE

SK