

HIGH COURT OF MADHYA PRADESH : BENCH AT INDORE

S.B.: HON'BLE MR. S. C. SHARMA, J

FIRST APPEAL No. 81 / 1999

SHUBH LAXMI GRIH NIRMAN SAHAKARI SANSTHA
MARYADIT, INDORE
THROUGH : PRESIDENT GOPALDAS

Vs.

SURESH @ GOPAL S/O AMBARAM AND FIVE OTHERS

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Mr. A. K. Sethi, learned senior counsel appearing with Mr. Harish Joshi, Advocate for the appellant.

Mr. Rajat Raghuvanshi, learned counsel for the respondent No.1.
None for respondent Nos. 2 to 5.

Mr. V. K. Jain, learned senior counsel appearing with Mr. Vaibhav Jain, Advocate for the respondent Nos. 7 and 8.

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J U D G M E N T

(15/02/2018)

The present first appeal before this Court is arising out of judgment and decree dated 13/10/1998 passed by 4th Additional District Judge, Indore in Civil Suit No. 8A/1996.

The plaintiff before the trial Court, a Cooperative Society, has filed the suit for specific performance of the contract, declaration and permanent injunction and the same has been dismissed by the trial Court.

Facts of the case reveal that the suit property bearing Survey No. 22/2, area 4.97 acres, is situated at Patwari Halka No. 10, Village Bijalpur, Tehsil Indore. Earlier the suit property was part of Survey No.22 under the ownership of one Fakir Chand Khati and Fakir Chand Khati expired on 15/3/1985 and his wife Ramkunwarbai expired on 2/12/1993. After the death of Fakir Chand Khati, Survey No.22 came into the share of one Ramnarayan, admeasuring 4.97 acres, Survey No.22/1 came into the share of Ramkunwarbai and Survey No.22/2 came into the share of Suresh, area 4.97 acres. The aforesaid partition took place on account of an order passed by the Revenue Court dated 19/2/1987 in Case No. 4A-27/85-86. The plaintiff Society, which is a Registered Society under the M.P. Cooperative Societies Act, 1960, entered into an agreement on 12/11/1993 with defendant No.1 Suresh through his Power of Attorney – Narendra Singh Punia, an agreement to sell was executed for selling the land for 1.05 lacs. A sum of Rs.20,000/- was received, as stated in the plaint by the

defendant No.2 who was the power of attorney holder and an amount of Rs.20,000/- was paid on 12/12/1993, again Rs.20,000/- on 12/1/1994 and again Rs.20,000/- on 12/2/1994 and the remaining amount of Rs.25,000/- was paid on 25/2/1994. It was also stated that in the agreement to sell defendant No.5 – Ramandeep Singh, who is son of defendant No.2 – Narendra Singh Punia, the power of attorney holder has also put his signatures. It was also pleaded that defendant No.1 has placed defendant No.2 in possession of the suit property and the defendant No.2 has placed the plaintiff Society in possession. On account of the agreement to sell dated 12/11/1993 possession was delivered as stated by the plaintiff on 12/12/1993. It was also pleaded by the plaintiff that inspite of the fact that the entire consideration has been paid the sale deed is not being executed and on 29/3/1994 the defendant No.2 wrote a letter to the plaintiff society, of which a reply was given by the society on 19/4/1994 and thereafter defendant No.2 filed a suit against the plaintiff, defendant No.1 and defendant No.6

before the District Judge ie., Civil Suit No. 23/1994 for declaration of title and for declaring the agreement of sell as null and void. A prayer was also made for grant of injunction. However, the suit was dismissed in default on 30/9/1995. It has been further stated in the plaint that defendant No.1 on 29/4/1994 published a notice in Dainik Agniban that the power of attorney issued by defendant No.1 in favour of defendant No.2 - Narendra Singh Punia has been cancelled and the plaintiff also got a notice published in Dainik Agniban on 4/5/1994 that the agreement of sell was executed in favour of the plaintiff Society and the plaintiff Society is in possession of the suit property. On 12/6/1995 public notice was published in Dainik Bhaskar again in respect of the suit property and the defendant No.2 - Narendra Singh Punia who got certain sale deeds executed in favour of his wife and his children. The documents on record reveals that as the sale deed was not being executed, the plaintiff has filed a suit for specific performance of the contract against the original land owner Suresh and has also

impleaded the power of attorney as defendant No.2.

The Civil Suit filed by the plaintiff has been dismissed.

The undisputed facts of the case reveal that an agreement to sell dated 15/11/1986 was executed by the respondent No.1 in favour of one Guru Teg Bahadur Housing Society and subsequently another agreement to sell Ex.D/77 was executed between the respondent No.1 and Guru Teg Bahadur Housing Society on 6/7/1988. At the relevant point of time, one Narendra Singh Punia – respondent No.2 was the President of Guru Teg Bahadur Housing Society and by the aforesaid agreement, respondent No.1 has agreed to dispose of land admeasuring 4.97 acres for a sale consideration of Rs.8,50,000/-. As an agreement of sell was executed by respondent No.1 he also executed a power of attorney in favour of Narendra Singh Punia – respondent No.2 in order to get certain other works done in respect of sale like obtaining permissions from various departments etc., The Power of Attorney is also on record as Ex.D/34 and was undisputedly for the purposes of

compliance of agreement of sale dated 6/7/1988. The same fact has been fortified by virtue of further agreement of sell dated 27/10/1988 Ex.D/45. Facts on record establishes that the general power of attorney executed in favour of Narendra Singh Punia – respondent No.2 was executed for being used in respect of agreement of sale dated 6/7/1988. Another important aspect is that the agreement to sell dated 6/7/1988 between respondent No.1 and Guru Teg Bahadur Housing Society came to an end nor the society got executed any sale deed in its favour. Record of the case further establishes that Narendra Singh Punia – respondent No.2 misused the power of attorney dated 13/10/1986 Ex.D/34 and entered into further agreements of sale with his family members respondent No. 3, respondent No.4 and respondent No.5 who are his wife and two sons. Narendra Singh Punia – respondent No.2 thereafter filed suits for specific performance of contract against respondent No.1, received notices on behalf of respondent No.1 and thereafter opted not to appear in the Civil Suits and the Civil Suits

were decreed ex-parte. Not only this, sale deeds were executed in favour of respondent Nos. 3, 4 and 5. The judgment and decree passed by the trial Court were subjected to appeal and three appeals were preferred before this Court ie., F.A.Nos. 685/2007, F.A.No. 686/2007 and F.A.No. 687/2007.

This Court has set aside the judgment and decrees passed by the trial Court in all the three cases by judgment and decree dated 22/6/2015 against which a SLP was also preferred before Hon'ble Supreme Court of India and SLPs No. 28337, 28339-15 have been dismissed by the Hon'ble Supreme Court of India on 27/7/2017, meaning thereby, the judgment and decrees passed in favour of Narendra Singh Punia, who has misused the power of attorney by entering into agreement of sell in favour of his wife and daughters have been set aside.

That as per the plaintiff, respondent No.2 Narendra Singh Punia entered into an agreement of sale for consideration of Rs.1,05,000/- and total consideration was

also to be paid in five installments w.e.f. 12/11/1993 to 25/2/1994. It has also been stated in the plaint that respondent No.1 has signed vouchers Ex.P/3, Ex.P/4, Ex.P/5 and Ex.P/6 in that behalf. It has also been stated by the plaintiff – appellant that on 12/11/1993 the date on which agreement to sell was executed, the power of attorney given by respondent No.1 in favour of Narendra Singh Punia respondent No.2 was alive and, therefore, the agreement dated 12/11/1993 is having a binding force upon the respondents. It has also been stated in the plaint that sale deed executed by respondent No.2 in favour of respondent Nos. 3, 4 and 5 is not legal and not binding upon the appellant. Protection was also sought by virtue of Sec. 53 of the Transfer of Property Act and the Civil Suit based upon the agreement dated 12/11/1993 was filed in the month of March, 1996. Respondent No.1 Suresh did file Written Statement and denied execution of power of attorney and also denied receipt of sale consideration. Transfer of possession was also denied and it was categorically stated

that his power of attorney holder has acted against his interest and has obtained ex-parte decree in favour of his own children and wife and also denied further agreement dated 12/11/1993. It was also brought to the notice of the Court by making a specific averment that the value of land was many times than the sale consideration shown by the appellant and by no stretch of imagination the land could have been sold for a meager amount of Rs.1,05,000/-. Factum of cancellation of power of attorney was also brought to the notice of the court.

Written Statement was also filed by respondent No.2 denying plaint allegations. All kind of allegations were levelled by respondent No.2 against the appellant – President of the Society and it was stated that the appellant is involved in grabbing lands by deceiving public at large. It was also stated that the land which was purchased for 8.5 lacs in the year 1988 could not have been sold in 1993 for a meager amount of Rs.1,05,000/-. It was also stated by respondent No.2 that earlier the land came under some

scheme of Indore Development Authority and the President of the Society came into contact of respondent No.2 Narendra Singh Punia and took his signatures on some blank papers and vouchers. Narendra Singh Punia – respondent No.2 denied that he has entered into any legal agreement of sell and also denied factum of receipt of sale consideration. It was also stated by him that by using criminal force his signatures has been obtained and for the same he has filed several complaints. It was also stated that the agreement dated 12/11/1993 was notarised on 15/11/1993 in absence of respondent No.2 -Narendra Singh Punia and a prayer was made for dismissal of the Civil Suit. Respondent Nos. 3, 4 and 5 have also denied plaint averments and made a categorical statement that they have entered into agreements purchase the land and have also paid the entire sale consideration and they are in possession of the suit property. It was also stated that the sale deeds have been registered in their favour.

The trial Court has framed the following issues and the

findings arrived at by the trial court in respect of the issues

are detailed as under :

1.	क्या विवादित भूमि सर्वे क्रमांक 22/2 रकबा 4.97 एकड़ स्थित ग्राम बीजलपुर को प्रतिवादी क्रमांक -2 ने प्रतिवादी क्रमांक -1 के मुख्यारआम के रूप में दिनांक 12.11.93 को एक लाख पांच हजार रूपये में विक्रय करने का अनुबंध करके दिनांक 25.02.94 को प्रतिफल की राशि प्राप्त की ?	प्रमाणित नहीं
2.	क्या प्रतिवादी क्रमांक-1 द्वारा प्रतिवादी क्रमांक -2 को आधिपत्य सौंपा गया तथा प्रतिवादी क्रमांक-2 द्वारा वादी को दिनांक 12.12.93 को विवादित भूमि का आधिपत्य सौंप दिया गया ?	प्रमाणित नहीं
3.	क्या सिविल प्रकरण 11-ए/95, 10-ए/95 तथा 9-ए/95 में पारित निर्णय व जयपत्र एवं उनके आधार पर निष्पादित पंजीकृत विक्रय पत्र दिनांक 26.8.95 प्रतिवादी क्रमांक-2 ने प्रतिवादी क्रमांक 3 से 5 से मिल कर पारित कराये हैं ? प्रमाण ?	प्रमाणित
4.	क्या उक्त निर्णय, जयपत्र पर आधारित पंजीबद्ध विक्रय पत्र अवैध, अनुचित व धोकाधड़ी पूर्ण होने से वादी संस्था पर अबंधनकारी है ?	विक्रय पत्रों का संबंध वादी संस्था से न होने से अबंधनकारी होने का प्रश्न ही नहीं।
5.	क्या वादी संस्था विवादित भूमि का पंजीबद्ध विक्रय पत्र का निष्पादन दिनांक 12.11.93 के अनुबंध के आधार पर प्रतिवादी क्रं.1 से अथवा विकल्प में न्यायालय के माध्यम से करा पाने का अधिकारी है।	नहीं।
6.	क्या वादी वांछित स्थाई निषेधाज्ञा प्राप्त करने का अधिकारी है ?	नहीं।
7.	क्या प्रतिवादी क्रं.1 द्वारा प्रतिवादी क्रं.2 के पक्ष में विधिवत मुख्यारनामा निष्पादित कर 3 से विवादित भूमि के अन्तरण के लिए अधिकृत किया था ?	प्रमाणित
8.	क्या इकरारनामा व मुख्यारनामा बोगस होकर प्रतिवादी क्रं.1 पर बंधनकारी है ?	नहीं।
9.	क्या अनुबंध के विशिष्ट पालन के लिए प्रस्तुत यह दावा अप्रचलनीय है ?	प्रचलन योग्य है।
10.	क्या प्रतिवादी क्रं. 2 डराकर, दबाव देकर वादी ने अन्य साथियों के साथ प्रतिवादी क्रं.2 के घर जाकर दस्तावेज निष्पादित कराये ? प्रमाण ?	प्रमाणित नहीं।
11.	क्या प्रतिवादी क्रं.2 ने वादी को अनुबंध निरस्त करने के लिए रजिस्टर्ड तथा यू.पी.सी. से पत्र दिनांक 19.4.94 भिजवाकर तथा वादी द्वारा उसका जवाब देने पर पुलिस में वादी के विरुद्ध रिपोर्ट, शिकायतों की ?	अनुबंध प्रतिवादी क्रं. 2 के माध्यम से प्रतिवादी क्रमांक 1 पर बंधनकारी नहीं। शिकायतों की। प्रभाव कुछ नहीं।
12.	क्या सिविल प्रकरण क्रं.11-ए/95, 10-ए/95 तथा 9-ए/95 में पारित निर्णय एवं जयपत्र दिनांक 27.7.93 तृतीय अपर जिला न्यायालय द्वारा पारित होने से यह दावा इस न्यायालय में अप्रचनीय होकर आदेश 7 नियम 10 सि.प्र.सं. के अन्तर्गत वाद वापिस लौटाये जाने योग्य है ?	नहीं।
13.	क्या वादी को उचित अनुबंध करने का अधिकार न होने से अनुबंध अनाधिकृत होकर यह दावा अप्रचलनीय है ?	दावा प्रचलन योग्य प्रमाणित।

14.	क्या यह दावा अवधि बाह्य है ?	नहीं।
15.	क्या प्रतिवादीगण वांछित विशेष क्षतिपूर्ति व्यय प्राप्त करने के अधिकारी है ?	नहीं।
16.	अनुतोष एवं व्यय ?	वाद निरस्त। उभयपक्ष अपना अपना वाद व्यय स्वयं वहन करेंगे।

The aforesaid findings arrived at by the trial Court in respect of the issues framed reveal that the Civil Suit has been dismissed and being aggrieved by the dismissal of the Civil Suit the present appeal has been filed.

Learned senior counsel appearing on behalf of the appellant has vehemently argued before this Court that at the time the execution of agreement the power of attorney executed by respondent No.1 in favour of respondent No.2- Narendra Singh Punia was very much in existence, he was legally competent to execute the agreement of sale, the entire sale consideration was paid and, therefore, the suit for specific performance was rightly filed. He has also argued that the matter regarding sale consideration is a matter exclusively between the appellant – plaintiff and respondent No.2 and the sale price mentioned in the agreement dated 12/11/1993 is just and proper. He has also argued that even

though the respondent No.2 has agreed to purchase the suit land for Rs.8.5 lacs in 1988, he was free to dispose of the land as per his own sweetwill even for peanuts. Learned senior counsel has argued in respect of delay in filing the suit. He has stated that the suit is not barred by prescribed period of limitation, there were lot of litigations between the parties, however, the delay in filing the Civil Suit is inconsequential. He has also argued in respect of the space left as Blank in the agreement Ex.P/2 and it has been argued that it has got no significance and even if there is no resolution passed by the appellant – Society, it was not necessary at all for purchasing the suit land by its President. Learned senior counsel in respect of payment vouchers Ex.P/3 to P/6 has also argued that they are partly filled in hand-writing and partly filled in by using a typewriter and even though there is a discrepancy in the amount in one of the vouchers, it is insignificant, as the account books of the appellant Society are audited and, therefore, the same has to be believed.

Learned senior counsel Mr. A. K. Sethi, has argued before this Court that the findings of fact arrived at by the trial Court are perverse and illegal findings and the judgment and decree passed by the trial Court deserves to be set aside and the decree of specific performance of contract be granted in the matter.

On the other hand, learned counsel appearing for respondent No.1, has argued before this Court that respondent No.1 has filed Civil Suit ie., C.S.No. 7A/1996 before the 4th Additional District Judge, Indore against respondent No.2 for declaration and permanent injunction and in the aforesaid suit, the learned trial Court has refused to grant any relief regarding declaration but granted decree of permanent injunction in favour of respondent No.1 and it was held that he is in possession of the suit property and respondent No.2 - Narendra Singh Punia was restrained from dispossessing respondent No.1 or interfering with his peaceful possession without following the prescribed procedure of law. Thus, in the Civil Suit No. 7A/96 it has

been held that it was respondent No.1 Suresh who is original land owner, was in possession of the suit property.

Mr. Rajat Raghuvanshi, learned counsel for the respondent No.1 has argued before this Court that the trial Court has rightly dismissed the suit. Narendra Singh Punia the power of attorney holder has misused the power of attorney and factum of cancellation of power of attorney was also brought to the notice of this Court. It has been argued that the said power of attorney was cancelled by executing a registered cancellation deed and also by publishing a notice in the newspaper. He has also argued that in the litigations which has been held between respondent No.1 and respondent Nos. 2 to 5, it has been held by this Court that Narendra Singh Punia respondent NO.2 the power of attorney holder was acting illegally against the interest of the original land owner ie., against the interest of the principal (F.A.Nos. 685/2007, F.A.No. 686/2007 and F.A.No. 687/2007, decided on 22/6/2015). He has also stated that the judgments delivered in the First Appeals have

been affirmed by the Hon'ble Supreme Court of India. Learned counsel has also argued that in the present case also the respondent No.2 Narendra Singh Punia has misused the power of attorney and the agreement dated 12/11/1993 cannot be enforced. It is a false and bogus agreement and it is in fact a collusion between appellant and respondent No.2. He has prayed for dismissal of the Civil Suit.

This Court has issued notices to respondent Nos. 2 to 5 and even SPCs have been issued to respondent Nos. 2 to 5, however, there is no appearance on behalf of respondent Nos. 2 to 5 and undisputedly the appeals preferred by respondent Nos. 2 to 5 have been dismissed by the Hon'ble Supreme Court of India ie., SLP No. No. 28337, 28339-15/

Mr. V. K. Jain, learned senior counsel appearing on behalf of respondent No.7 has prayed for dismissal of the First Appeal and has supported the arguments canvassed by learned counsel for the respondent No.1 and 2. He has vehemently argued that the agreement dated 12/11/1993 is collusive document. He has also argued that according to the

appellant, the said agreement dated 12/11/1993 was executed in the Office of the appellant. He has also drawn attention of this Court towards agreement dated 12/11/1993 and the same reflects that for entering into the said agreement the appellant society did pass a resolution. He has stated that the date of resolution and resolution number is not available in the agreement and the same creates a serious doubt about the authenticity of the agreement. He has also pointed out that agreement Ex.P/2, as per the averments made by the appellant, was executed on 12/11/1993, however, it was notarised on 15/11/1993, as per endorsement of the Notary. The appellant in his reply Ex.P/8 has stated that execution and notarisation took place on 12/11/1993. Learned senior counsel has argued before this Court that conduct of the appellant proves the manipulation done on his part and the conduct is illegal and unfair. Mr. Jain, learned senior counsel while referring to the alleged payment vouchers Ex.P/3 to P/6 has argued before this Court that the vouchers are also doubtful as they are partly

hand-written and partly filled by typewriter. He has also brought to the notice of this Court the discrepancy in the amount mentioned therein which is again written by hand partly and partly by using typewriter. Learned senior counsel has also argued before this Court that the appellant's witness PW1 in his statement has stated that in all the vouchers typed matter was typed on a single typewriter but a bare perusal of the said vouchers establishes that they were typed on different typewriters. Learned senior counsel has argued vehemently before this Court that the appellant Society has concealed their record and the same was produced at the instance of the defendants / respondents. Record produced by the Society also reflect several discrepancies and manipulations and the trial Court has rightly observed the same in the judgment which is subject matter of challenge. He has also argued that it is highly doubtful, improbable and impossible that the land which was agreed to be sold in 1986-88 for a consideration of Rs.8.05 lacs would have been agreed to be sold after 7 years

in the year 1993 for a meager amount of Rs.1,05,000/- only. He has also argued that at the relevant point of time market value of the land was more than Rs.20.00 lacs. He has also argued that during the land acquisition proceedings the value of land was estimated to be 4.00 lacs. He has drawn attention of this Court towards various exhibited documents and his contention is that on the ground of highly inadequate price the agreement dated 12/11/1993 is doubtful and no decree of specific performance of contract can be awarded in the peculiar facts and circumstances of the case. He has also stated that it is a settled principle of law that in respect of specific performance of contract keeping in view Sec. 16 and 20 of the Specific Relief Act, the plaintiff has to prove readiness and willingness. He has argued that in the entire plaint there is no averment in respect of readiness and willingness. He has also stated that in the evidence if there is something regarding readiness and willingness, keeping in view the settled position of law, no evidence can be looked into without pleadings. He has also argued that the plaintiff

in respect of specific performance of contract is required to file a suit at the first available opportunity and in the present case, the last payment was allegedly made on 25/2/1994 and respondent No.2 vide letter dated 29/3/1994 Ex.P/7 has seriously disputed the agreement dated 12/11/1993 Ex.P/2. Thereafter complaints were lodged by respondent No.2 against the appellant and there were exchange of public notices and counter public notices in various newspapers. There was a litigation going on between respondent Nos. 1 and 2 of which the appellant was also aware of. He has also argued that in March 1994 the appellant was fully aware that respondent No.2 Narendra Singh Punia and also respondent No.1 have disputed the agreement dated 12/11/1993. If inspite of the aforesaid the appellant opted to remain silent till March, 1996. The suit was filed after a very long time in March, 1996 and in those circumstances the appellant is not entitled to equitable and discretionary relief by taking shelter of the Specific Performance Act. He has argued that relief for specific performance is discretionary and equitable and,

therefore, as the conduct of the plaintiff is unjust, dishonest and unfair, the plaintiff is not at all entitled for such relief. He has also argued that even otherwise also it would not be equitable to grant such a relief after a lapse of 25 years.

This Court has carefully gone through the entire record of the case and has also given a patient hearing to all the parties. The plaint before this Court reveals that with respect to readiness and willingness to perform contract / agreement by the appellant, Sec. 16(1)(c) of the Specific Relief Act, 1963 read with Form 47 is very material in the peculiar facts and circumstances of the case. In a suit for specific performance of contract the plaintiff has to plead and prove readiness and willingness who is seeking performance of the contract against the defendant and in case and readiness and willingness of fact is not pleaded in the plaint then no evidence can be adduced in support of such pleadings nor any findings can be recorded by the trial Court for want of pleadings, meaning thereby, if there are no pleadings, no evidence can be adduced or can be looked into to prove the

case.

The apex Court in the case of Abdul Khader Rowthwe Vs. P. K. Sarabai and others reported in (1989) 4 SCC 313, in paragraph 10 and 12 has held as under :

10. As regards the second contention, namely, the question of specific performance, the High Court says-

Even by putting a liberal construction on the various statements contained in the plaint, it is difficult to hold that there has been even a faint attempt to make it to conform to the requirements prescribed in Forms 47 and 48 of the First Schedule in the Civil Procedure Code, that the plaintiff had applied to the defendants specifically to perform the agreement and that he had been and is still ready and willing to specifically Perform his part of the agreement....

12. In Ouseph Varghese v. Joseph Aley and Ors. MANU/SC/0493/1969MANU/SC/0493/1969:[1970]1SCR921 , this Court stated-

This takes us to the decree passed by the High Court in respect of plaint item No. 1. This decree is purported to have been passed on the basis of the admission made by the defendant. It may be noted that the agreement pleaded by the defendant is wholly different from that pleaded by the plaintiff. They do not refer to the same transaction. The plaintiff did not at any stage accept the agreement pleaded by the defendant as true. The agreement pleaded by the plaintiff is said to have been entered into at the time of the execution of Exh. P-1 whereas the agreement put forward by the defendant is one that is said to have been arrived at just before the filing of the suit. The two are totally different agreements. The plaintiff did not plead either in the plaint or at any subsequent stage that he was ready and willing to perform the agreement pleaded in the written statement of defendant. A suit for specific performance has to conform to the requirements prescribed in Forms 47 and 48 of the 1st Schedule in the Civil Procedure Code. In a suit for specific performance it is incumbent on the plaintiff not only to set out agreement on the basis of which he sues in all its details, he must go further and plead that he has applied to the defendant specifically to perform the agreement pleaded by him but the defendant has not done so. He must further plead that he has been and is still ready and willing to specifically perform his part of the agreement. Neither in the plaint nor at any subsequent stage of the suit the plaintiff has taken those pleas. As observed by this Court Pt. Prem Rai v. The D.L.F. Housing and Construction (Private) (Ltd.) and Anr. [Civil

Appeal No. 37/66, decided on 4.4.1968.] that it is well settled that in a suit for specific performance the plaintiff should allege that he is ready and willing to perform his part of the contract and in the absence of such an allegation the suit is not maintainable.

Hon'ble the apex Court has taken a similar view in the case of H. P. Pyarejan Vs. Dasappa (dead) by L.Rs., and others reported in **(2006) 2 SCC 496**. The apex Court in paragraphs 8 to 14 has held as under :

In order to appreciate the rival submissions Section 16(c) needs to be quoted along with the Explanations. The same reads as follows:

"16. Personal bars to relief:

(a)

(b)

(c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms of the performance of which has been prevented or waived by the defendant.

Explanation- For the purpose 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 aver performance of, or readiness and willingness to perform, the contract accordingly to its true construction."

In *Ardeshir H. Mama v. Flora Sassoon* (AIR 1928 PC

208), the Privy Council observed that where the injured party sued at law for a breach, going to the root of the contract, he thereby elected to treat the contract as at an end himself and as discharged from the obligations. No further performance by him was either contemplated or had to be tendered. In a suit for specific performance on the other hand, he treated and was required by the Court to treat the contract as still subsisting. He had in that suit to allege, and if the fact was traversed, he was required to prove a continuous readiness and willingness from the date of the contract to the time of the hearing, to perform the contract on his part. Failure to make good that averment brings with it and leads to the inevitable dismissal of the suit. The observations were cited with approval in *Prem Raj v. The D.L.F. Housing and Construction (Private) Ltd. and Anr.* (AIR 1968 SC 1355).

The requirements to be fulfilled for bringing in compliance of the Section 16(c) of the Act have been delineated by this Court in several judgments. While examining the requirement of Section 16(c) this Court in *Syed Dastagir v. T.R. Gopalakrishna Setty* (1999 (6) SCC 337) noted as follows:

"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 may be 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."

Again in *Motilal Jain v. Ramdasi Devi (Smt.) and Ors.* (2000 (6) SCC 420) it was noted as follows: "7. The other contention which found favour with the High Court, is that plaintiff averments do not show that the plaintiff was ready and willing to perform his part of the contract and at any rate there is no evidence on record to prove it. Mr. Choudhary developed that contention placing reliance on the decision in *Varghese case* ((1969) 2 SCC 539). In that case, the plaintiff pleaded an oral contract for sale of the suit property. The defendant denied the alleged oral agreement and pleaded a different agreement in regard to which the plaintiff neither amended his plaint nor filed subsequent pleading and it

was in that context that this Court pointed out that the pleading in specific performance should conform to Forms 47 and 48 of the First Schedule of the Code of Civil Procedure. That view was followed in Abdul Khader case (1989) 4 SCC 313).

8. However, a different note was struck by this Court in Chandiook case ((1970) 3 SCC

140). In that case 'A' agreed to purchase from 'R' a leasehold plot. 'R' was not having lease of the land in his favour from the Government nor was he in possession of the same. 'R', however, received earnest money pursuant to the agreement for sale which provided that the balance of consideration would be paid within a month at the time of the execution of the registered sale deed. Under the agreement 'R' was under obligation to obtain permission and sanction from the Government before the transfer of leasehold plot. 'R' did not take any steps to apply for the sanction from the Government. 'A' filed the suit for specific performance of the contract for sale. One of the contentions of 'R' was that 'A' was not ready and willing to perform his part of the contract. This Court observed that readiness and willingness could not be treated as a straitjacket formula and that had to be determined from the entirety of facts and circumstances relevant to the intention and conduct of the party concerned. It was held that in the absence of any material to show that 'A' at any stage was not ready and willing to perform his part of the contract or that he did not have the necessary funds for payment when the sale deed would be executed after the sanction was obtained, 'A' was entitled to a decree for specific performance of contract.

9. That decision was relied upon by a three- Judge Bench of this Court in Syed Dastagir case ((1999) 6 SCC 337) wherein it was held that 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. It is pointed out that in India most of the pleas are drafted by counsel and hence they inevitably differ from one to the other; thus, to gather the true spirit behind a plea it should be read as a whole and to test whether the plaintiff has performed his obligations, one has to see the pith and substance of the plea. It was observed : "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) of the Specific Relief Act, 1963 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."

It is thus clear that an averment of readiness and willingness in the plaint is not a mathematical formula which should only be in specific words. If the averments in the plaint as a whole do clearly indicate the readiness and willingness of the plaintiff to

fulfil his part of the obligations under the contract which is the subject-matter of the suit, the fact that they are differently worded will not militate against the readiness and willingness of the plaintiff in a suit for specific performance of contract for sale."

Lord Campbell in *Cork v. Ambergate etc. and Railway Co.* (1851) 117 ER 1229 observed that in common sense the meaning of such an averment of readiness and willingness must be that the non-completion of the contract was not the fault of the plaintiffs, and that they were disposed and able to complete it had it not been renounced by the defendant.

The basic principle behind Section 16(c) read with Explanation (ii) is that any person seeking benefit of the specific performance of contract must manifest that his conduct has been blemishless throughout entitling him to the specific relief. The provision imposes a personal bar. The Court is to grant relief on the basis of the conduct of the person seeking relief. If the pleadings manifest that the conduct of the plaintiff entitles him to get the relief on perusal of the plaint he should not be denied the relief.

Section 16(c) of the Act mandates the plaintiff to aver in the plaint and establish as the fact by evidence aliunde that he has always been ready and willing to perform his part of the contract. The principles were recently elaborated in *Aniglase Yohannan v. Ramlatha and Ors.* (2005 (7) SCC 534).

In the aforesaid cases, the Hon'ble Supreme Court of India keeping in view the statutory provisions under the Code of Civil Procedure, 1908 and the statutory provisions as contained under the Specific Relief Act, 1963 has held that it is mandatory for the plaintiff to make an averment in the plaint and to establish as a fact by evidence that the plaintiff was always ready and willing to perform his part of the contract.

Hon'ble apex Court in the case of Man Kaur (dead) by Lrs., Vs. Hartan Singh Sangha reported in (2010) 10 SCC

512, in paragraph 12 has held as under :

12. Section 16(c) of the Specific Relief Act 1963 ('Act' for short) bars the specific performance of a contract in favour of a plaintiff who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him (other than terms of the performance of which has been prevented or waived by the defendant). Explanation (ii) to section 16 provides that for purposes of clause (c) of section 16, the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction. Thus in a suit for specific performance, the plaintiff should not only plead and prove the terms of the agreement, but should also plead and prove his readiness and willingness to perform his obligations under the contract in terms of the contract. (See : N.P. Thirugnanam to R. Jagan Mohan Rao - AIR 1996 SC 116; Pushparani S.Sundaram v. Pauline Manomani James - 2002 (9) SCC 582; and Manjunath Anandappa v. Tammanasa - 2003 (10) SCC 390)

The Hon'ble Supreme Court has held in the aforesaid case that the plaintiff should not only plead and prove the terms of agreement but also plead and prove the factum of readiness and willingness to perform his obligation under the contract in terms of the contract keeping in view the statutory provisions as contained under the Specific Relief Act, 1963.

Hon'ble Supreme Court of India in the case of J. Samuel and others Vs. Gattu Mahesh and others reported in **(2012) 2 SCC 300**, in paragraph 14 has held as under :

14) Before proceeding further, it is also useful to refer Section 16(c) of Specific Relief Act which reads as under:
"16. Personal bars to relief.- Specific performance of a contract

cannot be enforced in favour of a person-

(a) xxx

(b) xxx

(c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than 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 aver performance of, or readiness and willingness to perform, the contract according to its true construction."

It is clear that in a suit for specific performance of a contract, unless there is a specific averment that he has performed or has always been ready and willing to perform the essential terms of the contract, the suit filed by him is liable to be dismissed. In other words, in the absence of the above said claim that he is always ready and willing to perform his part of the contract, the decree for specific performance cannot be granted by the Court.

Hon'ble Supreme Court of India in the aforesaid case has held that in absence of categorical averment that the plaintiff has performed and is always ready and willing to perform essential terms of the contract, suit for specific performance is liable to be dismissed and a decree cannot be granted keeping in view the statutory provisions as contained u/S. 16(c) of the Specific Relief Act, 1963 read with Appendix A Form 17, of the Code of Civil Procedure, 1908.

This Court is of the considered opinion that after going through the plaint, this Court has not been able to notice

such averment much less proper averments in respect of readiness and willingness of the plaintiff in relation to the contract in question. It was certainly obligatory upon the plaintiff to have pleaded that he was throughout ready and willing to perform his part of the contract and, therefore, in absence of the aforesaid material pleadings, the trial Court was justified in dismissing the suit, as basic requirement of pleadings, as provided u/S. 16(1)(c) of the Specific Relief Act, 1963 read with Form 17 Appendix A of the Code of Civil Procedure, 1908 was not fulfilled.

The another issue which deserves consideration is that the suit for specific performance of the contract was filed in the year 1996. The agreement to sell is dated 12/11/93. The respondent No.2 has disputed the agreement in March, 1994. Nothing prevented the appellant – plaintiff to approach the trial Court in time. However, for the reasons best known to the plaintiff, the suit was filed only in March, 1996. It is also noteworthy to mention that the appellant had never addressed any notice either to respondent No.1 or to

respondent No.2 to perform agreement dated 12/11/1993. Conduct of the plaintiff establishes that he was never ready and willing to get the agreement executed. There are no averments with regard to readiness and willingness in clear and unequivocal terms.

The apex Court has considered filing of such belated suits in respect of specific performance. Hon'ble Supreme Court of India in the case of Vimleshwar Vs. Noor Ahmad reported in (AIR 2011 SC 2057), in paragraph 9 has held as under:

9) It is settled law that Section 20 of the Specific Relief Act, 1963 confers discretionary powers. [vide: M. Meenakshi & Ors. vs. Metadin Agarwal (2006) 7 SCC 470, Nirmala Anand vs. Advent Corporation (P) Ltd. & Ors. (2002) 5 SCC 481, Parakunnan Veetill Joseph's Son Mathrew vs. Nedumbara Karuvila's Son & Ors. (1987) Supp. SCC 340].

It is also well settled that the value of property escalates in urban areas very fast and it would not be equitable to grant specific performance after a lapse of long period of time.

Even our own High Court in the case of Mohini Vs. Vidyawati reported in [2004 (2) MPLJ 169] in paragraphs 14 to 16 has held as under :

14. It may be noted that in December, 1987 Nanku Ram died and according to the plaintiff, he insisted the deceased to execute the sale-deed which was avoided by him. The suit was filed on 10-3-1989 meaning thereby after near about one year and three months of the date of the death of the deceased. According to the plaintiff, deceased avoided to execute the sale-deed, in

other words impliedly he denied to execute the sale-deed, but the suit was not filed and the plaintiffs waited for a year and three months. In a suit for specific performance of contract, delay plays a vital role and in order to infer the readiness and willingness of plaintiff, the delay of a great extent, in the present case, would be a relevant factor to refuse the exercise of the discretion in favour of plaintiff. Under Section 20 of the Specific Relief Act, the discretion has been vested in the Court to allow or disallow a decree of specific performance of contract and the Court is not bound to grant the relief of specific performance merely because it is lawful to do so. Though there is a rider put by the statute on the Court that the discretion should not be exercised arbitrarily. Indeed, it should be based on sound reasonings guided by judicial principles and capable of correction by a Court of appeal. Thus, this Court while exercising the appellate jurisdiction can also exercise the discretionary power to allow or dis-allow the relief of specific performance. Apart from this power conferred to this Court by Section 20 of the Specific Relief Act, under Section 107(2) of the Code of Civil Procedure, 1908, this Court being an Appellate Court also enjoys the same powers and duties as are conferred and imposed on the Trial Court before whom the suit was instituted. From the aforesaid enunciation of law, it is luminously clear that this Court can also exercise discretionary power to allow or dis-allow relief of specific performance of contract.

15. On testing the above said law on the anvil of present factual scenario as there is a great delay in filing the suit, this has put a deep dent on plaintiff's conduct in respect to his readiness and willingness.

16. As discussed hereinabove, plaintiff Krishna Kumar insisted deceased Nanku Ram when he was alive to execute the sale deed and he avoided then why notices were sent after the expiry of one year and two months. This would be an additional factor not to exercise the discretion in favour of plaintiff and equity also so demands. The Supreme Court in the case of S. Rangaraju Naidu v. S. Thiruvarakkarasu, 1995 Supp (2) SCC 680, has laid down that relief of specific performance is discretionary one. It is thus clear that the relief is equitable one and when the plaintiff did not bother to issue notices immediately after when Nanku avoided to execute the sale deed and they were sent soon before filing of the suit, would go to show that just to bring the suit in the clutches of readiness and willingness two notices were sent and immediately the suit was filed on 10-3-1989. A civil suit has to be decided not only on the basis of the evidence and its impact with technicality, but, also by applying the principles of "probabilities and preponderance".

Hon'ble the apex Court in the case of Vidyanandam
Vs. Vairavan reported in (AIR 1997 SC 1751), in

paragraphs 13 and 15 has held as under :

13. In the case before us, it is not mere delay. It is a case of total inaction on the part of the plaintiff for 2 112 years in clear violation of the term of agreement which required him to pay the balance, purchase the stamp papers and then ask for execution of sale deed within six months. Further, the delay is coupled with substantial rise in prices - according to the defendants, three times - between the date of agreement and the date of suit notice. The delay has brought about a situation where it would be inequitable to give the relief of specific performance to the plaintiff.

15. Sri Sivasubramaniam submitted that as on today, fourth appellant alone is fighting the litigation, that he has purchased the property after the decree of the Trial Court which means that he has consciously purchased litigation and that, therefore, there are no equities in his favour. Counsel submitted that as between the plaintiff and the fourth defendant, equities are in favour of the plaintiff. We are not impressed. The plaintiff has paid only a sum of Rs. 5,000/- in December, 1978 as against the consideration of Rs. 60,000/-. The Trial Court dismissed the suit for specific performance on 4.9.1982, while decreeing the refund of their earnest money. Defendant No.4 purchased the suit house on November 19, 1982 for a consideration of Rs. 90,000/-. May be, he knew he was purchasing litigation and probably it was for that reason that he may not have paid the full amount of the value. In any event, we cannot ignore the fact that Defendants 1 to 3 are also appellants before us. We are also not prepared to say that as between plaintiff and the fourth defendant, the equities are in favour of the plaintiff alone.

Another important aspect of the case is that the property was agreed to be sold for Rs.8.5 lacs in the year 1986-1988 and as per the agreement, which is subject matter of the present Civil Suit, in the agreement dated 12/11/1993, the value of the property has been mentioned as 1.05 lacs. It raises a serious doubt in respect of agreement as highly inadequate sale consideration was mentioned in the agreement and in those circumstances, this Court is of the

considered opinion that the trial Court was justified in dismissing the suit.

In a case decided by High Court of Rajasthan ie., Nab. Khan (deceased by L.Rs. and others Vs. Roojdar and others reported in **(AIR 2010 Rajasthan 128)**, in paragraphs No. 17 and 18 has held as under :

17. Applying the facts of the present case, it is clear from the evidence of the plaintiff himself that at the relevant time of the execution of the alleged agreement for sale on 17.02.1986 the price of land was much higher than Rs. 6,000/- per bigha which was agreed to by the power of attorney holder Khurshid, the son of the plaintiff while entering into the agreement for sale with the plaintiff. Thus, the agreement having been made at a price much below what was the price of land at the relevant time, as admitted by the plaintiff of Rs. 50,000/- in 1992 the price could safely have been Rs. 20,000/- as determined by the learned trial court in 1986. The said agreement was definitely disadvantageous to the principal in the facts and circumstances of the case. On account of the above, the principal (deceased defendant Chand Mai) was entitled to repudiate the contract.

18. Looking at it from another angle, the son Khurshid, the power of attorney holder had entered into an agreement with the plaintiff Nabi Khan who is none other than the father of the power of attorney holder Khurshid it can safely be inferred that the agreement had been entered into by the agent creating an interest in his own favour. There is no evidence in the present case to suggest that Khurshid while doing so had taken the consent of the deceased defendant Chand Mal. Thus, both the conditions which are there under Section 215 of the Indian Contract Act, 1872 are attracted to the facts and circumstances of the present case. In that view of the matter, the plaintiff is not entitled to have the specific performance of the agreement (Exhibit-2).

Our own High Court in the case of Sumer Vs. Akloo reported in **(1985 MPWN 327)** has held as under :

"... .. The conclusion reached by the Court below in that the consideration of Rs.200/- only for

2.05 acres of land adjoining the city of Jabalpur was grossly inadequate and that execution of the sale deed by the defendant was not proved even otherwise. Looking to the facts and circumstances of this case, which are not in controversy, the conclusion reached by the first appellate Court on this point appears to be quite reasonable, particularly in view of the gross inadequacy of consideration for the suit land. There is thus no occasion to interfere in this appeal. Appeal dismissed".

The relief of specific performance is a discretionary and equitable relief and in the present case, cannot be granted keeping in view the conduct of the plaintiff, after a lapse of 24 years. Here is a case in which a person respondent No.2 - Narendra Singh Punia even if the plaintiff's averments are admitted for the purpose of execution of agreement has acted against the interest of the principal and, therefore, the question of grant of any relief to the appellant for specific performance does not arise.

Hon'ble Supreme Court of India in the case of Jayakantham Vs. Abay Kumar reported in **2017 (3) MPLJ**

540, in paragraphs 10 and 11 has held as under :

10. In the present case, the material on the record contains several aspects which will have to weigh in the balance. There is no dispute about the fact that the father of the respondent who entered into an agreement on his behalf (and deposed in evidence) carried on moneylending business. The consistent case of the appellants in reply to the legal notice, in the written statement as well as in the course of evidence was that there was a transaction of a loan with the father of the respondent. The evidence of DW2 was to the following effect :

“The defendant was having a relationship with plaintiff’s father, Babu Dhanaraj in respect of loan transaction. Already the Defendant No. 2 has taken loan from Babu Dhanapathy Raj and bought a lorry and was driving it. In this case, in order to return the loan of Rs. 1,00,000/- as per the instruction of Babu Dhanapathy Raj only on the basis of trust, the Exhibit P1 agreement to sell was executed. In the said document, I have put my signature as a witness.”

During the course of the evidence, the appellants produced material (Exhibit D3) indicating that the value of the property was six lakhs thirty thousand on 20 November 2006. The agreed consideration between the parties was rupees one lakh sixty thousand of which an amount of rupees sixty thousand was paid at the time of the execution of the agreement. The sale transaction was to be completed within three years against the payment of the balance of rupees one lakh. The appellants also relied upon Exhibit D2 which indicated that the value of the property as on 1 April 1999. These aspects were adverted to in the judgment of the trial court and the first appellate court while setting out the evidence, but have evidently not been borne in mind in determining as to whether a decree for specific performance could judiciously have been passed.

11. In our view the material which has been placed on record indicates that the terms of the contract, the conduct of parties at the time of entering into the agreement and circumstances under which the contract was entered into gave the plaintiff an unfair advantage over the defendants. These circumstances make it inequitable to enforce specific performance.

A similar view has been taken by the apex Court in the case of A. C. Arulappan Vs. Ahalya Naik reported in **(2001)**

6 SCC 600, in paragraphs 7, 11 and 15 has held as under:

7. The jurisdiction to decree specific relief is discretionary and the court can consider various circumstances to decide whether such relief is to be granted. Merely because it is lawful to grant specific relief, the court need not grant the order for specific relief; but this discretion shall not be exercised in an arbitrary or unreasonable manner. Certain circumstances have been mentioned in Section 20(2) of the Specific Relief Act, 1963 as to under what circumstances the court shall exercise such discretion. If under the terms of the contract the plaintiff gets an unfair advantage over the defendant, the court may not exercise its discretion in favour of the plaintiff. So also, specific relief may not be granted if the defendant would be put to undue hardship

which he did not foresee at the time of agreement. If it is inequitable to grant specific relief, then also the court would desist from granting a decree to the plaintiff.

11. In *Gobind Ram v. Gian Chand* (JT 2000 (5) SC 101 = (2000) 7 SCC 548, it was observed in paragraph 7 of the judgment that grant of a decree for specific performance of contract is not automatic and is one of the discretions of the court and the court has to consider whether it would be fair, just and equi-table. The court is guided by the principles of justice, equity and good conscience.

15. Granting of specific performance is an equitable relief, though the same is now governed by the statutory provisions of the Specific Relief Act, 1963. These equitable principles are nicely incorporated in Section 20 of the Act. While granting a decree for specific performance, these salutary guidelines shall be in the forefront of the mind of the court. The trial court, which had the added advantage of recording the evidence and seeing the demeanour of the witnesses considered the relevant facts and reached a conclusion. The Appellate Court should not have reversed that decision disregarding these facts and, in our view, the Appellate Court seriously flawed in its decision. Therefore, we hold that the respondent is not entitled to a decree of specific performance of the contract.

Hon'ble Supreme Court of India in the case of Mohammadia Vs. Lakshmi reported in **(2008) 7 SCC 310**, in paragraphs 68 and 71 has held as under :

68. There is a serious doubt as to whether the agreement dated 2.8.1982 as also the purported order dated 30.6.1986 or the agreement were the genuine documents. In that view of the matter, the suit for specific performance of contract should not have been decreed.

71. Grant of a decree for specific performance of contract is a discretionary relief. There cannot be any doubt whatsoever that the discretion has to be exercised judiciously and not arbitrarily. But for the said purpose, the conduct of the plaintiff plays an important role. The Courts ordinarily would not grant any relief in favour of the person who approaches the court with a pair of dirty hands.

Our own High Court in the case of Abdul Hanif Vs. Shehjad reported in **2006 (3) MPLJ 205**, in paragraphs 16

has held as under :

16. In addition to the foregoing reasons, the performance of the contract would involve hardship on the appellant. The agreement is alleged to have been executed on 3-10-83. Since then a long period of 23 years has elapsed. After such a long delay it will not be proper to grant relief by way of specific performance of the contract. Therefore, even if accepting that the plaintiffs had been ready and willing to perform their part of the contract, in view of the fact that a long time has elapsed, the portion of which specific performance has been decreed by the trial Court is not only a small portion of the whole, the right of preemption is available to other members of the family, I do not consider it appropriate to maintain the decree for specific performance of the part of the contract.

The facts of the case reveal that the agreement was executed on 12/11/1993 on the basis of which specific performance is being claimed, however, the power of attorney granted in favour of respondent No.2 - Narendra Singh Punia by respondent No.1 was cancelled in the year 1994. Respondent No.2 has misused the power of attorney which was given to him in respect of agreement to sell with Guru Teg Bahadur Housing Society. This Court in the litigation which took place between respondent No.1 Suresh and respondent Nos. 2 to 5, F.A.Nos. 685/2007, F.A.No. 686/2007 and F.A.No. 687/2007, in paragraphs 5 to 36 has held as under :

05. Admittedly, appellant Suresh Kumar executed an agreement for sale on 15-01-1986 in favour of Tegbahudar

Housing Society and at the relevant point of time one Narinder Singh Punia (Husband of Respondent No.1) was the President of the Society. The agreement did not culminate into execution of sale deed as entire sale consideration was not paid and subsequently agreement was cancelled in respect of 4.97 acres of land bearing Survey No. 22/2 at Bijalpur Patwari Holding No.10.

06. Another agreement was executed by the present appellant Suresh Kumar (Defendant No.1) on 06-07-1988 in favour of Guru Tegbahudar Society through the then President N.S. Punia in respect of land bearing Survey No. 22/2 for consideration of Rs. 8,50,000. It is pertinent to note that at the time of execution of previous agreement dated 15-01-1986 a sum of rupees one lac was paid by the society to the defendant No.1 and at the time of execution of subsequent agreement dated 06-07-1988, a sum of Rs. 5,50,000 was allegedly paid to him. As per stipulation in the agreement, the balance amount of rupees two lacs was payable upto 10-09-1988. The appellant Suresh Kumar had to execute the sale deed in favour of the society. The agreement (Exhibit-P-7) also contained a stipulation that if the amount of rupees one lac be forfeited the sale deed is not executed within the time stipulated in the agreement. The present appellant (Defendant No.1) Suresh Kumar received a sum of Rs. 5,50,000 as part of sale consideration, which was evidenced by execution of receipt Exhibit-P-9/A. He again received a sum of Rs. 1,50,000 on 20-09-1988, under the agreement dated 06-07-1988, which was acknowledged by receipt (Exhibit-P-9-A). The appellant (Defendant No.1) thereafter executed a power of attorney on 27-10-1988 (Exhibit-P-3) in favour of N.S. Punia in respect of land bearing Survey No.22/2,. On 24-10-1988 the present appellant Suresh Kumar received a sum of Rs. 50,000/- as part of consideration under the agreement dated 06-07-1988 and executed a receipt (Exhibit-P-9-B). Admittedly, an '*Iquararnama*' dated 27-10-1988 (Exhibit-P-8) was executed by the appellant by which he acknowledged that the entire consideration was received by him and possession of land in question was handed over. Thereafter a notice was issued by Guru Tegbahudar Society to the present appellant through its President N.S. Punia on 13-02-1991 to the appellant (Defendant No.1) stating that the land in question has been sold to other persons, which were the subject matter of the agreement executed between the society and the present appellant Suresh Kumar. The present appellant sent a reply dated 20-02-1991(Exhibit-P-10) to Dr N.S. Punia, stating that he is ready and willing to execute the sale deed.

Dr N.S. Punia who was the President of the Society and who was holding the power of attorney of Suresh Kumar, the appellant as well entered into an agreement (Exhibit-P-1) with his wife Jasbeer Kaur (plaintiff) on 05-04-1994, under which she agreed to purchase land admeasuring 1.47 acres forming part of Survey No. 22/2 for consideration of Rs. 1,60,000/- from the

appellant through his power of attorney, N.S. Punia, who is admittedly the husband of Jasbeer Kaur. At the time of execution of agreement a sum of Rs. 21,000/- was allegedly paid. Thereafter, on 11-04-1994 balance amount of Rs. 1,39,000/- was allegedly paid and the possession of the land in question was handed over by the power of Attorney Holder of Suresh Kumar (Defendant No.1) and the relevant document is on record Exhibit-P-2. The power of attorney executed in favour of N.S. Punia was revoked on 15-04-1994 by the appellant on the grounds that the attorney was acting against the interest of the appellant. Subsequent to revocation of power of attorney, the appellant entered into an agreement to sale with Catholic Daoces of Indore in respect of five acres of land forming part of Survey No. 22/2 Patwari holding No.10 for a consideration of Rs. 3,65,000 per acre and received a sum of Rs. One lac. The agreement dated 16-04-1994 contained a stipulation that balance amount of sale consideration would be paid within a period of three months. Later-on agreement was cancelled due to breach committed by the prospective purchaser and earnest money was forfeited. Thereafter, prospective purchaser filed a Civil Suit for refund of earnest money bearing Civil Suit No. 122-B/1995.

07. On 18-04-1994 Dr N.S. Punia, Power of Attorney Holder of appellant sent a letter to him in relation to land forming part of Survey No. 22/2 Exhibit-P-11. Copies of postal receipts are on record as Exhibits-P-12 and P-12-A. The appellant published a public notice (Exhibit-P-19) in Daily Newspaper, namely, in 'Dainik Bhaskar' on 08-05-1994 through his counsel by which public in general was informed that agreement in question has come to an end.

On 07-02-1995 the respondent Smt Jasbir Kaur filed a civil suit against the appellant through his power of attorney holder and other civil suits were also preferred by other family members of the Smt Jasbeer Kaur. It is pertinent to note that the civil suit was filed against the appellant through the power of attorney holder N.S. Punia, who was the husband of the plaintiff, who admittedly despite receipt of summons of suit did not appear in the trial court and an exparte judgment was passed in Civil Suit No. 11-A/1995 in favour of the plaintiff. A similar exparte judgment and decree was passed in Civil Suit No. COS 9-A/1995 and CS No.10-A/1995 on 27-07-1995. Thus, in all the aforementioned Civil Suits instituted by the family members of N.S. Punia, who was sued as attorney of appellant, he did not appear despite receipt of summons of suit, which resulted into passing of exparte judgment and decree against the appellant.

08. On 09-08-1995 a notice was sent by Jasbeer Kaur (plaintiff) to the appellant for execution of sale deed in view of judgment and decree passed in Civil Suit No.11-A/1995 (Exhibit-P-18). On 26-

08-1995, in purported compliance of judgment and decree passed in 11-A/1995, registered sale deed (Exhibit-P-17) was executed in favour of plaintiff again by power of attorney holder N.S. Punia, who was the husband of the Jasbeer Kaur (plaintiff). The appellant as soon as he came to know about passing of exparte decree against him filed three applications under order 9 rule 13 for setting aside exparte decrees for specific performance of contract against the decree holders and same were registered as MJC Nos. 17, 18 and 19 of 1995. It is pertinent to note that Suresh Kumar though has preferred applications under order 9 rule 13 for setting aside exparte judgment and decrees also filed civil suit seeking the relief of declaration and permanent injunction against N.S. Punia as well as his family members to the effect that exparte decrees passed in CS Nos. 9-A/1995, 10-A/1995 and 11-A/1995 dated 27-07-1995 are not binding on him. A relief was also claimed for grant of permanent injunction restraining the defendants from interfering with his possession over the suit land.

09. The Civil Suit filed by the present appellant Suresh Kumar i.e COS No. 7-A/96 was decreed partly vide judgment and decree dated 30-11-1999 (Exhibit-P-4). Injunction against dispossession except, in accordance with law was granted. It is also pertinent to note that First Appeal was preferred by Suresh Kumar, the present appellant, against the judgment and decree passed in COS No. 7-A/96 and the same was registered as FA No. 8/2000. During pendency of First Appeal, the applications under order 9 rule 13 of CPC for setting aside the exparte judgment and decree were dismissed on 01-12-2000. The appellant preferred Miscellaneous Appeals before this court on 11-01-2001 ie MA No. 39/2001, 40/2001 and 41/2001. The Miscellaneous Appeals were allowed on 26-08-2002 and the judgments and decrees were passed on 27-07-1995 in CS Nos. 11-A/95, 9-A/1995 and 10-A/1995 were aside with the liberty to the appellant to contest the suits on merits. The trial court after hearing the parties decreed the suits. The impugned judgments and decrees are the subject matter of challenge in these appeals. The first appeal filed by Suresh Kumar which was filed in respect of civil suit filed by him has been withdrawn on 05-12-2013.

10. Learned counsel for the appellant has vehemently argued before this court whether the suit for specific performance could have been decreed in absence of requisite pleadings as required u/s 16(1) (c) of Specific Relief Act read with form 47 and 48 of Appendix-A of CPC, 1908.

He has vehemently argued before this court that finding recorded in CS No.7-A/1999 decided on 30-09-1999 (Exhibit-P-4) will not operate as res-judicata in the present suit out of which the present appeal arises. Reliance is also been placed upon various judgments in respect of Specific Performance of Contract as well

as on the issue of resjudicata.

11. On the other hand, the respondent No.1 has argued as well as submitted written arguments seeking dismissal of appeal. Written arguments are also on record. It has been stated that present appellant was not having any cause of action against Respondent No.1 (Jasbir Kaur) nor was having any right to sue. It is also been stated that the present litigant is a chronic and criminalized civil litigant. It is also been stated that Jasbir Kaur wife of N.S. Punia has purchased land on 27-10-1988 from Suresh Kumar and Dr N.S. Punia was never a power of attorney holder of Guru Tegbahudar Society.

It is also been stated that Power of Attorney was secretly revoked by Suresh Kumar, which was executed in favour of Dr N.S. Punia and it was irrevocable power of attorney. The ground has been raised that there was no bone of contention for filing the present appeal. It is also been stated in written submission that blood of the respondent is being sucked for last twenty years. It has been stated in the instant appeal supported by an affidavit that its an void and voidable appeal.

12. Grounds have also been raised in respect of interlocutory applications. It has been stated that an affidavit of the appellant Suresh Kumar is based upon personal residence of Dr N.S. Punia (who was hold power of attorney). It is also been stated that none of the Courts including the courts below have found any flaw in the purchase of portion of land by the respondent No.1. It is also been stated that instant appeal is not only third round of appeal in High Court, but the appellant is repeatedly violating the law of power of attorney as well as doctrine of resjudicate.

13. Other grounds mentioned in paragraph-8 and 9 deal with withdrawal of FA No. 08/2000 and the same has got no bearing in respect of the appeal as the same is being decided on merits based upon the evidence on record.

In paragraph-10 it has been stated that DW-1 Suresh Kumar has himself testified that the ikrarnama executed between Guru Teg Bahadur Housing Society has come to an end. It is also been stated that Suresh Kumar has admitted before the Supreme Court on 27-10-1988 that he has sold land to Dr N.S. Punia. It has been further stated that DW-1 in paragraph 31 has admitted that he is cultivating the land and he is getting Rs. 60,000/- as yearly income and therefore, the respondent No.1 was also entitled for mesne profit. Respondent No.1 has placed reliance upon a judgment which relates to grant of exparte stay order about the limits of their operation etc. etc. and, therefore, this ground does not required any discussion as the appeal is being decided on merits and parties have agreed before this court for decisions on merits, irrespective

of interlocutory applications.

14. Another additional written argument has been filed which was received on 12-05-2015 and it has been stated in the additional written arguments under the heading questions of law and Propriety that what will determine termination of chronic and criminalized civil litigation. It has been stated that the appellant has lost his four successive trials before ADJs in 1995, 1999, 2000 and 2007. In the same paragraphs it has been stated whether the High Court was justified in issuing ex parte stay order. In paragraph-2 it has been stated that belated concoctions and misrepresentation of the appellant cannot become a ground for final decision in the matter. It has been stated that the respondent No.1 is wife of power of attorney holder (Dr N.S. Punia) is not accountable nor answerable in respect of the fact that transpired between the appellant and his mukhtar. It has also been stated that the respondent No.1 has not answered even if the Principal went against interest of mukhtar or the mukhtar went against the Principal. It has been stated that the respondent No.1 is being outrageously and unendingly tortured by the appellant since 1995.

Under Paragraph-3, it has been stated that Doctrine of resjudicata has been distorted and the appellant is grossly distorting laws of the basic nature. In respect of readiness and willingness, it has been stated that the respondent No.1 was ready and willing to perform her part of the contract. It is also been stated that Doctrine of Resjudicata is applicable in all sale deed executed during the pendency of Civil Suits and appeals are bad in law.

Under Paragraph-4 it has been stated that the respondent No.1 is suffering for last twenty years and the appellant has suppressed his own execution, his own pleadings and his own testimonies made before the trial court and even in appeal.

It is also been stated in paragraph-6 that the appellant has withdrawn FA No. 08/2000 after thirteen years. Under paragraphs 7 and 12 SC Rulings are filed. It has been stated that they are in respect of illegal possession, frivolous litigations, abuse of court process, plea of irreparable losses, ex parte stays, mesne profit, compensation fines and prosecution of wrong doers.

15. This court has heard the learned counsel for the parties at length and has gone through the record of the case. The trial Court has decreed the suit in favour of the plaintiff even in absence of basic requirement and material pleadings in the plaint in relation to readiness and willingness. This Court while deciding a similar First Appeal i.e., F.A.No. 19/1998 (Prahlaad Vs. Babu) on 5/1/2010 has held that in absence of material facts in respect of readiness and

willingness, a decree for specific performance of the contract cannot be granted. Not only this, law on this point is too well settled.

16. This court has carefully gone through the written arguments filed by the appellant as well as the respondent No.1. The delay which has taken place in the matter cannot be attributed to the appellant as claimed by the respondent No.1. The power of attorney holder of the appellant Dr N.S. Punia after a civil suit was filed by the respondent No.1 took notice and did not appear before the Trial Court later on and the civil suites were decided *exparte*. The present appellant has taken steps for setting aside the judgment and now the matter has been decided on merits by the trial court and therefore if the litigant has prosecuted his matter that is by bi-party for setting aside the judgment and decree, it cannot be said that the delay which has taken place in final litigation of the civil suit is attributable to him.

17. At this stage, it is pertinent to take note of Section 16(1)(c) of the Specific Relief Act read with Form No. 47 of Appendix – A of the Code of Civil Procedure, 1908. In a suit for specific performance of contract, basic requirement is to plead and then to prove the readiness and willingness of the plaintiff who seeks performance of the contract against the defendant. If the basic requirement of readiness and willingness on facts is not pleaded in the plaint, then no evidence can be adduced in support of such plea nor any finding can be recorded by the trial Court for want of pleadings. In other words, if there is no pleading then no evidence can be adduced to prove the case.

18. The apex Court in the case of Abdul Khader Rowthwe Vs. P. K. Sara Bai and others reported in (1989) 4 SCC 313, in paragraphs 10 and 12 has held as under :

“10. As regards the second contention, namely, the question of specific performance, the High Court says-

“Even by putting a liberal construction on the various statements contained in the plaint, it is difficult to hold that there has been even a faint attempt to make it to conform to the requirements prescribed in Forms 47 and 48 of the First Schedule in the Civil Procedure Code, that the plaintiff had applied to the defendants specifically to perform the agreement and that he had been and is still ready and willing to specifically Perform his part of the agreement....

12. In Ouseph Varghese v. Joseph Aley and Ors. , this Court stated-

This takes us to the decree passed by the High Court in respect of plaintiff item No. 1. This decree is purported to have been passed on the basis of the admission made by the defendant. It may be noted that the agreement pleaded by the defendant is wholly different from that pleaded by the plaintiff. They do not refer to the same transaction. The plaintiff did not at any stage accept the agreement pleaded by the defendant as true. The agreement pleaded by the the plaintiff is said to have been entered into at the time of the execution of Exh. P-1 whereas the agreement put forward by the defendant is one that is said to have been arrived at just before the filing of the suit. The two are totally different agreements. The plaintiff did not plead either in the plaint or at any subsequent stage that he was ready and willing to perform the agreement pleaded in the written statement of defendant. A suit for specific performance has to conform to the requirements prescribed in Forms 47 and 48 of the 1st Schedule in the Civil Procedure Code. In a suit for specific performance it is incumbent on the plaintiff not only to set out agreement on the basis of which he sues in all its details, he must go further and plead that he has applied to the defendant specifically to perform the agreement pleaded by him but the defendant has not done so. He must further plead that he has been and is still ready and willing to specifically perform his part of the agreement. Neither in the plaint nor at any subsequent stage of the suit the plaintiff has taken those pleas. As observed by this Court Pt. Prem Rai v. The D.L.F. Housing and Construction (Private) (Ltd.) and Anr. Civil Appeal No. 37/66, decided on 4.4.1968.] that it is well settled hat in a suit for specific performance the plaintiff should allege that he is ready and willing to perform his part of the contract and in the absence of such an allegation the suit is not maintainable.”

19. The apex Court again in the case of H. P. Pyarejan Vs. Dasappa (dead) by LRs and others reported in **(2006) 2 SCC 496**, in paragraphs 8, 9, 10, 13 and 14 has held as under :

“08. In order to appreciate the rival submissions Section 16(c) needs to be quoted along with the Explanations. The same reads as follows:

"16. Personal bars to relief:

(a)

(b)

(c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms of the performance of which has been prevented or waived by the defendant.

Explanation- For the purpose 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 aver performance of, or readiness and willingness to perform, the contract accordingly to its true construction."

09. In Ardeshir H. Mama v. Flora Sassoon (AIR 1928 PC 208), the Privy Council observed that where the injured party sued at law for a breach, going to the root of the contract, he thereby elected to treat the contract as at an end himself and as discharged from the obligations. No further performance by him was either contemplated or had to be tendered. In a suit for specific performance on the other hand, he treated and was required by the Court to treat the contract as still subsisting. He had in that suit to allege, and if the fact was traversed, he was required to prove a continuous readiness and willingness from the date of the contract to the time of the hearing, to perform the contract on his part. Failure to make good that averment brings with it and leads to the inevitable dismissal of the suit. The observations were cited with approval in Prem Raj v. The D.L.F. Housing and Construction (Private) Ltd. and Anr. (AIR 1968 SC 1355).

10. The requirements to be fulfilled for bringing in compliance of the Section 16(c) of the Act have been delineated by this Court in several judgments. While examining the requirement of Section 16(c) this Court in Syed Dastagir v. T.R. Gopalakrishna Settty (1999 (6) SCC 337) noted as follows:

“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 may be 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. Again in Motilal Jain v. Ramdasi Devi (Smt.) and Ors. (2000 (6) SCC 420) it was noted as follows:

"7. The other contention which found favour with the High Court, is that plaint averments do not show that the plaintiff was ready and willing to perform his part of the contract and at any rate there is no evidence on record to prove it. Mr. Choudhary developed that contention placing reliance on the decision in Varghese case ((1969) 2 SCC 539). In that case, the plaintiff pleaded an oral contract for sale of the suit property. The defendant denied the alleged oral agreement and pleaded a different agreement in regard to which the plaintiff neither amended his plaint nor filed subsequent pleading and it was in that context that this Court pointed out that the pleading in specific performance should conform to Forms 47 and 48 of the First Schedule of the Code of Civil Procedure. That view was followed in Abdul Khader case (1989) 4 SCC 313).

8. However, a different note was struck by this Court in Chandiok case ((1970) 3 SCC 140). In that case 'A' agreed to purchase from 'R' a leasehold plot. 'R' was not having lease of the land in his favour from the Government nor was he in possession of the same. 'R', however, received earnest money pursuant to the agreement for sale which provided that the balance of consideration would be paid within a month at the time of the execution of the registered sale deed. Under the agreement 'R' was under obligation to obtain permission and sanction from the Government before the transfer of leasehold plot. 'R' did not take any steps to apply for the sanction from the Government. 'A' filed the suit for specific performance of the contract for sale. One of the contentions of 'R' was that 'A' was not ready and willing to perform his part of the contract. This Court observed that readiness and willingness could not be treated as a straitjacket formula and that had to be

determined from the entirety of facts and circumstances relevant to the intention and conduct of the party concerned. It was held that in the absence of any material to show that 'A' at any stage was not ready and willing to perform his part of the contract or that he did not have the necessary funds for payment when the sale deed would be executed after the sanction was obtained, 'A' was entitled to a decree for specific performance of contract.

9. That decision was relied upon by a three- Judge Bench of this Court in Syed Dastagir case ((1999) 6 SCC 337) wherein it was held that 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. It is pointed out that in India most of the pleas are drafted by counsel and hence they inevitably differ from one to the other; thus, to gather the true spirit behind a plea it should be read as a whole and to test whether the plaintiff has performed his obligations, one has to see the pith and substance of the plea. It was observed :

"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) of the Specific Relief Act, 1963 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."

It is thus clear that an averment of readiness and willingness in the plaint is not a mathematical formula which should only be in specific words. If the averments in the plaint as a whole do clearly indicate the readiness and willingness of the plaintiff to fulfil his part of the obligations under the contract which is the subject-matter of the suit, the fact that they are differently worded will not militate against the readiness and willingness of the plaintiff in a suit for specific performance of contract for sale."

12. Lord Campbell in *Cork v. Ambergate etc. and Railway Co.* (1851) 117 ER 1229 observed that in common sense the meaning of such an averment of readiness and willingness must be that the non-completion of the contract was not the fault of the plaintiffs, and that they were disposed and able to complete it had it not been renounced by the defendant.

13. The basic principle behind Section 16(c) read with Explanation (ii) is that any person seeking benefit of the specific performance of contract must manifest that his conduct has been blemishless throughout entitling him to the specific relief. The

provision imposes a personal bar. The Court is to grant relief on the basis of the conduct of the person seeking relief. If the pleadings manifest that the conduct of the plaintiff entitles him to get the relief on perusal of the plaint he should not be denied the relief.

14. Section 16(c) of the Act mandates the plaintiff to aver in the plaint and establish as the fact by evidence aliunde that he has always been ready and willing to perform his part of the contract. The principles were recently elaborated in Aniglase Yohannan v. Ramlatha and Ors. (2005 (7) SCC 534).”

20. The apex Court keeping in view the provisions of the Code of Civil Procedure, 1908 and the provisions of Specific Relief Act, has held that it is mandatory for the plaintiff to aver in the plaint and to establish as a fact by evidence aliunde that the plaintiff was always ready and willing to perform his part of the contract.

21. The apex Court again in the case of Man Kaur (Dead) by LRs Vs. Hartar Singh Sangha reported in (2010) 10 SCC 512, in paragraph 12 has held as under :

“ 12. Section 16(c) of the Specific Relief Act 1963 ('Act' for short) bars the specific performance of a contract in favour of a plaintiff who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him (other than terms of the performance of which has been prevented or waived by the defendant). Explanation (ii) to section 16 provides that for purposes of clause (c) of section 16, the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction. Thus in a suit for specific performance, the plaintiff should not only plead and prove the terms of the agreement, but should also plead and prove his readiness and willingness to perform his obligations under the contract in terms of the contract. (See : N.P. Thirugnanam to R. Jagan Mohan Rao - AIR 1996 SC 116; Pushparani S.Sundaram v. Pauline Manomani James - 2002 (9) SCC 582; and Manjunath Anandappa v. Tammanasa - 2003 (10).”

The apex Court in the aforesaid case has held that the plaintiff should not only plead and prove the terms of the agreement but should also plead and prove his readiness and willingness to perform his obligations under the contract in terms of the contract keeping in view the statutory provisions as contained under the Specific Relief Act, 1963.

22. The apex Court again in the case of J. Samuel and others Vs. Gattu Mahesh and others reported in (2012) 2 SCC 300, in paragraph 14, has held as under :

“14. Before proceeding further, it is also useful to refer Section 16(c) of Specific Relief Act which reads as under:

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

(a) xxx

(b) xxx

(c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than 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 aver performance of, or readiness and willingness to perform, the contract according to its true construction."

It is clear that in a suit for specific performance of a contract, unless there is a specific averment that he has performed or has always been ready and willing to perform the essential terms of the contract, the suit filed by him is liable to be dismissed. In other words, in the absence of the above said claim that he is always ready and willing to perform his part of the contract, the decree for specific performance cannot be granted by the Court.”

23. The apex Court in the aforesaid case has held that in absence of specific averment that the plaintiff has performed and is always ready and willing to perform essential terms of the contract, suit for specific is liable to be dismissed and decree for specific performance of the contract cannot be granted especially in the light of the statutory provisions as contained u/S. 16(c) of the Specific Relief Act read with Appendix A Form 17 of the Code of Civil Procedure, 1908.

24. This Court has very carefully gone through the plaint and have perused the same and this Court has not been able to notice such averment much less proper averments in respect of regarding readiness and willingness of the plaintiff in relation to the contract in question. It was obligatory upon the plaintiff to have pleaded he was throughout ready and willing to perform his part of the

contract. In absence of this material pleadings the trial Court was not at all justified in decreeing the suit even though basic requirement of pleadings, as provided by Sec. 16 (1) (c) read with Form 17 of Appendix A of the Code of Civil Procedure, 1908 was not fulfilled. This court has gone through the pleadings made in the plaint and it is axiomatic that the pleadings made in the plaint cannot be construed to infer readiness and willingness on the part of the plaintiffs.

25. This Court in F.A.No. 98 / 1998 (supra), in paragraph 9 has held as under :

“9. Learned counsel for the appellant referred to certain pleadings in the plaint and contended that they constitute the plea of readiness and willingness on facts. In my view, such pleadings cannot be construed as pleadings of readiness and willingness. A plea of readiness and willingness is not a technical plea. It is a basic requirement of law in a suit for specific performance in contract and hence, it cannot be liberally construed on stray facts.”

26. The plea of readiness and willingness is not a technical plea, as already stated earlier. It is a basic requirement of law in a suit for specific performance of the contract and it cannot be liberally construed on stray facts. Keeping in view the aforesaid judgment and keeping in view the the pleadings as mentioned in the plaint, this Court is of the considered opinion that the trial Court has erred in law and facts in passing the impugned judgment and decree. Though there is no more scope for discussion either on facts or evidence or law, but another important feature in the appeal is the trial Court has recorded a finding that the findings recorded in C.S.No. 7-A/1996 (Suresh Kumar Vs. Narendra Singh and four others) decided on 30/9/1999 Ex.P/4 shall operate as res-judicata in respect of the suit which is subject matter of the present First appeal.

27. In the present case, N. S. Punia, who was President of Teg Bahadur Housing Society, entered into an agreement with the present appellant Suresh Kumar as President of Teg Bahadur Housing Society, for the first time on 15/1/1986 and a Power of Attorney was executed by Suresh Kumar in respect of some land in favour of N. S. Punia who was functioning as President of Guru Teg Bahadur Housing Society. Said Narendra Singh Punia, on account of General Power of Attorney, executed in his favour Ex.P/3, which was also registered power of Attorney, executed an agreement on behalf of Suresh Kumar with his wife and two children. The agreement executed by N. S. Punia in favour of his wife by virtue of holding Power of Attorney of Suresh Kumar on 5/4/1994 and this agreement is the subject matter of the present First Appeal. A civil suit for specific performance of the contract

was filed by the wife of N. S. Punia who was the power of attorney holder of Suresh Kumar, against Suresh Kumar and N. S. Punia accepted notices on behalf of Suresh Kumar and thereafter opted not to appear before the trial Court and ex-parte judgment and decree was passed against Suresh Kumar. Suresh Kumar has filed applications and later on appeal for setting aside the ex-parte judgment and decree and at the same time he has filed a civil suit ie., C.S.No. 7-A/1996 (Suresh Kumar Vs. Narendra Singh) with a prayer that the ex-parte judgment and decree is not binding upon him, meaning thereby, the suit filed by Suresh Kumar was subsequent suit and with passage of time the ex-parte judgment and decrees were set aside and a judgment has been passed finally on 28/11/2007 in case of Jasbir Kaur – plaintiff and two other persons who are sons of N. S. Punia. The trial Court on the basis of subsequent judgment in a Civil Suit which was arising out of the present Civil Suit has held that the judgment delivered in C.S.No. 7-A/1996 would operate as res-judicata.

28. The issues were framed in the earlier Civil Suit and the issues framed in the Civil Suit which is subject matter of the present appeal are as under :

FA No. 685/2007 Arising out of COS 9A/2006 ISSUES	COS 7A/1996 ISSUES
1. क्या प्रतिवादी क्रमांक 1 ने वादग्रस्त भूमि वादी को दिनांक 05.04.1994 को 1,60,000/- रुपये में विक्रय करने का अनुबंध करके वादी के पक्ष में विक्रय अनुबंध निष्पादित एवं पंजीकृत करवाया।	1. क्या वादी वादग्रस्त भूमि सर्वे क्रमांक 22/2 रकबा 4.97 एकड स्थित ग्राम विजलपुर तहसील व जिला इंदौर का भूमि स्वामी है ँ
2. क्या प्रतिवादी क्रमांक 1 ने दिनांक 05.04.1994 को विक्रय मूल्य पेट 21,000/- रुपये प्राप्त किये थे।	2. क्या वादी वादग्रस्त भूमि के आधिपत्य में होकर उसका उपयोग तथा उपभोग कर राह है।
3. क्या प्रतिवादी क्रमांक 1 ने दिनांक 11 अप्रैल 1994 को विक्रय मूल्य पेट 1,39,000/- रुपये प्राप्त कर वादी के पक्ष में रसीद निष्पादित की थी ँ	3. क्या वादी बहुत कम पढा लिखा किसान है।
4. क्या प्रतिवादी क्रमांक 1 ने वादी को संपूर्ण विक्रय मूल्य प्राप्त करके वादग्रस्त भूमि को रिक्त आधिपत्य भी सौंप दिया था ?	4. क्या वादी ने दिनांक 06.07.1988 को गुरु तैयबहादुर गृह निर्माण सहकारी संस्था मर्यादित इंदौर से वादग्रस्त जमीन विक्रय करने को सौदा 1,70,000/- रुपये (एक लाख सत्तर हजार) प्रति एकड के हिसाब से किया?
5. क्या प्रतिवादी क्रमांक 1 वादग्रस्त भूमि के विक्रयपत्र	4-अ क्या उक्त संस्था ने रुपये 5,00,000/- वादी को उक्त

<p>निष्पादन में आना कानी कर रहे है?</p>	<p>सौदे पेटे अदा किये तथा शेष राशि दिनांक 10.09.1988 तक अदा करने का करार यिका और उक्त दिनांक तक शेष राशि अदा न होने पर अग्रिम राशि जप्त होना तथा 1,00,000/- काट कर शेष अग्रिम राशि संस्था को लौटाना तय हुआ ?</p>
<p>6. क्या प्रतिवादी क्रमांक 1 वादग्रस्त भूमि किसी अन्य को अंतरित करके, वादी के आधिपत्य में हस्तक्षेप करने के लिये प्रयासरत है।</p>	<p>4-बी क्या वादी ने बाद में दिनांक 27.10.1988 को प्रतिवादी क्रमांक 1 के पक्ष में इकरारनामा निष्पादित कर दिनांक 06.07.1988 के अनुबंध अनुसार प्रतिफल प्राप्त कर वादग्रस्त भूमि का कब्जा सौपा ?</p>
<p>7. क्या वादी, अनुबंध पालन के लिये सदैव तत्पर एवं तैयार रहा है ?</p>	<p>5. क्या प्रतिवादी क्रमांक 1 ने वादग्रस्त भूमि के संबंध में एन.ओ. सी. प्राप्त करने तथा सोलिंग विधान से छूट लेने आदि के लिये वादी को फुसलाकर मुख्यापत्र दिनांक 13.10.1988 को निष्पादित करवा लिया ?</p>
<p>8. क्या वादी ने असत्य एवं त्रासदाय वाद पेश किया है यदि हाँ तो प्रतिवादी प्रतिकारात्मक खर्च पाने का पात्र है ?</p>	<p>5-ए क्या प्रश्नगत मुख्यारनामा दिनांक 13.10.1988 पंजीकृत दिनांक 27.10.1988 में प्रतिवादी क्रमांक 1 के हित सम्मिहित है ?</p>
<p>9. सहायता एवं खर्च</p>	<p>5-बी यदि हां तो क्या प्रश्नगत पुख्यारनाम निरस्तनीय है ?</p>
	<p>6. क्या वादी ने मुख्यत्यारनामा दिनांक 13.10.1988 निरस्त करवाकर इस बाबद समाचारपत्र अग्नीबाण में दिनांक 15.04.1994 को जाहिर सूचना प्रकाशित करवाई ?</p>
	<p>7. क्या प्रतिवादी क्रमांक 1 ने प्रतिवादी क्रमांक 2 (पत्नी) तथा प्रतिवादी क्रमांक 3 व 4 (पुत्रों) से षडयंत्र कर वादग्रस्तभूमि तीन हिस्सों में बॉट कर तीनों के हित में पृथम पृथक विक्रय अनुबंध निष्पादित किये ?</p>
	<p>8. क्या प्रतिवादी क्रमांक 1 ने प्रतिवादी क्रमांक 2 से 4 से कपटपूर्वक मिल कर तृतीय अतिरिक्त लि न्यायाधीश इंदौर के न्यायालय में व्यवहार वाद क्रमांक 9-ए/95, 10-ए/95 तथा 11-ए/95 लगवा कर उक्त दावों को एकपक्षीय रूप से जयपत्रित करवाया ?</p>
	<p>8-अ यदि हां तो क्या उक्त वादों में पारित निर्णय एवं जयपत्र</p>

	वादी पर बंधनकारी नहीं है ?
	9. क्या वादी वादग्रस्त भूमि के स्वयं के आधिपत्य में है प्रतिवादीगण द्वारा हस्तक्षेप न किये जाने बाबद उनके विरुद्ध स्थाई निषेधाज्ञा पाने का पात्र है ?
	10. क्या वाद का उचित मूल्यांकन किया जाकर उचित न्यायशुल्क पटाया गया है?
	11. क्या वादी द्वारा आदेश 9 नियम 13 व्यवहार प्रक्रिया संहिता के तहत कार्यवाही किये जाने से यह वाद स्थगित किये जाने योग्य है ?
	12. क्या प्रतिवादीगण प्ररिव्यय तथा क्षतिपूर्ति पाने के पात्र है ? यदि हां तो कितनी राशि ?
	13. अनुतोष एवं व्यय

The aforesaid issues in both the civil suits makes it very clear that the issues in both the cases were different and therefore, the findings arrived at by the trial Court in respect of res-judicata is a perverse finding.

29. The apex Court in the case of Nawab Shaqafath Ali Khan and others Vs. Nawab Imdad Jah Bahadur and others reported in **(2009) 5 SCC 162**, in paragraphs No.37 and 38 has held as under :

“37. It is true that preliminary issues were decided by an order dated 21.07.1999. It is, however, not in dispute that as several other issues were framed including the additional issues, which we have noticed here in before, in terms whereof the suit was ultimately decreed by a judgment and order dated 3.04.2000, an appeal there against has been filed. A civil miscellaneous application has also been filed.

38. A decree was not passed pursuant to or in furtherance of the order dated 21.07.1999. It may be true that in terms of Section 105 of the Code of Civil Procedure when an appeal against the final decree is passed, legality of the said order could be challenged in the appeal. Only because a civil revision application has not been filed, the same, in our opinion, would not attract the principle of res judicata as an appeal from the final decree could still be maintained. “

30. The trial Court in the present case, has framed additional Issue No.10 on 17/4/2007 without there being any pleadings by the plaintiff. Sec. 105 of the Code of Civil Procedure, 1908 reads as

under :

“105. other orders :- (1) Save as otherwise expressly provided, no appeal shall lie from any order made by a Court in the exercise of its original or appellate jurisdiction, but, where a decree is appealed from, any error, defect or irregularity in any order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal.

(2) Notwithstanding, anything contained in sub-section (1), where any party aggrieved by an order or remand from which an appeal lies does not appeal therefrom, he shall thereafter be precluded from disputing its correctness.”

31. The apex Court in the case of Sita Ram Vs. Radha Bai and others reported in (AIR 1986 SC 534), in paragraph 11 has held as under :

“11. Counsel for the appellant contends that the plaint contains clear admissions that the plaintiff and Lachhmi Narain concluded with the object of defeating the claim of Gomti Bai, that in furtherance of that object the plaintiff entrusted the jewellery to Lachhmi Narain, and that in consequence thereof Gomti Bai was defrauded. It is clear that the appellant did not plead that with a view to defeat the claim of Gomti Bai the plaintiff and Lachhmi Narain entered into an arrangement under which the property belonging to Ram Sewak was handed over to Lachhmi Narain and that as a result of that arrangement the claim of Gomti Bai was defeated. No issue was raised at the trial that in consequence of the arrangement between the plaintiff and Lachhmi Narain, Gomti Bai was defrauded of her rightful claim. From the averments made in paragraph 7 it appears that it was the plaintiff's case that Gomti Bai knew that the jewellery in dispute in this suit was in the possession of the plaintiff, and by an agreement between her and the plaintiff she admitted that the jewellery was to belong to the plaintiff. It is clear that on the averments made in the plaint, the plaintiff did not plead that she deposited the ornaments belonging to Gomti Bai with Lachhmi Narain with a view to defeat the claim of Gomti Bai and the latter was in fact defrauded. The Trial Judge in his judgment observed:

"The alleged entrustment of the ornaments of Lachhmi Narain was meant to save them from the clutches of Musammat Gomti Bai, the rightful owner's widow. The purpose was achieved, and Musammat Gomti Bai hid not the scent of the ornaments, which do not seem 'to have been considered at the time of the adjustment by the' arbitrators on the basis 'of which they made the award. The fraudulent intent of Lachhmi Narain and the plaintiff was thus successful. What the plaintiff now wants to claim really belonged to her son Ram Sewak and after him for life, to his

widow Musammat Gomti Bai. I do not think that the plaintiff return the ornament even if they had not been returned. "

In, so observing, in our judgment, the learned Trial Judge determined an issue which did not arise on the pleadings of the parties. If the plaintiff's case as set out in the plaint be accepted, Gomtibai knew that jewellery of the family was handed over by the plaintiff to Lachhmi Narain, and it was agreed between the contesting parties that the jewellery was to be retained by the plaintiff. No argument was apparently addressed before the High Court on the case which appealed to. the Trial Court. There was no specific plea raised in the Trial, Court on that part of the case and the parties did not go to trial on that issue. Again, un-less the parties were proved to, be in pari delicto the plea that the action instituted by the plaintiff was not maintainable cannot succeed. "

32. Keeping in view the well settled legal position, in absence of pleading, the issue No.10 framed on 17/10/2007 without pleadings and thereafter decision thereupon, is bad in law. Not only this, the civil suit filed by Suresh Kumar ie., C.S.No. 7-A/1996 was decided on 30/11/1999 and the present civil suit which subject matter of the present First Appeal was revived on 26/8/2003, meaning thereby, the ex-parte decree was set aside by this Court directing a bi-party trial. The plaintiff did not raise any plea regarding res-judicata from 26/8/2003 to 28/11/2007. The expression "Fact in Issue" read with Sec. 43 of the Evidence Act, cannot be considered as relevant unless it is made a fact in issue in the pleadings with contemporaneous opportunity to the opposite party to deny the same. Another vital aspect of the case is that N. S. Punia who was holding a Power of Attorney and which was executed in his favour as he was the President of Guru Teg Bahadur Housing Society, executed the agreement in question on 5/4/1994 on behalf of Suresh Kumar in favour of his wife and he has acted against the interest of the principal.

33. The High Court of Rajasthan in the case of Nab. Khan (deceased by LRs and others) Vs. Roojdar and others reported in **(AIR 2010 RAJASTHAN 128)**, in paragraphs 17, 18 and 25 has held as under:

"17. Applying the facts of the present case, it is clear from the evidence of the plaintiff himself that at the relevant time of the execution of the alleged agreement for sale on 17.02.1986 the price of land was much higher than Rs.6,000/- per bigha which was agreed to by the power of attorney holder Khurshid, the son of the plaintiff while entering into the agreement for sale with the plaintiff. Thus, the agreement having been made at a price much below what was the price of land at the relevant time, as admitted by the plaintiff of Rs.50,000/- in 1992 the price could safely have been Rs.20,000/- as determined by the learned trial court in 1986. The said agreement was definitely disadvantageous to the principal

in the facts and circumstances of the case. On account of the above, the principal (deceased defendant Chand Mal) was entitled to repudiate the contract.

18. Looking at it from another angle, the son Khurshid, the power of attorney holder had entered into an agreement with the plaintiff Nabi Khan who is none other than the father of the power of attorney holder Khurshid it can safely be inferred that the agreement had been entered into by the agent creating an interest in his own favour. There is no evidence in the present case to suggest that Khurshid while doing so had taken the consent of the deceased defendant Chand Mal. Thus, both the conditions which are there under Section 215 of the Indian Contract Act, 1872 are attracted to the facts and circumstances of the present case. In that view of the matter, the plaintiff is not entitled to have the specific performance of the agreement (Exhibit-2).

25. In the facts and circumstances, therefore, while maintaining the judgment and its findings on issues No.1 and 2 and dismissing the suit filed by the plaintiff, the directions contained in the operative portion in favour of the defendant to the effect that the plaintiff is directed to return the possession of the disputed land to the defendant-respondents within one month and not to interfere in the peaceful possession and enjoyment of the land in dispute and further that necessary entries in the revenue record in favour of the defendant be made is accordingly set aside.”

34. In the light of the aforesaid judgment, it is a well settled proposition of law that the Power of Attorney Holder cannot act against the interest of the principal. For yet another reason in the considered opinion of this court, the trial court has exercised the jurisdiction to deal with discretionary relief of specific performance erroneously.

35. It is well settled in law that relief of specific performance of contract is discretionary and the court is not bound to grant such relief merely because it is lawful to do so. In the facts of the case, the contingency mentioned in section 20 (2) (a) of the Act is attracted. However, trial court has completely overlooked this aspect of the matter. In the facts of the case plaintiffs in the considered opinion of this court are not entitled to discretionary relief of specific performance of contract.

36. In view of the preceding analysis, the impugned judgments and decrees passed by the trial court cannot be sustained in the eye of law. Accordingly, the same are set aside and the claims of the plaintiffs are dismissed. In the result the appeals are allowed with costs.

This Court has minutely scanned the entire evidence on

record. In the agreement dated 12/11/1993, spaces have been left blank, its execution is dated 12/11/1993 though notarisation is dated 15/11/1993. Different typewriters have been used in respect of Vouchers Ex.P/3 to P/6 and there appears to be some manipulation in respect of vouchers and in respect of the agreement also. Lot of discrepancies have been found in the record of the society and the appellant has not been able to show a reasonable cause as to why the entire payment has been made in cash. The suit land is undisputedly in possession of respondent No.1 and now it is in possession of respondent No.7 and 8 after execution of sale deeds by respondent No.1 in favour of respondent Nos. 7 and 8 in the year 2005. The trial Court based upon the evidence on record has rightly arrived at a conclusion that the plaintiff is not entitled for any decree of specific performance of contract. Not only this, this Court has already decided three First Appeals ie., F.A.Nos. 685/2007, F.A.No. 686/2007 and F.A.No. 687/2007 in which respondent No.2 Narendra Singh Punia by using the power of attorney has adopted the same *modus operandi* by entering into agreement to sell in favour of respondent No.3, 4 and 5 who are his children and wife. The judgment delivered by this Court was subjected to

judicial scrutiny and SLPs have also been dismissed and, therefore, after careful consideration of the entire record is of the opinion that the learned Judge has rightly dismissed the suit and the present appeal being devoid of any merit and substance also deserves to be dismissed and is accordingly hereby dismissed.

No order as to costs.

A decree be drawn up accordingly.

(S. C. SHARMA)
J U D G E

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