

**THE HIGH COURT OF MADHYA PRADESH**  
**PRINCIPAL SEAT AT JABALPUR**

**First Appeal No.615/2018**

*T.P.G. Pillay*

**Versus**

*Mohammad Jamir Khan & another*

Date of Order	08.05.2020
Bench Constituted	Single Bench
Order delivered by	Hon'ble Mr. Justice Sanjay Dwivedi
Whether approved for reporting	<b>Yes</b>
Name of counsel for parties	For Appellant/Defendant: Mr. A.K. Jain, Advocate. For Respondent No.1/Plaintiff: None present. For Respondent No.2/State: Mr. Anvesh Shrivastava, Panel Lawyer.
Law laid down	Suit for specific performance of contract- readiness and willingness for a seeking decree of performance of contract, the plaintiff is required to produce strong documentary evidence relating to his financial condition- only oral evidence in respect of financial condition to establish readiness and willingness is not sufficient- The Court cannot assume or presume the financial status of the plaintiff only on the basis of oral evidence- The suit of specific performance of contract cannot be decreed in favour of the plaintiff unless readiness and willingness to perform his part of the contract is proved by the plaintiff.
Significant Para Nos.	15 & 16

**Reserved on : 14.02.2020**

**Delivered on : 08.05.2020**

**(J U D G M E N T)****(08.05.2020)**

By the instant appeal filed under Section 96 of the Code of Civil Procedure, the appellant/defendant is challenging the judgment and decree dated 14.02.2018 passed in Civil Suit No.12-A/2015 by Third Additional District Judge, Jabalpur which was preferred by respondent No.1/plaintiff for specific performance of contract.

**2.** The facts leading to the present appeal in brief are that the defendant/appellant executed an agreement to sale in favour of the plaintiff/respondent No.1 on 19.07.2011 in respect of the land situated over Mouza Gurda Har Khajari, Bandobast No.600, Patwari Halka No.20, Block Maharajpur, Tahsil and District Jabalpur, agriculture land survey No.38/8 area measuring 4600 square feet and survey No.38/18 area measuring 4450 square feet total area 9050 square feet.

At the time of execution of the agreement to sale (Ex.P/1), an amount of Rs.10,00,000/- was paid in advance by respondent No.1 to the appellant out of total sale consideration of Rs.25,00,000/-. As per the agreement, the remaining amount i.e. Rs.15,00,000/- had to be paid by respondent No.1 to the present appellant within the period of three months from the date of agreement and thereafter, the present appellant would execute the sale-deed in favour of respondent No.1. In the said agreement, it was also mentioned that before getting the sale-deed registered, the appellant would get the land demarcated at his own expenses and the document in respect of the same would be made available to respondent No.1. According to the terms and conditions of

the agreement to sale (Ex.P/1), the appellant was required to get the land demarcated till first week of August, 2011 and further to get the sale-deed executed in favour of respondent No.1.

**3.** As per respondent No.1, in the month of August, 2011, he requested the appellant to get the land demarcated and then to get the sale-deed executed in his favour but he did not do so. As per respondent No.1, he repeatedly asked the appellant to get the land demarcated so that the sale-deed could be executed but the appellant was delaying the matter for one or the another reason. Thereafter, respondent No.1 sent a notice on 24.10.2011 to the present appellant but the same was neither replied nor the sale-deed got executed in favour of respondent No.1.

**4.** Thereafter, a suit was filed by the plaintiff/respondent No.1 seeking a decree of specific performance of the contract mentioning in the plaint that the cause of action arose on 19.07.2011 when the agreement to sale got executed and thereafter, on 24.10.2011, despite issuance of notice to the defendant/appellant he did not appear in the suit then *ex parte* decree dated 26.06.2012 was passed against the defendant/appellant and in pursuance to the said *ex parte* decree, the sale-deed got executed by the Court-below and the possession over the disputed land was also handed over to the decree holder/respondent No.1. However, the said *ex parte* decree dated 26.06.2012 was set-aside by the Court-below vide order dated 31.01.2014 on an application moved by the present appellant filed under Order IX Rule 13 of the Code of Civil Procedure but in the meantime, an execution proceeding initiated by respondent No.1 in which the sale-deed got executed by the Court-below in favour of respondent No.1 and he was

also put in possession over the disputed land.

**5.** However, after setting-aside the *ex parte* decree, written statement was filed by the defendant/appellant mentioning therein that the plaintiff/respondent No.1 has never shown any readiness and willingness on his part. It is also stated in the written statement that as per the terms of the contract, the remaining amount of Rs.15,00,000/- was to be paid by the plaintiff to the defendant within the period of three months from the date of agreement, as such the time was the essence of the contract but remaining amount of Rs.15,00,000/- was not paid by the plaintiff within the aforesaid period, therefore, the suit cannot be decreed and it deserves to be dismissed. It is also stated by the defendant/appellant that the condition for getting the land demarcated was not the mandatory requirement because in pursuance to execution of the *ex parte* decree, the sale-deed got executed without getting the land demarcated. It is also stated that even after execution of the sale-deed the plaintiff/respondent No.1 had not deposited the full amount of sale consideration of Rs.15,00,000/- but deposited only Rs.13,00,000/- in the CCD which further indicates that the plaintiff was never ready and willing to get his part done, therefore, the suit deserves to be dismissed.

**6.** The trial Court on the basis of pleadings of the parties, framed as many as seven issues; recorded the evidence of the parties and finally decreed the suit vide impugned judgment and decree dated 14.02.2018 directing the defendant/appellant to get the disputed land demarcated within the period of two months from the date of passing the judgment and decree and further directed that within 15 days from getting the report of demarcation, the plaintiff would pay the remaining

amount of sale consideration i.e. Rs.15,00,000/- to the defendant/appellant and then the sale-deed will be executed in favour of the plaintiff/respondent No.1.

**7.** Learned counsel for the appellant at the time of arguments has contended that the trial Court erred while decreeing the suit of the plaintiff holding that he was ready and willing to perform his part of the contract. It is contended by learned counsel for the appellant that the Court-below ignored the admission made by respondent No.1 that he did not have the money to complete the transaction. It is also contended by him that the Court-below has failed to consider that the time was the essence of the contract and if the remaining consideration i.e Rs.15,00,000/- was not paid by the plaintiff to the defendant within the aforesaid period, the decree of specific performance of contract could not be granted and as such, the Court-below had not exercised its discretion properly while decreeing the suit of specific performance in favour of the plaintiff. It is also contended by him that the condition contained in the agreement to sale (Ex.P/1) casting obligation upon the defendant /appellant to get the land demarcated before execution of the sale-deed was not the mandatory condition and the same cannot be read with first part of the agreement which binds the plaintiff/respondent No.1 to perform his part of the contract and to pay Rs.15,00,000/- within the period of three months from the date of agreement and as such, he assailed the impugned judgment and decree passed by the Court-below and prays that the same be quashed. To reinforce his stand, learned counsel for the appellant has placed reliance upon the judgments reported in **(1995) 5 SCC 115** parties being **N.P. Thirugnanam (Dead) by Lrs. Vs. Dr. R. Jagan Mohan Rao & others;** **(1999) 7 SCC 303** parties being **Ram**

**Kumar Agarwal & another Vs. Thawar Das (Dead) Through Lrs.; (1999) 6 SCC 337** parties being **Syed Dastagir Vs. T.R. Gopalakrishna Setty; (2018) 9 SCC 805** parties being **Jagjit Singh (Dead) Through Legal Representatives Vs. Amarjit Singh; (2018) 3 SCC 658** parties being **Kalawati (Dead) Through Legal Representatives & others Vs. Rakesh Kumar & others; (2019) 8 SCC 575** parties being **Surinder Kaur (Dead) Through Legal Representatives Jasinderjit Singh (Dead) Through Legal Representatives Vs. Bahadur Singh (Dead) Through Legal Representatives; (2019) 9 SCC 132** parties being **Ritu Saxena Vs. J.S. Grover & another; AIR 2011 CHHATTISGARH 66** parties being **Shankarlal Bijreja Vs. Ashok B. Ahuja** and **AIR 2014 GUJARAT 12** parties being **Mangabhai Jadavbhai Makwana Vs. Tekchand Chhangalal & others.**

8. Despite service of notice on respondent No.1, nobody appeared on his behalf, therefore, on the basis of contention made by learned counsel for the appellant as well as on the basis of available record, this appeal is being decided.

9. As per submission made by learned counsel for the appellant, he is mainly attacking the impugned judgment and decree pointing out perversity in the finding given by the trial Court in regard to issue No.3 which relates to performance of the contract on the part of respondent No.1/plaintiff whether he had shown his readiness and willingness to perform his part of the contract?

10. The trial Court after appreciating the evidence adduced by the parties and considering the recital of Ex.P/1, has observed that the time was not the essence of the contract but the condition casting obligation upon the

defendant/appellant to get the land demarcated was the mandatory one which entails the performance on the part of the plaintiff/respondent No.1 to pay the amount of Rs.15,00,000/-. The trial Court further observed that the defendant since did not get the land demarcated, no adverse inference can be drawn against the plaintiff for not performing his part of the contract showing his readiness and willingness to pay the amount of Rs.15,00,000/- within the period of three months from the date of the agreement and further the trial Court answered the said issue in paragraph-16 of the judgment saying that in pursuance to the statement made by the elder brother of the plaintiff (PW/3) that in the family of the plaintiff, there was a joint business of transportation and they were operating 20 to 25 trucks jointly and had also paid Rs.10,00,000/- in advance then it would not be difficult for the appellant to pay the remaining amount of Rs.15,00,000/- and observed that it was not acceptable that the plaintiff/respondent No.1 had no arrangement to pay Rs.15,00,000/-.

**11.** As per the arguments advanced by learned counsel for the appellant that on a bare perusal of document Ex.P/1, it is clear that the same is in two parts. In first part, there is a mandatory condition under which the plaintiff was to pay Rs.15,00,000/-, the remaining amount of total sale consideration to the defendant/appellant, within the period of three months from the date of sale agreement and according to the plaintiff, this condition very clearly indicates that the time was the essence of the contract. As per learned counsel for the appellant, the second condition for getting the land demarcated by the defendant/appellant was not the mandatory one and that cannot be read together with condition No.1. Although, the same should be read

separately as the same was an isolated condition. As per counsel for the appellant, admittedly, even at the time of execution of the sale-deed in pursuance to the *ex parte* decree passed, the plaintiff has deposited only Rs.13,00,000/- in the CCD but not the total remaining amount of Rs.15,00,000/- which also indicates that the plaintiff did not perform his part of the contract and, therefore, the finding of the trial Court showing the readiness and willingness of the plaintiff was erroneous and perverse.

**12.** I have heard the arguments advanced by learned counsel for the appellant and also perused the record.

**13.** Looking to foundation of the finding given by the Court-below in paragraph-16 of the judgment wherein the Court-below assigned the reasons and opined that the plaintiff/respondent No.1 was ready and willing to perform his part of the contract as he had arrangement to pay Rs.15,00,000/-, in my opinion is vulnerable and is not sustainable for the reason that the same was based upon the presumption and assumption as no cogent and strong evidence was adduced by the plaintiff to substantiate that he had arrangement to pay the amount of Rs.15,00,000/- to the defendant within the period of three months from the date of agreement. I also find substance in the contention made by learned counsel for the appellant that the condition for getting the land demarcated is not a mandatory one because at the time of execution of *ex parte* decree, the Court-below got the sale-deed executed in favour of respondent No.1/plaintiff but even at that time, the defendant did not perform his part of the contract and got the land demarcated otherwise, the plaintiff should have asked the Court that firstly the defendant should have performed his part and thereafter



would execute the sale-deed and then only he would pay the amount.

**14.** As per the requirement of Section 16(c) of the Specific Relief Act, 1963 which reads as under:-

16(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.

the plaintiff is under an obligation to plead and prove his readiness and willingness to perform his part of the contract. I find force in the submission made by learned counsel for the appellant as the Supreme Court in the case of **Kalawati** (supra) in paragraph-18 relying upon a judgment reported in **(1996) 4 SCC 526** parties being **Acharya Swami Ganesh Dasji Vs. Sita Ram Thapar**, has observed as under :-

“18. In Acharya Swami Ganesh Dassji v. Sita Ram Thapar-(1996) 4 SCC 526 this Court drew a distinction between readiness to perform the contract and willingness to perform the contract. It was observed that by readiness it may be meant the capacity of the plaintiff to perform the contract which would include the financial position to pay the purchase price. As far as the willingness to perform the contract is concerned, the conduct of the plaintiff has to be properly scrutinised along with the attendant circumstances. On the facts available, the Court may infer whether or not the plaintiff was always ready and willing to perform his part of the contract. It was held in para 2 of the Report: (SCC p. 528)

“2. There is a distinction between readiness to perform the contract and willingness to perform the contract. By readiness may be meant the capacity of the plaintiff to perform the contract which includes his financial position to pay the purchase price. For determining his willingness to perform his part of the contract, the conduct has to be properly scrutinised. ... The factum of readiness and willingness to perform the plaintiff's part of the contract is to be adjudged with reference to the conduct of the party and the attending circumstances. The court may infer from the facts

and circumstances whether the plaintiff was ready and was always ready and willing to perform his part of the contract. The facts of this case would amply demonstrate that the petitioner/plaintiff was not ready nor had the capacity to perform his part of the contract as he had no financial capacity to pay the consideration in cash as contracted and intended to bid for the time which disentitles him as time is of the essence of the contract.”

further, the Supreme Court in the case of **Ritu Saxena** (supra) while dealing with the material produced by the plaintiff to show his readiness and willingness has observed that the statement of the plaintiff and his witnesses in the nature of *ipse dixit* and without support of any corroborating evidence is not enough to show the financial condition to perform his part of the contract. The Supreme Court in the case of **Ritu Saxena** (supra) has observed as under:-

“15. Coming to the facts of the present case, the sole document relied upon by the appellant to prove her readiness and willingness is the approval of loan on 30-7-2004 by ICICI. Such approval was subject to two conditions viz. furnishing of income tax documents of the appellant and the property documents. M/s ICICI has sent an email on 12-5-2005 to the husband of the appellant requiring an agreement to sell on a stamp paper of Rs 50 to be executed between the parties, as per the legal opinion sought from the empanelled lawyer, without which ICICI will not be able to disburse the loan. Admittedly, no agreement was executed on stamp paper, therefore, the appellant could not avail loan of Rs 50 lakhs from ICICI. Independent of such loan, there is mere statement that the appellant and her husband have income of Rs 80 lakhs per annum unsupported by any documentary evidence. Such statement will be in the nature of *ipse dixit* of the appellant and/or her husband and is without any corroborating evidence. Such self-serving statements without any proof of financial resources cannot be relied upon to return a finding that the appellant was ready and willing to perform her part of the contract. The appellant has not produced any income tax record or the bank statement in support of her plea of financial capacity so as to be ready and willing to perform the contract. Therefore, mere fact that the bank has assessed the financial capacity of the appellant while granting loan earlier in respect of another property is not sufficient to discharge of proof of financial capacity in the facts of the present case to hold that the appellant was ready and willing to perform her part of the contract. Such is the finding recorded by both the courts below as well.”

**15.** In the present case, the plaintiff did not

produce any evidence except the oral evidence to substantiate his readiness, willingness and his financial capacity to pay the remaining sale consideration of Rs.15,00,000/-. He did not produce any income tax return, bank statement and financial business condition of his family on the basis of which, the trial Court has presumed in paragraph-16 of the judgment that it was not difficult for the plaintiff to pay Rs.15,00,000/-. In absence of any cogent evidence and also taking note of the fact that in the judgment of the trial Court, there was no answer about the contention of the appellant/defendant by the Court that at the time of execution of the sale-deed, the plaintiff has deposited only Rs.13,00,000/- but not total remaining sale consideration of Rs.15,00,000/-. Thus, in absence of any denial of the said fact, this Court has not hesitation to hold that the plaintiff has not paid the remaining sale consideration of Rs.15,00,000/- but paid only Rs.13,00,000/-. Accordingly, I am of the opinion that the trial Court was not right in holding and deciding the issue No.3 in favour of the plaintiff in respect of his readiness and willingness. The Supreme Court in the case of **Surinder Kaur** (supra) has observed as under:-

“6. The aforesaid provisions have to be read along with Section 16(c) of the Specific Relief Act, 1963 which clearly lays down that the specific performance of a contract cannot be enforced in favour of a person who fails to prove that he has performed or was always ready and willing to perform the essential terms of the contract which were to be performed by him.

7. We shall also have to take into consideration that the specific performance of contract of an immovable property is a discretionary relief in terms of Section 20 of the Specific Relief Act as it stood at the time of filing of the suit.

8. Section 20 of the Specific Relief Act lays down that the jurisdiction to decree a suit for specific performance is a discretionary jurisdiction and the court is not bound to grant such relief merely because it is lawful.

9. The first issue is whether the promises were reciprocal promises or promises independent of each other. There can be no hard-and-fast rule and the issue whether promises are reciprocal or not has to be determined in the peculiar facts of each case. As far as the present case is concerned, the vendor, who was a lady received less than

20% of the sale consideration but handed over the possession to the defendant, probably with the hope that the dispute would be decided soon, or at least within a year. Therefore, Clause 3 provided that if the case is not decided within one year, then the second party shall pay to the first party the customary rent for the land. It has been urged by the respondents that the High Court rightly held that this was not a reciprocal promise and had nothing to do with the sale of the land. One cannot lose sight of the fact that the land had been handed over to Bahadur Singh and he had agreed that he would pay rent at the customary rate. Therefore, the possession of the land was given to him only on this clear-cut understanding. This was, therefore, a reciprocal promise and was an essential part of the agreement to sell.

10. Admittedly, Bahadur Singh did not even pay a penny as rent till the date of filing of the suit. After such objection was raised in the written statement, in replication filed by him, he instead of offering to pay the rent, denied his liability to pay the same. Even if we were to hold that this promise was not a reciprocal promise, as far as the agreement to sell is concerned, it would definitely mean that Bahadur Singh had failed to perform his part of the contract. There can be no manner of doubt that the payment of rent was an essential term of the contract. Explanation (ii) to Section 16(c) clearly lays down that the plaintiff must prove performance or readiness or willingness to perform the contract according to its true construction. The only construction which can be given to the contract in hand is that Bahadur Singh was required to pay customary rent.

11. It has been urged that no date was fixed for payment of rent. Tenancy can be monthly or yearly. At least after expiry of one year, Bahadur Singh should have offered to pay the customary rent to the vendor which could have been monthly or yearly. But he could definitely not claim that he is not liable to pay rent for 13 long years.

12. The learned counsel for the respondents urged that in case of non-payment of rent the plaintiff was at liberty to file suit for recovery of rent. We are not impressed with this argument. A party cannot claim that though he may not perform his part of the contract he is entitled to specific performance of the same.

13. Explanation (ii) to Section 16(c) of the Specific Relief Act lays down that it is incumbent on the party, who wants to enforce the specific performance of a contract, to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract. This the plaintiff miserably failed to do insofar as payment of rent is concerned.

14. A perusal of Section 20 of the Specific Relief Act clearly indicates that the relief of specific performance is discretionary. Merely because the plaintiff is legally right, the court is not bound to grant him the relief. True it is, that the court while exercising its discretionary power is bound to exercise the same on established judicial principles and in a reasonable manner. Obviously, the discretion cannot be exercised in an arbitrary or whimsical manner. Sub-clause (c) of sub-section (2) of Section 20 provides that even if the contract is otherwise not voidable but the circumstances make it inequitable to enforce specific performance, the court can refuse to grant such discretionary relief. Explanation (2) to the section provides that the hardship has to be considered at the

time of the contract, unless the hardship is brought in by the action of the plaintiff.”

**16.** In view of the above, it is clear that a person who seeks a decree of specific performance of contract then the same cannot be enforced in his favour unless he proves that he was always ready to perform the essential terms of the contract which was to be performed by him. Here, in this case, the plaintiff did not give any notice to the defendant showing that he had an arrangement to pay Rs.15,00,000/-, the remaining sale consideration. Even in notice i.e Ex.P/4 dated 24.10.2011, he has asked the defendant to perform his part to get the land demarcated and then execute the sale-deed but in the said notice even there was no reference of readiness of the plaintiff that he had an arrangement of Rs.15,00,000/-. Further, despite the notice served upon respondent No.1, he did not turn up to contest the case, therefore, in absence of any specific observation in the impugned judgment and decree passed by the trial Court as to whether, the plaintiff had deposited Rs.15,00,000/- at the time of execution of the sale-deed, the submission made by learned counsel for the appellant has to be accepted because the said fact was referred by the trial Court in paragraph-8 of its judgment but remained unanswered, therefore, it is infact undisputed that the plaintiff has not paid Rs.15,00,000/- but has deposited only Rs.13,00,000/- at the time of execution of the sale-deed in the CCD. The Supreme Court in the case of **Syed Dastagir** (supra) has observed as under:-

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

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

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

[Emphasis Supplied]

Now it is clear that the plaintiff had to discharge his obligation to deposit the remaining amount of sale consideration even though he has not been directed by the Court to deposit the said amount. The Supreme Court in the case of **Jagjit Singh** (supra) has observed as under:-

“4. It is settled law that a plaintiff who seeks specific performance of contract is required to plead and prove that he was always ready and willing to perform his part of the contract. Section 16(c) of the Specific Relief Act mandates that the plaintiff should plead and prove his readiness and willingness as a condition precedent for obtaining relief of grant of specific performance. As far back as in 1967, this Court in *Gomathinayagam Pillai v. Palaniswami Nadar* [*Gomathinayagam Pillai v. Palaniswami Nadar*, (1967) 1 SCR 227 : AIR 1967 SC 868] held that in a suit for specific performance the plaintiff must plead and prove that he was ready and

willing to perform his part of the contract right from the date of the contract up to the date of the filing of the suit. This law continues to hold the field and it has been reiterated in J.P. Builders v. A. Ramadas Rao [J.P. Builders v. A. Ramadas Rao, (2011) 1 SCC 429 : (2011) 1 SCC (Civ) 227] and P. Meenakshisundaram v. P. Vijayakumar [P. Meenakshisundaram v. P. Vijayakumar, (2018) 15 SCC 80 : (2018) 5 Scale 229]. It is the duty of the plaintiff to plead and then lead evidence to show that the plaintiff from the date he entered into an agreement till the stage of filing of the suit always had the capacity and willingness to perform the contract.”

**17.** In the case of **Shankarlal Bijreja** (supra), the High Court of Chhattisgarh while dealing with the similar issue has also observed that since there was no forfeiture clause in the agreement and it is found that the plaintiff failed to prove his readiness and willingness and it is settled law that in proper cases where specific performance is refused, the Court may direct refund of amount which has been paid by the plaintiff even though it is not claimed in the plaint.

**18.** Thus, I am also of the opinion that at the most the plaintiff is entitled to get the refund the amount of Rs.10,00,000/- which the plaintiff had paid to the defendant as advance and Rs.13,00,000/- which the plaintiff had deposited in the CCD. The decree passed by the Court below for specific performance of the contract is not found proper because the plaintiff failed to show performance on his part of the contract and failed to prove any readiness and willingness on his part, therefore, the judgment and decree dated 14.02.2018 passed by the Court-below is hereby set-aside. The appellant is directed to refund the amount of Rs.10,00,000/- to respondent No.1 and if the possession over the disputed land is with respondent No.1 then the same be given to the appellant. The amount so deposited by the plaintiff in the CCD during the course of execution of the sale-deed in pursuance to the ex parte decree and if it has not been withdrawn by respondent No.1 then the said amount be

also refunded to him.

**19.** In the result, the appeal filed by the appellant/defendant is **allowed** and the suit filed by respondent No.1/plaintiff is accordingly dismissed.

**(SANJAY DWIVEDI)**  
**JUDGE**