CGHC010155042018 2026:CGHC:44669

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SAIFAN KHAN Digitally signed by SAIFAN KHAN

HIGH COURT OF CHHATTISGARH AT BILASPUR

Judgment Reserved on : 26.09.2026

Judgment Pronounced on : 15.10.2026

Judgment (Fully) Uploaded on : 15.10.2026

[Arising out of common judgment and decree dated 11.07.2017, passed in Civil Suit No.286-A/2014 (Smt. M. Kamla vs. Smt. Gulaba Manikpuri) by the Addl. District Judge, Bilaspur (CG)]

FA No. 335 of 2018

Smt. M. Kamla W/o Shri M.Govind Raju Aged About 60 Years R/o Shankar Nagar, Ward No. 37 Near Gudakhu Factory Bilaspur, Tahsil Bilaspur, P.S. Torwa, Civil And Revenue District Bilaspur, Chhattisgarh (Plaintiff), District : Bilaspur, Chhattisgarh

--- **Appellant/ Plaintiff**

Versus

Smt. Gulaba Manikpuri W/o Shri Premdas Manikpuri Aged About 47 Years Caste Kayasth, R/o Shankar Nagar, Ward No.37 Near Gudakhu Factory Bilaspur, Tahsil Bilaspur, P.S. Torwa, Civil And Revenue District Bilaspur, Chhattisgarh (Defendant), District : Bilaspur, Chhattisgarh

--- **Respondent/ Defendant**

WITH

FA No. 427 of 2017

Smt. Gulaba Manikpuri W/o Shri Premchand Manikpuri, Aged About 42 Years R/o Shankar Nagar, Ward No. 37, Near Gudakhu Factory, Tahsil District Bilaspur Chhattisgarh., Chhattisgarh

---**Appellant/ Defendant**

Versus

Smt. M. Kamla W/o Shri M. Govind Raju, Aged About 55 Years R/o R/o Shankar Nagar, Ward No. 37, Near Gudakhu Factory, Tahsil District Bilaspur Chhattisgarh. , Chhattisgarh

--- **Respondent/ Plaintiff**

Cause-title taken from Case Information System (CIS)

For Plaintiff : Mr. Sunil Sahu, Advocate
For Defendant : Mr. Hemant Kesharwani, Advocate

Single Bench: Hon'ble Mrs. Justice Sushma Sawant

CAV Judgment

1. Regarding being had to the similitude of the questions of facts and law involved and being arising out of the a common judgment dated 11.07.2017, on the joint request of learned counsel for the parties, both these appeals are clubbed together, heard together and being disposed of by this common judgment. However, for the sake of convenience facts are taken from **FA-335-2016** as leading case.

2. **FA-335-2016**, has been preferred by the **plaintiff Smt. M. Kamla**, invoking the appellate jurisdiction of this Court under Section 96 of the Code of Civil Procedure, 1908, challenging the judgment & decree dated 11.07.2017, passed in Civil Suit No.286-A/2014 (Smt. M. Kamla vs. Smt. Gulaba Manikpuri) by the Addl. District Judge, Bilaspur (CG), by which the learned Additional District Judge has dismissed the suit filed by the plaintiff Smt. M. Kamla seeking specific performance of contract dated 31.03.2009 and permanent injunction by restraighten the defendant- Smt. Gulaba Manikpur from selling the suit property in favour of any

other person and further allowed the counter claim/suit filed by the defendant. Whereas, **FA-427-2017** has been preferred by **defendant Smt. Gulaba Manikpuri** challenging the same impugned judgment and decree dt. 11.07.20017, by which though the learned trial Court allowed the counter-claim filed by the defendant but directed her to pay an amount of Rs.3,58,700/- to the plaintiff Smt. M. Kamla within a peri0d of two months, failing which, the **plaintiff Smt. M. Kamla**, will be entitled for interest on the said amount @ 6% from 31.03.2009.

3. The aforesaid challenge has been made on the following factual backdrop: -

(For the sake of convenience, parties hereinafter will be referred as per their status shown and ranking given in the civil suit before the trial Court.)

Factual Matrix

-:Admitted facts between the parties:-

4. The admitted facts between the parties are that the **defendant Smt. Gulaba Manikpuri** had entered into an agreement with the **plaintiff Smt. M. Kamla** on 31.03.2009 for sale of the suit house situated at Mohalla Shankar Nagar, Ward No. 37, Tahsil and District Bilaspur, Chhattisgarh, bearing Khasra No. 764/35, admeasuring 538.21 square feet, out of which a house has been constructed over the ground-floor portion measuring 444 square feet (hereinafter referred to as the “suit property”) for a total sale consideration of Rs. 4,70,000/-.

-:Case of the Plaintiff- Smt. M. Kamla before the Trial Court:-

5. According to the **plaintiff Smt.M.Kamla**, the defendant Smt. Gulaba Manipiri disclosed that the suit property had been mortgaged with the State Bank of Indore, Bus Stand Branch, Bilaspur, against a commercial loan, in respect whereof a sum of Rs. 3,96,000/- was outstanding, and that the said bank had subsequently merged with the State Bank of India.

6. It is also the case of the **plaintiff Smt. M. Kamla**, that she deposited Rs. 10,000/- in the **defendant Smt. Gulaba Manikpuri**'s loan account on 31.03.2009 and executed an agreement to sell the suit property before witnesses, which was duly notarized by a Public Notary. The **plaintiff Smt. M. Kamla**, thereafter paid Rs. 50,000/- to Shri Narayan Sahu on 10.04.2009 and Rs. 24,000/- on 25.04.2009 in cash, towards the liability of the **defendant Smt. Gulaba Manikpuri**. Consequently, an aggregate amount of Rs. 74,000/- stood adjusted towards the sale consideration as advance/earnest money under the agreement. Further, pursuant to the said agreement, the possession of the suit property has also been handed over by the **defendant Smt. Gulaba Manikpuri** to the **plaintiff Smt. M. Kamla**, and from the date of agreement the **plaintiff Smt. M. Kamla**, is in possession of the said house.

7. The **plaintiff Smt. M. Kamla**, further pleads that it was also agreed by the **defendant Smt. Gulaba Manikpuri** that the **plaintiff Smt. M. Kamla**, would, at her convenience or in one

lump sum, deposit with the Bank the loan amount taken against the suit house, which would be Rs. 3,86,000/- only, and in the event of the loan amount being in excess thereof, the **defendant Smt. Gulaba Manikpuri** would be liable to make payment of such excess amount to the Bank. Immediately upon the entire loan amount being cleared and the property being released from the Bank's charge/mortgage, the sale deed would be registered forthwith. As per the agreement, the **plaintiff Smt. M. Kamla**, continued to make payments towards the loan amount in installments from time to time. On 12.12.2012, an installment amount was also deposited by the **plaintiff Smt. M. Kamla**, with the Bank. Thus, in all, a sum of Rs. 4,39,700/- has already been paid to the **defendant Smt. Gulaba Manikpuri** towards the advance sale consideration of the suit house. Out of the total sale consideration stipulated under the agreement, only Rs. 30,300/- remains payable to the **defendant Smt. Gulaba Manikpuri**, which the **plaintiff Smt. M. Kamla**, is ready and willing to pay.

8. The **plaintiff Smt. M. Kamla**, further pleads that on 20.03.2014, the **defendant Smt. Gulaba Manikpuri**, after repaying the entire loan amount due and payable, got the suit house released from the mortgage/charge. Thereafter, the **plaintiff Smt. M. Kamla**, contacted the **defendant Smt. Gulaba Manikpuri** on 23.03.2014 and 06.04.2014 for getting the sale deed registered. However, the **defendant Smt. Gulaba**

Manikpuri kept giving evasive replies and, after discussing the matter with the members of her family, refused to execute the sale in favour of the **plaintiff Smt. M. Kamla**, and is prepared to sell the suit property to some other person. The **defendant Smt. Gulaba Manikpuri** is also ready and willing to demolish the approximately 30-year-old tin-roofed house and latrine/bathroom structure standing on the suit property, thereby causing irreparable loss and injury to the Plaintiff. The **plaintiff Smt.M.Kamla** had the remaining sale consideration amount, stamp duty and registration charges, available with her from the date of execution of the agreement. Hence, with aforesaid pleading, the **plaintiff Smt.M.Kamla** filed a civil suit before the learned trial Court seeking seeking specific performance of contract dated 31.03.2009 and permanent injunction by restraighten the **defendant Smt. Gulaba Manikpuri** from selling the suit property in favour of any other person.

-:Written Statement of the Defendants before the Trial Court:-

9. The **defendant Smt. Gulaba Manikpuri** filed its written statement and denied the averments of the plaint except the admitted facts and submitted that as on the date of the agreement dated 31.03.2009, a loan of Rs. 3,96,000/- was outstanding against the suit property. On the said date, the **plaintiff Smt.M.Kamla** paid only Rs. 10,000/- towards the loan, whereas the remaining amount of Rs. 3,86,000/- was, as per Clause 8 of the agreement, required to be paid by the **plaintiff**

Smt.M.Kamla either in the prescribed monthly installments or in one lump sum. However, the **plaintiff Smt.M.Kamla** failed to make the said payment.

10. It is further stated by the **defendant Smt. Gulaba Manikpuri** that the **plaintiff Smt.M.Kamla** knowingly and deliberately failed to repay the bank loan, as a result of which the interest continued to accrue and the outstanding amount increased. The **plaintiff Smt.M.Kamla** herself is responsible for the increase in the said liability. The **defendant Smt. Gulaba Manikpuri** further pleaded that the **plaintiff Smt.M.Kamla** did not make payment of the bank loan in accordance with the stipulated monthly installments, but instead made payments according to her own convenience, as a result of which the Bank auctioned the house/property. The Bank published an advertisement regarding the auction in the daily newspaper Dainik Bhaskar dated 13.02.2014. The said information was also communicated to the **plaintiff Smt.M.Kamla**, and she was requested to pay the outstanding loan amount before the auction of the house. However, the **plaintiff Smt.M.Kamla** did not make the payment. Thereafter, the **defendant Smt. Gulaba Manikpuri** borrowed money from a moneylender and, on 20.03.2014, deposited the requisite amount and got the suit house released from the mortgage/charge. The **plaintiff Smt.M.Kamla** failed to pay the loan amount within the stipulated period and remained negligent/defaulting in complying with the terms and conditions

of the agreement. Thus, no cause of action arose in favour of the **plaintiff Smt.M.Kamla** on 20.03.2014. The **plaintiff Smt. M.Kamla**'s suit is barred by limitation and since the agreement to sell was not registered, the suit is liable to be dismissed.

-:Counter claim of the defendant before the trial Court:-

11. In accordance with the averments of the written statement, the **defendant Smt. Gulaba Manikpuri** has further stated in her counter-claim that the suit house had been mortgaged under a home loan, and as the loan could not be repaid, an agreement was entered into with Narayan Sahu for sale of the house and possession thereof was handed over to him. Subsequently, when Narayan Sahu expressed his inability to repay the loan, the **plaintiff Smt.M.Kamla** entered into an agreement to sell dated 31.03.2009 with the **defendant Smt. Gulaba Manikpuri** for a sale consideration of Rs. 4,70,000/-, subject to certain terms and conditions.

12. Since a loan amount of Rs. 2,96,000/- remained outstanding and the **plaintiff Smt.M.Kamla** failed to comply with the terms of the agreement, particularly the obligation to deposit/pay the loan amount, the **defendant Smt. Gulaba Manikpuri** obtained a loan from a moneylender and got the suit house released from the mortgage. Therefore, on the basis of her ownership, the **defendant Smt. Gulaba Manikpuri** is entitled to obtain possession of the suit house from the **plaintiff Smt.M.Kamla**. On the basis of the aforesaid averments, the **defendant Smt.**

Gulaba Manikpuri has prayed that her counter-claim be allowed and that an order/decree be passed directing the **plaintiff Smt.M.Kamla** to hand over vacant possession of the suit house, along with an order for costs of the suit.

-:Reply of the plaintiff to the counter-claim of the defendant before the trial Court:-

13. In reply to the counter claim, it has been stated by the **plaintiff Smt.M.Kamla** that the home loan was not Rs. 2,96,000/- indeed it was Rs. 3,96,000/-. The remaining amount under the agreement was also required to be paid to the **defendant Smt. Gulaba Manikpuri** herself, and the responsibility of getting the suit house released from the mortgage did not lie upon the **plaintiff Smt.M.Kamla**. On the basis of aforesaid submission, the **plaintiff Smt.M.Kamla** prayed for dismissal of the counter claim filed by the **defendant Smt. Gulaba Manikpuri**.

-:Findings of the learned trial Court:-

14. The learned Trial Court on the basis of the pleadings and the written statement as well as the material evidence available on record, has framed 6 issues and after due consideration of the facts and circumstances of the case though dismissed the suit filed by the **plaintiff Smt.M.Kamla**, but held her entitled for recovery of an amount of Rs.3,58,700/- from the **defendant Smt. Gulaba Manikpuri** and further allowed the counter-claim filed by the **defendant Smt. Gulaba Manikpuri** by recording thus:

A. The Plaintiff shall hand over possession to the **defendant Smt. Gulaba Manikpuri**, within two months from the date of the decree, of the property situated at Mohalla Shankar Nagar, Ward No. 37, Tehsil and District Bilaspur, Chhattisgarh, bearing Khasra No. 764/35, measuring 538.21 square feet, out of which a constructed portion measuring 444 square feet has a building constructed thereon.

B. The **defendant Smt. Gulaba Manikpuri** shall pay a sum of ₹3,58,700/- (Rupees Three Lakh Fifty-Eight Thousand Seven Hundred only) to the **plaintiff Smt. M. Kamla**, within two months. In the event of failure to make the payment within the said period, interest at the rate of 6% per annum shall also be payable from 31.03.2009 until the date of payment.

C. Payment of the aforesaid amount by the **defendant Smt. Gulaba Manikpuri** shall be a condition precedent to the **plaintiff Smt. M. Kamla**, handing over possession of the property to the Defendant.

15. Being aggrieved by the aforesaid findings of the trial Court, **FA-335-2018** has been filed by the **plaintiff Smt.M.Kamla** on the following grounds:-

(i) That, the impugned judgment and decree passed by the learned trial Court is illegal, erroneous and contrary to law.

(ii) That the learned trial court has committed an error of law in recording the findings that the plaintiff- Smt. M. Kamla has

committed breach of agreement conditions and also committed an error of law in allowing the counter suit of defendant.

(iii) That the learned trial court has committed an error of law in dismissing the suit for specific performance of the contract though the agreement to sale and acceptance of the amount has been admitted by the defendant.

(iv) That the learned trial court has failed to see that the agreement is admitted between the parties and the plaintiff- Smt. M. Kamla has given the amount as per the terms and condition of the agreement and she has deposited the installment in the Bank and all the receipt were produce and proved therefore the dismissal of the suit of plaintiff- Smt. M. Kamla is bad in eye of law.

(v) That the learned trial court has failed to consider that the house in question was not purchase by the defendant in auction the major part of the loan has been deposited by the plaintiff and defendant deposit the remaining balance amount and get released the house from mortgage though in the auction proceedings the highest bidder is one Mahadev Appa but the defendant deposit the amount therefore auction sale has not been conformed in favour of Mahadev Appa.

(vi) That the learned trial Court failed to see that the present suit is for specific performance of the contract and plaintiff- Smt. M. Kamla has proved the execution of agreement and giving the amount therefore dismissal of the suit on relying the statement of

DW-1 defendant is not in accordance with the provisions of contract Act as the contract is admitted between the parties.

(vii) That the judgment of the trial court based on the presumption, surmises and conjunctures which could not be sustainable.

16. Whereas, being aggrieved by the findings of the trial Court to the extent of paying an amount of Rs.3,58,700/- to the **plaintiff Smt. M. Kamla**, within a period of two months, failing which, the **plaintiff Smt. M. Kamla**, will be entitled for interest on the said amount @ 6% from 31.03.2009, the **defendant has filed FA-427-2017** on the following grounds:-

(i) That, the impugned Judgment and Decree is bed in law, perverse, and against the fact, evidence and other material available in the record.

(ii) That, the learned trial Court imposed the said condition in the impugned decree without any claim in civil suit, which is not sustainable.

(iii) That, the trial Court has not considered the legal aspect regarding the suit was filed beyond the limitation, the agreement was entered on dated 31.03.2009 and suit was filed a 10.07.2014, which is barred by limitation.

(iv) That, in impugned judgment and decree the trial Court found that the plaintiff committed breach of condition therefore not entitled for any relief, and thus, the trial Court dismissed the

suit of plaintiff and allow the cross suit filed by the defendant, however, erroneously imposed the condition to pay Rs. 3,58,700/- to the plaintiff which is not sustainable.

(v) That, the learned trial Court has not considered the fact that the plaintiff has purchase the disputed house on auction held by the Bank, the plaintiff invest huge amount in auction proceeding and purchased the disputed house, this facts is admitted by the plaintiff, however, the learned trial Court not considered the aforesaid at all.

(vi) That, the learned trial Court has not considered that the plaintiff has failed to pay installment within a time therefore, loan amount was increased and due to non payment of the loan amount the Bank proceeding auction of said disputed house.

-:Proceedings before Appellate Court :-

17. Heard on the Appeal. In the context of the appeal and arguments, evidence and documents, available on record of the trial Court were examined.

-:Points for determination :-

18. In order to dispose of both the First Appeals, following questions are to be considered:-

(i) Whether the learned trial Court is justified in dismissing the the suit filed by the plaintiff seeking reliefs of specific performance of contract dated 31.03.2009 and permanent injunction by restraighten

the defendant from selling the suit property in favour of any other person ?

(ii) Whether the trial Court is justified allowing the counter-claim of the defendant and directing the plaintiff to hand over the possession of the suit property to the defendant ?

(iii) Whether the trial Court is justified in directing the defendant to pay an amount of Rs.3,58,700/- to the plaintiff within a period of two months, failing which, the plaintiff will be entitled for interest on the said amount @ 6% from 31.03.2009 ?

-:Arguments of the Plaintiff:-

19. On behalf of the **plaintiff Smt.M.Kamla** it is argued, with reference to the grounds raised in the memorandum of appeal, that the **plaintiff Smt. M. Kamla**, duly complied with the terms and conditions stipulated in the agreement **Ex.P-1**. She regularly deposited the amount in the bank in accordance with the agreed terms and was also ready and willing to deposit the remaining amount. Despite her compliance with the contractual obligations and her readiness to perform the remaining part of the contract, the learned Trial Court erred in deciding the matter against her and dismissing the suit for specific performance. It is, therefore, contended that the findings recorded by the learned Trial Court are contrary to the evidence available on record and are liable to be set aside.

-:Arguments of the Defendant:-

20. *Per contra*, the learned counsel for the defendant **Smt. Gulaba Manikpuri**, while supporting the order of restoration of possession passed by the learned Trial Court, has advanced arguments, in terms of the memorandum of appeal, challenging the correctness of the decree for refund of the amount. Placing reliance upon the judgment in ***Daya Ram v. Gyarsi Bai Khandelwal***, ***2016 SCC Online Chh 190*** it is contended that the **plaintiff Smt. M. Kamla**, was never ready and willing to perform her part of the contract and that, had she been so ready and willing, her bank loan would not have increased. It is further contended that the failure to perform the contract was attributable to the **plaintiff Smt. M. Kamla**, herself and, therefore, the learned Trial Court ought not to have granted a decree for refund of the amount. In ***Daya Ram (supra)***, this Court declined to grant relief to the **plaintiff Smt. M. Kamla**, on the ground that the plaintiff was not ready and willing to perform her part of the contract. Reliance has also been placed upon the judgments in ***Telikicherla v. Kalli Raj Rao, (2014) 15 SCC 743*** and ***U.N. Krishnamurthy v. A.M. Krishnamurthy, (2023) 11 SCC 775*** in support of the submissions concerning readiness and willingness.

21. The learned counsel for the defendant **Smt.Gulaba Manikpuri**, has further questioned the admissibility of the sale agreement **Ex. P-1**, placing reliance upon the judgment of this Court in

Swadhin Nag Chaudhary v. Ajay Francis @ Subba, 2026 SCC Online Chh 462. It is contended that possession of the suit property was delivered to the plaintiff at the time of execution of the said document and, therefore, in the absence of proper stamping, the document is inadmissible in evidence. On this basis, it is submitted that no relief could have been granted to the **plaintiff Smt. M. Kamla**, on the strength of the said document.

-: Details of evidence and documents available before the trial Court:-

22. Before the trial Court, in support of its case, the plaintiff examined herself as Smt. M. Kamla **(PW-01)** and exhibited documents vide **Ex.P/01 to Ex.P/38**. Whereas, in defence, though defendant examined herself as Smt. Gulaba Manikpuri **(DW-01)** but not exhibited any document.

-:Analysis of the Appellate Court:-

Points for determination No. (i) to (iii)-

23. All three issues are interdependent on each other and, therefore, they are being decided together.

24. Although both parties adduced extensive oral and documentary evidence before the Trial Court and subjected the witnesses examined on behalf of the opposite party to detailed cross-examination in support of their respective stands, the execution of the agreement to sell in respect of the suit property is not in dispute. Thus, notwithstanding the extensive evidence brought on record and the elaborate contest between the parties, the

controversy, in its essential nature, is confined within a relatively narrow compass.

25. The real point of disagreement is not whether the agreement to sell was executed, but rather the manner in which its terms and conditions were required to be performed, the respective obligations undertaken by the parties thereunder, and the party upon whom the responsibility for fulfilling the stipulated conditions rested. In other words, the central issue requiring adjudication is the proper interpretation of the terms of the agreement and the determination of the respective obligations of the parties in relation to its performance.

26. The plaintiff, **Smt. M. Kamla,** instituted a suit before the Trial Court seeking specific performance of the contract. The agreement to sell, marked as **Ex. P.-1**, stipulated that the **plaintiff Smt. M. Kamla**, would purchase the suit house, which was mortgaged with the bank by the **defendant, Smt.Gulaba Bai,** for a consideration of ₹4,70,000/-. Out of the said consideration, the plaintiff was required to deposit ₹3,86,000/- with the bank, either in installments or in a lump sum, and the sale deed was to be executed after the property was released from the mortgage.

27. Upon consideration of the evidence adduced by both parties before the Trial Court, it is apparent that neither party disputes the terms and nature of **Ex. P-1.** Since the **plaintiff Smt. M. Kamla**, has instituted the suit seeking specific performance of

the contract, the burden of establishing her entitlement to the relief claimed rests upon her. Therefore, even if **Ex. P-1** is accepted in the form in which it stands, certain material aspects emerge from its terms.

28. It is evident that, from the very date of execution of the agreement, the **plaintiff Smt. M. Kamla**, was aware that the suit house was mortgaged with the bank and that installments were required to be paid towards discharge of the outstanding bank liability. Consequently, she was also aware that, in the event of regular installments not being paid, the outstanding liability of the bank would continue to increase. Thus, the **plaintiff Smt. M. Kamla**, must necessarily be taken to have understood that the amount of ₹3,86,000/- mentioned in **Ex. P-1** represented the bank liability as it stood on the date of execution of the agreement and that, if the said amount was not deposited with the bank on that date, the outstanding liability would continue to increase on account of accruing interest and other applicable charges.

29. It is true that **Ex. P-1**, the agreement to sell, also contains a stipulation that, in the event of an increase in the outstanding amount, the enhanced amount would be paid by the defendant. However, in the facts and circumstances of the present case, the question as to which party was liable to pay the enhanced amount is not the material consideration. The more significant question is whether the **plaintiff was at all times ready and willing to perform her part of the contract**.

30. The parties to an agreement are at liberty to incorporate such terms and conditions as they mutually consider appropriate. In the present case also, the **plaintiff Smt. M. Kamla**, and the **defendant Smt. Gulaba Manikpuri** have incorporated the terms and conditions according to their own convenience. If both parties abide by the terms so agreed upon, no difficulty would ordinarily arise. However, when a party approaches the Court seeking legal relief on the basis of such an agreement, the entitlement to such relief must be examined in the light of the applicable legal requirements.

31. In a suit for specific performance of a contract, the Court must examine whether the **plaintiff Smt. M. Kamla**, has performed, or has always been ready and willing to perform, the essential terms of the contract required to be performed by him, as mandated under **Section 16(c)** of the **Specific Relief Act, 1963.** Merely incorporating terms in an agreement is not sufficient; the plaintiff must establish her readiness and willingness to perform her contractual obligations.

32. In this regard, the Hon'ble Supreme Court has also given a detailed interpretation in various precedents. In the matter of ***M/s J.P. Builders & Anr. Vs. A.Ramadas Rao & Anr., 2011 (1) SCC 429***, the Hon'ble Supreme Court while clarifying the difference between **"readiness"** and **"willingness"** emphasized that, **"Readiness"** means proving financial capability, and **"willingness"** means proving conduct that

indicates the intention that **"I truly want to complete the sale agreement."** The relevant portion of the opinion is as follows.

> "20. Section 16 of the Specific Relief Act, 1963 provides for personal bars to relief.
>
> > "16. *Personal bars to relief*.—Specific performance of a contract cannot be enforced in favour of a person—
> >
> > (*a*) who would not be entitled to recover compensation for its breach; or
> >
> > (*b*) who has become incapable of performing, or violates any essential term of, the contract that on his part remains to be performed, or acts in fraud of the contract, or wilfully acts at variance with, or in subversion of, the relation intended to be established by the contract; or
> >
> > (*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."
>
> 21. Among the three sub-sections, we are more concerned about sub-section(c). "Readiness and willingness" is enshrined in clause (c) which was not present in the old Act of 1877. However, it was later inserted with the recommendations of the 9th Law Commission's report. This clause provides that the person seeking specific performance must prove that he has performed or has been ready and willing to

perform the essential terms of the contract which are to be performed by him.

22. The words “ready” and “willing” imply that the person was prepared to carry out the terms of the contact. The distinction between “readiness” and “willingness” is that the former refers to financial capacity and the latter to the conduct of the plaintiff wanting performance. Generally, readiness is backed by willingness.”

33. Similarly, in another Judgment **N.P. Thirugnanam Vs. Dr. R. Jagan Mohan Rao & Ors., (1995) 5 SCC 115**, the Hon'ble Supreme Court while interpreting Section 16 (c) of the **Specific Relief Act, 1963** in relation to **"readiness"** and **"willingness"** has opined that, For such relief, it is a precondition that the plaintiff must continuously prove readiness and willingness; it is necessary for him, before filing the suit, i.e., from the date of execution of the contract up to the date of passing of the decree, to prove his readiness and willingness. The relevant portion is as follows:-

“.....Section 16(c) of the Act envisages that plaintiff must plead and prove that he had 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 those terms the performance of which has been prevented or waived by the defendant. The continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of specific performance. This circumstance is material and relevant and is required to be considered by the court while granting or refusing to grant the relief. If the plaintiff fails to either aver or prove the same, he must fail. To adjudge whether the plaintiff is ready and willing to perform his part of the contract, the court must take into consideration the conduct of the plaintiff prior and subsequent to the filing of the suit alongwith other

> attending circumstances. The amount of consideration which he has to pay to the defendant must of necessity be proved to be available. Right from the date of the execution till date of the decree he must prove that he is ready and has always been willing to perform his part of the contract. As stated, the factum of his readiness and willingness to perform his part of the contract is to be 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 always ready and willing to perform his part of the contract."

34. In case of **R.C. Chandiok & Anr. vs. Chuni Lal Sabharwal & Ors. (1970) 3 SCC 140,** the Hon'ble Supreme Court is also of the view that the intent of **"readiness"** and **"willingness"**and the conduct of the plaintiff can be tested by the facts and circumstances of the case, the relevant portions of which are as follows:

> **"'readiness and willingness' cannot be treated as a straight jacket formula. This has to be determined from the entirety of the facts and circumstances relevant to the intention and conduct of the party concerned."**

35. In the light of the principles held above, it would be appropriate to examine the present case as to whether the circumstances of this case indicate that the plaintiffs were, from the very beginning, "ready and willing" to complete the contract of sale ?

36. In this regard, a perusal of the documents produced by the **plaintiff Smt. M. Kamla**, herself, namely, **Ex. P-2** to **P-35**, through which she sought to establish the deposit of amounts with the bank, as well as **Ex. P-36**, being the notice issued by her

to the defendant in relation to performance of the agreement, reveals that the plaintiff had made payments towards the bank liability only **up to 12-12-2012.**

37. Furthermore, the statement of the plaintiff, **Smt. M. Kamla (P.W.-1)**, in paragraph **14 of her cross-examination** also brings out the fact that the notice of auction of the suit house was issued on 13-12-2014. This circumstance indicates that the plaintiff had not paid the consideration **amount up to 13-12-2014**. The documentary evidence produced by the **plaintiff Smt. M. Kamla**, herself, particularly **Ex. P-1,** when read in conjunction with her admissions in cross-examination, assumes significance in assessing whether she had the financial capacity and continued readiness and willingness to perform her contractual obligations.

38. The material on record indicates that the entire consideration stipulated in **Ex. P-1** was never available with her at any point of time. Had the **plaintiff Smt. M. Kamla**, possessed the requisite amount, she could have deposited the same in the bank in one lump sum. Further, she did not produce even a copy of her bank account to establish that she had sufficient funds available with her at the time of execution of the agreement.

39. **Ex. P-1** was executed in the year 2009, whereas the payment of the consideration amount continued to be made in installments up to the year 2014. This circumstance supports the inference that the **plaintiff Smt. M. Kamla**, was never financially ready to perform her part of

the contract. In such circumstances, the learned Trial Court has committed no error in recording an adverse finding against the **plaintiff Smt. M. Kamla**, on this aspect. The judgment relied upon by the defendant, ***Telikicherla v. Kalli Raj Rao, (2014) 15 SCC 743*** and ***U.N. Krishnamurthy v. A.M. Krishnamurthy, (2023) 11 SCC 775*** also supports the same proposition.

40. As regards the decree directing restoration of possession of the suit property to the defendant, once the agreement to sell the suit property cannot be specifically enforced in favour of the **plaintiff Smt. M. Kamla**,, her continued possession of the suit property cannot be sustained on that basis. Consequently, the original owner is entitled to recover possession of the suit property. Therefore, the learned Trial Court has committed no error in directing the **plaintiff Smt. M. Kamla**, to restore possession of the suit property to the defendant.

41. The **defendant Smt. Gulaba Manikpuri** has placed reliance upon the judgment in **Swadhin Nag Chaudhary v. Ajay Francis @ Subba, 2026 SCC OnLine Chh 462**, and challenged the admissibility of **Ex.P-1**, contending that no relief could be granted against her on the basis of the said document. However, **Ex.P-1** does not contain any mention of the transfer or delivery of possession of the suit property pursuant to the agreement to sell. In the absence of any such mention, the

document cannot be treated as a "**conveyance**" on the ground that possession was delivered thereunder.

42. Therefore, the principle relied upon in the aforesaid judgment, concerning the requirement of payment of stamp duty applicable to a conveyance, is not attracted to the facts of the present case. It is also noteworthy that no objection regarding the admissibility of **Ex.P-1** was raised before the learned Trial Court. In any event, the said objection does not assume significance in the context of the remaining relief claimed in the present case.

43. The learned Trial Court has recorded a well-reasoned finding that the **plaintiff Smt. M. Kamla**, had paid an amount of ₹3,58,700 towards the sale consideration to the defendant, as reflected in **Ex.P-2 to Ex.P-35**, (except Ex.P-34). The Trial Court has also passed a reasoned order directing refund of the said amount. No other legal objection has been raised warranting interference with this finding. Accordingly, the finding and direction of the learned Trial Court regarding refund of the amount do not call for any interference.

-:Final Conclusion:-

44. In view of the foregoing discussion, this Court finds no merit in either of the appeals. The learned Trial Court has rightly declined the relief of specific performance of the agreement to sell and has also committed no error in directing restoration of possession of the suit property to the **defendant Smt. Gulaba Manikpuri** and refund of the amount paid by the **plaintiff Smt. M. Kamla**,

towards the sale consideration. The findings recorded by the learned Trial Court do not warrant any interference by this Court.

45. Accordingly, **First Appeal No. 335 of 2018** and **427 of 2017** are hereby **dismissed**. The judgment and decree passed by the learned Trial Court are affirmed.

46. In the facts and circumstances of the case, the parties shall bear their own costs.

A decree be drawn up accordingly.

sd/-
(Sushma Sawant)
JUDGE

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