



2025:DHC:7655-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment reserved on: 14.08.2025

Judgment pronounced on: 03.09.2025

+ RFA(OS) 12/2021

SH. MAHENDER PAL CHHABRA & ANR.Appellants

Through: Mr. Siddharth Batra, Mr. Chinmay Dubey, Ms. Shivani Chawla, Mr. Rhythm Katyal, Ms. Archna Yadav, Ms. Preetika Shukla, Advs.

versus

SH. SUBHASH AGGARWALRespondent

Through: Mr. Kirti Uppal, Sr. Adv. with Mr. Nitin Mittal and Ms. Archisha Satyarthi, Advs.

CORAM:

HON'BLE MR. JUSTICE ANIL KSHETARPAL

HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

JUDGMENT

ANIL KSHETARPAL, J.

1. The Appellants have preferred the present Appeal assailing the correctness of the judgment dated 15.02.2021 [hereinafter referred to as the “Impugned Judgment”] while decreeing the suit of the Respondent for specific performance of an Agreement to Sell [hereinafter referred to as the “ATS”], executed on 22.01.2008, in respect of the residential house bearing No. C-20, Ashok Vihar,



Phase-I, Delhi-110052, on payment of the balance sale consideration of Rs. 5,21,00,000/- (Rupees Five Crores Twenty-One Lakhs only).

Brief Factual Matrix:

2. The sale consideration was pegged at Rs. 6,11,00,000/- (Rupees Six Crores Eleven Lakhs only). The execution of the ATS on receipt of Rs. 60,00,000/- (Rupees Sixty Lakhs only) as earnest money is admitted by the parties. An additional payment of Rs. 30,00,000/- (Rupees Thirty Lakhs only) on 24.03.2008 is also not in dispute. It was agreed between the parties that the sale deed would be executed on 10.05.2008, after the Appellants [defendants before the learned Single Judge] had the property mutated in their favour and converted into freehold, the property having originally been leasehold. In substance, the property was initially owned by the Appellants'/Defendants' mother, who passed away, whereupon it was to be mutated in favour of the Appellants/Defendants in the official record. Since it was a leasehold property, the Appellants/Defendants were required to get it converted into freehold. For the purpose of deciding the present case, the relevant clauses are extracted hereinbelow:

“5. That balance amount of Rs.5,51,00,000/- (Rupees five crore fifty one lacs only) is to be paid by the Second Party on or before 10.05.2008, or on the execution of relevant documents by the First Party, in the office of the concerned Sub-Registrar in the name of the above said purchaser or his Nominee.(s) and handing over possession by this date.

6. That the first party has agreed above shall get the mutation and free hold done before the final date of payment i.e 10.05.2008. The final payment will be made only after the conversion and mutation of above mentioned property is completed.



7. That the First Party shall deliver all the original documents relating to the said Property to the Second Party at the time of final payment of the sale consideration by the Second Party or at the time of registration of Sale-Deed in the office of concerned Sub-Registrar."

3. On 19.08.2008, the Respondent [Plaintiff before the learned Single Judge] filed a suit for specific performance of the ATS with consequential relief of permanent injunction, while asserting that he was always ready and willing to perform his part of the contract, however, the Defendants failed to fulfill their obligation of getting the property mutated and converted into freehold. It was also alleged that on 10.05.2008, the Appellants/Defendants were not available at their residence, as they were away in Punjab, and that on 06.06.2008, upon enquiry regarding the arrival of the Appellants/Defendants, the Respondent/Plaintiff contacted them, but the Appellants/Defendants asked for ten more days' time. Subsequently, on 22.06.2008, a meeting took place between the parties, and the Appellants/Defendants promised to transfer the property and execute the sale deed. The Appellants/Defendants failed to take steps, and on 16.07.2008, the Respondent/Plaintiff sent a notice to the Appellants/Defendants, but there was no response. Hence, the Respondent/Plaintiff filed the suit on 19.08.2008.

4. The Appellants/Defendants, while contesting the suit, asserted that the Respondent/Plaintiff neither had the balance sale consideration nor was prepared to get the sale deed executed on payment of balance amount in their favour. They further contended that they had been misled by Mr. Raj Kumar Tejwani [hereinafter referred to as 'Mr. R.K. Tejwani'], one of the attesting witnesses to



the ATS and a property broker, who had charged Rs. 2,00,000/- (Rupees Two Lakhs only) for getting the property mutated in their favour and converted into freehold, but failed to take any steps in that regard despite the Appellants/Defendants having signed all necessary documents on two different occasions. Thereafter, the Appellants/Defendants also instituted a suit against Mr. R.K. Tejwani for recovery of Rs. 2,00,000/- before the Senior Civil Judge (North), Rohini Courts, which was dismissed *vide* judgment dated 09.02.2017, holding that there was no document in existence between the parties regarding payment of the alleged amount, as nothing had been produced on record. The suit for recovery is not between the parties. The issues adjudicated therein do not substantially arise for consideration in the present proceedings. The said judgment does not fall within the ambit of Sections 40, 41 or 42 of the Indian Evidence Act, 1872, and is, therefore, covered under Section 43 thereof¹.

5. On the basis of the pleadings and with the consent of the parties, the following issues were framed:

“1.Whether the Plaintiff is entitled to specific performance of the Agreement to Sell dated 22.01.2008 (Ex. P4)? OPP

2.Whether the sum of Rs. 30,00,000/- (Thirty Lakhs Rupees only), paid by the Plaintiff to the Defendants on 24.03.2008, was pursuant to an oral agreement of the same date (i.e., 24.03.2008) arrived at between the Plaintiff and the Defendants? If so, to what effect? OPD

3.Relief.”

6. On the same day, by an interim order dated 12.03.2010, the Appellants/Defendants were directed to deposit Rs. 90,00,000/-

¹ Sections 40, 41, 42 and 43 of the Indian Evidence Act, 1872 have been repealed and re-enacted, in substance, as Sections 35, 36, 37 and 38 respectively of the Bharatiya Sakshya Adhiniyam, 2023.



(Rupees Ninety Lakhs only) with the Registrar General. In support of his case, the Respondent/Plaintiff examined himself as PW-1 and further examined Mr. R.K. Tejwani as PW-3 and Mr. Davinder Singh as PW-2, who were attesting witnesses to the ATS.

7. On the other hand, the Appellants/Defendants examined themselves as DW-1 and further examined Mr. Balraj Singh, Assistant (Lab), DDA, as DW-2, Mr. N.S. Vashisht, Stamp Vendor, as DW-3, and Mr. Satya Prakash, Patwari, as DW-4.

8. Consequently, the learned Single Judge decreed the suit in favour of the Respondent/Plaintiff, holding that he was entitled to a decree of specific performance in respect of the ATS entered into between the parties.

Submissions on behalf of the Appellants:

9. Learned counsel for the Appellants/Defendants has made the following submissions:

i. By relying on *Section 16(c)* of the Specific Relief Act, 1963 [hereinafter referred to as ‘SRA’], it is contended that the Respondent/Plaintiff was never ready and willing to perform his obligation. It is contended that he did not purchase any stamp papers on or around 10.05.2008 for execution of the sale deed, and also did not pay the requisite court fee at the time of filing the suit. Thus, the Respondent/Plaintiff, in the present case, has failed to discharge this statutory obligation.



- ii. Learned counsel has relied upon the judgments of the Supreme Court in ***His Holiness Acharya Swami Ganesh Dassji vs. Sita Ram Thapar***² and the same has also been relied upon ***U.N. Krishnamurthy vs. A.M. Krishnamurthy***³, wherein a distinction is drawn between readiness and willingness. It states that 'readiness is the financial capacity to perform the contract and pay the purchase price, while 'willingness' is the intention to perform as shown by conduct. In this relied judgment, there is no documentary proof that the plaintiff had ever funds to pay the balance of consideration. Assuming that he had the funds, he has to prove his willingness to perform his part of the contract.
- iii. For this, learned counsel for the Appellants/Defendants relied upon judgment of the Supreme Court in ***Umabai vs. Nilkanth Dhondiba Chavan***⁴, wherein it is held that it was for the Plaintiff to prove his readiness and willingness to pay the stipulated amount as mandated under *Section 16(c)* of the SRA, and such burden could not shift to the Appellants. It is further held that under *Section 16(c)* of the SRA, the Plaintiff must prove readiness and willingness through conduct and supporting evidence, not merely by averments in the plaint or statements in examination-in-chief. Such readiness and willingness must be assessed from the overall pleadings and circumstances on record.
- iv. The Respondent/Plaintiff was required to pay the balance sale consideration of Rs. 5,21,00,000/- to the Appellants/Defendants on

² (1996) 4 SCC 526.

³ 2022 SCC OnLine SC 840.

⁴ (2005) 6 SCC 243.



or before 10.05.2008 and cause the execution of the relevant documents in his favour before the concerned Sub-Registrar. In support of his arguments, he relied upon the judgment of the Supreme Court in ***Kalawati vs. Rakesh Kumar***⁵, wherein it is held that an obligatory no-objection certificate from the appropriate authority, along with requisite permissions and clearances, was required for the sale of the disputed land.

v. The Respondent/Plaintiff to demonstrate his financial capacity had made unsupported averments, as he claimed, during his evidence, that he had entered into an ATS with respect to another property and was expecting to realise funds therefrom to pay the balance consideration. It is also submitted that some of his properties had been leased to banks, against which he could have availed a loan. However, no such financial arrangements were placed on record. For this, he relied upon the judgment of the Supreme Court in ***Kalawati (supra)***, wherein it held that the Plaintiff did not have the necessary funds to pay the balance consideration, as his low income and bank balance showed his incapacity. Though he had taken a loan from his cousin, it was meant for business purposes and not for the disputed land. There was no evidence that he could repay that loan and also raise sufficient funds for the balance consideration, making it clear that he was incapable of meeting both liabilities.

vi. From a scrutiny of the Income Tax Returns of the Respondent/Plaintiff, it is seen that the Respondent/Plaintiff neither

⁵ (2018) 3 SCC 658.



had the means nor any credible plan to raise the balance amount. Even the figures shown therein confirm that the **Earnest money of Rs. 60,00,000/- (Rupees Sixty Lakhs only)** was financed by a third-party loan from M/s Merlin Travels. Additionally, the certificate of the Chartered Accountant produced by the Respondent/Plaintiff, purporting to show the valuation of certain properties in the year 2015, is not admissible and, therefore, cannot be taken into account.

vii. By relying upon the various statements of cross-examinations as aforementioned, he would contend that the Respondent/Plaintiff is a seasoned property dealer/real estate developer, who routinely engages in real estate transactions and in entering into shabby deals.

viii. The learned Single Judge, while considering the aspect of 'readiness' of the Respondent/Plaintiff, erroneously relied upon the annual rent of Rs. 47,00,000/- (Rupees Forty-Seven Lakhs only) received by the Respondent/Plaintiff and, on that basis, reached the unfounded conclusion that the said property ought to be worth Rs. 9.4 crores (Rupees Nine Crores Forty Lakhs only).

Submissions on behalf of the Respondent:

10. *Per Contra*, learned senior counsel for the Respondent/Plaintiff submitted that not only had the Defendants failed to get the property mutated in their favour, but no steps were taken to convert the leasehold property into freehold property. Though, the Respondent/Plaintiff has proved his readiness and willingness but in any case, the Appellants/Defendants, first of all, were required to take steps for mutation and conversion of property and the question of



payment of balance consideration would come subsequently. Moreover, the Respondent/Plaintiff at every step has proved his readiness and willingness as he paid additional amount of Rs.30,00,000/- (Rupees Thirty Lakhs only) on 24.03.2008 and thereafter, visited the residence of Appellants/Defendants on 10.05.2008 and sent notice on 10.07.2008, which was not responded to by the Appellants/Defendants and finally filed the suit on 19.08.2008.

Findings and Analysis:

11. This Court has heard the learned counsel representing the parties at length, and with their able assistance, perused the paper book along with the scanned copy of the requisitioned record in support of their submissions.

12. In terms of *Section 16(c)* of the SRA, it is incumbent upon the Respondent/Plaintiff to specifically aver and establish that he has always been ready and willing to perform his part of the contract. However, pursuant to the recent amendment to the Act, the requirement of incorporating such an averment in the plaint has since been dispensed with. The relevant provisions are extracted hereinbelow:

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

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



13. The expression 'readiness' and 'willingness' is in two parts: first, the Plaintiff has to prove that he was always ready to execute the ATS. The learned Single Judge has found that the Respondent/Plaintiff was previously in the business of Real Estate/ construction, but he had stopped that business, which is factually incorrect because the Appellant/Defendants has produced the directory of residents of Ashok Vihar, wherein the Respondent's/Plaintiff's company has been advertised as a construction company. The Respondent/Plaintiff, while appearing in evidence, admitted the aforesaid fact, however, he submitted that the advertisement was given only in routine, and that he is not carrying out construction. Both attesting witnesses, namely Mr. R.K. Tejwani and Mr. Devender Singh, are property brokers/Real Estate agents. Mr. R.K. Tejwani, along with his father and brother, runs the firm G.K. Properties, which not only deals in sale, purchase and renting of property, but also runs Tejwani Documentation.

14. This Bench is of the view that the learned Single Judge has erred in recording the finding that the Respondent/Plaintiff was always ready and willing to perform his part of the contract on the basis of the following events:

- i. Execution of the ATS;
- ii. Additional payment of Rs. 30 lakhs on 24.03.2008;
- iii. Plaintiff sent a notice calling upon the defendants to perform their part of the contract;



- iv. The final payment was to be made only after mutation was sanctioned and the suit property was converted into freehold;
- v. As per the terms of the agreement, Appellants/Defendants had undertaken to deliver the original documents concerning the suit property;
- vi. Respondent's/Plaintiff's obligation to pay would get triggered only if the Appellants/Defendants had obtained mutation and conversion;
- vii. The Appellants/Defendants have taken an incorrect defence;
- viii. The Appellants/Defendants did not respond despite Respondent's/Plaintiff's notice dated 16.07.2008;
- ix. The Respondent/Plaintiff has a rental income of Rs. 47,70,000/- (Rupees Forty-Seven Lakhs Seventy Thousand only) per year and has shares in various immovable properties.

15. This Bench has reached a considered opinion, founded upon the following determinative factors:

- i. As per the ATS, the sale deed was to be executed and registered upon payment of Rs. 5,21,00,000/- on 10.05.2008 in the office of the Registrar (Registration). However, the Respondent/Plaintiff did not visit the office of the Registrar, and it is not the case of the Respondent/Plaintiff that he visited the office of the Registrar for the purpose of registration of the sale deed. The Respondent/Plaintiff has also failed to produce any positive evidence to prove the availability of resources for



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payment of the balance sale consideration of Rs. 5,21,00,000/- on 10.05.2008. In fact, the Respondent/Plaintiff was required to prove that, on 10.05.2008, he had made arrangements for payment of the balance sale consideration of Rs. 5,21,00,000/- (Rupees Five Crores Twenty-One Lakhs only). The Respondent/Plaintiff claims that he was to get money as he had entered into an agreement to sell his property located in Shakti Nagar. However, neither the aforesaid ATS with respect to the property located in Shakti Nagar has been produced, nor has the Plaintiff proved as to when and how much amount was to be received by him. The Appellants/Defendants, while filing the written statement, specifically averred that the Respondent/Plaintiff did not hold the financial capacity to pay the said amount but the Plaintiff failed to prove his readiness and willingness to pay the balance amount.

ii. The learned Single Judge has erred in observing that the Respondent/Plaintiff has a share in various immovable properties, however, this by itself would not prove that the Respondent/Plaintiff had made arrangements for paying the balance sale consideration of Rs. 5,21,00,000/- (Rupees Five Crores Twenty-One Lakhs only), together with stamp duty and registration charges. The Respondent/Plaintiff, in order to prove his case, has produced his income tax record as well as the record of the Respondent/Plaintiff associated with his Hindu Undivided Family (hereinafter referred to as “HUF”). As per the profit and loss account for the year ending on 31.03.2005, his gross profit



was Rs. 3,98,950/- (Rupees Three Lakhs Ninety-Eight Thousand Nine Hundred and Fifty only), whereas his total gross income was Rs. 13,19,730/- (Rupees Thirteen Lakhs Nineteen Thousand Seven Hundred and Thirty only), which included rental income of Rs. 7,30,000/- (Rupees Seven Lakhs Thirty Thousand only) per year. For the year ending on 31.03.2006, his gross income from various sources was Rs. 16,89,889/- (Rupees Sixteen Lakhs Eighty-Nine Thousand Eight Hundred and Eighty-Nine only). For the Financial Year 2007–2008, the gross total income of the Respondent/Plaintiff was Rs. 9,95,725/- (Rupees Nine Lakhs Ninety-Five Thousand Seven Hundred and Twenty-Five only). The Appellants/Defendants have also produced a Chartered Accountant's Certificate to show that his net worth was Rs. 8,68,39,183/- (Rupees Eight Crores Sixty-Eight Lakhs Thirty-Nine Thousand One Hundred and Eighty-Three only), which included various immovable properties. However, it is pertinent to state that no ready cash/deposits in the bank/arrangement of required sum from financial institution was available. Similarly, the net worth of the Respondent/Plaintiff and his HUF was Rs. 22,11,22,740/- (Rupees Twenty-Two Crores Eleven Lakhs Twenty-Two Thousand Seven Hundred and Forty only), the majority of which was invested in immovable properties. The Respondent/Plaintiff was expected to pay Rs. 5,21,00,000/- (Rupees Five Crores Twenty-One Lakhs only) on 10.05.2008, however, he failed to produce evidence to prove that he had the financial capacity to pay the said amount.



16. The effort of the Plaintiff has been to withhold from the Court that he was in the business of Real Estate. **The Defendants claim that the Plaintiff is in the business of Real Estate.** From the evidence produced by the Defendant, it is proved that the Plaintiff is in the business of Real Estate.

17. Moreover, the address of the suit property is C-20, Ashok Vihar, Phase-I, Delhi-110052, whereas the Respondent/Plaintiff resides at C-3, Ashok Vihar, Phase-I, Delhi-110052. In other words, the Respondent/Plaintiff and the Appellants/Defendants are neighbours. On 16.07.2008, the Respondent/Plaintiff sent a notice calling upon the Appellants/Defendants to complete the documentation, including mutation and conversion, and to execute the sale deed. The Respondent/Plaintiff claims that he was always ready to perform his part of the contract; however, it is his stand that he is liable to pay only when the properties were not only mutated in favour of Defendant Nos. 1 and 2 but also converted from leasehold to freehold. Once he knew that the Defendants were avoiding the execution of the sale deed on 10.05.2008, he ought to have immediately taken action, at least by way of getting a notice issued.

18. On a careful reading of the deposition of the Respondent/Plaintiff in his statement and cross-examination, and also of Mr. R.K. Tejwani, who appeared as PW-3, it is evident that both have known each other for the last 8 to 10 years and were hand-in-glove with each other. They stated as under:

Statement of the Respondent/Plaintiff in cross-examination dated 13.10.2011:



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“My. relations with Mr. Tejwani are cordial. (Vol. As I have been trusting him).

.....
I personally know Mr. S.L Tejwani, father of Sh. R.K Tejwani. However, I do not know Mr. R.K Tejwani's brother nor I am aware about the profession of Mr. S.L Tejwani as well as brother of Mr. R.K Tejwani.

.....
Although the same pertains to me but no such business was ever initiated or carried out by me under .such name and style.

.....
In the meeting dated 22.06.08, Mr. Tejwani as well as one Vikas Gupta of M/s J.K Properties were present. (Vol. Some common neighbours were also present). ”

Statement of Mr. R.K Tejwani dated 16.03.2012:

I know the plaintiff since last 8/10 years. I also know the defendant no. 1 & 2 for the last around five years. Defendant no. 1 & 2 had approached me sometime in or around November, 2007, in connection with sale of property no. C-20, Ashok Vihar, Phase -I, Delhi 4/5 buyers were traced but the deal was finalized with the plaintiff The parties had met for the first time on 22.01.2008 and prior to that there had been telephonic conversations between the parties as well as myself, in connection with settling the terms and conditions of the sale. I had arranged their meeting on 22.01.2008 once the negotiations had ripened for further process.”

19. The second attesting witness in the ATS is also in the Real Estate business and operates from the Ashok Vihar area. The Appellants/Defendants have produced a directory issued by the Ashok Vihar Residents' Welfare Association, which proves that Mr. R.K. Tejwani runs G.K. Properties, which includes Tejwani Documentation. Thus, it is clear that the Appellants/Defendants were pitted against three Real Estate brokers.

20. It is the case of the Appellants/Defendants that while making payment of Rs. 2,00,000/- (Rupees Two Lakhs only) for getting the mutation sanctioned and to get the property converted from leasehold



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to freehold, they handed over signed documents required in this regard to Mr. R.K. Tejwani, the broker. The Court has refused to rely upon such a statement on the ground that the Appellant/Defendants had not produced any receipts. It will be noted here that out of Rs. 2,00,000/-, Rs. 1,28,000/- (Rupees One Lakh Twenty-Eight Thousand only) was to be paid to the Delhi Development Authority as conversion fee, hence, Mr. R.K. Tejwani was not expected to issue any receipt. The statement of Mr. R.K. Tejwani is not above board, when he was questioned on this aspect of the matter, he denied being approached by the Defendants for mutation or conversion. The Defendants' plea in this regard appears to be more plausible. They signed the documents required for conversion on two different occasions, firstly, on the date of the ATS dated 22.01.2008, which were handed over to Mr. R.K. Tejwani and thereafter, on 01.04.2008, when the Appellants/Defendants kept its xerox copy.

21. Further, it is surprising that the Respondent/Plaintiff paid Rs.30,00,000/- (Rupees Thirty Lakhs only) on 24.03.2008, without verifying whether the Appellants/Defendants had applied for mutation and conversion or not, while Mr. R.K. Tejwani was along with him. Needless to mention that a man of ordinary prudence would have enquired from the Appellants/Defendants about the steps taken by them towards fulfillment of their responsibilities first of all before making an additional payment of Rs. 30,00,000/- (Rupees Thirty Lakhs only), and that also after the period of two months from the date of the ATS.



22. The learned Single Judge has picked holes in the case of the Appellants/Defendants, whereas the Respondent/Plaintiff was not only required to prove his readiness throughout, but also his willingness.

23. The deposition of the Plaintiff is not reliable because he has not been a truthful witness and has not only tried to conceal the factum of his business of Real Estate but also made an attempt to mislead the Court. He has produced a certificate issued by Chartered Accountant Mr. V.K. Sehgal and Associates. It does not prove that he had wherewithal to pay Rs. 5,21,00,000/- (Rupees Five Crores Twenty-One Lakhs only) besides stamp duty and registration charges on 10.05.2008.

24. The learned Single Judge has observed that the obligation of the Plaintiff to pay the remaining amount would get triggered only if the Appellants/Defendants had obtained mutation and conversion. The aforesaid reasoning is incorrect because the aforementioned *clauses 5 and 6* of the ATS are required to be read harmoniously. On the one hand, the Plaintiff, vide notice dated 16.07.2008 and while filing the suit, seeks specific performance of the ATS, whereas, on the other hand, he claims that he is not required to prove that he had made arrangements for payment of the amount until the Defendants get the property mutated in their favour and converted into freehold. Additionally, on a reading of Mr. R.K. Tejwani's deposition, it is evident that he admits that his father and brother live with him in the same house and that his brother is engaged in the business of documentation and conversion of properties. The statement to that effect is extracted as under:



"No other member from my family works with me as far as my profession is concerned. I lived along with my father Sh. S.L. Tejwani and my brother Sh. Ashok Tejwani in the same house. (Vol. another brother of mine Sh. Kamal Tejwani also lived with us.) My father retired from Ministry of Urban Development around 1987. My father had never remained posted in DDA on deputation. My brother is engaged into documentation relating properties.

Although, it is correct that my father and brother were running documentation work under the name and style - Tejwani Documentation, however, my father has ceased to work on account of his age. "My brother and my father also used to deal in documentation. For the purpose of conversion of properties. My brother used to do the same as my father has already stopped working."

25. In such circumstances, the Defendants' case stands proved once the Broker and his family members, who were in the business of documentation and conversion of properties and were also close aides of the Respondent/Plaintiff, were involved. The job of getting the mutation sanctioned and the property converted is accepted to have been handed over to the Broker. Moreover, the Appellants/Defendants have specifically stated that, on the day of execution of the Agreement, the required documents for mutation and conversion were signed and handed over to Mr. R.K. Tejwani. Subsequently, according to Mr. R.K. Tejwani, those documents were lost, and hence a fresh set of documents was handed over to him on 01.04.2008. The Appellants/Defendants retained photocopies, which have been produced. The evidence of the Appellants/Defendants on this score appears to be more plausible and reliable.

26. Learned senior counsel for the Respondent/Plaintiff is correct in contending that the Respondent/Plaintiff was not required to display cash. However, in order to show his readiness, the



Respondent/Plaintiff was expected to visit the office of the Sub-Registrar on 10.05.2008, since the sale deed was to be executed and registered in the office of the Registrar and produce cogent evidence to prove capacity to immediately pay Rs.5,21,00,000/-, if the Defendants had completed the documentation. It is not his case that before 10.05.2008 he was aware of the fact that the Defendants have failed to get the property mutated and converted.

27. Learned senior counsel has also contended that the Appellants/Defendants required the amount for the marriage of their daughters, however, this would not be sufficient to prove that the Plaintiff was always ready. The Appellants/Defendants have not disputed that they agreed to sell the property. Hence, the marriage of the daughters of both the Defendants would not advance the Respondent's/Plaintiff's case. Similarly, the Defendants have not pleaded and proved hardship. However, even if hardship was proved, there was no specific issue. It may be noted here that this Court is not accepting the arguments of learned counsel representing the Defendants on the question of hardship.

28. Keeping in view the aforesaid discussion, it is evident that the Respondent/Plaintiff failed to prove his readiness and willingness, and therefore, the Appellants/Defendants are entitled to forfeit the earnest money. Failure of the Appellants/Defendants to respond to the notice dated 16.07.2008, by itself would not be sufficient to assume that the Respondent/Plaintiff is ready and willing. The Appellants/Defendants have also failed to prove that there was an oral agreement for payment of a further amount, however, the Appellants'/Defendants' failure



would not clothe the Respondent/Plaintiff with an enabling right to claim specific performance, particularly when he is required to stand on his own legs. In view of the settled proposition of law, the Appellants/Defendants are entitled to forfeit the amount of earnest money, which is Rs. 60,00,000/- (Rupees Sixty Lakhs only), however, they are liable to refund the remaining amount of Rs. 30,00,000/- (Rupees Thirty Lakhs only), which was an additional payment but never part of the earnest money. Reference in this regard can be placed upon the judgment of the Supreme Court in *Satish Batra v. Sudhir Rawal*⁶. The relevant paragraphs are as follows:

“15. The law is, therefore, clear that to justify the forfeiture of advance money being part of “earnest money” the terms of the contract should be clear and explicit. Earnest money is paid or given at the time when the contract is entered into and, as a pledge for its due performance by the depositor to be forfeited in case of non-performance by the depositor. There can be converse situation also that if the seller fails to perform the contract the purchaser can also get double the amount, if it is so stipulated. It is also the law that part-payment of purchase price cannot be forfeited unless it is a guarantee for the due performance of the contract. In other words, if the payment is made only towards part-payment of consideration and not intended as earnest money then the forfeiture clause will not apply.

16. When we examine the clauses in the instant case, it is amply clear that the clause extracted hereinabove was included in the contract at the moment at which the contract was entered into. It represents the guarantee that the contract would be fulfilled. In other words, “earnest” is given to bind the contract, which is a part of the purchase price when the transaction is carried out and it will be forfeited when the transaction falls through by reason of the default or failure of the purchaser. There is no other clause that militates against the clauses extracted in the agreement dated 29-11-2011.

17. We are, therefore, of the view that the seller was justified in forfeiting the amount of Rs 7,00,000 as per the relevant clause, since the earnest money was primarily a security for the due

⁶ (2013) 1 SCC 345.



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performance of the agreement and, consequently, the seller is entitled to forfeit the entire deposit. The High Court has, therefore, committed an error in reversing the judgment of the trial court."

29. This Court has observed that the Plaintiff/Respondent has taken an inconsistent stand. It seems that, on the one hand, he sent a legal notice, and on the other, he has shown concern to get the sale deed mutated. In view of the above, it has to be penned down that 'readiness' and 'willingness' must go hand in hand and operate in tandem.

Conclusion:

30. Consequently, the Appeal is allowed, and the judgment of the learned Single Judge granting a decree for specific performance is set aside. However, the Plaintiff is held entitled to recover Rs. 30,00,000/- (Rupees Thirty Lakhs only) along with interest @ 9% per annum from the date of the payment, i.e., 24.03.2008, till the amount is refunded from the Defendants which shall be charge upon the suit property.

31. Hence, the present Appeal is accordingly disposed of.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.
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