

Court No. - 73

Case :- FIRST APPEAL No. – 388 of 2025

Appellant :- Tushar Agrawal

Respondent :- Ganesh Prasad

Counsel for Appellant :- Shakti Shanker Tiwari, Subhash Chandra Tiwari, Umesh Chandra Verma

Counsel for Respondent :- Ravish Chandra Srivastava

Hon'ble Sandeep Jain, J.

1. The instant appeal has been preferred by the defendant under Section 96 CPC against the impugned judgment and decree dated 11.3.2025 passed by the Court of Civil Judge(Senior Division) Bhadhoi, Gyanpur in O.S. no. 9 of 2022 Ganesh Prasad vs. Tushar Agrawal, whereby the plaintiffs suit for the specific relief of registered agreement to sell dated 30.12.2019 has been decreed.

Plaint case

2. The plaintiff/respondent Ganesh Prasad filed O.S. no. 9 of 2022 against the defendant/appellant with the averments that the defendant is the owner in possession of 2 storeyed building bearing house no.1, facing Gyanpur Road, area 2184 ft² or 202.973 m² constructed on Arazi no.1, situate in village Poore Gulab(out of town), Pargana Bhadohi, Tehsil Gyanpur, District Sant Ravidas Nagar, the full details of which were described at the foot of the plaint, which is hereinafter referred to as the 'house'. It is the case of the plaintiff that the defendant was in need of money for increasing his business and for personal needs, hence he decided to sell the above house with land and constructions to the plaintiff. The defendant approached the plaintiff and requested him to purchase the said house which was agreed to be sold by the defendant for a consideration of ₹ 30 lakhs only, out of which a sum of ₹ 20 lakhs was to be paid as earnest

money, so as to enable the defendant to meet his immediate financial requirements and it was agreed that the sale deed shall be executed by the defendant after receiving the balance consideration of ₹ 10 lakhs.

3. It was further averred by the plaintiff that in pursuance of the above agreement, a registered agreement to sell was executed by the defendant in favour of the plaintiff on 30.12.2019 which was also registered in the office of sub-registrar, Gyanpur, Bhadohi in Bahi no.1, Zild no. 3053, at pages 103 – 124, at serial no. 4288 on 30.12.2019. It was further averred that the consideration of ₹ 20 lakhs was paid through cheque no. 223569 dated 30.12.2019 drawn on Indian Bank, Branch Lahurabir, Varanasi at the time of execution of the agreement to sell by the plaintiff to the defendant. It was further averred that thereafter, the plaintiff personally met the defendant as per his assurance and requested him to execute and register the sale deed, but no heed was paid by the defendant.

4. It was further averred that when inspite of the lapse of considerable period, the defendant did not express his readiness for execution and registration of sale deed, then after waiving previous notices dated 4.5.2021 and 23.8.2021, the plaintiff sent his last registered notice on 11.9.2021 to the defendant on his residential address as well as his business address by registered post requesting him to execute and register the sale deed, which was personally served upon the defendant on 14.9.2021, but the defendant failed to fulfil the terms of the agreement.

5. It was further averred that when the plaintiff came to know that the defendant was negotiating for sale of the house with others, then the plaintiff was compelled to file the suit for specific performance of the registered agreement to sell. It was further averred that the plaintiff was and is still ready and willing to purchase the disputed premises as agreed upon in accordance with the terms and conditions of the

registered agreement to sell and to pay the balance amount of ₹ 10 lakhs to the defendant at the time of execution and registration of the sale deed.

6. In view of the above backdrop, the plaintiff claimed the following reliefs against the defendant:-

(A) That by means of a decree of specific performance of contract of sale the defendant be directed to execute and register the sale deed in respect of the 2 storeyed building bearing house no.1, facing Gyanpur Road, area 2184 ft² or 202.973 m² constructed on Arazi no.1, situate in village Poore Gulab(out of town), Pargana Bhadohi, Tehsil Gyanpur, District Sant Ravidas Nagar, the full details of which were described at the foot of the plaint, as per the terms and conditions of registered agreement of sale deed dated 30.12.2019 on receiving of the balance amount of ₹ 10 lakhs in favour of the plaintiff within the time to be fixed by the court and the plaintiff be put in the actual physical possession thereof failing which, the court may be pleased to execute and register the sale deed on behalf of the defendant in favour of the plaintiff and the plaintiff be put in actual possession over the property detailed and described below.

(B) That the cost of the suit be decreed in favour of the plaintiff as against the defendant.

(C) That any other relief to which the plaintiff is found entitled in the opinion of the court the same also be passed in favour of the plaintiff as against the defendant.

Written statement of the defendant

7. The defendant Tushar Agrawal in his written statement denied the plaint averments. It was averred that the plaintiff is in the business of silver and the defendant obtains his silver from the plaintiff, and

thereafter, sells it, in this way, since the year 2016, business was going on between them. It was further averred that the relationship of plaintiff and defendant started in the year 2013, when the defendants father Narendra Kumar was alive, there was a mutual trust between the plaintiff and defendant due to which the defendant, trusted the plaintiff.

8. It was further averred that the defendant is having just one residential house, in which his shop is also situated, besides this house, the defendant has no other house to reside. It was specifically averred that neither any conversation ever took place between him and the plaintiff for selling his house nor he executed any agreement to sell on 30.12.2019 in favour of the plaintiff regarding his house. It was further specifically averred that neither the plaintiff gave him consideration of ₹ 20 lakhs through cheque no. 223569 dated 30.12.2019 drawn on Indian Bank, branch Lahurabir nor the above cheque was encashed in plaintiffs bank account. It was further averred that the defendant was not having any financial necessity so as to sell his house.

9. It was further averred that the disputed house was valued not less than ₹ 2 crores, and in order to usurp his house, the plaintiff has managed to get fraudulently executed from him, in collusion with the scribe and witnesses, the alleged agreement to sell dated 30.12.2019, by showing the disputed house to be valued at only ₹ 30 lakhs, whereas at that time, it was valued not less than ₹ 2 crores. It was specifically averred that the defendant never executed the alleged agreement to sell dated 30.12.2019. It was also specifically averred that he never received any legal notice dated 11.9.2021, allegedly sent by the plaintiff. It was also averred that the defendant was not negotiating to sell his sole house to anyone. The plaintiff was not having any cause of action to file the instant suit.

10. It was further averred by the defendant that he used to purchase, after making payment to the plaintiff, raw silver from the plaintiff, and after refining it, used to sell the refined silver to the plaintiff, after receiving its payment from the plaintiff. It was further averred that taking advantage of the above business relations, the plaintiff has fabricated a forged and fraudulent agreement to sell dated 30.12.2019, in collusion with the scribe, witnesses and sub-registrar, which was not binding upon the defendant, which is a void document.

11. It was further averred that the plaintiff 's suit was premature, was also barred by Section 16 and 20 of the Specific Relief Act. It was also averred that the defendant neither negotiated nor had any conversation with Maneesh Kumar Jaiswal for selling his house nor received ₹ 10 lakhs for selling it or has executed any agreement to sell. The plaintiff was never having the financial capacity to purchase the disputed house. The plaintiff was nor is, ready and willing to fulfil the terms of the agreement to sell. The suit has been improperly valued and insufficient court fees has been paid by the plaintiff. The plaintiff 's suit was not legally maintainable and was liable to be dismissed with special costs under Section 35-A CPC.

Issues framed by the trial court

12. The following issues were framed by the trial court (English translation):-

(i) Whether the plaintiff is entitled to specifically enforce the agreement to sell dated 30.12.2019 ? OPP

(ii) Whether the plaintiff negotiated to purchase the disputed house for a consideration of ₹ 30 lakhs, out of which ₹ 20 lakhs was paid as earnest money to the defendant ? OPP

(iii) Whether the suit is under valued? OPD

(iv) Whether the court fees paid by the plaintiff is insufficient ? OPD

(v) Whether the plaintiff's suit is barred by Section 16 and 20 of the Specific Relief Act ? OPD

(vi) Whether the defendant is entitled to special costs under Section 35 CPC from the plaintiff ? OPD

(vii) Whether the suit is bad for non-joinder of necessary party ? OPD

(viii) Whether the plaintiff is entitled to any relief ?

Documentary evidence of plaintiff

13. The plaintiff has filed the original agreement to sell dated 30.12.2019, the copy of legal notice dated 11.9.2021, original postal receipts, the certified copy of his bank account statement in Indian Bank, certified copy of the sale deeds dated 8.1.2016, 20.3.2017, 27.11.2018, 29.4.2019, the certified copy of the agreement to sell executed by the defendant in favour of Maneesh Kumar Jaiswal, the bank account statement of M/s Ganesh Jewellers, the report of the handwriting expert, etc.

Documentary evidence of defendant

14. Certified copy of sale deeds, certified copy of khatauni, etc.

Oral evidence of the parties

15. The plaintiff Ganesh Prasad has examined himself as PW-1, Shyamchandra as PW-2 and handwriting expert Mohd. Shahrukh as PW-3, whereas, the defendant Tushar Agrawal has examined himself as DW-1.

Reasoning of the trial court

Issue no. 1 and 2

16. The trial court concluded that the defendant executed an agreement to sell dated 30.12.2019 in favour of plaintiff for a

consideration of ₹ 30 lakhs out of which ₹ 20 lakhs was paid by the plaintiff to the defendant as earnest money. The trial court also concluded that no fraud was committed by the plaintiff upon the defendant, taking advantage of business relations between them. The trial court also concluded that the plaintiff always remained ready and willing to get the sale deed executed in his favour. Both the issues were decided in favour of the plaintiff.

Issue no.3 and 4

17. The trial court concluded that the suit has been properly valued by the plaintiff at ₹ 30 lakhs and sufficient court fees of ₹ 2,25,410/- was paid by the plaintiff. Both the issues were decided in favour of the plaintiff vide order dated 7.7.2022.

Issue no. 5

18. The trial court concluded that the plaintiff's suit was not barred by Section 16 and 20 of the Specific Relief Act.

Issue no. 6 and 7

19. The trial court concluded that the defendant was not entitled to special costs from the plaintiff under Section 35 CPC. It also concluded that the suit was not bad for non-joinder of necessary parties since the plaintiff has impleaded the necessary party in the suit.

Issue no. 8

20. The trial court concluded that as per the agreement to sell dated 30.12.2019 the sale deed was to be executed within 3 years in favour of the plaintiff after paying the balance sale consideration of ₹ 10 lakhs but when the defendant, after receiving the legal notice from the plaintiff, failed to execute the sale deed in favour of the plaintiff, then

the plaintiff was compelled to file a suit for specific performance of the registered agreement to sell dated 30.12.2019, which was perfectly legal. The trial court also concluded that the suit of the plaintiff was not premature, which was filed within the three-year duration fixed by the parties for specific performance of the agreement to sell. This issue was decided in favour of the plaintiff.

21. Accordingly, the plaintiffs suit for the specific performance of the registered agreement to sell dated 30.12.2019 was decreed and the plaintiff was ordered to pay the remaining consideration of ₹ 10 lakhs to the defendant, and the defendant was directed to execute and register the sale deed within 2 months in favour of the plaintiff and also to hand over the possession of the disputed property to the plaintiff. Aggrieved against which, the defendant has filed the instant appeal under Section 96 CPC.

Submissions of learned counsel of the defendant appellant

22. Sri Pramod Jain learned Senior Counsel for the appellant submitted that there was business relationship between the plaintiff and the defendant since the year 2013. The defendant used to purchase raw silver from the plaintiff and after refining it, used to sell the refined silver to the plaintiff and taking advantage of this business relationship, the plaintiff fraudulently got executed the disputed agreement to sell from the defendant. He further submitted that the defendant was only having one house in which he was residing with his family and in which his shop/firm was also situated, hence the defendant could not have sold this immovable property to the plaintiff. He further submitted that the defendant was not having any financial necessity/stringency to sell his property to the plaintiff.

23. Learned counsel further submitted that the defendant never went to the sub-registrar office on 30.12.2019 to get the agreement to sell

executed and registered in favour of the plaintiff. He further submitted that the alleged agreement mentions that cheque no. 223569 for ₹ 20 lakhs was given by the plaintiff to the defendant towards earnest money but the cheque was never encashed by the defendant in his bank account, which implies that the consideration of the alleged agreement was never paid by the plaintiff to the defendant. He further submitted that the amount of ₹ 20 lakhs related to the business transactions which took place between the firms of the plaintiff and the defendant, for sale – purchase of silver, which was not the consideration of the disputed immovable property.

24. Learned counsel further submitted that from the recitals of the legal notice given by the plaintiff to the defendant, it is apparent that the plaintiff never remained ready and willing to perform the terms of the alleged agreement. He submitted that it is mandatory to aver and prove that the plaintiff always remained ready and willing, is ready and willing and in future also, the plaintiff has to prove his continuous readiness and willingness till decree is passed in his favour. He submitted that the plaintiff has failed to comply with the requirements of Section 16 of the Specific Relief Act.

25. Learned counsel further submitted that the suit was filed by the plaintiff without proper court fees, which was subsequently made good, which suo-motu proves that the plaintiff was lacking the financial capacity to pay ₹ 10 lakhs to the defendant and was not ready and willing to fulfil the terms of the agreement.

26. Learned counsel further submitted that the market value of the disputed property was more than ₹ 2 crores hence there was no occasion for the defendant to sell it for a paltry consideration of only ₹ 30 lakhs. He submitted that in these circumstances the benefit of Section 20 of the Specific Relief Act should be given to the defendant and the plaintiff may not be granted the primary relief of specific

performance of the agreement to sell and he be returned earnest money with interest. With these submissions, it is prayed that the appeal be allowed.

27. In support of his contentions, learned counsel has relied upon the following case law-

(i) Ram Singh vs. Sughar Singh 2010 (83) ALR 547 (All)

(ii) Smt. Veena Agarwal @ Veena Garg vs. M/s Unjha Ayurvedic Pharmacy & ors. 2019 (1) ARC 221

(iii) Prem Kumar and others vs. Gurudev Singh and others Neutral Citation No. 2024:AHC: 193613

(iv) Sitaram and others vs. Radheshyam (2007) 14 SCC 415

(v) Azhar Sultana vs. B. Rajamani and others (2009) 17 SCC 27

(vi) C.S. Venkatesh vs. A.S.C. Murthy (Dead) through Lrs and others (2020) 3 SCC 280

(vii) R. Kandasamy (Dead) and ors. vs. T.R.K. Sarawathy and anr. (2025) 3 SCC 513

(viii) Shamsher Singh and others vs. Rajinder Kumar and others (2015) 5 SCC 531

(ix) K. Nanjappa (Dead) by Lrs vs. R.A. Hameed Alias Ameersab (Dead) by LRs and another (2016) 1 SCC 762

(x) Tulsi and others vs. Chandrika Prasad and others (2006) 8 SCC 322

(xi) Maharaj Singh and others vs. Karan Singh (Dead) by LRs and others (2024) 8 SCC 83

(xii) K. Bhaskaran Nair vs. Habeeb Mohd. and others 2002 SCC OnLine Ker 17

(xiii) Kunwar Surendra Bahadur Singh and others vs. Thakur Behari Singh and others 1939 AIR (PC) 117

28. Per contra, Sri Vijay Kumar Ojha learned counsel for the plaintiff respondent submitted that the defendant was in necessity of money for his personal requirements and for enhancing his business, hence he willingly without any coercion, agreed to sell his house for a consideration of ₹ 30 lakhs to the plaintiff, out of which, earnest

money of ₹ 20 lakhs was paid by cheque no. 223569 by the plaintiff to the defendant, which was encashed by the defendant in his savings account, which was proved by the documentary evidence submitted by the plaintiff before the trial court.

29. Learned counsel further submitted that the agreement to sell specifically mentions that the earnest money of ₹ 20 lakhs was given by the plaintiff to the defendant through cheque no. 223569 dated 30.12.2019 drawn on Indian Bank, Lahurabir branch, Varanasi and as per the bank statement paper no. 31-C, the above amount was debited on 3.1.2020 from the savings bank account of the plaintiff and credited to the bank account of the defendant, which falsifies the assertion of the defendant that he has not received the consideration of the alleged agreement.

30. He further submitted that from the oral evidence of the defendant it is proved that he went to the sub-registrar office willingly on 30.12.2019, and executed and got registered the disputed agreement to sell in favour of the plaintiff, which was also proved from the oral evidence of the plaintiff Ganesh Prasad PW-1, attesting witness Shyamchandra PW-2 and handwriting expert PW-3. He further submitted that the assertion of the defendant that the plaintiff got fraudulently executed from him the agreement to sell, is false, because neither any complaint in this regard was made to the police or any administrative official nor any criminal complaint was filed in the court. He further submitted that the defendant till date has not taken any steps for getting the disputed agreement to sell cancelled. He further submitted that prior to the disputed agreement to sell, the defendant had got executed sale deed of his house in his favour from his 2 brothers and had also facilitated execution of 3 sale deeds in favour of his wife, hence it is improbable that he was not aware of the procedures applicable and the formalities which are required to be

complied at the time of registration of the sale deed in the sub-registrar office. Learned counsel further submitted that the assertion of the defendant that he signed on the blank papers or his signature was fraudulently obtained on the agreement to sell by the plaintiff, is totally unbelievable and false, which has been rightly rejected by the trial court.

31. Learned counsel further submitted that the plaintiff always remained ready and willing to fulfil the terms of the agreement to sell by paying the balance sale consideration of ₹ 10 lakhs to the defendant, and a legal notice dated 11.09.2021 in this regard was also sent by the plaintiff to the defendant, which was duly received by the defendant on 14.09.2021, and when the defendant failed to execute the sale deed in favour of the plaintiff, then the plaintiff was compelled to file the suit for specific performance of the agreement to sell, which has been rightly decreed by the trial court in favour of the plaintiff.

32. Learned counsel further submitted that the disputed agreement to sell is a registered document, which has been proved in accordance with law by the plaintiff, and there is a presumption also regarding its due execution and registration, which has not been rebutted by the defendant. The defendant could have examined another attesting witness of the sale deed Arun Kumar Jaiswal in support of his contentions, but this witness was not examined by the defendant.

33. Learned counsel further submitted that the disputed property was never valued at ₹ 2 crores. The defendant has not filed any documentary evidence to prove that the disputed house was valued at ₹ 2 crores at the time of execution of agreement to sell.

34. It was further submitted that the part consideration of the agreement amounting to ₹ 20 lakhs was paid by the plaintiff through

cheque to the defendant, which was deposited by the defendant in his savings bank account, the receipt of which was also admitted by the defendant DW-1 in his oral evidence. Learned counsel submitted that the assertion of the defendant that the above consideration was towards the business transactions between the plaintiff and the defendant, is false. Learned counsel submitted that between November 2019 and March 2020 only 4 business transactions took place between plaintiff and the defendant, which was proved from the bank account statement of the plaintiff's firm paper no.65-C. Besides the above 4 transactions, no other business transaction ever took place between the plaintiff and the defendant. The defendant could have filed contra documentary evidence, but no such evidence was filed by the defendant. Learned counsel submitted that if the consideration of ₹ 20 lakhs paid by the plaintiff to the defendant was towards business transactions that took place between the plaintiff and the defendant, then the burden of proving this fact was upon the defendant, but no evidence was led by the defendant to prove this fact.

35. It was further submitted that the business transactions between the plaintiff and the defendant were recorded in the bank account statement existing in the name of the firm of the plaintiff and defendant, not in their personal savings account, which was also loaded on the GST portal, which could have been proved by the defendant by leading documentary evidence, but no such evidence was led by the defendant before the trial court. Learned counsel submitted that in view of the above, it cannot be presumed that the consideration of ₹ 20 lakhs paid by the plaintiff to the defendant was towards the business transaction.

36. It was further submitted that the defendant was not willing to execute the sale deed of the disputed house in favour of the plaintiff because he had agreed to sell the disputed house for a consideration

of ₹ 50 lakhs to Manish Kumar Jaiswal, and an unregistered agreement to sell was also executed by defendant in favour of Manish Kumar Jaiswal, a certified copy of which was also filed by the plaintiff before the trial court, hence, the plaintiff was compelled to give legal notice dated 11.9.2021 to the defendant and after the defendant failed to execute the sale deed in favour of the plaintiff, the plaintiff had no other option but to file the suit for the relief of specific performance of the agreement against the defendant.

37. Learned counsel further submitted that as per the amended provisions effective from 01.10.2018, the word "aver" has been deleted from Section 16(c) of the Specific Relief Act, 1963. He further submitted that now the grant of specific relief by the Court is not discretionary, but mandatory. With these submissions, it was prayed that the appeal is meritless and be dismissed.

38. In support of his contention, learned counsel has relied upon the following case law:-

(i) B. Santoshamma and another vs. D. Sarala and another (2020) 19 SCC 80

(ii) Prem Singh vs. Birbal (2006) 5 SCC 353

(iii) Sughar Singh vs. Hari Singh (Dead) through LRs and others (2021) 17 SCC 705

(iv) Parswanath Saha vs. Bandhana Modak (Das) and another 2024 INSC 1022

(v) Manjunath Anandappa Urf Shivappa Hanasi vs. Tammanasa & ors. (2003) 10 SCC 390

(vi) P. Daivasigamani vs. S. Sambandan (2022) 14 SCC 793

(vii) Syed Dastagir vs. T.R. Gopalakrishna Setty (1999) 6 SCC 337 (by 3 Judges)

(viii) M/s J.P. Builders and another vs. A. Ramadas Rao & anr. (2011) 1 SCC 429

(ix) Man Kaur (Dead) by Lrs vs. Hartar Singh Sangha (2010) 10 SCC 512

39. I have heard the learned counsel of both the sides, perused the record of the trial court and the case law submitted by them.

Issues for determination before this Court

40. The following issues arise for determination before this Court :-

(A) Whether the defendant executed a registered agreement to sell dated 30.12.2019 in favour of the plaintiff ?

(B) Whether any consideration was paid by the plaintiff to the defendant towards the execution of the agreement to sell in his favour?

(C) Whether the consideration paid by the plaintiff to the defendant was related to the business transactions that took place between them?

(D) Whether the alleged agreement to sell was got fraudulently executed by the plaintiff from the defendant taking advantage of the business relationship between them ?

(E) Whether the plaintiff continuously remained ready and willing to perform his part of the agreement to sell ?

(F) Whether the relief of specific performance of contract is still discretionary, after the amendment in Specific Relief Act w.e.f 01.10.2018?

Analysis of case law submitted by the parties

By appellant:-

41. A Single Judge Bench of this Court in the case of ***Ram Singh*** (supra) held that the use of the word ready alone may not be sufficient compliance of the mandatory requirement of Section 16(c) of the Specific Relief Act which postulates specific averment both with regard to readiness and willingness. It was further held that the essentials of pleadings are provided in Order 6 of CPC. Rule 3 of the said Order stipulates that forms as prescribed shall be used for all pleadings. It was further held that format of plaints for suits for specific performance of an agreement are provided in Forms 47 and 48 of Appendix A to the CPC. The aforesaid forms clearly provide for

making an averment that the plaintiff has been "and still is ready and willing specifically to perform the agreement on his part " or that " the plaintiff is still ready and willing to pay the purchase money of the said property to the defendant ". It was further held that the aforesaid forms of the suit for specific performance as provided in Appendix A to the CPC clearly demonstrate that the averment must be to the effect that the plaintiff is always and is still " ready and willing " to perform his part of the agreement, which is also a mandatory requirement of Section 16(c) of the Act failing which no contract of specific performance is enforceable. **The aforesaid judgment has subsequently been set aside by the Apex Court in the case of Sughar Singh vs. Hari Singh(Dead) through LRs and others (2021) 17 SCC 705, hence, it no longer constitutes good law and cannot be regarded as a binding precedent.**

42. A Division Bench of this Court in the case of *Smt. Veena Agarwal @Veena Garg* (supra), on facts, held that plaintiffs were throughout not ready and willing to perform the essential terms of contract in terms of Section 16(c) of the Specific Relief Act, because the dues of the bank were cleared belatedly by them.

43. A Single Judge Bench of this Court in the case of *Prem Kumar* (supra), where specific performance of an unregistered agreement to sell dated 31.5.1977 was claimed by the plaintiff, held that since the agreement to sell was mandatorily required to be registered in the State of Uttar Pradesh w.e.f. 1.1.1977 hence, the relief of specific performance cannot be granted of the above unregistered agreement to sell. It was further held that the plaintiff failed to plead and prove that he was continuously ready and willing to perform the terms of the agreement.

44. The Apex Court in the case of *Sitaram* (supra) has held that the basic principle behind Section 16(c) read with Explanation (ii) is that

any person seeking benefit of the specific performance of contract must manifest that his conduct has been blemishless throughout entitling him to the specific relief. The provision imposes a personal bar. The Court is to grant relief on the basis of the conduct of the person seeking relief. If the pleadings manifest that the conduct of the plaintiff entitles him to get the relief on perusal of the plaint he should not be denied the relief.

45. The Apex Court in the case of *Azhar Sultana* (supra) has held that Section 16(c) of the Specific Relief Act postulates continuous readiness and willingness on the part of the plaintiff and it is condition precedent for obtaining a decree of specific performance of a contract.

46. The Apex Court in the case of *C.S. Venkatesh* (supra) has held that mere plea that plaintiff was ready to pay consideration, without any material to substantiate this plea, cannot be accepted. It was further held that it is not necessary for plaintiff to produce ready money to establish its readiness and willingness to pay the consideration, but it is mandatory on his part to prove that he had the means to generate consideration amount within the time-frame contemplated in the contract. On facts, it was held that the plaintiff could neither establish his ability to pay the consideration amount nor could prove his readiness and willingness to perform his part of the contract, hence the rejection of suit for specific performance by the trial court was upheld by the Apex Court.

47. The Apex Court in the case of *R.Kandasamy(Dead)* (supra), on facts, held that there was no readiness and willingness on the buyers part to pay the balance sale consideration and get the sale deed executed and the buyer despite multiple reminders, did not come forward for execution of the sale deed. It was also held that the buyer was not having enough funds in her bank accounts to pay the

balance sale price and thus was not having the financial capacity to perform her part of the contract. On above facts, the discretionary relief of specific performance was not granted to the buyer.

48. The Apex Court in the case of *Shamsher Singh* (supra) on facts, declined to grant decree of specific performance having regard to the inequitable terms of agreement of sale which gave unfair advantage to plaintiff over defendant.

49. The Apex Court in the case of *K.Nanjappa(Dead)* (supra) on facts, declined to grant decree of specific performance in favour of the plaintiff, because the disputed contract was written on a quarter sheet of paper, and not on a proper stamp paper and was also written in small letters.

50. The Apex Court in the case of *Tulsi* (supra) has held that Section 91 of the Evidence Act mainly forbids proving of the contents of a writing otherwise than by writing itself and merely lays down the "best evidence rule". It, however does not prohibit the parties to adduce evidence in a case the deed is capable of being construed differently to show how they understood the same. In this case it was held that the transaction between the parties was a mortgage, not sale.

51. The Apex Court in the case of *Maharaj Singh* (supra) has held that Section 91 and 92 of the Evidence Act do not prevent parties from adducing evidence on the issue of whether the parties to the documents had agreed to contract on the terms set forth in the document. In this case, the original vendor had subsequently sold the property to 3rd parties. In these facts, it was held that the subsequent purchasers, who were not bona fide purchasers, can be directed to execute the sale deed along with the original vendor and there was no necessity to pray for the cancellation of the subsequent sale deeds. It was further held that since the 2nd plaintiff was not interested in

getting the specific performance, the decree ought to have been restricted to the undivided one-half share in the suit property in favour of only the 1st plaintiff.

52. The Kerala High Court in the case of *K.Bhaskaran Nair* (supra) has held that no oral evidence can be given to vary the terms of the contract. But, the intention of the parties can be proved by oral evidence and oral evidence can be given to show that the contract was not intended to be acted upon.

53. The Privy Council in the case of *Kunwar Surendra Bahadur Singh* (supra) has held that where one attesting witness was called to prove execution of the mortgage deed and his evidence was rejected as unreliable, then, further evidence of due execution and attestation is necessary. It was further held that signatures of sub- registrar and identifying witnesses affixed to registration endorsement admitting execution of mortgage deed do not suffice as attestation unless made in the presence of the executant. It was further held that endorsements made at the time of registration are relevant only to the matter of registration and do not prove due attestation under the Transfer of Property Act.

By respondent:-

54. The Apex Court in the case of *B.Santoshamma* (supra) while considering the provisions of the Specific Relief Act 1963, held as under:-

67. The relief of specific performance of an agreement, was at all material times, equitable, discretionary relief, governed by the provisions of the Specific Relief Act, 1963, hereinafter referred to as the SRA. Even though the power of the court to direct specific performance of an agreement may have been discretionary, such power could not be arbitrary. The discretion had necessarily to be exercised in accordance with sound and reasonable judicial principles.

68. Section 10 of the SRA as it stood prior to its amendment with effect from 1-10-2018 provided:

“10. Cases in which specific performance of contract enforceable.— Except as otherwise provided in this Chapter, the specific performance of any contract may, in the discretion of the court, be enforced—

(a) when there exists no standard for ascertaining actual damage caused by the non-performance of the act agreed to be done; or

(b) when the act agreed to be done is such that compensation in money for its non-performance would not afford adequate relief.

Explanation.—Unless and until the contrary is proved, the court shall presume—

(i) that the breach of a contract to transfer immovable property cannot be adequately relieved by compensation in money; and

(ii) that the breach of a contract to transfer movable property can be so relieved except in the following cases—

(a) where the property is not an ordinary article of commerce, or is of special value or interest to the plaintiff, or consists of goods which are not easily obtainable in the market;

(b) where the property is held by the defendant as the agent or trustee of the plaintiff.”

69. After amendment with effect from 1-10-2018, Section 10 of the SRA provides:

“10. Specific performance in respect of contracts.—The specific performance of a contract shall be enforced by the court subject to the provisions contained in sub-section (2) of Section 11, Section 14 and Section 16.”

70. After the amendment of Section 10 of the SRA, the words “specific performance of any contract may, in the discretion of the court, be enforced” have been substituted with the words “specific performance of a contract shall be enforced subject to ...”. The court is, now obliged to enforce the specific performance of a contract, subject to the provisions of sub-section (2) of Section 11, Section 14 and Section 16 of the SRA. Relief of specific performance of a contract is no longer discretionary, after the amendment.”

55. The Apex Court in the case of **Prem Singh** (supra) has held that

there is a presumption that a registered document is validly executed. A registered document, therefore, prima-facie would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption.

56. The Apex Court in the case of ***Sughar Singh*** (supra) has relied on the law laid down by the Apex Court in the case of ***Syed Dastagir*** (supra) **(by 3 Judges)** and has held as under :-

“24. Even otherwise it is required to be noted that as such there were concurrent findings of fact recorded by the learned trial court as well as the learned first appellate court on readiness and willingness on the part of the plaintiff, which were on appreciation of evidence on record. Therefore, in exercise of powers under Section 100CPC the High Court ought not to have interfered with such findings of fact unless such findings are found to be perverse. Having gone through the findings recorded by the learned trial court as well as the learned first appellate court on readiness and willingness on the part of the plaintiff, we are of the opinion that findings recorded cannot be said to be perverse and/or contrary to the evidence on record. On the contrary, the High Court has ignored the necessary aspects on readiness and willingness which are stated hereinabove including the conduct on the part of the parties.

25. Even the observations made by the High Court that Forms 47 and 48 of the Appendix A to the Code of Civil Procedure provide for making an averment that the plaintiff has been “and still is ready and willing specifically to perform the agreement on his part” or that “the plaintiff is still ready and willing to pay the purchase money of the said property to the defendant” and that “there is non-compliance of Section 16(c) of the Specific Relief Act and the plaint does not even contain any averment that the plaintiff ever required Defendant 1 to attend the office of the Sub-Registrar to execute the sale deed within time agreed are too technical in the facts and circumstances of the case. The overall circumstances and the conduct on the part of the parties are relevant consideration for the purpose of deciding the aforesaid issues and the prayer of the plaintiff in whose favour the execution of the agreement to sell has been held to be proved. The High Court has given unnecessary stress on the word “still”.

26. Even while proving the readiness and willingness the plaintiff is not required to make any averment that the plaintiff required executant of the agreement to sell to attend the office of the Sub-Registrar to execute the sale deed within the time agreed. Even as held by this Court in C.S. Venkatesh v. A.S.C. Murthy [(2020) 3 SCC 280 : (2020) 2 SCC (Civ) 90] to adjudge whether the plaintiff is ready and willing to perform his part of

contract, the Court must take into consideration the conduct of the plaintiff prior and subsequent to filing of the suit along with other attending circumstances in a particular case. It is also further observed that whether the plaintiff was ready and was always ready to perform his part of contract may be inferred from the facts and circumstances of a particular case. It is further observed that it is not necessary for the plaintiff to produce ready money but it is mandatory on his part to prove that he has means to generate consideration amount.

27. In the present case, even it was not the case on behalf of the defendants and even there is no finding by the High Court that the plaintiff was not having any means to generate consideration amount. It is required to be noted that as per the last extension and the document executed the balance amount of sale consideration i.e. Rs 16,000 was to be paid at the time of execution of the sale deed and earlier out of Rs 56,000 of total sale consideration, Rs 40,000 was already paid and there were two extensions at the instance of the original Defendant 1 who was his father-in-law.

28. Now, so far as the finding recorded by the High Court and the observations made by the High Court on Section 20 of the Act and the observation that even if the agreement is found to be duly executed and the plaintiff is found to be ready and willing to perform his part of the agreement, grant of decree of specific performance is not automatic and it is a discretionary relief is concerned, the same cannot be accepted and/or approved. In such a case, many a times it would be giving a premium to the dishonest conduct on the part of the defendant executant of the agreement to sell. Even the discretion under Section 20 of the Act is required to be exercised judiciously, soundly and reasonably. The plaintiff cannot be punished by refusing the relief of specific performance despite the fact that the execution of the agreement to sell in his favour has been established and proved and that he is found to be always ready and willing to perform his part of the contract. Not to grant the decree of specific performance despite the execution of the agreement to sell is proved; part sale consideration is proved and the plaintiff is always ready and willing to perform his part of the contract would encourage the dishonesty. In such a situation, the balance should tilt in favour of the plaintiff rather than in favour of the defendant executant of the agreement to sell, while exercising the discretion judiciously.

29. For the aforesaid, even amendment to the Specific Relief Act, 1963 by which Section 10(a) has been inserted, though may not be applicable retrospectively but can be a guide on the discretionary relief. Now the legislature has also thought it to insert Section 10(a) and now the specific performance is no longer a discretionary relief. As such the question whether the said provision would be applicable retrospectively or not and/or should be made applicable to all pending proceedings including appeals is kept open. However, at the same time, as observed hereinabove, the same can be a guide.

30. Even otherwise it is required to be noted that as such on applicability of Section 20 of the Act, no issue was framed either by the learned trial court or by the learned first appellate court or even by the High Court. The same has been dealt with by the High Court for the first time in a second appeal under Section 100CPC. Even otherwise no cogent reasons have been given as to why the decree of specific performance shall not be passed in favour of the plaintiff.”

57. The Apex Court in the case of ***Parswanath Saha*** (supra) has held that the question of hardship as mentioned in Section 20 of the Specific Relief Act 1963 is to be adjudged in the facts and circumstances of each case. It was further held that mere rise in price subsequent to the date of the contract or inadequacy of price is not to be treated as a hardship entailing refusal of specific performance of the contract. Further, the hardship involved should be one not foreseen by the party and should be collateral to the contract. In sum, it is not just one factor or two, that is relevant for consideration. But it is the sum total on various factors which is required to enter into the judicial verdict. It was further held that hardship has to be determined with reference to the circumstances existing at the time of the contract, except where the hardship has been caused from an act of the plaintiff subsequent to the contract.

58. The Apex Court in the case of ***Manjunath Anandappa Urf Shivappa Hanasi*** (supra) has reiterated that a plaintiff in a suit for specific performance of contract not only must raise a plea that he had all along been and even on the date of filing of suit was ready and willing to perform his part of contract, but also prove the same. Only in certain exceptional situation where although in letter and spirit, the exact words had not been used but readiness and willingness can be culled out from reading all the averments made in the plaint as a whole coupled with the materials brought on record at the trial of the suit, to the said effect, the statutory requirement of Section 16(c) of the Specific Relief Act may be held to have been complied with.

59. The Apex Court in the case of *P.Daivasigamani* (supra) has held that readiness and willingness are not one, but two separate elements. Readiness means the capacity of the plaintiff to perform the contract, which would include the financial position to pay the purchase price. Willingness refers to the intention of the plaintiff as a purchaser to perform his part of the contract. Willingness is inferred by scrutinising the conduct of the plaintiff/purchaser, including attending circumstances. Continuous readiness and willingness on the part of the plaintiff/purchaser from the date the balance sale consideration was payable in terms of the agreement to sell, till the decision of the suit, is a condition precedent for grant of relief of specific performance. It has also relied on the interpretation made by the Apex Court previously in **Syed Dastagir's** case whereby the plea of "readiness and willingness to perform" was interpreted. **It is also held that the amending act No. 18 of 2018 whereby the provisions of the Specific Relief Act were amended with effect from 1.10.2018 are prospective in nature which cannot apply to those transactions that took place prior to its coming into force.**

60. The Apex Court in the case of *Syed Dastagir* (supra) has construed the plea of "readiness and willingness to perform" in Section 16(c) of the Specific Relief Act.

61. The Apex Court in the case of *M/s J.P. Builders* (supra) has held as under:-

"22. The words "ready" and "willing" imply that the person was prepared to carry out the terms of the contract. 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.

23. In N.P. Thirugnanam v. Dr. R. Jagan Mohan Rao [(1995) 5 SCC 115] at SCC para 5, this Court held: (SCC pp. 117-18)

"5. ... Section 16(c) of the Act envisages that the 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 along with 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 ready and was always ready and willing to perform his part of the contract.”

24. *In P. D'Souza v. Shondrilo Naidu [(2004) 6 SCC 649] this Court observed: (SCC p. 654, paras 19 and 21)*

“19. It is indisputable that in a suit for specific performance of contract the plaintiff must establish his readiness and willingness to perform his part of contract. The question as to whether the onus was discharged by the plaintiff or not will depend upon the facts and circumstances of each case. No straitjacket formula can be laid down in this behalf. ...

21. ... The readiness and willingness on the part of the plaintiff to perform his part of contract would also depend upon the question as to whether the defendant did everything which was required of him to be done in terms of the agreement for sale.”

25. *Section 16(c) of the Specific Relief Act, 1963 mandates “readiness and willingness” on the part of the plaintiff and it is a condition precedent for obtaining relief of grant of specific performance. It is also clear that in a suit for specific performance, the plaintiff must allege and prove a continuous “readiness and willingness” to perform the contract on his part from the date of the contract. The onus is on the plaintiff.*

26. *It has been rightly considered by this Court in R.C. Chandiook v. Chuni Lal Sabharwal [(1970) 3 SCC 140] that “readiness and willingness” cannot be treated as a straitjacket formula. This has to be determined from*

the entirety of the facts and circumstances relevant to the intention and conduct of the party concerned.

27. It is settled law that even in the absence of specific plea by the opposite party, it is the mandate of the statute that the plaintiff has to comply with Section 16(c) of the Specific Relief Act and when there is non-compliance with this statutory mandate, the court is not bound to grant specific performance and is left with no other alternative but to dismiss the suit. It is also clear that readiness to perform must be established throughout the relevant points of time. "Readiness and willingness" to perform the part of the contract has to be determined/ascertained from the conduct of the parties."

62. The Apex Court in the case of ***Man Kaur (Dead)*** (supra) on facts, has declined to grant the relief of specific performance of the agreement to the plaintiff.

Conclusion of this Court

(A) Whether the defendant executed a registered agreement to sell dated 30.12.2019 in favour of the plaintiff?

(B) Whether any consideration was paid by the plaintiff to the defendant towards the execution of the agreement to sell in his favour?

(D) Whether the alleged agreement to sell was got fraudulently executed by the plaintiff from the defendant taking advantage of the business relationship between them ?

63. It is the case of the plaintiff Ganesh Prasad PW-1 that the defendant Tushar Agrawal DW-1 was in need of money for enhancing his business and also for his personal needs hence the defendant decided to sell his residential house and approached the plaintiff and requested him to purchase the disputed house, which ultimately the plaintiff agreed for a consideration of ₹ 30 lakhs, out of which an earnest money of ₹ 20 lakhs was paid by the plaintiff to the defendant through cheque no. 223569 dated 30.12.2019 which was drawn on

Indian Bank, Branch Lahurabir, Varanasi. It was agreed between the parties that the remaining amount of ₹ 10 lakhs will be paid by the plaintiff to the defendant at the time of execution of the sale deed. It is the case of the plaintiff that the defendant willingly executed an agreement to sell in the presence of witnesses Shyamchandra PW-2 and Arun Kumar Jaiswal in favour of the plaintiff on receiving the part consideration of ₹ 20 lakhs on 30.12.2019, which was on the same day, subsequently registered in the office of sub-registrar Gyanpur, Bhadohi.

64. The perusal of the plaint shows that the plaintiff has pleaded that he personally met the defendant and requested him to execute and register the sale deed but the defendant failed to do so hence, the plaintiff gave two registered notices dated 4.5.2021 and 23.8.2021 to the defendant for executing the sale deed in his favour and after waiving these 2 notices, finally a registered legal notice was given dated 11.9.2021 to the defendant to execute the sale deed but when it was not complied by the defendant, the plaintiff was compelled to file the instant suit in the competent court for the specific performance of the registered agreement to sell dated 30.12.2019. It was also pleaded that the intention of the defendant has turned dishonest and malafide, who was negotiating with other persons for selling the disputed property.

65. The perusal of the plaint shows that the plaintiff has specifically pleaded that he was always ready and willing and is still ready and willing to purchase the disputed property in accordance with the terms of the registered agreement after paying the balance consideration of ₹ 10 lakhs to the defendant. From the perusal of the legal notice dated 11.9.2021 it is apparent that it mentions that the plaintiff has arranged the remaining consideration of ₹ 10 lakhs and was ready and willing and the plaintiff has assured that, he will also

in the future remain ready and willing to get the sale deed of the disputed house executed and registered in his favour after paying the balance consideration to the defendant.

66. It is apparent that the defendant in his written statement altogether denied the execution of the alleged agreement to sell dated 30.12.2019 in favour of the plaintiff. The defendant has categorically averred that he has not received the alleged earnest money of ₹ 20 lakhs from the plaintiff. The defendant has averred that there was business relationship between him and the plaintiff since the year 2016 in which he purchased raw silver from the plaintiff and after refining it, sold the refined silver back to the plaintiff and taking advantage of this business relationship, the plaintiff has fraudulently managed to get the alleged agreement to sell executed from him. The defendant has further taken a plea that he has only one house, in which he is residing with his family, in which his firm is also situated, hence he cannot sell this house to the plaintiff. The defendant also pleaded that he was never in necessity of money and as such, there was no occasion for him to sell his house to the plaintiff. The defendant has further pleaded that the disputed house was valued at more than ₹ 2 crores hence there was no justification for him to sell it only for a paltry consideration of ₹ 30 lakhs. Although the plaintiff has alleged that he gave legal notice to the defendant before filing of the suit, which was also received by the defendant, but in the written statement, the defendant has denied this. The defendant has also averred that he was not intending to sell the disputed property to Manish Kumar Jaiswal, and no agreement to sell has been executed in his favour. It was also averred that the plaintiff never remained ready and willing to fulfil the terms of the agreement hence the suit filed by him was not legally maintainable.

67. From the perusal of the registered agreement to sell it is evident

that it was contemplated that the plaintiff after arranging the balance sale consideration of ₹ 10 lakhs, in every circumstance will get the sale deed executed from the defendant within a period of 3 years from 30.12.2019, and if the defendant fails to do so, then the plaintiff was given the right to get the sale deed executed from the Court after depositing the balance consideration with it.

68. **PW-1 Ganesh Prasad** in his examination-in-chief has reiterated the plaint averments. He deposed that he always remained ready and willing to get the sale deed executed by paying the balance sale consideration of ₹ 10 lakhs to the defendant, as per the terms of the agreement to sell, and also requested the defendant personally, but when the defendant procrastinated, then he gave legal notice to the defendant on 4.5.2021, 23.8.2021, and after waiving these notices, a final notice dated 11.9.2021 was given by his counsel Shri Dinesh Kumar Advocate , to the defendant to execute the sale deed in his favour, which was also received by the defendant on 14.9.2021 but still, the sale deed was not executed in his favour. He further deposed that the intention of the defendant had turned malafide. He further deposed that he maintained a balance of ₹ 10 lakhs in his savings bank account to pay the defendant towards remaining consideration of the sale deed but the defendant was busy negotiating with other persons, to sell the disputed house, hence he filed the suit. He further deposed that the agreement was executed by the defendant in the presence of the witnesses.

69. PW-1 further deposed in cross-examination that the disputed agreement of sale was got typed by Tushar Agrawal in Varanasi and was presented to the sub-registrar by the defendant. He gave account payee cheque no. 223569 to the defendant on 30.12.2019 in the sub-registrar office, before the sub-registrar, in the presence of witnesses. The cheque was issued in the name of Tushar Agrawal. Besides this

cheque, neither any other cheque was given nor any cash payment was made, to the defendant. He admitted that he was not present at the time when the document was being prepared by Tushar Agrawal. An e-stamp of ₹ 60,000/- was purchased from Central Bank of India, Gyanpur, for the agreement, the amount was paid by him. The agreement to sell was signed by him and the defendant after reading it, thereafter, it was signed by the witnesses. The agreement to sell was of land and house, pertaining to an area of 2184 ft². The agreement was got typed by Tushar Agrawal. He gave notice to the defendant through his advocate Dinesh Kumar. The notice given to the defendant on 11.9.2021 was received by him on 14.9.2021. The notices were sent to the defendant on his individual address as well as the address of his firm, both were received by Tushar Agrawal. The cheque No. 223569 of ₹ 20 lakhs was issued from his saving account, which was given to the defendant on 30.12.2019 in the presence of witnesses, in the office of sub-registrar.

70. **Shyamchandra PW-2**, the attesting witness of the agreement, deposed in examination-in-chief that the defendant willingly due to financial necessity and for enhancement of his business, agreed to sell the disputed house for a consideration of ₹ 30 lakhs in favour of the plaintiff, out of which ₹ 20 lakhs was paid by the plaintiff as earnest money to the defendant and a registered agreement to sell was executed on 30.12.2019 by the defendant in favour of the plaintiff, which was subsequently registered in the office of sub-registrar Gyanpur at Bhadohi in book no.1, zild no. 3053, at pages 103 – 124 at serial no. 4288 on 30.12.2019. He further deposed that the earnest money of ₹ 20 lakhs was paid by the plaintiff to the defendant through cheque before the sub-registrar Gyanpur at Bhadohi and as per the conditions of the agreement to sell, an amount of ₹ 10 lakhs was to be paid by the plaintiff to the defendant at the time of execution of sale deed.

71. He further deposed that the contents of the agreement to sell was read by Advocate Anoop Kumar Srivastava to the defendant Tushar Agrawal , Ganesh Prasad and the 2 witnesses. Besides this, Tushar Agrawal after reading and understanding the agreement to sell, had signed it and also affixed his thumb impression on every page. The agreement was also signed by the buyer plaintiff, witnesses and Advocate Anoop Kumar Srivastava. He further deposed that thereafter, he, plaintiff, defendant, the other witness and Anoop Kumar Srivastava went to the sub-registrar office where the sub-registrar asked Tushar Agrawal whether he had agreed to execute the agreement to sell for a consideration of ₹ 30 lakhs of his house and whether he had received ₹ 20 lakhs through cheque as earnest money and after getting its confirmation from Tushar Agrawal, the agreement to sell was registered.

72. PW-2 in cross-examination deposed that he met Tushar Agrawal for the 1st time in the sub-registrar office at Gyanpur at about 12 – 1 p.m. He was accompanied by Ganesh Prasad. The agreement was got typed by Tushar Agrawal and the consideration of the stamp was also paid by Tushar Agrawal. The agreement was not typed in his presence. The document was produced by Tushar Agrawal before the sub-registrar. Arun Kumar Jaiswal had also signed the agreement as a witness. He further deposed that he was a witness of the plaintiff.

73. Handwriting expert **Mohd.Shahrukh PW-3** in his examination-in-chief deposed that the agreement to sell dated 30.12.2019 bears the signature and fingerprint of defendant Tushar Agrawal.

74. **Tushar Agrawal DW-1** in his examination-in-chief denied execution of the disputed agreement to sell dated 30.12.2019 in favour of the plaintiff, denied receiving any consideration for the alleged agreement, denied that he was in need of money for his personal requirement and business. He alleged that the plaintiff

fraudulently taking advantage of his business relations with him, had got executed a forged agreement to sell dated 30.12.2019 for inadequate consideration of ₹ 30 lakhs, whereas the disputed house was valued not less than ₹ 2 crores. He also denied receiving any legal notice from the plaintiff. He reiterated that he was having only one house in which he was residing with his wife and children, which was never agreed to be sold to the plaintiff or any other person.

75. He further deposed that he used to purchase raw silver from the plaintiff, which was sold to the plaintiff after refining it and taking advantage of the above business relations, the plaintiff had managed to get fraudulently prepared the alleged agreement to sell dated 30.12.2019 in connivance with the scribe, witnesses and sub-registrar, which was not binding on him. He will also file a suit for the cancellation of the alleged agreement to sell.

76. He further deposed that he never had any talks with Manish Kumar Jaiswal for selling the disputed house to him and the plaintiff has filed fraudulent documents regarding such transaction, which is not binding on him. He specifically denied receiving earnest money of ₹ 10 lakhs for executing an agreement to sell in favour of Manish Kumar Jaiswal. He further deposed that the plaintiff is neither ready and willing nor he has remained so.

77. DW-1 Tushar Agrawal in his cross-examination deposed that he is a businessman. The name of his firm is Ganpati Abhushan Mandir. He deals in sale – purchase of silver. He also files the income tax return. His wife's name is Shweta Agrawal. He had purchased land in village Thanipur, Goppur and Chakparauna in his wife's name. He started business in the year 2013 from his firm Ganpati Abhushan. From this firm, he does business of purchase – sale of raw and refined silver. He is having a current account of his firm Ganpati Abhushan Mandir in Union Bank of India, Gopiganj. After perusing paper No.

31-C, he acknowledged that on 3.1.2020 an amount of ₹ 20 lakhs has been credited to his account. He feigned ignorance that his photo is affixed on agreement to sell paper no. 43-A. His 2nd firm is named Vinayak Abhushan Mandir.

78. After perusing paper No. 31-C he disclosed that the amount of ₹ 20 lakhs pertains to business transaction hence he deposited it in his firm's current account. He clarified that he utilised this amount in his business. After perusing paper No. 31-C/1 he could not tell, whether cheque No. 223569 was written in it or not. He further deposed that the plaintiff fraudulently taking undue advantage of the business relations with him, obtained his signatures on the blank papers on the pretext of doing business and also obtained 4 cheques of ₹ 25 – 25 lakhs, who obtained his signature on some papers on the pretext of preparing an agreement.

79. He further deposed that the plaintiff obtained his signature on about 15 – 20 blank pages, one of which was a stamp paper of ₹ 100/-. He further deposed that the plaintiff gave him ₹ 20 lakhs towards labour charges, which was a yearly settlement. He could not tell whether the above amount of ₹ 20 lakhs towards labour charges was shown by his chartered accountant in his annual income tax return or not ?

80. The defendant DW-1 was shown paper No. 34-C, a certified copy of the unregistered agreement to sell of the disputed property allegedly executed by the defendant in favour of Manish Kumar Jaiswal for a consideration of ₹ 50 lakhs, to which the witness feigned ignorance and could not tell whether it was signed by him or not. He disclosed that he filed a case against Manish Kumar Jaiswal, but stated that no compromise was reached with him. He deposed that he can examine Arun Kumar Jaiswal, who is included in the list of witnesses, who is a businessman doing business in gold– silver.

81. He feigned ignorance that on 30.12.2019 Arun Kumar Jaiswal accompanied him to the sub-registrar office, who was witness of the agreement to sell, on his behalf. He accepted that till date, he has not filed any suit for cancellation of the agreement to sell against the plaintiff. The plaintiff committed fraud on him by taking 4 cheques of ₹ 25 – 25 lakhs, obtained his signature on blank paper and fraudulently got executed the agreement to sell from him. He admitted that he has not lodged a complaint with the police or administrative officials or a case in the court, regarding the above fraudulent acts allegedly committed by the plaintiff. He was under pressure, because he was doing business with the plaintiff. The disputed house is valued at about ₹ 2 crores, because the adjoining houses have been sold for that amount but he cannot file the certified copy of those transactions.

82. He admitted that he read the alleged agreement to sell after 2 – 3 days in which the cheque number was written but he clarified that no such cheque was ever received by him. Since he was under pressure, no written complaint was made to the plaintiff. He also made no complaint to the police regarding non-receipt of ₹ 20 lakhs. He denied having executed an unregistered agreement to sell of his house in the year 2020 for ₹ 50 lakhs in favour of Manish Jaiswal.

83. He disclosed that after the plaintiff committed fraud upon him, after a period of 6 months – 1 year, he stopped doing business with him. He was having business with Ganesh Prasad since the year 2013. He admitted that paper No. 43-A/10 bears the photo of his witness Arun Kumar Jaiswal. He admitted that he was having no enmity and acquaintance with sub-registrar Sherdendu Mishr.

84. He admitted that he went to the sub-registrar office, where the sub-registrar and other persons were present, where on some papers his signature was fraudulently obtained. His witness, Arun Kumar

Jaiswal and the plaintiff Ganesh Prasad was also present. He denied that the sub-registrar asked him anything regarding the disputed agreement to sell as well as its consideration and receipt of earnest money through cheque. He feigned ignorance whether his, Ganesh Prasad and witness Shyamchandra and Arun Kumar Jaiswal's photograph and thumb impression were taken in the sub-registrar office. He admitted that on the day when the agreement to sell was allegedly executed, he went to the sub-registrar office on the asking of the plaintiff Ganesh Prasad for signing some documents, but he is not aware of the nature of the document. He disclosed that his signature and thumb impression was previously obtained on a blank paper, hence what was his necessity of going to the sub-registrar office, only Ganesh Prasad knew. Ganesh Prasad told him that he has to sign some documents in sub-registrar office and campus, these were the same documents on which he had earlier signed and affixed his thumb impression.

85. He further deposed that he had applied for the certified copy of the agreement to sell, thereafter, he read it. When he received the notice, then he read it. Notice was also received on the mobile. Since money was required for initiating litigation, which he did not have, hence he did nothing after receiving the notice. He didn't accompany Arun Kumar Jaiswal to the sub-registrar office. He went to the sub-registrar office on 30.12.2019 for signing documents relating to business. The documents were taken by Ganesh Prasad. What was enquired from him by the sub-registrar, he did not remember because he was suffering from cold. The document on which he signed, he didn't enquire about it, because he trusted him. He neither received any cheque for the agreement to sell nor received any payment of cheque through RTGS. He returned from the sub-registrar office in the evening. He admitted that the document on which he signed, was also signed by Arun Kumar Jaiswal as a witness. He also admitted

that his photograph, signature and thumb impression were taken in the sub-registrar office, but on which document it was obtained, he did not know because he was indisposed. He admitted that the sub-registrar enquired from him but he could not remember it. He disclosed that prior to 30.12.2019 also, he went to the sub-registrar office for getting the sale deed executed from his brothers. He also went to the sub-registrar office for purchasing property in the name of his wife. He got executed 3 sale deeds in favour of his wife.

86. He further deposed that he has sold his car. He has replied to the notice received on his mobile and also filed it in this case. Arun Kumar Jaiswal is not his witness, but he is the witness of Ganesh Prasad. He was having no necessity of money so as to execute the agreement to sell in favour of the plaintiff.

87. From the above oral evidence of PW-1 Ganesh Prasad and PW-2 Shyamchandra and documentary evidence on record, it is evident that the defendant executed an agreement to sell in favour of the plaintiff on 30.12.2019 in presence of the witnesses Shyamchandra PW-2 and Arun Kumar Jaiswal. The defendant DW-1 in his oral evidence has admitted that he went to the office of the sub-registrar on 30.12.2019 where taking advantage of the business relations between him and the plaintiff, the plaintiff got fraudulently executed the disputed agreement from him by obtaining signatures on some blank papers with the connivance of attesting witnesses, scribe and concerned sub-registrar. The defendant has also admitted that prior to the disputed agreement, he has got executed a sale deed of the disputed house in his favour from his brothers and has also facilitated the execution of 3 sale deeds in his wife's favour, as such, it cannot be said that the defendant was not at all conversant with the procedure and practices prevalent in the concerned sub-registrar office, which were followed at the time of execution and registration of the sale deed.

88. It is also pertinent to mention here that the defendant has failed to mention the manner in which fraud was practised upon him in the office of the sub-registrar by the plaintiff. The defendant has only levelled a general allegation that the plaintiff obtained his signature on some blank papers.

89. It is also evident that the plaintiff has examined himself as PW-1 and attesting witness Shyamchandra as PW-2 to prove the execution of the agreement to sell. The defendant admitted that Arun Kumar Jaiswal was another attesting witness of the agreement to sell, but in spite of mentioning his name in the list of witnesses paper number 107-C, this witness was not examined by the defendant to discredit the evidence of the plaintiff insofar as the execution of the agreement to sell was concerned. The defendant could very well have examined Arun Kumar Jaiswal to create doubt about the veracity of the alleged agreement to sell, but no such effort was made by the defendant.

90. It is also evident that the defendant DW-1 has admitted that he was having no enmity with the concerned sub-registrar Sherdendu Mishr. The defendant has also admitted that neither any complaint regarding the alleged fraudulent act of the plaintiff has been made to the police, administrative official or the Court nor any cancellation of the alleged agreement to sell was sought by filing suit. The defendant has also admitted that even after the alleged execution of the agreement to sell, he continued having business with the plaintiff for 6 months – 1 year. It is also evident that the alleged agreement to sell contains the digital photograph of the defendant, plaintiff and the 2 witnesses and their thumb impression. The agreement also contains the endorsement of the concerned sub-registrar that the parties to the agreement have accepted its execution and the consideration mentioned in it, which has not been rebutted by the defendant by leading any cogent evidence.

91. The Apex Court in the case of ***Prem Singh*** (supra) has held that there is a presumption that a registered document is validly executed. A registered document, therefore, prima-facie would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption.

92. Similarly, the Apex Court in the case of ***Rattan Singh and others vs. Nirmal Gill and others (2021) 15 SCC 300*** held as under:-

“33. To appreciate the findings arrived at by the courts below, we must first see on whom the onus of proof lies. The record reveals that the disputed documents are registered. We are, therefore, guided by the settled legal principle that a document is presumed to be genuine if the same is registered, as held by this Court in Prem Singh v. Birbal [Prem Singh v. Birbal, (2006) 5 SCC 353]. The relevant portion of the said decision reads as below : (SCC pp. 360-61, para 27)

“27. There is a presumption that a registered document is validly executed. A registered document, therefore, prima facie would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption. In the instant case, Respondent 1 has not been able to rebut the said presumption.”

In view thereof, in the present cases, the initial onus was on the plaintiff, who had challenged the stated registered document.”

93. The Apex Court again in the case of ***Sarafat Ali(Deceased) Through Lrs. And Others vs. Deputy Director of Consolidation Haridwar and Others 2026 SCC OnLine SC 1190***, held as under:-

“51....It is trite law that a registered document carries a presumption of valid execution and genuineness unless rebutted by cogent evidence. In this regard, it would be apposite to refer to the recent decision of this Court in Hemalatha (D) by Legal Representatives v. Tukaram (D) by Legal Representatives¹⁶, wherein the relevant observation read thus:

“31. It is a settled position of law that a registered Sale Deed carries with it a formidable presumption of validity and genuineness. Registration is not a mere procedural formality but a solemn act that imparts high degree of sanctity to the document. Consequently, a Court must not lightly or casually declare a registered instrument as a “sham”. Adopting the principles enunciated in Prem Singh v. Birbal, (2006) 5 SCC 3531, Jamila Begum (Dead) Through Lrs. v. Shami

Mohd. (Dead) Through Lrs., (2019) 2 SCC 727 : (2019) 2 SCC (Civ) 632, and Rattan Singh v. Nirmal Gill, (2021) 15 SCC 3003, this Court reiterates that the burden of proof to displace this presumption rests heavily upon the challenger. Such a challenge can only be sustained if the party provides material particulars and cogent evidence to demonstrate that the Deed was never intended to operate as a bona fide transfer of title.

32. The grounds typically accepted to challenge a registered Deed at the instance of the vendee/executant are fraud or want of capacity in any party or mistake of fact or fundamental illegality like where the Deed was executed under deceit or sold by a fraudster who did not own the land or where the Deed was executed without consideration, namely, if no money or value was actually exchanged despite recitals in the Deeds or where there was coercion or intimidation like where the seller was forced to sign without free consent.

33. While the aforementioned grounds are illustrative and not exhaustive, this Court must caution against the growing tendency to challenge registered instruments 'at the drop of a hat'. If the sanctity of registered documents is diluted, it would erode public confidence in property transactions and jeopardize the security of titles. In a society governed by the Rule of Law, registered documents must inspire certainty; they cannot be rendered precarious by frivolous litigation."

52. The aforesaid observations leave little room for doubt that a registered conveyance cannot be lightly brushed aside on conjectures or insignificant discrepancies. The burden to dislodge the presumption attaching to such an instrument lies heavily upon the party assailing it, and such burden can be discharged only through clear, cogent and convincing evidence establishing fraud, fabrication, want of execution or any other circumstance striking at the root of the transaction itself."

94. It is evident that in this case the burden was upon the defendant to rebut the above evidence of due execution and registration of the disputed agreement to sell. ***In the absence of any contra evidence, the defendant has failed to prove that the disputed agreement to sell was fraudulently got executed from him by the plaintiff. The plaintiff has duly proved that the disputed agreement to sell was willingly executed on 30.12.2019 by the defendant.***

95. The defendant has also alleged that the disputed house was at the relevant time valued at about ₹ 2 crores hence there was no occasion

for him to execute the alleged agreement in favour of the plaintiff for a paltry consideration of ₹ 30 lakhs. The defendant could have filed the sale deeds of the comparable immovable property to prove the above fact but no such evidence has been filed by the defendant.

96. It is further pertinent to mention that the defendant entered into an unregistered agreement to sell of the disputed house for a consideration of ₹ 50 lakhs with Manish Kumar Jaiswal in the year 2021, a certified copy of which was filed by the plaintiff before the trial court as paper no. 34-C. The defendant alleged that the above agreement was forcibly got executed from him by Manish Kumar Jaiswal and hence moved an application under Section 156 (3) CrPC before the Court of Chief Judicial Magistrate, Bhadohi for getting a FIR registered against Manish Kumar Jaiswal in which subsequently compromise was reached between the parties on 29.6.2021. The plaintiff has also filed the certified copy of the compromise reached between the parties in which the defendant has agreed to return the consideration of ₹ 50 lakhs to Manish Kumar Jaiswal. Although, the defendant has denied the above transaction of his house with Manish Kumar Jaiswal, but the denial of the defendant is unbelievable. It is evident that even the defendant has not sold his property to Manish Kumar Jaiswal for ₹ 2 crores in the year 2021, hence, by no stretch of imagination it can be presumed that at the relevant time on 30.12.2019, the disputed house was valued at about ₹ 2 crores.

97. It is also evident that the defendant DW-1 although in his written statement denied the receipt of legal notice from the plaintiff but in the oral evidence, he has accepted that he received the legal notice from the plaintiff. The defendant has also stated that he received the notice on his mobile also to which he had replied.

98. It is also evident that the earnest money of ₹ 20 lakhs was paid by the plaintiff to the defendant through cheque no. 223569 dated

30.12.2019 drawn on Indian Bank, branch Lahurabir, Varanasi, which was also proved by the plaintiff by filing the account statement of his bank before the trial court, which was paper no. 31-C. The above bank statement proves that on 3.1.2020 through cheque No. 223569 amount of ₹ 20 lakhs has been paid to Tushar Agrawal. It is also evident that the above bank account of the plaintiff is the savings bank account.

99. The defendant DW-1 in his cross-examination after perusing the above bank statement paper no. 31-C has accepted that he has received an amount of ₹ 20 lakhs from the plaintiff. The defendant has neither filed any statement of his bank account nor given any legal notice to the plaintiff to prove that he has not received the above payment from the plaintiff. **Hence, in view of the above oral and documentary evidence on record, it is proved that the earnest money of ₹ 20 lakhs was paid by the plaintiff to the defendant for executing the disputed agreement to sell in his favour on 30.12.2019 through cheque no.223569 which was encashed by the defendant on 3.1.2020.**

100. Accordingly, issues A, B and D are decided in favour of the plaintiff.

(C) Whether the consideration paid by the plaintiff to the defendant was related to the business transactions that took place between them?

101. It is the contention of the defendant that since the year 2013 he was having business relationship with the plaintiff. He used to purchase raw silver from the plaintiff and after refining it, used to sell refined silver back to the plaintiff and the alleged consideration of ₹ 20 lakhs paid by the plaintiff was towards the business transactions that took place between him and the plaintiff. It has been specifically pleaded by the defendant that the above amount was not paid by the

plaintiff as earnest money of the alleged agreement to sell executed by him in favour of the plaintiff. The above fact was denied by the plaintiff by stating that only 4 business transactions took place between him and the defendant during the period November 2019 – March 2020. The plaintiff also filed the bank statement of his firm paper no. 65-C2 to prove the above business transactions.

102. On the contrary, the defendant has not filed any documentary evidence to prove that the above consideration of ₹ 20 lakhs was paid by the plaintiff towards the business transactions that took place between him and the plaintiff.

103. PW-1 Ganesh Prasad in his examination-in-chief reiterated the plaintiff averments. PW-1 in cross-examination deposed that he does business of silver ornaments in the name and style of M/S Ganesh Jewellers, which is a registered firm, and his shop is situated in Varanasi. He is in this business since the year 2014 – 15. He admitted that the defendant Tushar Agrawal was purchasing silver ornaments from him since November 2019, which was sold by issuing receipt to the defendant. His firm had no dealing with Narendra Agrawal. He admitted that there were 4 transactions of silver between him and the defendant, during the period November 2019 – March 2020. Tushar Agrawal is the proprietor of M/s Ganapathi Abhushan Mandir, with which he had transactions.

104. He further deposed that Tushar Agrawal used to purchase silver and ornaments from him, bill of which was issued to him, which was being paid by him, before purchase. Tushar Agrawal never purchased raw silver from him, only silver ornaments were purchased from him, regarding which bill was issued to him. The defendant paid through his(plaintiff) bank account in the name of Ganesh Jewellers. The bills were generated through GST portal. The bill of silver ornaments was signed both by him and Tushar Agrawal.

105. He further deposed that paper no. 65-C2 pertains to account No. 02251131002137 in which transaction dated 30.12.2019 was not conducted. The above account contains transactions made on GST portal. The transactions made with Tushar Agrawal on the GST portal, contain bill number also. Paper no. 65-C2 records 4 transactions between him and the defendant, from November 2019 – March 2020. There are 4 transactions with Ganpati Abhushan Mandir which are – bill No. 34 dated 29.11.2019, invoice No. 38 dated 18.12.2019, invoice No. 43 dated 27.02.2020 and invoice No. 50 dated 6.3.2020. Besides the above transactions, no other transaction took place.

106. Tushar Agrawal DW-1 in his examination in chief reiterated the averments made in his written statement. He further deposed that he used to purchase raw silver from the plaintiff, which was sold to the plaintiff after refining it .

107. DW-1 Tushar Agrawal in his cross examination deposed that he is a businessman. The name of his firm is Ganpati Abhushan Mandir. He deals in sale – purchase of silver. He also files the income tax return. He started business in the year 2013 from his firm Ganpati Abhushan. From this firm, he does business of purchase – sale of raw and refined silver. At present he is not doing the business of refining raw silver. He is having a current account of his firm Ganpati Abhushan Mandir in Union Bank of India, Gopiganj. His 2nd firm is named Vinayak Abhushan Mandir.

108. After perusing paper No. 31-C he disclosed that the amount of ₹ 20 lakhs pertains to business transaction hence he deposited it in his firm's current account. He clarified that he utilised this amount in his business.

109. He further deposed that he used to have business with Ganesh

Prasad, and due to this, the plaintiff gave him ₹ 20 lakhs, he used to supply silver to the plaintiff after refining it. He cannot give any evidence regarding the supply of silver to the plaintiff. He was shown paper No. 65-C the bank statement, according to which 4 business transactions took place between him and the plaintiff on 29.11.2019, 18.2.2020, 26.2.2020 and finally on 3.3.2020 and asked whether any other transaction took place between them? The witness replied that he has got no knowledge about paper No. 65-C.

110. He further deposed that the plaintiff gave him ₹ 20 lakhs towards labour charges, which was a yearly settlement. He could not tell whether the above amount of ₹ 20 lakhs towards labour charges was shown by his chartered accountant in his annual income tax return or not? He was having business with Ganesh Prasad since the year 2013. He denied the suggestion that he never supplied silver ingots and refined silver to the plaintiff. He accepted that he did labour work with the plaintiff.

111. From the oral and documentary evidence on record it is evident that the plaintiff was having firm in the name and style of M/S Ganesh Jewellers whereas, the defendant is having firm in the name and style of M/S Ganpati Abhushan Mandir and M/S Vinayak Abhushan Mandir. The plaintiff has specifically asserted that only 4 business transactions took place between him and the defendant between November 2019 – March 2020, and in order to prove the above transactions, the plaintiff also filed the copy of statement of current bank account no. 02251131002137 of his firm M/S Ganesh Jewellers before the trial court as paper no. 65-C, from the perusal of which it is evident that on 29.11.2019, 18.2.2020, 26.2.2020 and 3.3.2020 transactions of ₹ 14 lakhs, 5 lakhs, 7.47 lakhs and 2 lakhs took place with M/S Ganpati Abhushan Mandir, which is the firm of the defendant. The plaintiff has received the above amount in his

firm's current account from the defendant's firm.

112. The plaintiff has also filed the statement of invoices generated on the GST portal between his firm M/S Ganesh Jewellers and defendant's firm M/S Shree Ganpati Abhushan Mandir, which disclose that the following transactions took place between the above firms – invoice No. 43 dated 27.2.2020 for ₹ 10 lakhs, invoice No. 50 dated 6.3.2020 for ₹ 4.47 lakhs, invoice No. 34 dated 29.11.2019 for ₹ 4 lakhs and invoice No. 38 dated 18.12.2019 for ₹ 10 lakhs.

113. It is evident that none of the above transactions mentioned in the bank statement as well as the transactions generated on the GST portal is of ₹ 20 lakhs, which was the earnest money paid by the plaintiff to the defendant towards execution of registered agreement to sell dated 30.12.2019 by the defendant in his favour. It is apparent that the burden is upon the defendant to prove that the above amount of ₹ 20 lakhs was towards the business transactions that took place between him and the plaintiff, but that burden has not at all been discharged by the defendant. The defendant could have filed the GST bills, invoices, GST return and his firms income tax return to prove that the above amount of ₹ 20 lakhs was paid to him by the plaintiff towards business transactions but the defendant has not led any evidence to contradict the above evidence led by the plaintiff. It is further pertinent to mention here that the consideration of ₹ 20 lakhs was paid by the plaintiff from his individual savings bank account, not from his firms bank account, hence it cannot be presumed that the above amount was paid by the plaintiff towards business transactions with the defendant.

114. In view of the above evidence on record, the defendant has failed to prove that the consideration of ₹ 20 lakhs was paid to him by the plaintiff towards the business transactions that took place between him and the plaintiff. On the contrary, the plaintiff has successfully

proved that the above consideration, was the earnest money paid by him to the defendant for the execution of the registered agreement to sell dated 30.12.2019 in his favour. Accordingly, issue C is decided in favour of the plaintiff against the defendant.

(E) Whether the plaintiff continuously remained ready and willing to perform his part of the agreement to sell ?

115. It has been vehemently contended by the learned Senior Counsel for the appellant that the plaintiff never remained ready and willing to perform his part of the agreement because the plaintiff never mentioned in his legal notice that he was ready and willing and was still ready and willing to perform his part of the agreement. Learned counsel by relying upon the Single Judge Bench precedent of this Court in the case of *Ram Singh* (supra) vehemently contended that the plaintiff has to strictly aver and prove that he was always ready and willing and was still ready and willing to perform his part of the agreement and such assertion should be in the form 47 and 48 prescribed in Appendix 'A' of the CPC, but in this case, the plaintiff has not submitted his pleading in the above format which is also a mandatory requirement of Section 16(c) of the Specific Relief Act failing which no contract of specific performance is enforceable. The learned Senior counsel failed to disclose to this Court that the above precedent was challenged by filing appeal before the Apex Court and in appeal it has not been affirmed and **subsequently set aside by the Apex Court, which is reported as Sughar Singh vs. Hari Singh(Dead) through LRs and others (2021) 17 SCC 705 hence it cannot be considered as good law and binding precedent.** In view of the above facts, the contention of the learned Senior counsel cannot be accepted, and is liable to be rejected.

116. The plea " ready and willing to perform his part under the contract " with reference to Section 16(c) of the Specific Relief Act,

1963 has been construed by a 3 Judge Bench of the Apex Court in the case of *Syed Dastagir* (supra). It was held as under :-

"9. In construing a plea in any pleading, Courts must keep in mind that a plea is not an expression of art and science but an expression through words to place fact and law of one's case for a relief. Such an expression may be pointed, precise, sometimes vague but still would be gathered what he wants to convey through only by reading the whole pleading, depends on the person drafting a plea. In India most of the pleas are drafted by counsels hence aforesaid difference of pleas which inevitably differ from one to other. Thus, to gather true spirit behind a plea it should be read as a whole. This does not distract one from performing his obligations as required under a statute. But to test, whether he has performed his obligations one has to see the pith and substance of a plea. Where a statute requires any fact to be pleaded then that has to be pleaded may be in any form. Same plea may be stated by different persons through different words then how could it be constricted to be only in any particular nomenclature or word. Unless statute specifically require for a plea to be in any particular form, it can be in any form. No specific phraseology or language is required to take such a plea. The language in Section 16(c) does not require any specific phraseology but only that the plaintiff must aver that he has performed or has always been and is willing to perform his part of the contract. So the compliance of " Readiness and willingness " has to be in spirit and substance and not in letter and form. So to insist for mechanical production of the exact words of an statute is to insist for the form rather than essence. So absence of form cannot dissolve an essence if already pleaded."

117. From the above law laid down by the Apex Court in the case of *Syed Dastagir* (supra) it is evident that no specific phraseology or language is required to prove that the plaintiff always remained ready and willing to perform his part of the contract and is still ready and willing to do so. The above compliance of " readiness and willingness " has to be in spirit and substance and not in letter and form.

118. In the context of the above law, it is to be examined in the instant case whether the plaintiff has complied with the requirement of "readiness and willingness " in spirit and substance?

119. From the perusal of the legal notice dated 11.9.2021 given by the

plaintiff to the defendant, plaint and the oral evidence of the plaintiff PW-1 it is evident that the sale deed was to be executed within 3 years from the date of the registered agreement to sell dated 30.12.2019 and the plaintiff was supposed to pay the balance sale consideration of ₹ 10 lakhs to the defendant at the time of execution of the sale deed in his favour. The plaintiff specifically mentions in his above legal notice that he has arranged the remaining consideration of ₹ 10 lakhs and he is ready and willing and will also remain ready and willing in future to get the sale deed executed and registered in his favour by paying the above consideration to the defendant. The plaintiff requested the defendant to intimate the date and time when he proposed to execute the sale deed in favour of the plaintiff but the defendant never communicated that date to the plaintiff. The receipt of the above legal notice has been accepted by the defendant DW-1 in his cross-examination.

120. The plaint also discloses that the plaintiff personally met the defendant and requested him to execute and register the sale deed in his favour but the defendant failed to do so. The plaint also discloses that a legal notice was issued by the plaintiff dated 11.9.2021 to the defendant which was received by the defendant, but still the defendant failed to execute and register the sale deed in favour of the plaintiff. The plaint also discloses that the defendant turned dishonest which was apparent from his conduct and was also negotiating to sell the disputed premises to others, which was proved by the evidence submitted by the plaintiff during trial. The plaintiff produced the certified copy of the unregistered agreement to sell executed by the defendant in the year 2021 in favour of Manish Kumar Jaiswal, whereby the defendant agreed to sell the disputed house for a consideration of ₹ 50 lakhs to him. The plaint specifically mentions that the plaintiff was and is still ready and willing to purchase the disputed premises as agreed upon and in accordance with the terms

and conditions of the registered agreement to sell dated 30.12.2019 and was ready and willing to pay the balance consideration of ₹ 10 lakhs to the defendant at the time of execution and registration of the sale deed. The plaintiff in his oral evidence also reiterated that he always remained ready and willing and was still ready and willing to perform his terms of the agreement and get the sale deed executed in his favour by paying the balance consideration of ₹ 10 lakhs to the defendant.

121. The Apex Court in the case of ***Syed Dastagir*** (supra) specifically held as under:-

" 11..... 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. This speaks in negative term what is not essential for the plaintiff to do..... This does not mean that unless the court directs the plaintiff cannot tender the amount to the defendant or deposit in the Court. 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 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..... "

122. It is well settled that the word "readiness" refers to financial capacity and the word "willingness" to the conduct of the plaintiff wanting performance and generally, readiness is backed by willingness. The continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of specific performance.

123. The Apex Court in the case of ***Sughar Singh*** (supra) has held that while proving the readiness and willingness the plaintiff is not required to make any averment that the plaintiff required executant of the agreement to sell to attend the office of the sub-registrar to execute the sale deed within the time agreed. It was held that whether the plaintiff is ready and willing to perform his part of contract, the

Court must take into consideration the conduct of the plaintiff prior and subsequent to filing of the suit alongwith other attending circumstances in a particular case. Whether the plaintiff was ready and was always ready to perform his part of contract may be inferred from the facts and circumstances of a particular case. **It was further held that it is not necessary for the plaintiff to produce ready money but it is mandatory on his part to prove that he has means to generate consideration amount.**

124. In the instant case, the plaintiff was required to pay the balance consideration of ₹ 10 lakhs to the defendant at the time of execution of the sale deed in his favour. The plaintiff has filed the statement of his savings bank account no. 6089807462 with the Indian Bank, Lahurabir branch, Varanasi from 1.1.2020 till 24.3.2022 which is paper no. 31-C on record, which discloses that the plaintiff was maintaining balance in excess of ₹ 10 lakhs after the execution of the agreement in his above bank account, which proves the financial capacity of the plaintiff.

125. It was submitted by the learned Senior counsel for the appellant that the suit for specific performance of the registered agreement to sell was filed by the plaintiff before the trial court with the deficient court fees, which was subsequently made good, and this fact itself proves that the plaintiff was lacking the financial capacity to pay the balance sale consideration of ₹ 10 lakhs to the defendant.

126. It is apparent from the record of the trial court that the suit was filed by the plaintiff with the deficient court fees on 14.12.2021 but the deficiency of court fees was made good on 13.1.2022. The plaintiff was always having a balance in excess of ₹ 10 lakhs in his savings bank account and was also in a position to arrange the funds, since he was a jeweller, hence merely on the basis that the suit was filed by the plaintiff with deficient court fees, it cannot be inferred

that the plaintiff was always lacking the financial capacity to pay the defendant the balance sale consideration of ₹ 10 lakhs.

127. In view of the above facts, it is apparent that the plaintiff was always ready and willing and is still ready and willing to perform his part of the contract. It is further apparent that to the contrary, the defendant was not ready and willing to execute the sale deed in favour of the plaintiff, hence the plaintiff was compelled to file the suit for the relief of specific performance of the registered agreement to sell dated 30.12.2019 against the defendant.

128. Accordingly, issue E is decided in favour of the plaintiff against the defendant.

(F) Whether the relief of specific performance of contract is still discretionary, after the amendment of Specific Relief Act w.e.f 01.10.2018?

129. The amended Section 10 of the Specific Relief Act 1963 w.e.f. 1.10.2018 reads as under:-

*" 10. **Specific performance in respect of contracts** – The specific performance of a contract **shall be enforced by the court** subject to the provisions contained in sub-section (2) of section 11, section 14 and section 16."*

130. The Apex Court in the case of *P.Daivasigamani* (supra) has held that the amending act No. 18 of 2018 whereby the provisions of the Specific Relief Act were amended with effect from 1.10.2018 are prospective in nature which cannot apply to those transactions that took place prior to its coming into force.

131. In the instant case, the disputed registered agreement to sell has been executed by the defendant in favour of the plaintiff on 30.12.2019, which is after the enforcement of the amended provisions of the Specific Relief Act with effect from 1.10.2018, hence the

amended provisions of the Act are applicable in the facts and circumstances of this case.

132. The Apex Court in the case of *B.Santoshamma* (supra) has also held that after the amendment with effect from 1.10.2018, the relief of specific performance of contract is no longer discretionary. The Court is, now obliged to enforce the specific performance of a contract, subject to the provisions of Section 11(2), 14 and 16 of the Specific Relief Act.

133. In view of the above facts and the legal position prevailing now, it is apparent that in this case, the Court is bound to specifically enforce the registered agreement to sell dated 30.12.2019 subject to the provisions of Section 11(2),14 and 16 of the Specific Relief Act.

134. Accordingly, issue F is decided.

Conclusion

135. In view of the above analysis, it is proved that a registered agreement to sell dated 30.12.2019 of his residential house was executed by the defendant in favour of the plaintiff, for a consideration of ₹ 30 lakhs, out of which ₹ 20 lakhs was paid as earnest money by the plaintiff to the defendant. It is also proved that the market value of the residential house was not ₹ 2 crores, as alleged by the defendant. It is also proved that the above registered agreement was not got fraudulently executed by the plaintiff from the defendant, taking advantage of the business relations between them.

136. The defendant has asserted that he was not having any financial necessity to sell his house to the plaintiff but the plaintiff has filed evidence on record to prove that the defendant's wife Shweta Agrawal was the owner of 3 immovable properties, the certified copies of the sale deeds dated 20.3.2017, 27.11.2018 and 29.4.2019 in favour of

the defendants wife have been filed by the plaintiff before the trial court. To counter the above assertion, the defendant has disclosed that his wife has sold the above 3 immovable properties before the filing of the suit and has also filed the certified copies of 3 sale deeds executed by his wife on 06.3.2021. Besides that, the defendant DW-1 has admitted in his cross-examination that he has sold his car. The above fact also disclose that the defendant was in need of money, otherwise there was no necessity to sell his car and for his wife, to sell the above 3 immovable properties.

137. It is also evident that the plaintiff always remained ready and willing to fulfil his terms of the agreement, who was having the financial capacity to pay the balance consideration of ₹ 10 lakhs to the defendant.

138. The hardship pleaded by the defendant cannot be considered because from the very inception the defendant was aware that the disputed house was being used by him for residential purposes and for business purposes, hence he should not have sold it but still, the defendant entered into a registered agreement to sell it with the plaintiff. The hardship, if any, is due to the own mis-deeds of the defendant, for which the plaintiff cannot be faulted in any manner whatsoever.

139. In view of the above facts, since the relief of specific performance is no longer discretionary and even otherwise, there is no fact or circumstance which disentitles the plaintiff from getting the primary relief of specific performance, hence, the trial court has not erred in decreeing the plaintiff's suit for the relief of specific performance of the registered agreement to sell dated 30.12.2019. There is no perversity in the judgment of the trial court warranting interference by this Court in exercise of its appellate jurisdiction. Accordingly, this appeal lacks merit, and is liable to be dismissed

with costs.

140. **For the aforesaid reasons, the instant appeal is dismissed with costs throughout.** Consequently, the impugned judgment and decree dated 11.3.2025 passed by the trial court in O.S. 9 of 2022 is affirmed.

141. The defendant- appellant is directed to execute the sale deed of the disputed house within a period of 2 months from today in favour of the plaintiff-respondent after receiving the balance sale consideration of ₹ 10 lakhs, failing which, the plaintiff is entitled to get the sale deed executed through Court, by depositing the balance consideration in the Court, in accordance with law.

Order Date:- 06.07.2026

Jitendra/Himanshu/Mayank

(Sandeep Jain,J.)