SYED DASTAGIR

v.

T.R. GOPALAKRISHNA SETTY

AUGUST 11, 1999

[B.N. KIRPAL, S. RAJENDRA BABU AND A.P. MISRA, JJ.]

Specific Relief Act, 1963:

Section 16(c)—Willingness and readiness to perform one's part of contract—Plea of —Plaintiff pleaded that defendant had received a part of the total sale consideration—But defendant refused to accept balance amount and, therefore, plaintiff deposited it in court—Plaintiff's suit for specific performance decreed by trial court—However, High Court set aside the decree on ground that plaintiff had not averred in his pleading that he was ready and willing to perform his part of the contract—Held, the language in S.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—To insist on a mechanical reproduction of the exact words of a statute is to insist on the form rather than the essence—Pith and substance of a plea is to be seen —In the circumstances of the case, readiness and willingness on the part of plaintiff pleaded— Hence, High Court not right in defeating the plaintiff's claim on the basis of wrong interpretation of his plea.

Section 16(c) Explanation (i)—Willingness to perform terms of contract—Construing of —Plaintiff deposited balance amount of sale consideration in court without the order of court—Held, Explanation (i) states in negative term what is not essential for the plaintiff to do—That does not mean that the plaintiff cannot tender the amount to the defendant or deposit it in court unless the court so directs—Plaintiff can always tender such amount—Such tendering exhibits his willingness to perform his part of the contract—Hence, deposit of balance amount in court cannot be construed adversely against him.

Code of Civil Procedure, 1908: Order 6.

Pleadings—A plea is not an expression of art and science but an expression through words to place the facts and law of one's case before the

A *court in order to obtain relief.*

Practice and Procedure:

Pleading—Interpretation of—Held, whenever there are two possible interpretations, the one, which serves the ends of justice, should be accepted
B *and the one, which defeats justice, should be rejected.*

Words and Phrases:

"Not essential"—Meaning of—In the context of Explanation (i) to S.16(c) of the Specific Relief Act, 1963.

C

The appellant-plaintiff and the respondent-defendant entered into an agreement to sell some properties for certain sale consideration. The appellant paid part of the sale consideration on different occasions. But the respondent refused to accept the balance amount and to execute the sale deed. The appellant, therefore, deposited the balance amount in court and filed a suit
D **for specific performance, which was decreed. The appellate court confirmed the decree. However, High Court set aside the decree on the ground that the appellant had not specifically averred in his pleading that he was ready and willing to perform his part of the contract which was mandatory under Section 16(c) of the Specific Relief Act, 1963.**

E

On behalf of the respondent-defendant it was contended that the balance amount was deposited in court without the court's order and, therefore, there was non-compliance of Section 16(c) of the Act.

Allowing the appeal, this Court

F

HELD: 1. 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, some times vague but still could be
G **gathered what he wants to convey through only by reading the whole pleading, depending on the person drafting a plea. In India most of the pleas are drafted by counsels hence aforesaid difference of plea 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 one's obligations as required under a statue. But to test, whether he has performed his obligations**
H **one has to see the pith and substance of a plea. Where a statue 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 requires 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) of the Specific Relief Act, 1963 does not require any specific phraseology but only that the plaintiff must aver that he has performed or has always been and is willing to perform his part of the contract. So the compliance of "Readiness and willingness" has to be in spirit and substance and not in letter and form. So to insist on a mechanical reproduction of the exact words of a statute is to insist on the form rather than essence. So absence of form cannot dissolve an essence if already pleaded. [356-H; 357-A-D]

Ramesh Chandra v. *Chuni Lal,* AIR (1971) SC 1238, relied on.

Mithu Khan v. *Pipariyawali,* AIR (1986) MP 39, *Trimbak* v. *Nivratti,* AIR (1985) Bom. 128 and *Kamdev* v. *Devendra Kumar,* AIR (1979) Gau 65, referred to.

2. Explanation (i) to Section 16(c) states 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 it in court. The plaintiff can always tender the amount to the defendant or deposit it in court, towards performance of his obligation under the contract. Such tendering 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. Hence, when the plaintiff has tendered the balance amount in court even without the court's order, it cannot be construed adversely against the plaintiff under Explanation (i). [358-F-H; 359-A]

3. Whenever there are two possible interpretations, then the one, which defeats justice should be rejected and the one, which serves the ends of justice, should be accepted. Hence, the High Court was not right in defeating the claim of the plaintiff on the basis of wrong interpretation of his plea in terms of Section 16(c). [359-B-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2061 of 1987.

From the Judgment and Order dated 22.10. 86 of the Karnataka High

A Court in R.S.A. No. 954 of 1975.

Sharat S. Javalli, Joseph Pookatt and Prashant Kumar for the Appellant.

Shantha K. Mahale, for P. Mahale for the Respondent.

B The Judgment of the Court was delivered by

A.P. MISRA, J. The short question raised in this appeal is, how to construe a plea of 'readiness and willingness to perform' to sub-serve to the requirement of Section 16(c) of the Specific Relief Act, 1963 (hereinafter referred to as 'The Act') and the interpretation of its explanation.

C This appeal arises out of an Order dated 22nd October, 1986 passed by the High Court of Karnataka allowing the Second Appeal No.954 of 1975 in favour of the respondent-defendant by dismissing the suit of the plaintiff-appellant for specific performance of an agreement to sell. This resulted into setting aside concurrent findings of both the courts below which decreed the D appellant's suit. For this the sole ground was that appellant did not aver in his plaint that he was ready and willing to perform his part of the contract. Before adverting to this issue, it is necessary to give some bare facts.

The appellant-plaintiff filed a suit for specific performance of an agreement to sale dated 11th August, 1960. According to the plea, defendant E entered into an agreement to sell the properties for the consideration of Rs. 9500. As per stipulation in the agreement, the plaintiff agreed for an adjustment of the mortgage amount of Rs. 5000 and paid Rs. 500 to the defendant-respondent towards part consideration on the same date when the said agreement was executed. On this payment, only Rs. 4000 remained as the balance amount to be paid and on this payment a sale deed was to be F executed. As per plea, the defendant subsequently received a sum of Rs. 3680 on and off from 13.1.1961 to 21.12.1965 from the plaintiff which is endorsed on the agreement to sale on the 21.12.1965. The plaintiff also paid to the defendant Rs. 100 on 21.3.1965 and another Rs. 100 on 4.5.1966. Thus, in all out of the aforesaid balance amount of Rs. 4000, the plaintiff paid Rs. 3880. G It is also averred that these payments are also duly recorded in the account book of the defendant. When plaintiff approached the defendant to receive the balance of Rs. 120 towards sale price and to execute the sale deed the defendant evaded and hence left with no option a legal notice was served on the defendant.

H The trial court held that the alleged agreement to sell (Ex. P. 1) was

executed by the defendant for a sale consideration of Rs. 9500 and the defendant agreed to execute sale deed on receipt of the balance amount of Rs. 4000, and that defendant did receive all the aforesaid amounts except Rs. 120 which also plaintiff tendered in court. Hence, the suit for specific performance was decreed. The appellate court also confirmed the said findings. However, the High court set aside the findings only on the ground that the plaintiff had not averred in his pleading specifically that he was ready and willing to perform his part of the contract which is mandatory under Section 16 (c) of the aforesaid Act.

Mr. S.S. Javali, Learned Senior counsel for the appellant submitted, firstly, that the High Court should not have interfered with the concurrent findings of fact recorded by both the courts below. Secondly, even on facts there exists sufficient pleadings which conforms to the requirement of Section 16(c) of the Act. On the other hand learned counsel for the defendant stoutly defended the impugned order. He submits that the High Court was right to take up this pure question of law which goes at the root of the controversy and it rightly held there was no such plea thus dismissed the suit.

So far the first point, we felt as this goes to the root and being pure question of law, argued at length before the High Court, without objection being raised, it would not be proper, on the facts and circumstances of this case to accede to this submission for the appellant. Thus, the only question to which we are adverting is, the second point, viz., whether the plea of the plaintiff is sufficient to conform to the requirement of the aforesaid section. In other words, could it be construed to be a plea of 'readiness and willingness'. The submission is there exists sufficient plea to construe it to be a plea of readiness and willingness to perform' in terms of the said section. He referred in support to the following pleadings. The relevant portion of which is quoted hereunder:-

> The defendant has entered into an agreement with the plaintiff on 1.8.1960 ....for a consideration of Rs. 9,500.00.... ....the plaintiff has agreed to that on adjustment of the mortgage amount of Rs. 5000.00 and Rs. 500.00 paid towards advance payment of the sale price, that on payment of the obtaining sum of Rs. 4000.00 and off, he would execute a proper sale deed conveying the suit schedule properties. ....the defendant has accordingly received a sum of Rs. 3680.00.....from the plaintiff and has endorsed the same on the agreement on 21.12.1965. He has further received Rs. 100.00 on 21.3.1966 and Rs. 100.00 on

A 4.5.1966 and in all Rs. 3880.00. These payments are also duly written up in the account book of the defendant. The plaintiff approached the defendant to receive the balance amount of Rs. 120.00 towards the sale price and execute the proper sale and he agreed. He evaded and hence a legal notice was issued on 23.2.1967 calling upon him to perform his part of the contract.....He (plaintiff) has today B deposited in Court Rs. 120.00 under R.O. No. being the balance due to the defendant"

Learned counsel submits this pleading clearly reveals that the plaintiff has performed his part of the contract by paying the total balance amount except C Rs. 120, which was tendered in Court. Thus nothing was left for the plaintiff to perform his part under the contract, and such a plea cannot but to be construed to conform to the requirement of Section 16(c). He submits what better 'readiness and willingness' could be said than from the aforesaid plea. He submits, it is not necessary to further express in literal words that 'plaintiff is ready and willing to perform his part of the contract'.

D

He places reliance in *Mithu Khan v. Pipariyawali*, AIR (1986) M.P. 39, *Trimbak* v. *Nivratti,* AIR (1985) Bom.128 and *Kamdev* v. *Devendra Kumar,* AIR 1979 Gau. 65.

On the other hand, learned counsel for the respondent submits, in the E absence of averment of the actual words by the plaintiff in his pleading, i.e., 'ready and willing to perform his part under the contract', which is mandatory in nature, the plaintiff disentitles himself to any relief in view of Section 16(c). His submission with reference to the explanation of Section 16(c) is, even if any balance amount as in the present case Rs. 120 had been tendered by the plaintiff in Court, that cannot be construed to comply with the provisions of F the aforesaid Section. He emphasised, the use of word 'except when so directed by the Court' used in the explanation (i) of the aforesaid Section, means such payment could only be construed to be such, if he deposit this amount only under the direction of the court, which is not in the present case.

G So whole gamut of issue raised is, how to construe a plea specially with reference to Section 16(c) and what are the obligations which the plaintiff has to comply with reference to his plea and whether the plea of the plaintiff could not be construed to conform to the requirement of the aforesaid Section, or does this section require specific words to be pleaded that he has performed or has always been ready and is willing to perform his part of the contract. H 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, some times vague but still could 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.

Returning to the facts of the present case we find the aforesaid pleading recites that all balance amount of the consideration under the contract has been paid by the plaintiff of which there is an endorsement by the defendant except the balance amount of Rs. 120 about which also there is a specific plea that he has tendered the same in the Court. It is true in the pleading the specific word 'ready and willing to perform' in this nomenclature is not there but can aforesaid plea, could be read that plaintiff was not ready to willing to perform his part of his obligation? In other words, can it be said he has not pleaded that he is 'ready and willing' to perform his part? Courts cannot draw any inference in abstract or to give such hyper technical interpretation to defeat a claim of specific performance which defeats the very objective for which the said Act was enacted. The Section makes it obligatory to a plaintiff seeking enforcement of specific performance, that he must not only come with clean hands but there should be a plea that he has performed or has been and is ready and willing to perform his part of the obligation. Unless this is there, Section 16 (c) creates a bar to the grant of this discretionary relief. As we have said for this it is not necessary to plea by any specific words, if

through any words it reveals the readiness and willingness of the plaintiff to perform his part of obligation then it cannot be said there is non-compliance of the said Section.

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

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

(a) xxx xxx xxx

(b) xxx xxx xxx

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

Explanation. - For the purposes of clause (c), -

(i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court;

(ii) the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction."

It is significant that this explanation carves out contract which involves payment of money as a separate class from Section 16(c). Explanation (i) uses the words `it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court. This speaks in negative term what is not essential for plaintiff to do. This is more in support of plaintiff that he need not tender to the defendant or deposit in Court any money but the plaintiff must (as per explanation ii) at least aver his performance or readiness and willingness to perform his part of the contract. This does not mean that unless the court directs the plaintiff cannot tender the amount to the defendant or deposit in the Court. 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. Hence, when

the plaintiff has tendered the balance amount of Rs. 120 in court even without court's order it cannot be construed adversely against the plaintiff under explanation (i) Hence, we do not find any merit in the submission of the learned counsel for the respondents. A

In interpreting a pleading wherever there be two possible interpretations, then the one which defeats justice should be rejected and the one which subserve to justice should be accepted. B

It was held in the case of *Ramesh Chandra* v. *Chuni Lal,* AIR (1971) SC 1238, that readiness and willingness cannot be treated as a strait-jacket formula. This have to be determined from the entirety of facts and circumstances relevant to the intention and conduct of the party concerned. Finally, we have no hesitation to hold that the pleading as made by the plaintiff not only shows his readiness and willingness to perform his part of obligation under the contract but by tendering total amount shows he has performed his part of the obligation. We also construe such a plea to be a plea of 'readiness and willingness' as required under Section 16 (c). In view of the aforesaid findings we hold that the High Court committed an error by defeating the claim of the plaintiff on the basis of wrong interpretation of his plea in terms of the said Section. C D

Accordingly, the impugned order of the High Court dated 22nd October, 1986 is set aside and the plaintiff suit as decreed by both the courts below is confirmed. The appeal is, accordingly, allowed. E

In view of the facts and circumstances of the case, costs on the parties.

V.S.S. Appeal allowed.