REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3672 OF 2007

BISWANATH GHOSH (Dead) by LRs.
AND OTHERS ... APPELLANT(S)

VERSUS

GOBINDA GHOSH ALIAS
GOBINDHA CHANDRA GHOSH
AND OTHERS ... RESPONDENT(S)

JUDGMENT

M.Y. EQBAL, J.:

1. This appeal is directed against the judgment and order dated 28.3.2005 passed by Calcutta High Court in S.A. No.244 of 1987 whereby the judgment and decree passed by the Trial Court as also the Appellate Court has been reversed and the suit was dismissed holding that the suit itself was barred by limitation and lack of relevant pleading and evidence disentitle the plaintiff-appellant to get a decree for

specific performance and for re-conveyance of the suit property.

2. The facts of the case lie in a narrow compass.

3. The plaintiffs-appellants in need of money took a loan of Rs.3,000/- from the defendants-respondents and executed a registered *Kobala* dated 24.11.1964. On the same day, a registered *Ekrarnama* was also executed between the parties stipulating the terms of re-conveyance on payment of the loan amount by the appellants to the respondents.

4. In the year 1970, the appellants filed a suit being Title Suit No.215 of 1970 against the defendants before the Sub-Divisional Munsif, Bangaon under Section 36 of the Bengal Money Lenders Act, 1940. The said suit was resisted by the defendants-respondents, stating therein that the aforesaid sale deed executed by the plaintiffs was out an out-sale of the suit property and possession was also delivered to the respondents. The learned Munsif in terms of the judgment dated 20.12.1973 dismissed the suit. The plaintiffs then filed

appeal against the said judgment being Title Appeal No.350 of 1974. The learned Additional District Judge, upon hearing the parties, allowed the appeal and remanded the matter back to the Trial Court with a direction to the Trial Court to allow the plaintiffs-appellants an opportunity for amending the plaint and to add prayer for specific performance of the contract and to pass fresh judgment in accordance with law.

5. Consequent upon the remand, the appellants amended the plaint by filing application on 1.3.1975 adding prayer for specific performance of contract to transfer the suit property in terms of the agreement for re-conveyance. The said application for amendment was allowed and the learned Munsif framed additional issues, and after considering the evidence on record finally decreed the suit holding that the suit was not barred by limitation. The court of Munsif held that the order for amendment related back to the date of institution of the suit and, therefore, the suit cannot be held to be barred by limitation. Aggrieved by the said judgment

and decree, the defendants-respondents filed appeal being Title Appeal No.836 of 1983, which was dismissed on merit by the First Appellate Court. The respondents then filed Second Appeal, which was finally allowed in favour of the defendant-respondents and the judgment and decree passed by both the courts of Munsif and the Additional District Judge have been set aside. Hence, this appeal by special leave by the plaintiff-appellants.

6. From the impugned judgment passed by the High Court it appears that the High Court formulated the following substantial questions of law and considered the same while allowing the appeal:

> "1) Whether the Learned Courts below erred in law in granting a decree for specific performance of contract notwithstanding the fact that the necessary averment as required by the provisions of the Specific Relief Act were absent in the plaint.
>
> 2)Whether from the materials on records both the learned Courts below ought to have held that the plaintiffs had failed to plead and prove that they were ready and willing to perform their part of contract.
>
> 3)Whether the prayer for specific performance of contract in the instant case is barred by limitation.

4)Whether the amendment as prayed for was rightly allowed and whether on the basis of the said amendment both the Courts below rightly decreed the suit."

7. Before we proceed with the matter, it would be proper to first go through the judgment of remand passed by the Additional District Judge in first round of appeal being Title Appeal No.350 of 1974, which was preferred against the judgment passed by Munsif dismissing the suit of the plaintiffs-appellants. From perusal of the judgment, it reveals that both parties made their submission on the interpretation of two documents, namely *Kobala* and the agreement of re-conveyance. It also reveals that there were exchange of letters (Exhibit 'B' and 'B1') whereupon the defendants-respondents in the reply letter expressed their willingness to reconvey the land but after harvest of aushpaddy on the suit land. Thereafter, the plaintiff issued another letter dated 6.6.1968 agreeing to have conveyance of the suit land after harvest on payment of Rs.3000/- (Exhibit 'B2'). The defendant also replied to such letter

(Exhibit ‘B3’) agreeing to reconvey the suit land after the harvest.

8. On the basis of these exchanges of letters and in the facts and circumstances of the case, the Appellate Court held that the plaintiff-appellants should be given opportunity to have specific performance of contract in terms of the agreement. The relevant portion of the finding and the order passed in the appeal is extracted hereinbelow:

> “The learned advocate for the plaintiffs-appellants submits in view of the facts and circumstances the plaintiffs should be given an opportunity to have a specific performance of contract in terms of an agreement (ext.1). Under the law time is not essence of contract in case of sale of land. The parties mutually extended the time as the letters passed between them indicate. The evidence on record does not speak for the fact that the plaintiffs are keen to treat the transaction as a loan under the

provision of Bengal Money Lenders Act. They are, on the other hand, keen to fall back upon the agreement of repurchase Ext.1. But the suit has been framed as one under section 36 of Bengal Money Lenders Act and as such no relief can be given to the plaintiffs by way of specific performance. So far the end of justice the plaintiff should be given an opportunity to include a prayer for specific performance of contract by effecting amendment of the plaint appropriately and on payment of the requisite court fees and on compliance with the formalities of a suit for specific performance.

The learned advocate for the respondents has objected to giving of such opportunity to the plaintiffs as the proposed amendment will alter the nature of the suit. I do not think so.

The main prayer of the plaintiffs is for restoration of the land in terms of the agreement either by reopening the

transaction or by specific performance of contract.

Considering all these, I for the ends of justice remand the suit for giving the plaintiffs an opportunity to amend the plaint in the light of observation made above in my judgment. The result the appeal succeeds. Memo of appeal is correctly stamped. Hence,

O R D E R E D

that the appeal be allowed on contest without costs. The judgment and decree of the learned Munsif are hereby set aside. The suit be remanded to the trial court for allowing the plaintiff an opportunity to amend the plaint for making a prayer for specific performance of contract. The plaintiff shall pay a cost of Rs.30/- (Rupees Thirty) to the defendants for making such amendment. The defendants shall get opportunity to file additional written statement. The amendment shall be effected within two months from the

receipt of record of this suit. In default, the plaintiffs' suit shall stands dismissed. After the amendment the learned Munsif shall decide the suit on taking further evidence if the parties like to adduce and on the basis of evidence on record in terms of the added prayer of the plaintiffs."

9. From the finding recorded by the Additional District Judge in the aforementioned judgment of remand, it is evidently clear that a direction was issued to the learned Munsif to allow the plaintiff to amend the plaint on payment of cost of Rs.30/-. The Appellate Court also gave opportunity to the defendants-respondents for filing additional written statement.

10. In terms of the aforesaid judgment, the plaint was amended and a relief for a decree of specific performance was added in the said suit. The learned Munsif, after framing additional issue and considering the facts and evidence on

record, decreed the suit for specific performance holding that the suit was not barred by limitation. While passing the decree, the plaintiff-appellant was directed to deposit consideration amount of Rs.3,000/-.

11. Learned Munsif held that after the amendment was allowed and relief for decree of specific performance was added, it should be deemed that the suit for specific performance was filed on the date of institution of the suit i.e. 7.5.1970.

12. Aggrieved by the said judgment and decree passed by the Munsif, the defendants-respondents preferred an appeal being Title Appeal No.836 of 1983. The said appeal was heard and finally dismissed by the First Appellate Court holding that the suit was well within the period of limitation and it was not barred by limitation inasmuch as the amendment of the plaint related back to the date of the presentation of the plaint.

13. The defendants-respondents then assailed the judgment by filing second appeal being S.A. No.244 of 1987. The High Court, as stated above, reversed the finding given by the Trial Court and the Appellate Court and set aside the same by allowing the appeal.

14. From perusal of the judgment passed by the High Court, it reveals that the High Court, after referring Section 16 and Section 20 of the Specific Relief Act and relying on the decision of the Supreme Court, came to the conclusion that since the readiness and willingness have not been averred and proved, both the Trial Court and First Appellate Court committed error in decreeing the suit for specific performance. The High Court further observed that by converting a suit under Section 36 of the Bengal Money lenders Act into a suit for specific performance, basically the nature and character of the suit was changed and such amendments have been wrongly allowed in favour of the plaintiffs-appellants.

15. Mr. S.B. Sanyal, learned senior counsel appearing for the appellant, vehemently contended that the impugned judgment of the High Court is vitiated in law for not following the mandatory requirements of Section 100 of the Code of Civil Procedure (in short "Code"). As a matter of fact, the High Court has adopted wrong procedure in dealing with the second appeal.

16. Mr. Sanyal further contended that the High Court while entertaining the appeal for admission has to formulate substantial question of law involved in the said appeal for consideration and only after giving notice to the respondents an opportunity of hearing on those substantial questions of law, shall finally decide the appeal. In this connection, learned senior counsel relied upon the decision of this Court in the cases of ***Sasikumar & Ors vs. Kunnath Chellappan Nair & Ors.,*** (2005) 12 SCC 588 and ***Gurdev Kaur & Ors. vs. Kaki & Ors.,*** (2007) 1 SCC 546. We find force in the submission of Mr. Sanyal.

17. Section 100 of the Code lays down the provision with regard to second appeal which reads as under:-

> "100. **Second appeal:-** (1) Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law.
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> (2) An appeal may lie under this section from an appellate decree passed ex parte.
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> (3) In an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.
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> (4) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.
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> (5) The appeal shall be heard on the question so formulated and the respondent shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:
>
> Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law, not formulated by it, if it is satisfied that the case involves such question."

18. From bare reading of the aforesaid provision it is manifestly clear that an appeal shall lie to the High Court

from an appellate decree only if the High Court is satisfied that the case involves a substantial question of law. It further mandates that the memorandum of appeal precisely states the substantial question of law involved in the appeal. If such an appeal is filed, the High Court while admitting or entertaining the appeal must record its satisfaction and formulate the substantial question of law involved in the appeal. The appeal shall then be heard on the questions so formulated and the respondent shall be allowed to argue only on those substantial questions of law. However, proviso to this section empowers the court to hear on any substantial question of law not formulated after recording reasons.

19. Order XLI, Rule (3) of the Code is also worth to be quoted hereinbelow:-

> "3.**Rejection or amendment of memorandum:**-(1) Where the memorandum of appeal is not drawn up in the manner hereinbefore prescribed, it may be rejected, or be returned to the appellant for the purpose of being amended within a time to be fixed by the Court or be amended then and there.

> (2) Where the Court rejects any memorandum, it shall record the reasons for such rejection.
>
> (3) Where a memorandum of appeal is amended, the Judge, or such officer as he appoints in this behalf, shall sign or initial the amendment."

20. It is, therefore, clear that if a memorandum of appeal arising out from an appellate decree is not drawn up in the manner provided in the Code, the Court may reject the memorandum of appeal or return the same for the purposes of being amended within the time fixed by the Court.

21. In the instant case what the High Court has done is evident from its order dated 13.1.1987. The order reads as under:-

> "This appeal will be heard on all the grounds and issue a Rule and stay as prayed for"

22. The aforesaid order shows that the High Court while admitting the appeal has not formulated any substantial question of law and it was only after the arguments were

concluded some questions of law were formulated and the appeal was decided by passing the impugned judgment.

23. The law is well settled by catena of decisions of this Court that jurisdiction of the High Court to entertain a second appeal is confined only to such appeals which involves substantial question of law. Section 100 of the Code casts a mandate on the High Court to first formulate substantial question of law at the time of admission of the appeal. In other words, a duty is cast on the High Court to formulate substantial question of law before hearing the appeal. Since the same has not been done, the impugned judgment is vitiated in law.

24. On the question of readiness and willingness, the High Court after relying upon some decisions of this Court allowed the appeal and set aside the judgment and decree of the Trial Court and the First Appellate Court. The only finding recorded by the High Court is extracted hereinbelow:-

> "In my view, both the Courts below totally neglected and failed to consider the point of readiness

and willingness which must be continuous and both the Courts below also failed to consider that this readiness and willingness have not been averred and/ or not been proved. The Learned Appellate Court below without scanning the judgment and decree passed by the Learned Trial Judge wrongly dittoed the judgment and decree passed by the Learned Trial Judge and failed to perform its statutory obligations and/ or duties.

In view of the discussions made above and in view of the decisions of the Hon'ble Apex Court referred to above, both the judgments and decrees passed by the Learned Trial Judge as well as the Learned Appellate Court are set aside.

The suit is therefore, dismissed.

Let a decree be drawn up accordingly.

In the substantially of the facts and circumstances the parties are to bear their respective costs.

Let the lower Court records be sent down to the Courts below forthwith.

Urgent Xerox certified copy, if applied for, will be given to the parties as expeditiously as possible."

25. In our considered opinion, the High Court has committed error of law in setting aside the judgment and decree of the Trial Court and the First Appellate Court on the basis of aforesaid finding.

26. It is well settled proposition of law that in a suit for specific performance the plaintiff must be able to show that he is ready and willing to carry out those obligations which are in fact part of the consideration for the undertaking of

the defendant. For the compliance of Section 16(c) of the Act it is not necessary for the plaintiff to aver in the same words used in the section i.e. ready and willing to perform the contract. Absence of the specific words in the plaint would not result in dismissal of the suit if sufficient fact and evidence are brought on record to satisfy the court the readiness and willingness to perform his part of the contract. In the case of ***Kedar Lal Seal & Anr. vs. Hari Lal Seal***, AIR (39) 1952 SC 47, this Court has held that the Court would be slow to throw out the claim on mere technicality of the pleading. The Court observed:

> "51. I would be slow to throw out a claim on a mere technicality of pleading when the substance of the thing is there and no prejudice is caused to the other side, however clumsily or inartistically the plaint may be worded. In any event, it is always open to a court to give a plaintiff such general or other relief as it deems just to the same extent as if it had been asked for, provided that occasions no prejudice to the other side beyond what can be compensated for in costs."

27. In the case of ***Syed Dastagir vs. T.R. Gopalakrishna Setty***, (1999) 6 SCC 337, this Court dealing with a similar issue observed:

"9. So the whole gamut of the 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 in 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. 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 it could be 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 counsel hence the aforesaid difference of pleas which inevitably differ from one to the 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 maybe in any form. The 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 a statute specifically requires 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 a mechanical production of the exact words of a statute is to insist for the form rather than the essence. So the absence of form cannot dissolve an essence if already pleaded."

28. In the case of ***Mst. Sugani vs. Rameshwar Das and Anr.,*** AIR 2006 SC 2172, this Court observed that

> "17. It is not within the domain of the High Court to investigate the grounds on which the findings were arrived at, by the last court of fact. It is true that the lower appellate court should not ordinarily reject witness accepted by the trial court in respect of credibility but even where it has rejected the witnesses accepted by the trial court, the same is no ground for interference in second appeal, when it is found that the appellate court has given satisfactory reasons for doing so. In a case where from a given set of circumstances two inferences are possible. One drawn by the lower appellate court is binding on the High Court in second appeal. Adopting any other approach is not permissible. The High Court cannot substitute its opinion for the opinion of the first appellate court unless it is found that the conclusions drawn by the lower appellate court were erroneous being contrary to the mandatory provisions of law applicable or its settled position on the basis of pronouncements made by the Apex Court, or was based upon inadmissible evidence or arrived at without evidence.
>
> 18. If the question of law termed as a substantial question stands already decided by a larger Bench of the High Court concerned or by the Privy Council or by the Federal Court or by the Supreme Court, its merely wrong application on the facts of the case would not be termed to be a substantial question of law. Where a point of law has not been pleaded or is found to be arising between the parties in the absence of any factual format, a litigant should not be allowed to raise that question as

> a substantial question of law in second appeal. The mere appreciation of the facts, the documentary evidence or the meaning of entries and the contents of the document cannot be held to be raising a substantial question of law. But where it is found that the first appellate court has assumed jurisdiction which did not vest in it, the same can be adjudicated in the second appeal, treating it as a substantial question of law. Where the first appellate court is shown to have exercised its discretion in a judicial manner, it cannot be termed to be an error either of law or of procedure requiring interference in second appeal. This Court in Reserve Bank of India vs. Ramkrishna Govind Morey, AIR 1976 SC 830, held that whether the trial court should not have exercised its jurisdiction differently is not a question of law justifying interference."

29. In the case of ***Ardeshir Mama vs. Flora Sassoon*****,** 55 IA (PC) 360, their Lordships of the Judicial Committee observed that

> "Where the injured party sued at law for a breach, going, as in the present case, to the root of the contract, he thereby elected to treat the contract as at an end and himself as discharged from his obligations. No further performance by him was either contemplated or had to be tendered. In a suit for specific performance, on the other hand, he treated and was required by the Court to treat the contract as still subsisting. He had in that suit to allege, and if the fact was traversed, he was required to prove a continuous readiness and willingness, from the date of the contract to the time of the hearing, to perform the

> contract on his part. Failure to make good that averment brought with it the inevitable dismissal of his suit."

30. Following the aforesaid principle, the Pakistan Supreme Court in the case of ***Maksud Ali & Ors. vs. Eskandar Ali***, 16 DLR (1964) 138, observed as under:

> "25. So far as the question of making any express averment in the pleading of such readiness and willingness is concerned, we are of the view that although there can be doubt that this is the invariable practice of pleading, and if we may say so, a desirable practice, designed to give a clear and express notice to the opponent of the case sought to be made out, it cannot be said that this is a rule of law which would render the structure of the suit itself defective or that without it a proper cause of action would not appear on the plaint. We are, therefore, unable to accept the contention of the learned counsel that the present suit was bound to fail in the absence of such an averment."

31. In the case of ***Cort and Gee vs. The Ambergate, Nottingham and Boston and Eastern Junction Railway Company,*** (1851) 17 Queen's Bench Reports 127, the Court observed that

> "In common sense the meaning of such an averment of readiness and willingness must be that the non-completion of the contract was

> not the fault of the plaintiffs, and that they were disposed and able to complete it if it had not been renounced by the defendants. What more can reasonably be required by the parties for whom the goods are to be manufactured? If, having accepted a part, they are unable to pay for the residue, and have resolved not to accept them, no benefit can accrue to them from a useless waste of materials and labour, which might possibly enhance the amount of damages to be awarded against them. "

32. In sum and substance, in our considered opinion, the readiness and willingness of person seeking performance means that the person claiming performance has kept the contract subsisting with preparedness to fulfill his obligation and accept the performance when the time for performance arrive.

33. In the background of the principles discussed hereinbefore, we shall now consider the conduct of the plaintiffs-appellants and the act done by them in performance of their part of obligations. These may be summarized as under:

i) Admittedly on 1.12.1964, two documents were executed viz. the sale deed in favour of the defendants on payment of Rs.3,000/-.

ii) An agreement of re-conveyance was also executed on the same day whereby the defendants agreed to return back the property within the stipulated time;

iii) Before the expiry of the time stipulated in the deed of re-conveyance, the plaintiffs send a notice through a lawyer informing the defendants that as per the terms of the agreement of re-conveyance the plaintiffs tendered the amount of Rs.3,000/- and requested them to execute the sale deed. The defendants deferred the date and time on one pretext or another. In the same notice, the plaintiffs reminded the defendants to execute the sale deed after receiving the aforesaid amount.

iv) The defendants-respondents on 29.4.1968 sent reply to the plaintiffs' notice stating that that they are ready to execute and register the sale deed in favour of the plaintiffs, but because of the paddy grown on the land it could be done after some time. The reply dated 29.4.1968 is reproduced hereinbelow:

"NOTICE

To

1. Sree Biswanath Ghosh

2. Sri Guru Pada Ghosh
3. Tarak Dasi Ghosh of Village Narikela, P.O. Gaighata

Under instructions and advice of my clients Sri Narendra Nath Ghosh, and Sri Harendra Nath Ghosh and in reply of the said notice dated 22.4.68. I am to intimate you that the averments and contents of the said notice under reply regarding offer of Rs. 3000/- by you and to requesting them that after harvesting of the crops after the expiry of moth of Pous in respect of the land in question and to execute and register the said sale deed are altogether false.

That the land in question under the said notice my clients has shown Aush Paddy on the 4th day of Baisak within the knowledge of you and without any objection and the said paddy seeds have grown to some extent my clients are ready to execute and register the sale deed in favour of you at our own cost after acknowledged receipt of the said amount of Rs. 3000/- from my clients within ensuring month of Bhadra after harvesting the said paddy dated 29.4.68.

Sd/- Rabindra Nath Dutta
Advocate
29.4.68"

v) The plaintiffs again sent a notice on 6.6.1968 referring the reply dated 29.4.1968 and requesting the defendants to execute the sale deed after harvesting the paddy. The said letter is also extracted hereinbelow:

"From:
NirendraNath Basu, Advocate, Bongaon,
P.O. Dt. 24 Parganas

To,
1 .Sri Narendra Nath Ghosh) Sons of Late
Hazari Lai Ghosh

2. Sri Harendra Nath Ghosh)
Residents of Village Narikela, P.O. Gaighata, Dt. 24 Parganas, Dated at Bongaon on the 6th day of June, 1968.

Sir,
In pursuance of the letter dated 29/4/1968 sent on behalf of your Advocate Rabindra Nath Dutta under instruction of my clients Sri Biswanath Ghosh, Sri Gurupada Ghosh, Sri Tarak Basi Ghosh. You are informed that after harvest the 'Aush Paddy' within the month of Bhadra and within the said month acknowledged receipt a sum of Rs. 3000/- in cash from my client and execute and register a sale deed in favour of my client and deliver vacant possession in favour of my clients otherwise you will be liable for all costs and damages dated 6.6.68.

Sd/- Narendra Nath Basu
Advocate, Bongaon
Dated 6.6.68

Schedul

P.S. Gaighata, Mouza- Narikela
Settlement Plot No. 189 of .46 decimals.
Settlement Plot No. 566 of .42 decimals out of .84 dec.
Settlement Plot No. 416 of .14 decimals
Settlement 413 of. 15 decimals.
Total 1.17 acre of land. Sd/-

vi) In spite of assurance, when the defendants failed to execute the sale deed, the plaintiffs filed the suit on 7.5.1970 before the Munsif, Bongaon stating therein that the plaintiffs have every right to reconvey and to take possession of the suit land. Although the suit was dismissed, but in appeal the First Appellate Court while dismissing the appeal by Judgment dated 16.12.1985

mentioned in the order that the plaintiffs have deposited the money as per directions of learned Munsif before the date fixed in the judgment passed for specific performance.

34. From the aforementioned sequence of facts and events, it can be safely inferred that the plaintiffs-appellants were always ready and willing to discharge their obligation and perform their part of the agreement. In our considered opinion, the undisputed facts and events referred to hereinabove shall amount to sufficient compliance of the requirements of Section 16(c) of the Specific Relief Act.

35. Taking into consideration the entire facts and circumstances of the case and the law discussed hereinabove, in our considered opinion the impugned judgment passed by the High Court cannot be sustained in law.

36. For the aforesaid reasons, the appeal is allowed, the impugned judgment passed by the High Court is set aside and the judgment and decree of the First Appellate Court confirming the judgment and decree passed by the Munsif are restored. However, in the facts of the case, there shall be no order as to costs.

.....J.
(Jagdish Singh Khehar)

.....J.
(M.Y. Eqbal)

New Delhi,
March 14, 2014.