2025 INSC 1298

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 13507–13508 OF 2025

(Arising out of Special Leave Petition (C) Nos. 29405-29406 of 2017)

K.S. MANJUNATH AND OTHERS **...APPELLANTS**

VERSUS

MOORASAVIRAPPA @ MUTTANNA CHENNAPPA BATIL, SINCE DECEASED BY HIS LRS AND OTHERS **...RESPONDENTS**

J U D G M E N T

J.B. PARDIWALA, J.:

For the convenience of exposition, this judgment is divided into the following parts:-

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1. Leave Granted.

2. Since the issues raised in both the captioned appeals are the same, the parties are same, and the challenge is also to the self-same, judgment and order passed by the High Court, those were taken up for hearing analogously and are being disposed of by this common judgment and order.

3. These appeals arise from the common judgment and order passed by the High Court of Karnataka in the Regular First Appeal Nos. 4187 of 2013 and 4160 of 2012 respectively by which the High Court allowed the two appeals filed by the vendees and thereby, set aside the judgment and decree dated 21.07.2012 passed by the 2nd Additional Senior Civil Judge at Haveri, Karnataka ("**Trial Court**") in Original Suit No. 36 of 2007, while granting the relief of specific performance of Agreement to Sell dated 28.04.2000 ("**ATS**") executed by the Respondent Nos. 6 to 13 ("**Original Vendors**") in favour of the Respondent Nos. 15 to 22 respectively & the Respondent Nos. 1 to 5 respectively ("**Original Vendees**") and holding the Appellants herein ("**Subsequent Purchasers**") not to be the *bona fide* purchasers of the subject land *(as defined below)* for value without notice.

A. FACTUAL MATRIX

4. For the sake of convenience, the respective positions of the contesting parties to the present *lis* before the various courts leading upto this Court is tabularly illustrated herein below:

BEFORE THIS COURT	**BEFORE THE HIGH COURT**	**BEFORE THE TRIAL COURT**	**PARTICULARS**
Appellants	Respondent Nos. 8 to 15	Defendant Nos. 9 to 16	Subsequent Purchasers of subject land
Respondent Nos. 1 to 5 (Legal Heirs of Defendant No. 7 on record)	Appellants	Defendant No. 7	One of the Original Vendees of the subject land, however, he was arrayed as a defendant in the suit. This defendant supported the case of plaintiffs.
Respondent Nos. 6 to 13 (Legal Heirs of Defendant Nos. 4 and 6 on record)	Respondent Nos. 1 to 6	Defendant Nos. 1 to 6	Original Vendors of the subject land
Respondent No. 14	Respondent No. 7	Defendant No. 8	One of the Original Vendees of the subject land, however, he was arrayed as a defendant in the suit. This defendant was proceeded *ex-parte* by the Trial Court
Respondent Nos. 15 to 22	Appellants	Plaintiffs	Original Vendees of the subject land
Respondent Nos. 15 to 22, Respondent Nos. 1 to 5, and Respondent No. 14 being the original purchasers of subject land are also collectively being referred to as "**Original Vendees**" in the present matter.			

5. On 28.04.2000, the original vendors executed an unregistered ATS in favour of the original vendees in respect of 354 Acres of Agricultural Watan Land bearing survey no. 12/2 part 12/2A situated in village Basavanakoppa, Taluk Shiggaon, District Haveri, Karnataka ("**Subject Land**") for a total sale consideration of Rs. 26,95,501/- out of which the original vendees paid an amount of Rs. 2,00,000/- as earnest money to the original vendors. It was agreed that an additional amount of Rs. 5,00,000/- would be paid by the original vendees to the original vendors at the time of registration of the ATS and the balance sale amount would be paid at the time of registration of the sale deed. It was also agreed that the original vendees would execute the sale deed within two months of the original vendors, informing them about the change of subject land from new tenure to old tenure in the record of rights, surveying, measuring, fixing the boundaries of subject land and shifting 19 tenants residing on the subject land to one particular place. Between the years 2000 and 2001, the original vendees paid some further amount to the original vendors, in all aggregating to Rs. 8,12,500/-.

6. On 24.03.2001, one Sunil Anand Rao Desai, nephew of the original vendors, instituted the Original Suit No. 30 of 2001 in the court of the Principal Senior Civil Judge at Haveri against the original vendors herein *inter alia* seeking partition and possession of certain properties including the subject land and revocation of a partition deed dated 29.12.1996 (unrelated to the present case) to which the original vendees were not parties. On 11.04.2001, an order of *status quo* came to be passed by the Principal Senior Civil Judge. When the original vendees came to know about the institution of the Original Suit No.

30 of 2001, they took steps to enforce their rights under the ATS and sought to implead themselves as parties in the said suit by filing an impleadment application dated 27.08.2001. The said application came to be rejected by the Principal Senior Civil Judge *vide* its order dated 16.03.2005. Later, aggrieved by rejection to impleadment application, the original vendees preferred a Writ Petition being WP No. 17952 of 2005 before the High Court. However, the same also came to be dismissed by the High Court *vide* its order dated 18.07.2005.

7. In the interregnum and during the pendency of the aforementioned Original Suit No. 30 of 2001, the original vendees got the subject land converted from new tenure to old tenure on behalf of the original vendors and also persuaded those 19 tenants who were residing on the subject land to relocate themselves to some other portion of the land. Meanwhile, one of the original vendees i.e. the Respondent No. 14 herein entered into an agreement dated 28.12.2002 wherein he released and relinquished his right under the ATS in favour of the remaining original vendees.

8. On 10.03.2003, the original vendors sent a Legal Notice ("**Notice of Termination**") to the original vendees thereby terminating the ATS and informing them of their inability to execute a sale deed *inter alia* for two reasons – (i) Long pendency of the Original Suit No. 30 of 2001 and the *status quo* order in force therein, and (ii) The death of one of the original vendors i.e., Smt. Godavari @ Mahalaxmi Kulkarni. In the said notice of termination, the original vendors called upon the original vendees to take back the earnest money paid by them and

treat the ATS as cancelled within one month from the date of receipt of said notice, failing which the ATS would be "deemed to be cancelled". The relevant portion of the said notice reads as under:

> *"In view of the pending litigation and death of Smt. Godavari urf Mahalakshmi G. Kulkarni, my clients are not in a position to go ahead with the transaction as per agreement of sale deed dt. 28.04.2000. My clients cannot wait for an indefinite period. Furthermore they cannot be definite about their share in the land in view of the litigation and it is also subject to the decision of the court.*
> *Hence, my clients are unable to execute a sale deed in respect of the land in question as per agreement dt. 28.04.2000. Under the circumstances, you are hereby called upon to take back your earnest money and to treat the agreement of sale dt. 28.04.2000 as cancelled within a period of one month from the date of receipt of this notice. Failing which the agreement of sale dt. 28.04.2000 is deemed to be cancelled and the legal effects and rights of my clients will take their own course and my clients will be at liberty to deal with the above said land in accordance with law."*
>
> (Emphasis Supplied)

9. To the aforesaid, the original vendees on 21.03.2003 gave a reply stating as follows:

(i). That they had fulfilled the terms of the ATS by getting the subject land surveyed, measured, and boundaries fixed, and carrying out the conversion of tenure of the subject land which otherwise was the obligation of the original vendors under the ATS;

(ii). That they had time and again requested the original vendors to perform their part of the obligation of executing the sale deed;

(iii). That they were always ready and willing to perform their part of the contract;

(iv). That the further performance of the ATS had to be suspended due to the order of *status quo* passed in the Original Suit No. 30 of 2001 and the same would not render the ATS unenforceable;

(v). That the original vendors were duty bound to execute the sale deed in their favour after the disposal of the Original Suit No. 30 of 2001;

(vi). That the death of one of the original vendors would not have the effect of cancellation of the ATS because the legal heirs would be bound to perform in that regard;

(vii). That for all the above grounds the question of taking back the earnest money did not arise.

10. No further response was given by the original vendors to the aforesaid reply to their notice of termination. On 10.02.2007, the plaintiff in the Original Suit No. 30 of 2001 viz., Sunil Anand Rao Desai filed a memo to withdraw the suit and get the *status quo* order vacated in effect thereto. On the basis of the withdrawal memo, the Principal Senior Civil Judge *vide* its order dated 14.02.2007 dismissed the Original Suit No. 30 of 2001 as being withdrawn and thus, the *status quo* order came to be vacated in effect thereto. Pursuant to the withdrawal of the said suit, the original vendors executed the sale deeds dated 20.02.2007 and 02.03.2007 respectively in favour of the subsequent

purchasers, selling the subject land for a total sale consideration of Rs. 71,00,000/-.

11. Having obtained knowledge of the sale deeds executed in favour of the subsequent purchasers, the original vendees instituted the Original Suit No. 36 of 2007 in the Trial Court on 09.07.2007 *inter alia* the relief of seeking specific performance of the ATS dated 28.04.2000 against both the original vendors and the subsequent purchasers.

12. The original vendees prayed for the following reliefs:

> *"16. The plaintiffs pray: -*
>
> *(a) That the defendants be specifically ordered to perform the agreement dated 28.04.2000 and do all acts necessary to put the plaintiffs in full possession of the suit property as owners at the cost of the plaintiffs after receiving the balance consideration from the plaintiffs;*
>
> *(b) That the above acts be got done through Court Commissioner in case defendant/s fail to execute and register the sale deed;*
>
> *(c) In case for any reason whatsoever the court comes to the conclusion that the specific performance cannot be ordered, then the court may be pleased to order refund of amounts paid with damages and compensation which is total sum of Rs. 26,95,501/-;*
>
> *(d) Costs and such other reliefs as court deems fit and proper."*

13. Pursuant to the above, the Trial Court framed the following issues:

"1. Whether plaintiffs prove that, defendants No. 1, 2, 4 and 6 and two others have agreed to sell the suit land RS No. 12/2 i.e. 12/2A measuring 354 acres of village Basasvanakoppa for a sum of Rs: 26,95,501/- on 28.4.2000 and paid Rs. 2,00,000/- as earnest money?
2. Whether plaintiffs prove that, defendants No. 1, 2, 4 and 6 and others have agreed to execute the sale deed within one month after completion of the work of sub division.
3. Whether plaintiffs prove that they have paid amount of Rs. 9,45,000/- as shown in schedule B?
4. Whether plaintiffs prove that, they are ready, ever ready and always ready to perform their part of contract?
5. Whether defendants No.1 to 4 and 9 to 16 prove that suit of the plaintiffs is hopelessly barred by them?
6. Whether defendant No. 1 to 4 prove that the suit of the plaintiffs is not maintainable without seeking relief of cancellation of sale deed?
7. Whether deft. No. 10 proves that, deft. No. 9 to 16 are bonafide purchase of suit lands for valid consideration?
8. Whether plaintiffs are entitled to the relief of specific performance of contract of sale?
9. What order or decree?"

14. The Trial Court answered the issues as under:

(a) Issue Nos. 1, 2, 4 and 7 respectively were answered in the affirmative and the Issue No. 3 was answered partly in the affirmative –

(i). That the original vendees successfully proved that the original vendors had agreed to sell the subject land for sale consideration of Rs. 26,95,501/- and had paid Rs. 2,00,000/- as earnest money;

(ii). That the original vendees successfully proved that the original vendors had agreed to register the sale deed within one month after the completion of subdivision work;

(iii). That the original vendees claim to have paid Rs. 9,45,000/- in overall to the original vendors yet the evidence indicates that the original vendees had paid a total of Rs. 8,12,500/- to the original vendors;

(iv). That the original vendees successfully proved that they were always ready and willing to perform their part of the contract;

(v). That the original vendees failed to prove that the subsequent purchasers had prior knowledge of the ATS.

(vi). That the subsequent purchasers have proved that they are *bona fide* purchasers of the subject land for valid consideration without notice.

(b) Issue Nos. 5, 6, and 8 respectively were answered in the negative –

(i). That the delay in filing the suit was caused due to the pendency of the Original Suit No. 30 of 2001 and the original vendees had filed the suit after the execution of the sale deed by the original vendors in favour of the subsequent purchasers. Thus, the suit filed by the original vendees was within limitation from the date of the disposal of the Original Suit No. 30 of 2001 as well as the execution of the sale deeds;

(ii). That the suit of the original vendees was maintainable without seeking the relief of cancellation of the sale deeds.

This was because the original vendees were not party to those sale deeds and they had filed the suit for specific performance on the basis of ATS only;

(iii). That the original vendees failed to prove that they were in actual possession of the subject land from the date of execution of the ATS and that the subsequent purchasers had *bona fide* purchased the subject land. Therefore, the grant of relief of specific performance in favour of the original vendees would cause hardship to the subsequent purchasers.

(c) Issue No. 9 followed with the following order and direction –

(i). That the original vendees had failed to make good their case for grant of relief of specific performance and that in the alternative, the original vendees were entitled to refund of an amount of Rs. 8,12,500/- alongwith damages @9% p.a.

15. Aggrieved by the judgment and decree dated 21.07.2012 passed by the Trial Court, the original vendees filed two separate appeals i.e., the Regular First Appeal Nos. 4160 of 2012 and 4187 of 2013 respectively, before the High Court. As no cross objections were filed by the subsequent purchasers, the High Court framed the following point for its determination:

"1. Whether the defendant 9 to 16 had established that they were bona fide purchasers for value of the suit property?"

16. The High Court allowed the two appeals by a common judgment and order dated 22.03.2017. It was held that the subsequent purchasers had been informed of the ATS by the original vendors and a copy of the notice of termination of ATS was also shared with the subsequent purchasers. This in High Court's opinion would indicate that the subsequent execution of sale deeds in favour of the subsequent purchasers was a deliberate act and in plain disregard to the subsisting ATS in favour of the original vendees. The High Court also observed that as the original vendors had not responded to the reply of original vendees to the notice of termination, the termination of ATS could never be said to have reached to its logical end, and that the ATS was still alive and binding.

17. Thus, the High Court held that the subsequent purchasers were not *bona fide* purchasers of the subject land for value without notice as they were aware of the earlier ATS executed in favour of the original vendees. The High Court directed the subsequent purchasers to execute the sale deeds in favour of the original vendees and put them in physical possession of the subject land. The original vendees, in turn, were directed to pay the balance sale consideration to the subsequent purchasers. The relevant portions of the impugned judgment at Page Nos. 29 to 31 are as under:

> *"Apparently, there was no rejoinder to the reply notice. It is also not shown that the defendants had offered to return the advance amount received, nor was it claimed to have been returned. The termination of the agreement was hence*

not taken to its logical end. The unilateral termination could not therefore said to be valid and binding on the plaintiffs.

Defendants no.1 to 6 were therefore aware of the circumstance that the advance amount paid by the plaintiffs was not refunded nor was it claimed to have been forfeited on any alleged breach of contract on the part of the plaintiffs. In the face of which, the circumstance that close on the heels of, the plaintiff in the civil suit in OS 30/2001 having withdrawn the suit, that was claimed as an impediment for completion of the sale transaction, defendants no. I to 6 having sold the property in favour of Defendants no.9 to 16, who in turn were said to have been informed of the agreement of sale and the same having been terminated under the notice dated 10-3-2001 and a copy of the same also said to having been furnished to the said defendants, would plainly indicate that the sale transaction was carried out deliberately and blatantly in the face of a subsisting agreement of sale in favour of the plaintiffs, with a clear intention of defeating the said agreement of sale in favour of the plaintiffs. Such a deliberate act on the part of Defendants no. I to 6 and 9 to 16 would not enable them to claim that as they have achieved a fait accompli, though defendants may claim to be innocent and bona fide purchasers for value, as it is found that they were aware of the agreement of sale in favour of the plaintiffs, it cannot be said that the contract is no longer capable of ; performance as the property is now in the hands of a third party. This may be true of genuinely bona fide purchasers and not such third-party purchasers who have brazenly entered into the transaction with eyes wide open and with notice of the subsisting agreement. The consequence would be that even defendants no. 9 to 16 would be obliged to complete the sale, as persons claiming under Defendants no. 1 to 6 by the due execution of a sale deed or sale deeds in favour of the plaintiffs and to convey the suit property in favour of the plaintiffs.

Incidentally, it is our firm opinion that it would be unjust to grant a lesser relief to the plaintiffs in directing the refund of the earnest money or to embark upon an exercise of determining any damages which the plaintiffs could very well claim. Such an exercise would have been justified if the defendants no. 9 to 16 had established their bona fides, which they have not.

In the result, the appeals are allowed and the judgment of the trial court is set aside. The suit for specific performance is decreed. Defendants 9 to 16 shall execute sale deeds in favour of the plaintiffs in respect of such portions of the suit property that they may have purchased from Defendants no. 1 to 6, in favour of the plaintiffs and put them in physical possession of the same. The plaintiffs shall pay the balance sale price in consideration thereof, proportionately. The sale transactions shall be completed within a period of three months, if not earlier. In the event of default on the part of the said defendants in this regard, the plaintiffs shall be entitled to have the sale deeds executed through the court below, in the manner as may be directed by it."

(Emphasis Supplied)

18. In such circumstances referred to above, the subsequent purchasers are here before us with the present appeals.

B. SUBMISSIONS OF THE PARTIES

(i). Submissions on behalf of the Appellants / Subsequent Purchasers

19. Dr. Aditya Sondhi, the learned senior counsel appearing for the subsequent purchasers would submit that the courts below

committed a serios error in decreeing the suit for specific performance filed by the original vendees in as much as the same was barred by limitation. The learned counsel argued that as per Article 54 of the Limitation Act, 1963, the period of the limitation to institute a suit for specific performance is 3 years from the date when a plaintiff has notice of refusal of performance. According to the learned counsel, the ATS was terminated by the original vendors *vide* notice of termination dated 10.03.2003 and thus, the limitation period could be said to have expired on 10.03.2006. However, the original vendees filed the Original Suit No. 36 of 2007 on 09.04.2007 i.e. after a delay of total 11 months.

20. He further submitted that the original vendees' explanation as regards delay in filing the Original Suit No. 36 of 2007 by relying on the pendency of their impleadment application in the Original Suit No. 30 of 2001 is misconceived in as much as: (a) the impleadment application of the original vendees' in the Original Suit No. 30 of 2001 was filed much prior to the notice of termination and on the basis of a wholly different cause of action and (b) the notice of termination was issued by the original vendors on 10.03.2003 i.e. later in time to the filing of the impleadment application, giving rise to a fresh cause of action in respect of specific performance.

21. The learned senior counsel further submitted that the Original Suit No. 36 of 2007 filed for seeking specific performance was not maintainable in law in the absence of there being any prayer seeking declaration in respect of the legality and validity of the termination of the ATS. For this, the learned counsel placed reliance on the decisions

of this Court in ***I.S. Sikandar (Dead) by LRs v K. Subramani & Ors.***, reported in **2013 (15) SCC 27** and ***R. Kandasamy (since dead) & Ors. v T.R.K. Sarawathy & Anr.***, reported in **2024 SCC OnLine SC 3377** respectively wherein this Court had held that a suit for specific performance is not maintainable in the absence of a prayer for declaration that the notice of termination of agreement of sale is bad in law.

22. The learned senior counsel further submitted that his clients are *bona fide* purchasers of the subject land for value without notice and that too after 4 years of the termination of the ATS. He would submit that at the time of the sale of the subject land there was no suit pending. According to the learned counsel, the ATS being an unregistered document and the same being terminated by the original vendors, they had no occasion to have notice to anything contrary. The learned counsel submitted that the subsequent purchasers made *bona fide* enquires about the title of the original vendors and all other necessary particulars before purchasing the subject land. The subsequent purchasers were made aware by the original vendors about the termination of the ATS *vide* the notice of termination prior to the purchase of the suit property. It was argued that the title and possession of the subject land was with the original vendors at the time of the sale.

23. In the last, the learned senior counsel submitted that the ATS was executed in favour of six different individuals who were joint vendees and that there was no division of each person's interest. Four of the original vendees chose to file the Original Suit No. 36 of 2007 as

plaintiffs. Two of the original vendees i.e. the Respondent Nos. 1 to 5 herein and the Respondent No. 14 herein respectively, were arrayed as the defendant no. 7 and defendant no. 8 respectively in the Original Suit No. 36 of 2007, out of which the defendant no. 7 supported the case of the original vendees, however, the defendant no. 8 was proceeded *ex-parte* by the Trial Court. This defendant no. 8 chose not to appear before the High Court. He has not appeared before this Court as well. One of the original vendees i.e. defendant no. 7 never sought the relief of specific performance of the ATS. On such premise, the learned counsel argued that the ATS being indivisible, and in the absence of all the vendees seeking enforcement of the same, the relief of specific performance is not enforceable in law.

(ii). <u>Submissions on behalf of the Respondents / Original Vendees</u>

24. Mr. Devadatt Kamat, the learned senior counsel, appearing for the original vendees vehemently submitted that no error not to speak of any error of law could be said to have been committed by the High Court in passing the impugned judgement and order. On the point of limitation, the learned counsel argued that the Trial Court after due consideration of the facts of the present matter and the evidence on record rightly held that the Original Suit No. 36 of 2007 filed by the original vendees was not time barred. He submitted that the appellant herein / subsequent purchasers had not even challenge this finding of limitation before the High Court and that the High Court limited its adjudication only to the issue whether the subsequent purchasers were *bona fide* purchasers or not. In *arguendo*, the learned counsel argued that even otherwise the original vendees would be entitled to

seek the benefit of Section 14 of the Limitation Act, 1963 in as much as they were seeking impleadment in the Original Suit No. 30 of 2001.

25. It was sought to be argued that the time consumed in impleading themselves as parties in Original Suit No. 30 of 2001 and in the Writ Petition No. 17952 of 2005 has to be excluded under Section 14 of the Limitation Act, 1963 since: (1) both the Original Suit No. 30 of 2001 and the Original Suit No. 36 of 2007 were civil proceedings; (2) the impleadment application filed by the original vendees was dismissed by recording a finding that they were not a necessary party; and (3) original vendees agitated their rights under the same ATS in both the proceedings and that specific submissions regarding their readiness and willingness to perform the contract were made in both the proceedings.

26. The learned counsel further submitted that the High Court was right in holding that the subsequent purchasers are not *bona fide* purchasers of the subject land. He argued that it is evident from the conduct and flow of events that the subsequent purchasers are not *bona fide* purchasers. He pointed out that the subsequent purchasers entered into sale deeds on 20.02.2007 and 02.03.2007 respectively i.e. within 6 (Six) days and 15 (Fifteen) days respectively of the withdrawal order dated 14.02.2007 passed in the Original Suit No. 30 of 2001. The timing of the execution clearly shows that the sale deeds were executed with the sole intent to defeat the rights of the original vendees. Developing this argument further, the learned counsel submitted that the subsequent purchasers have admitted that they were shown the notice of termination dated 10.03.2003 and had the

subsequent purchasers not been negligent, they would have come to know the fact that the earnest money of the original vendees was never returned by the original vendors and that the original vendees had objected to the notice of termination *vide* their reply dated 21.03.2003.

27. In the last, the learned senior counsel submitted that in so far as the readiness and willingness of the original vendees is concerned, the Trial Court and High Court have concurrently held that the original vendees were always ready and ever willing to perform their part of the ATS.

28. In such circumstance referred to above, the learned counsel prayed that there being no merit in the present appeals those may be dismissed.

C. ANALYSIS

29. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the High Court committed any error in passing the impugned judgment?

(I). Failure to challenge the legality and validity of termination of ATS in the suit.

30. The subsequent purchasers have vehemently argued that the Original Suit No. 36 of 2007 filed by the original vendees *inter alia* seeking specific performance of ATS was not maintainable because the original vendees failed to also seek a declaration from the court in respect of whether the notice of termination of the ATS was bad in law or invalid. We are aware that neither the subsequent purchasers nor the original vendors had raised before the Trial Court the plea that the suit for specific performance filed by the original vendees was not maintainable in the absence of a declaration seeking the invalidity of the termination of ATS, no issue came to be framed by the Trial Court on this aspect. However, the same would not preclude this Court to determine if the suit for specific performance filed by the original vendees was not maintainable for want of such declaration as this Court recently in ***R. Kandasamy*** *(supra)* had held that an appellate court would not be precluded from examining whether any jurisdictional fact exists for grant of relief of specific performance notwithstanding the fact that the trial court omitted or failed to frame issue on maintainability of the suit. The relevant observation is as under:

> *"25. What follows from A. Kanthamani [A. Kanthamani v. Nasreen Ahmed, (2017) 4 SCC 654: (2017) 2 SCC (Civ) 596] is that unless an issue as to maintainability is framed by the trial court, the suit cannot be held to be not maintainable at the appellate stage only because appropriate declaratory relief has not been prayed.*
>
> *xxx* *xxx* *xxx*

43. In Shrisht Dhawan v. Shaw Bros. [Shrisht Dhawan v. Shaw Bros., (1992) 1 SCC 534], an interesting discussion on "jurisdictional fact" is found in the concurring opinion of Hon'ble R.M. Sahai, J. (as his Lordship then was). It reads: (SCC pp. 551-52, para 19)

> *19. … What, then, is an error in respect of jurisdictional fact? A jurisdictional fact is one on existence or non-existence of which depends assumption or refusal to assume jurisdiction by a court, tribunal or an authority. In Black's Legal Dictionary it is explained as a fact which must exist before a court can properly assume jurisdiction of a particular case. Mistake of fact in relation to jurisdiction is an error of jurisdictional fact. No statutory authority or tribunal can assume jurisdiction in respect of subject-matter which the statute does not confer on it and if by deciding erroneously the fact on which jurisdiction depends the court or tribunal exercises the jurisdiction then the order is vitiated. Error of jurisdictional fact renders the order ultra vires and bad. [Wade, Administrative Law.] In Raza Textiles [Raza Textiles Ltd. v. CIT, (1973) 1 SCC 633: (1973) 87 ITR 539] it was held that a court or tribunal cannot confer jurisdiction on itself by deciding a jurisdictional fact wrongly.*

44. Borrowing wisdom from the aforesaid passage, our deduction is this. An issue of maintainability of a suit strikes at the root of the proceedings initiated by filing of the plaint as per requirements of Order 7 Rule 1CPC. If a suit is barred by law, the trial court has absolutely no jurisdiction to entertain and try it. However, even though a given case might not attract the bar envisaged by Section 9 CPC, it is obligatory for a trial court seized of a suit to inquire and ascertain whether the jurisdictional fact does, in fact, exist to enable it (the trial court) to proceed to trial and consider granting relief to the plaintiff as claimed. No higher court,

much less the Supreme Court, should feel constrained to interfere with a decree granting relief on the specious ground that the parties were not put specifically on notice in respect of a particular line of attack/defence on which success/failure of the suit depends, more particularly an issue touching the authority of the trial court to grant relief if "the jurisdictional fact" imperative for granting relief had not been satisfied. It is fundamental, as held in Shrisht Dhawan [Shrisht Dhawan v. Shaw Bros., (1992) 1 SCC 534], that assumption of jurisdiction/refusal to assume jurisdiction would depend on existence of the jurisdictional fact. Irrespective of whether the parties have raised the contention, it is for the trial court to satisfy itself that adequate evidence has been led and all facts including the jurisdictional fact stand proved for relief to be granted and the suit to succeed. This is a duty the trial court has to discharge in its pursuit for rendering substantive justice to the parties, irrespective of whether any party to the lis has raised or not. If the jurisdictional fact does not exist, at the time of settling the issues, notice of the parties must be invited to the trial court's prima facie opinion of non-existent jurisdictional fact touching its jurisdiction. However, failure to determine the jurisdictional fact, or erroneously determining it leading to conferment of jurisdiction, would amount to wrongful assumption of jurisdiction and the resultant order liable to be branded as ultra vires and bad.

45. Should the trial court not satisfy itself that the jurisdictional fact for grant of relief does exist, nothing prevents the court higher in the hierarchy from so satisfying itself. It is true that the point of maintainability of a suit has to be looked only through the prism of Section 9CPC, and the court can rule on such point either upon framing of an issue or even prior thereto if Order 7 Rule 11(d) thereof is applicable. In a fit and proper case, notwithstanding omission of the trial court to frame an issue touching jurisdictional fact, the higher court would be justified in

pronouncing its verdict upon application of the test laid down in Shrisht Dhawan [Shrisht Dhawan v. Shaw Bros., (1992) 1 SCC 534].

46. In this case, even though no issue as to maintainability of the suit had been framed in the course of proceedings before the trial court, there was an issue as to whether the agreement is true, valid and enforceable which was answered against the sellers. Obviously, owing to dismissal of the suit, the sellers did not appeal. Nevertheless, having regard to our findings on the point as to whether the buyer was "ready and willing", we do not see the necessity of proceeding with any further discussion on the point of jurisdictional fact here.

47. However, we clarify that any failure or omission on the part of the trial court to frame an issue on maintainability of a suit touching jurisdictional fact by itself cannot trim the powers of the higher court to examine whether the jurisdictional fact did exist for grant of relief as claimed, provided no new facts were required to be pleaded and no new evidence led."

(Emphasis Supplied)

31. In order to fortify their submission, the subsequent purchasers have relied upon the decision of this Court in ***I.S. Sikandar*** *(supra)* wherein the plaintiff had instituted a suit for specific performance of agreement of sale entered into with the defendants therein against the total sale consideration of Rs. 45,000/- in the year 1983. The plaintiff had paid Rs. 5,000 as part sale consideration. In 1985, the defendants issued a legal notice and called upon the plaintiff to comply with his part of the contract by paying the balance sale consideration against which the plaintiff had issued a response calling upon the defendants

to execute a conveyance deed and receive the balance sale consideration. By another letter, the plaintiff also requested the defendants to go to the office of the Sub-Registrar for the purpose of execution of the conveyance deed. However, the defendants sent a notice declining to accede to the plaintiff's request and rescinded the agreement to sell. This Court thus was seized with the question of whether the suit for specific performance of agreement of sale filed by the plaintiff therein against the defendants was maintainable without seeking a declaratory relief with respect to the notice of termination *vide* which the agreement of sale was terminated. This Court held that in the absence of any prayer to declare the termination of agreement of sale as bad in law, the suit for specific performance filed by the plaintiff therein was not maintainable. The relevant observation is as under:

> *"36. Since the plaintiff did not perform his part of contract within the extended period in the legal notice referred to supra, the agreement of sale was terminated as per notice dated 28-3-1985 and thus, there is termination of the agreement of sale between the plaintiff and Defendants 1-4 w.e.f. 10-4-1985.*
>
> *37. As could be seen from the prayer sought for in the original suit, the plaintiff has not sought for declaratory relief to declare the termination of agreement of sale as bad in law. In the absence of such prayer by the plaintiff the original suit filed by him before the trial court for grant of decree for specific performance in respect of the suit schedule property on the basis of agreement of sale and consequential relief of decree for permanent injunction is not maintainable in law.*

38. Therefore, we have to hold that the relief sought for by the plaintiff for grant of decree for specific performance of execution of sale deed in respect of the suit schedule property in his favour on the basis of non-existing agreement of sale is wholly unsustainable in law. Accordingly, Point (i) (see para 32.1) is answered in favour of Defendant 5."

(Emphasis Supplied)

32. Furthermore, in a recent decision of this Court in ***Sangita Sinha v. Bhawana Bhardwaj***, reported in **2025 SCC OnLine SC 723**, this Court had occasion to consider and deal with ***I.S. Sikander*** *(supra)* and ***R. Kandasamy*** *(supra)* respectively. In the said case the suit property that was allotted to the vendor by a cooperative society under a registered sub-lease. Later, an unregistered agreement to sell concerning the said property was executed between the vendors and the vendee for a total sale consideration of Rs. 25,00,000/-. At the time of the execution of the agreement to sell, the vendee had paid a sum of Rs. 2,51,000/- in cash to the vendors and had issued three post-dated cheques of the amount of Rs. 7,50,000/-. When the vendee visited the property along with her husband, the tenants of the vendors created a ruckus and drove them out. In January 2008, the vendors issued a notice to the vendee cancelling the agreement to sell and refunded to the vendee an amount of Rs. 2,11,000/- through five demand drafts and also returned two of the three post-dated cheques of Rs. 2,50,000/- each. It was the case of the plaintiff that an advance amount of Rs. 40,000/- still remained unpaid and that the agreement for sale was unilaterally terminated. The abovementioned refunded amount was later encashed by the vendee without any objection as regards the unpaid amount. When the vendee instituted the suit for

specific performance, they failed to seek a declaration that the termination of agreement for sale was invalid. In this backdrop, this Court deliberated upon the issue of whether the suit filed by the vendee was maintainable in the absence of the declaration that the notice of termination was invalid. This Court while relying on the decisions in ***I.S. Sikander*** *(supra)* and ***R. Kandasamy*** *(supra)* respectively, held that a suit for specific performance is not maintainable in the absence of a declaratory relief that the termination of agreement was bad in law. The relevant observation is as under:

> *"THE AGREEMENT TO SELL DATED 25TH JANUARY 2008 STOOD CANCELLED/TERMINATED.*
>
> *21. This Court is also of the view that the act of the Respondent No. 1-buyer in encashing the demand drafts leads to an irresistible conclusion that the agreement in question stood cancelled.*
>
> *22. The contention of the learned counsel for the Respondent No. 1- buyer that the Agreement to Sell dated 25th January 2008 could not have been cancelled unilaterally is contrary to facts as the letter dated 07th February 2008 along with the refund of the demand drafts and two post-dated cheques was nothing but repudiation of the Agreement to Sell dated 25th January 2008 by the seller and the encashment of the demand drafts was acceptance of such repudiation by the Respondent No. 1-buyer, leading to cancellation of the Agreement to Sell dated 25th January 2008.*
>
> *23. The contention that the demand drafts were encashed under protest is misconceived on facts as there is nothing*

on record to show that the demand drafts were encashed under protest. In fact, PW-2, who is the husband of the Respondent No. 1-buyer, has deposed that upon receipt of the demand drafts and cheques, the Respondent No. 1-buyer had not issued any letter to the seller stating that the amounts received by them were less than the earnest money paid by them.

ABSENT A PRAYER FOR DECLARATORY RELIEF THAT CANCELLATION OF THE AGREEMENT IS BAD IN LAW, A SUIT FOR SPECIFIC PERFORMANCE IS NOT MAINTAINABLE

24. This Court further finds that the seller had admittedly issued a letter dated 7th February 2008 cancelling the Agreement to Sell dated 25th January 2008, prior to the filing of the subject suit on 5th May 2008. Even though the demand drafts enclosed with the letter dated 07th February, 2008 were subsequently encashed in July, 2008, yet this Court is of the view that it was incumbent upon the Respondent No. 1- buyer to seek a declaratory relief that the said cancellation is bad in law and not binding on parties for the reason that existence of a valid agreement is sine qua non for the grant of relief of specific performance.

25. This Court in I.S. Sikandar (Dead) By LRs. v. K. Subramani, (2013) 15 SCC 27 has held that in absence of a prayer for a declaratory relief that the termination of the agreement is bad in law, the suit for specific performance of that agreement is not maintainable. Though subsequently, this Court in A. Kanthamani v. Nasreen Ahmed, (2017) 4 SCC 654 has held that the declaration of law in I.S. Sikander (Dead) By LRs. v. K. Subramani (supra) regarding non-maintainability of the suit in the absence of a challenge to letter of termination is confined to the facts of the said case, yet the aforesaid issue has been recently considered in R. Kandasamy (Since Dead) v. T.R.K. Sarawathy (supra)

authored by brother Justice Dipankar Datta and the conflict between the judgment of I.S. Sikander (Dead) By LRs. v. K. Subramani (supra) and A. Kanthamani v. Nasreen Ahmed (supra) has been deliberated upon. In R. Kandasamy (Since Dead) v. T.R.K. Sarawathy (supra), it has been clarified that the appellate court would not be precluded from examining whether the jurisdictional fact exists for grant of relief of specific performance, notwithstanding the fact that the trial Court omitted or failed to frame an issue on maintainability of the suit […]

26. Since in the present case, the seller had issued a letter dated 07th February, 2008 cancelling the agreement to sell prior to the institution of the suit, the same constitutes a jurisdictional fact as till the said cancellation is set aside, the respondent is not entitled to the relief of specific performance.

27. Consequently, this Court is of the opinion that absent a prayer for declaratory relief that termination/cancellation of the agreement is bad in law, a suit for specific performance is not maintainable."

(Emphasis Supplied)

33. Before delving into the discussion of whether decisions of this Court in ***I.S. Sikander*** *(supra)* and ***Sangita Sinha*** *(supra)* would be of any help to subsequent purchasers herein, we deem it necessary to look into the views adopted by various High Courts with respect to the issue at hand.

(a) Views adopted by the High Courts on failure to seek declaration.

34. The Punjab and Haryana High Court in ***Brahm Dutt v. Sarabjit Singh***, reported in **2017 SCC OnLine P&H 5489**, had observed that unilateral cancellation by one party is impermissible in law except in cases where the agreement itself is determinable under Section 14 of the Specific Relief Act, 1963 (for short, "**the Act of 1963**"). As per the court, to hold otherwise would have enabled a defendant to frustrate virtually every suit for specific performance by resorting to unilateral cancellation. The court emphasized that the Act of 1963 had made elaborate provisions on this aspect under Chapter IV i.e., where a party seeks to rescind an agreement to sell, it is incumbent upon such party to approach the court and obtain a declaration as to the validity of such revocation or rescission. If a party claims that he had valid reasons to terminate or rescind the contract, then such terminating party should seek a declaration from the competent court, as required under Sections 27 and 31 of the Act of 1963 respectively. Therefore, in such a situation, the burden to seek a declaration regarding the validity of cancellation or termination of the contract would rest upon the defendant, who has raised such termination as a defence to resist the suit for specific performance, and not upon the plaintiff. The relevant observation is as under:

> *"17. However, otherwise also the defendant could not have, unilaterally, cancelled the agreement in question. Unilateral cancellation of agreement to sell by one party is not permissible in law except where the agreement is determinable in terms of Section 14 of this Specific Relief Act. Such cancellation cannot be raised as a defence in a suit for specific performance. If any such a plea of cancellation/termination is raised by the defendant than the Court can just ignore this and the plaintiff need not*

challenge such an alleged cancellation. If such unilateral cancellation of non-determinable agreement is permitted as a defence then virtually every suit for specific performance can be frustrated by the defendant. Therefore the Specific Reliefs Act has made detailed provisions for this aspect. The bare perusal of the provisions of the Specific Relief Act shows that once a party claims the right of revocation or rescission, of the agreement then such a party is required to seek a declaration from the Court regarding the validity of revocation or rescission, as the case may be. In the present case also, it was not the duty cast upon the plaintiff to challenge the alleged cancellation of agreement, which, otherwise also, is not proved on record. On the contrary, if the defendant so claimed that he had valid reasons to terminate the contract or rescind the contract then he should have sought a declaration from the competent Court, as required under Sections 27 and 31 of Specific Relief Act. Hence the plea of termination of agreement raised by the defendant has rightly not been accepted by the Courts below.

18. So far as the judgment of the Hon'ble Supreme Court in case of I.S. Sikandar (supra) is concerned, there is no dispute regarding the proposition laid down by the Hon'ble Supreme Court. However, that judgment is distinguishable on the facts of the present case. In the case before the Hon'ble Supreme Court, the defendant had, in fact, asked the plaintiff to make the payment of the money and to get the sale deed executed. On failure of the plaintiff to make the payment the agreement had become determinable and the defendant had terminated the contract by specific communication. This action of the defendant was within the realm of the Contract Act, as provided under Sections 38 and 51 of the Contract Act and Section 14 of Specific Relief Act, which provides that in case of the performance which was required of the plaintiff/promisee is refused by him

then the defendant/promisor need not perform his part of the agreement."

(Emphasis Supplied)

35. The view taken in ***Brahm Dutt*** *(supra)* stood affirmed by this Court in ***Brahm Dutt v. Sarabjit Singh***, reported in **2018 SCC Online SC 3961**, wherein this Court found no good reason to interfere with the view taken by the High court. The relevant portion of the order is as under:

"3. We do not find any ground to interfere with the impugned order. The special leave petition is, accordingly, dismissed."

36. Later, in ***Balwinder Sarpal v. Ram Kumar Bansal***, reported in **2022 SCC OnLine P&H 4408**, the Punjab and Haryana High Court was again confronted with a suit for possession by way of specific performance. The case arose out of an agreement for sale where the total sale consideration was fixed at Rs. 7,00,000/-, of which Rs. 1,00,000/- was paid as earnest money, and the sale deed was to be executed on 05.07.2006 upon payment of the balance consideration. On the appointed date, the plaintiff remained present in the office of the Sub-Registrar with the requisite balance sale consideration, for the purpose of execution and registration of the sale deed. The defendants, however, failed to appear and the sale deed could not be executed, thereby compelling the plaintiff to institute the suit. The trial court noted that under a notice of termination, the defendants purported to cancel the agreement and forfeit the earnest money. Thus, the trial court, relying on the termination notice, held that the agreement stood terminated and the earnest money stood forfeited,

and that in the absence of any declaratory relief sought, the suit for specific performance was not maintainable. Aggrieved by the decision of the trial court, the plaintiff preferred an appeal which came to be allowed and thus, the suit for specific performance was decreed in favour of plaintiff. In second appeal, the defendants placed reliance upon ***I.S. Sikandar*** *(supra)* to contend that, since the plaintiff had not sought a declaration challenging the termination, the suit was not maintainable. The High court, however, distinguished ***I.S. Sikandar*** *(supra)*. It was observed that in ***I.S. Sikandar*** *(supra)*, the vendor had called upon the purchaser to complete the transaction by paying the balance sale consideration, and even afforded him a further opportunity with a caveat that failure would result in termination. The purchaser defaulted despite such opportunity, and in such circumstances, this Court upheld the termination. In other words, it was under such circumstances that the failure to seek a declaration that the termination was unilateral and void, was considered to be detrimental to the suit for specific performance instituted by the plaintiff therein. By contrast, in ***Balwinder Sarpal*** *(supra)*, the defendants had issued the notice of termination within five days of the stipulated date, without granting any opportunity to the plaintiff to tender the balance consideration and get the sale deed executed. On these distinguishing facts, the High court held that ***I.S. Sikandar*** *(supra)* could not be applied to the case at hand. Instead, reliance was placed on ***Brahm Dutt*** *(supra)* to hold that a unilateral termination of an agreement for sale, effected in such manner, is not permissible. The High court observed that once it was found that the termination was unilateral and without giving any opportunity to the purchaser to perform his part of the contract, no separate declaratory relief was

required with respect to the termination. The relevant observation is as under:

> *"9. In the present facts and circumstances wherein, the agreement in question is dated 05.04.2006 with 05.07.2006 being the target date, notice dated 10.07.2006 regarding its termination and forfeiture of earnest money was issued on 10.07.2006 whereas the suit for possession by way of specific performance came to be filed at the instance of respondent-plaintiff on 17.08.2006 i.e. without causing any delay what so ever. This itself shows that in fact the respondent/plaintiff was always ready and willing to perform his part of agreement and the amazing swiftness shown by the appellants/defendants was not at all bona fide and the uncalled for. Before terminating the agreement in question, the appellant/defendant never called upon the respondent/plaintiff to come forward and execute the sale deed in pursuance to the agreement in question which happens to be the most relevant distinguishing factor as compared to the facts in the case of I. S. Sikandar (D) By LRs. v. K. Subramani, (2014) 1 RCR (Civil) 236. To point out the same, relevant portion from paragraph No. 17 of the aforesaid judgment is reproduced as under:—*
>
> > *"…… The period of five months stipulated under clause 6 of the Agreement of Sale for execution and registration of the sale deed in favour of the plaintiff had expired. Despite the same, the defendant Nos. 1-4 got issued legal notice dated 06.03.1985 to the plaintiff pointing out that he has failed to perform his part of the contract in terms of the Agreement of Sale by not paying balance sale consideration to them and getting the sale deed executed in his favour and called upon him to pay the balance sale consideration and get the sale deed executed on or before 18.3.1985. The plaintiff had issued reply letter dated 16.3.1985 to the advocates of*

defendant Nos. 1-4, in which he had admitted his default in performing his part of contract and prayed time till 23.05.1985 to get the sale deed executed in his favour. Another legal notice dated 28.03.1985 was sent by the first defendant to the plaintiff extending time to the plaintiff asking him to pay the sale consideration amount and get the sale deed executed on or before 10.04.1985, and on failure to comply with the same, the Agreement of Sale dated 25.12.1983 would be terminated since the plaintiff did not avail the time extended to him by defendant Nos. 1-4. Since the plaintiff did not perform his part of contract within the extended period in the legal notice referred to supra, the Agreement of Sale was terminated as per notice dated 28.03.1985 and thus, there is termination of the Agreement of Sale between the plaintiff and defendant Nos. 1-4 w.e.f. 10.04.1985. As could be seen from the prayer sought for in the original suit, the plaintiff has not sought for declaratory relief to declare the termination of Agreement of Sale as bad in law. In the absence of such prayer by the plaintiff the original suit filed by him before the trial court for grant of decree for specific performance in respect of the suit schedule property on the basis of Agreement of Sale and consequential relief of decree for permanent injunction is not maintainable in law…….".

10. From the portion reproduced hereinabove, it can be easily traced out that in the case of I.S. Sikandar (Supra), the purchaser was initially called upon by the vendor to get the sale deed executed on payment of balance sale consideration. The purchaser having failed to do so, another opportunity was even granted to him to perform his part of the agreement with a caveat that in case the purchaser failed to do so by the stipulated date, the agreement would stand terminated. It was under those circumstances, when the purchaser failed to perform his part of obligation under

the agreement, the Hon'ble Supreme Court accepted the plea of termination of the agreement. On the contrary, in the present case, notice of termination was issued by appellants/defendants merely within 5 days of the target dates and that too without granting any opportunity to the respondent/plaintiff to pay the balance consideration and get the sale deed executed. In these distinguishing circumstances, the judgment passed in the case of I. S. Sakandar (supra) can't be made applicable to the present case. More than that even the unilateral termination of agreement in question could not be accepted, in view of the law laid down by this Court in case of Brahm Dutt v. Sarabjit Singh, 2018 (1) L.A.R. 119 […]

11. Once the alleged termination of agreement in question, in the facts and circumstances of the present case has not been found to be bona fide being done in a unilateral manner without even calling upon the respondent/plaintiff to perform their part of agreement and particularly under the circumstances, wherein, the suit was filed promptly thereafter, no declaration, challenging the alleged termination was called for."

(Emphasis Supplied)

37. In ***S.K. Ravichandran v. M. Thanapathy***, reported in **2022 SCC OnLine Mad 9094**, the plaintiff had instituted a suit for specific performance of an agreement for sale of immovable property owned by the defendant. The parties had entered into a written agreement for sale dated 19.08.2007 for a total consideration of Rs. 11,80,000/-, out of which the plaintiff paid Rs. 1,50,000/- as advance on the very same day. The agreement stipulated that upon payment of the balance consideration of Rs. 10,30,000/- on or before 15.10.2007, the sale deed would be executed and registered. The plaintiff tendered the balance consideration and was assured by the defendant that he

would attend the office of the Sub-Registrar prior to the stipulated date. It was further agreed that both the parties would appear before the Sub-Registrar on 09.10.2007. While the plaintiff duly presented himself on that date, the defendant failed to do so. Consequently, on 12.10.2007, the plaintiff dispatched a telegram and a detailed letter requesting the defendant to attend the Sub-Registrar's office on 15.10.2007. The plaintiff remained present on the appointed day, but despite due receipt of the communication, the defendant neither appeared nor responded. The plaintiff thereafter learnt that the defendant was attempting to alienate the suit property to third parties, compelling him to institute a suit for specific performance and permanent injunction. The defendant by relying on ***I.S. Sikandar*** *(supra)* resisted the suit on the ground that, in the absence of a specific challenge to the alleged termination of the agreement, the suit was not maintainable. The plaintiff, on the other hand, contended that the agreement did not contain any clause permitting termination in the event of default, and that unilateral cancellation was impermissible in law. Relying upon the decision in ***Brahm Dutt*** *(supra)*, it was urged that unilateral cancellation of a contract, except in cases where the agreement is determinable under Section 14 of the Act of 1963 is not sustainable in the eyes of law. Such a cancellation, if pleaded as a defence, could be ignored by the court and the plaintiff did not require to seek a separate declaratory relief. Relying on the dictum as laid in ***Brahm Dutt*** *(supra)*, the Madras High Court held that since the agreement in question did not provide for termination upon the purchaser's failure to pay the balance consideration by a stipulated date, the unilateral cancellation pleaded by the defendant

was of no legal effect. It was reiterated that law does not permit such unilateral termination. The relevant observation is as under:

> *"15. He would further submit that since the appellant did not come forward to get the sale deed by paying balance sale consideration and he was not ready and willing to perform his part of contract, the respondent cancelled the sale agreement and when the respondent communicated the appellant, regarding the cancellation of the deed, the appellant has not challenged the cancellation of the sale agreement. Without challenging the cancellation of the sale agreement, the Suit is not maintainable.*
>
> *16. In support of his contention, he relied on the following Judgments:— (i) I.S. Sikandar (D) by LRS., v. K. Subramani, (2013) 15 SCC 27; (ii) Ravindran v. Danton Shanmugam, (2017) 3 Mad LJ 265; (iii) Mohinder Kaur v. Sant Paul Singh, (2019) 9 SCC 358 and (iv) Prabakaran v. Geetha, (2022) 3 CTC 650.*
>
> *xxx xxx xxx*
>
> *25. It is the contention of the learned counsel for the respondent that the suit itself was not maintainable on the ground that though the respondent cancelled the agreement, the appellant has not challenged the cancellation. In this regard, the learned counsel for the appellant would submit that the sale agreement does not speak about the termination of the contract. Unilateral cancellation is not permissible under law, except where the agreement is determinable in terms of Section 14 of the Specific Relief Act. Such cancellation cannot be raised as a defence in a suit for specific performance. If any such plea is raised by the respondent, the Court can just ignore the same and the plaintiff need not challenge the unilateral cancellation separately. Further, the plea regarding the*

maintainability of the suit is to be raised at the first instance in the written statement. Therefore, the said plea cannot be adjudicated in the appeal. The citation referred to by the learned counsel for the respondent is not applicable to the present case on hand.

26. A careful perusal of the sale agreement Ex.A.1 clearly shows that the time stipulated for the balance sale consideration is on or before 15.10.2007, it does not speak about the termination of the contract, in case the appellant will not pay the balance sale consideration on particular date. Therefore, the law does not permit unilateral cancellation as referred to above."

(Emphasis Supplied)

38. The view taken by the Madras High Court in ***S.K. Ravichandran*** *(supra)* also came to be affirmed by this Court in ***S.K. Ravichandran v. M. Thanapathy***, reported in **2022 SCC Online SC 2369**, wherein one of us, J.B. Pardiwala, J., was a part of the Bench. This Court found no good reason to interfere with the above decision. The relevant portion is as under:

"2. We do not find any reason to interfere with the impugned order. The Special Leave Petition is accordingly dismissed."

39. The Delhi High Court was also seized of a similar issue in the case of ***Rajesh Sethi S.C. v. P.C. Sethi***, reported in **2023 SCC OnLine Del 7010**. In the said case, the plaintiff had filed a suit for specific performance of agreement to sell. The agreement to sell was terminated by the defendants on the ground that the property was an HUF property. The High court observed that such unilateral termination is not permissible under law, especially when the

defendant vendor neither had any valid reason nor had filed any suit seeking a declaration that the agreement to sell was void. Thus, the plea that the agreement to sell was unilaterally terminated by the defendant vendor as the suit property was an HUF property is not valid. The relevant observation is as under:

> *"145. The question which now needs deliberation is whether the Agreement to Sell dated 14.01.2004 Ex P-1/D-2 had been validly terminated by Col. P.C. Sethi vide his Letter dated 21.03.2004, before the expiry of the three month period for execution as provided in the said Agreement.*
>
> *146. To evaluate the validity of a unilateral rescission of a contract it would be apposite to refer to the judgment of the Madras High Court in Raja Rajeswara Dorai v. A.L.A.R.R.M. Arunachellan Chettiar, 1913 SCC OnLine Mad 276 where it was observed that a unilateral expression of rescission of a contract by one of the parties to the contact cannot be held to relieve him from his obligation to have the contract rescinded by Court under the substantive law and within the time allowed by statutory law if he wants as a plaintiff the assistance of the Court in obtaining certain reliefs on the basis that the contract has ceased to exist. It was observed that repudiation of a contract by one party alone cannot get the party any relief except as consequent of getting a declaration and a rescission by the Court. Thus, a contract can be properly rescinded without the intervention of a Court only by the act of both parties or, if the original contract or Deed itself, by clauses of forfeiture or similar clauses, puts an end to the contract or transaction. However, even the latter case has to be determined by both the parties and only then the aid of the Court is not required. Therefore, even though a contract or transaction may be voidable at the instance of one party, its rescission is*

effectuated, not by the mere repudiation of one party, but by the decree of declaration of this Court.

147. It has been further explained by Punjab and Haryana High Court in the case of Brahm Dutt v. Sarabjit Singh, 2017 SCC OnLine P&H 5489 that unilateral cancellation of Agreement to Sell by one party is not permissible in law except where the agreement is determinable in terms of Section 14 of this Specific Relief Act, 1963 and such cancellation cannot be raised as a defense in a suit for Specific Performance. If any such plea of cancellation/termination is raised by the defendant, the Court can just ignore the same and the plaintiff is also not required to challenge such a cancellation or revocation. It was further observed that if such unilateral cancellation of non-determinable agreements is permitted as a defense, then virtually every suit for specific performance can be frustrated by the defendant. On the contrary, if the defendant so claimed that he had valid reasons to terminate the contract or rescind the contract then he ought to have sought a declaration from the competent Court, as required under Sections 27 and 31 of Specific Relief Act, 1963.

148. Thus, once a party claims the right of revocation or rescission of the Agreement, then such a party is required to seek a declaration from the Court regarding the validity of revocation or rescission, as the case may be.

149. In the present case, the Col. PC Sethi has given contrary reasons in his Letter of Revocation dated 21.03.2004 to those which have been stated in his Written Statement clearly reflecting that the reason for rescission on the ground that the property was an HUF was an after-thought. Be that as it may, the reason provided in the Letter of Rescission dated 21.03.2004 cannot by any means be construed as a valid one to unilaterally rescind the Agreement to Sell even before the tenure of executing the

same had expired. Col. PC Sethi clearly had second-thoughts about the sale and wanted to wriggle out of this Agreement to Sell on one ground or the other. Such unilateral rescission is not permissible under law, especially when the Col. PC Sethi neither had any valid reason, nor filed any suit for seeking a declaration that the Agreement to Sell was void. Therefore, the plea that the Agreement to Sell dated 14.01.2004 was unilaterally rescinded by Col. PC Sethi as the suit property is an HUF asset is not sustainable in the present case.

150. Thus, the cancellation/termination of Agreement by Col. P.C. Sethi is not valid and the Agreement to Sell is held to be subsisting and executable to the extent of the share of Col. P.C. Sethi."

(Emphasis Supplied)

40. Further, in the case of ***Kavi Ghei v. Rohit Vaid***, reported in **2024 SCC OnLine Del 6118**, the plaintiff had filed a suit for specific performance of agreement to sell executed by the defendant nos. 1 and 2 respectively therein and the cancellation of subsequent sale deed executed by the defendant nos. 1 and 2 respectively in favour of the defendant no. 3. The facts of the case were such that the plaintiff and the defendant nos. 1 and 2 therein had entered into an agreement to sell for the sale of property for a consideration of Rs. 3,22,50,000/-. Pursuant to execution of the agreement to sell, the plaintiff paid Rs. 21,00,000/- to the defendant nos. 1 and 2 respectively. In terms of the agreement to sell, the sale deed was to be executed on or before 15.05.2004. For the purpose of raising the funds for the purchase of suit property, the plaintiff had also availed a loan of Rs. 2,00,00,000/- from a bank. However, the plaintiff received a notice of termination from the defendant nos. 1 and 2 dated 21.04.2004, wherein they

informed the plaintiff that they had decided not to sell the suit property to the plaintiff. The reason for such refusal was stated to be that the plaintiff himself had supposedly reduced the sale consideration to Rs. 2,00,00,000/- from the agreed sum of Rs. 3,22,50,000/- and informed the neighbours about the sale even though sale had not been effected, and also attempted to avoid the brokerage. The defendant nos. 1 and 2 respectively further sought to refund the aforesaid amount paid by the plaintiff by annexing cheques with the notice of termination. The High court found that none of the reasons as assigned in the notice of termination were acceptable as they did not reflect any dubious conduct on part of the plaintiff which would justify a premature termination of the agreement to sell. The High court while placing reliance on ***Brahm Dutt*** *(supra)* held that the termination of agreement to sell was not in accordance with any of the clauses of the agreement and further it was not with the consent of the both parties. Thus, it was held therein that the unilateral termination of agreement to sell by the defendant nos. 1 and 2 was not valid and that agreement to sell was still subsisting and executable. The relevant observation is as under:

> *"82. It is argued on behalf of Defendant 3 that without challenging the termination of agreement to sell dated 21-3-2004, the present suit for Specific Performance is not maintainable under the law.*
>
> *xxx* *xxx* *xxx*
>
> *115. The facts of the present case may thus, be analysed to ascertain whether the unilateral termination of ATS, was justified. Admittedly, the parties entered into an agreement*

to sell dated 21-3-2004, Ext. PW 1/1 in regard to the suit property for the sale consideration of Rs 3,22,50,000 and that a sum of Rs 21,00,000 was paid by the plaintiff as advance money to the defendants and a balance amount of Rs 3,01,50,000 remained to be paid at the time of registration of the sale deed at which time the physical vacant possession was to be handed over to the plaintiff […] 116. this agreement to Sell was not only signed by the plaintiff and the defendants but was also witnessed by the two witnesses, namely, Colonel C.K. Vaid r/o B-1, Sundar Nagar, New Delhi and by Ms Ranjana Ahuja r/o 903, Nirmal Towers, 26 Barakhamba Road. It was thus, clearly stipulated in terms of the agreement to Sell that the sale deed was required to be executed by 15-5-2004. 117. However, before the expiry of the stipulated period for honouring the respective obligations, the defendant has admittedly terminated the agreement on 20-4-2004 i.e. much prior to the date stipulated for completion of the obligations under the agreement.

xxx xxx xxx

121. From the notice of termination, the three grounds stated for premature cancellation are: (i) Renegotiations of terms in regard to the cash competent of the agreed sale consideration. (ii) Informing the neighbours even though the sale had not been effected. (iii) The endeavour to avoid the broker in order to save the brokerage amount.

xxx xxx xxx

132. Any of the reasons as stated in this Letter of Termination, Ext. DW 1/1, has not been proved or established and it does not reflect to any conduct of the plaintiff which justify premature termination of the agreement to Sell.

xxx *xxx* *xxx*

152. It cannot be overlooked that even though Defendant 3 was being cautious in enter into this sale transaction and had been conscious and aware of the earlier subsisting Agreement to Sell, he has admitted that he did not in any manner contact the plaintiff or otherwise satisfy himself about the valid termination of the earlier Agreement to Sell. The manner in which the entire transaction has been executed, clearly establishes that Defendant 3 while has been a party to the creation and execution of the documents and has even mentioned about the earlier Agreement to Sell in the sale deed, Ext. PW 1/1 but has deliberately not contacted the plaintiff, to confirm from him about the alleged cancellation of the earlier Agreement to Sell, as any prudent reasonable person would do in the given circumstances especially when the consequences of the earlier Agreement to Sell, were well within the knowledge and of all the parties.

153. Defendant 3 has acted selectively and had chosen to ensure that there was proper paper work done and has not acted like a reasonable person, to ensure the cancellation of earlier Agreement to Sell. Though he has claimed himself to be a bona fide purchaser, but from the fact that earlier ATS was well within the knowledge of the defendants, manner in which the documents have been executed and also the fact that the notice of termination of the agreement to Sell has been served subsequently, the only inference that can be drawn is that the subsequent sale in favour of Defendant 3, has been made without there being any valid termination of prior Agreement to Sell with the plaintiff. The termination has neither been in accordance with any Clause of ATS nor is it with the consent of both the parties.

154. Thus, the unilateral cancellation/termination of agreement to sell dated 21-3-2024 Ext. PW 1/1 by

Defendants 1 and 2 is not valid and the agreement to Sell is held to be subsisting and executable. Moreover, it is proved that Defendant 3 is not a bona fide purchaser as claimed by him.

155. In conclusion, there being a valid subsisting Agreement to Sell, which was well within the knowledge of Defendant 3. He cannot defend the subsequent Sale Deed executed in his favour. The plaintiff continues to have a right to seek the execution of the agreement to Sell, Ext. PW 1/1, in his favour."

(Emphasis Supplied)

41. A similar view was taken by the Andhra Pradesh High Court in ***A. Kanthudu v. S. Venkat Narayana***, Appeal No. 678 of 2007 and the Delhi High Court in ***Ajay Narain v. Arti Singh***, reported in **(2025) 316 DLT 425**.

42. In addition to the views expressed by various High courts, as discussed above, this Court, in the recent decision of ***Annamalai v. Vasanthi***, reported in **2025 SCC OnLine SC 2300**, wherein one of us, J.B. Pardiwala, J., was a member of the Bench, had the occasion to consider whether a suit for specific performance is maintainable without seeking a declaration that the termination of the agreement was invalid in law. This Court held that where a contract confers upon a party the right to terminate it under certain conditions, and if such right is exercised, then the continued subsistence of the contract becomes doubtful. In such cases, the plaintiff must first obtain a declaration that the termination is invalid before seeking specific performance. However, where no such contractual right to terminate exists, or where the right has been waived, and a party nevertheless

proceeds to terminate the contract unilaterally, such termination would amount to a repudiatory breach, in which event the non-terminating party can directly seek specific performance without first seeking a declaration as aforesaid. The relevant observation is as under:

> *"**Issues for consideration***
>
> *12. Upon consideration of the rival submissions and having regard to the facts of the case, in our view, following issues arise for our consideration:*
>
> > *A. Whether the High Court was justified in interfering with the finding of the first appellate court qua payment of additional amount of Rs. 1,95,000 by the plaintiff-appellant? If receipt of additional payment by D-1 and D-2 is proved, as found by the first appellate court, whether it could be held that plaintiff was not ready and willing to perform its part under the contract?*
> > *B. Whether the suit for specific performance was maintainable without seeking a declaration that termination of the agreement was invalid in law?*
> > *C. Whether in the facts of the case the plaintiff was entitled to the discretionary relief of specific performance?*
>
> *xxx xxx xxx*
>
> ***When a declaratory relief is essential***
>
> *25. A declaratory relief seeks to clear what is doubtful, and which is necessary to make it clear. If there is a doubt on the right of a plaintiff, and without the doubt being cleared no further relief can be granted, a declaratory relief becomes essential because without such a declaration the*

consequential relief may not be available to the plaintiff. For example, a doubt as to plaintiff's title to a property may arise because of existence of an instrument relating to that property. If plaintiff is privy to that instrument, Section 31 of Specific Relief Act, 1963 enables him to institute a suit for cancellation of the instrument which may be void or voidable qua him. If plaintiff is not privy to the instrument, he may seek a declaration that the same is void or does not affect his rights. When a document is void ab initio, a decree for setting aside the same is not necessary as the same is non est in the eye of law, being a nullity. Therefore, in such a case, if plaintiff is in possession of the property which is subject matter of such a void instrument, he may seek a declaration that the instrument is not binding on him. However, if he is not in possession, he may sue for possession and the limitation period applicable would be that as applicable under Article 65 of the Limitation Act, 1963 on a suit for possession. Rationale of the aforesaid principle is that a void instrument/transaction can be ignored by a court while granting the main relief based on a subsisting right. But, where the plaintiff's right falls under a cloud, then a declaration affirming the right of the plaintiff may be necessary for grant of a consequential relief. However, whether such a declaration is required for the consequential relief sought is to be assessed on a case-to-case basis, dependent on its facts.

26. A breach of a contract may be by non-performance or by repudiation, or by both. In Anson's Law of Contract (29th Oxford Edn.), under the heading "Forms of Breach Which Justify Discharge", it is stated thus:

> *"The right of a party to be treated as discharged from further performance may arise in any one of three ways: the other party to the contract (a) may renounce its liabilities under it; (b) may by its own conduct make it impossible to fulfill them, (c) may fail to perform what*

it has promised. Of these forms of breach, the first two may take place not only in the course of performance but also while the contract is still wholly executory i.e., before either party is entitled to demand a performance by the other party of the other's promise. In such a case the breach is usually termed an anticipatory breach. The last can only take place at or during the time for performance of the contract."

27. Ordinarily, for a breach of contract, a party aggrieved by the breach i.e., failure on the part of the other party to perform its part under the contract can claim compensation or damages by accepting the breach as a termination of the contract, or/and, in certain cases, obtain specific performance by not recognizing the breach as termination of the contract. In a case where the contract between the parties confers a right on a party to the contract to unilaterally terminate the contract in certain circumstances, and the contract is terminated exercising that right, a mere suit for specific performance without seeking a declaration that such termination is invalid may not be maintainable. This is so, because a doubt/cloud on subsistence of the contract is created which needs to be cleared before grant of a decree enforcing contractual obligations of the parties to the contract.

28. Now we shall consider few decisions of this Court where the question of grant of relief of specific performance of a contract in teeth of termination of the contract without seeking a declaration qua subsistence of the contract was considered. In I.S. Sikandar v. K. Subramani, the agreement for sale stipulated sale within a stipulated time frame; on failure of the plaintiff to respond to the notice seeking execution of sale, the agreement was terminated. In that context, this Court held:

"36. Since the plaintiff did not perform his part of contract within the extended period in the legal notice referred to supra, the agreement of sale was terminated as per notice dated 28-3-1985 and thus, there is termination of the agreement of sale between the plaintiff and defendants 1-4 w.e.f. 10-4-1985

37. As could be seen from the prayers sought for in the original suit, the plaintiff has not sought for declaratory relief to declare the termination of agreement of sale as bad in law. In the absence of such prayer by the plaintiff the original suit filed by him before the trial court for grant of decree for specific performance in respect of the suit scheduled property on the basis of agreement of sale and consequential relief of decree for permanent injunction is not maintainable in law.

38. Therefore, we have to hold that the relief sought for by the plaintiff for the grant of decree for specific performance of execution of sale deed in respect of the suit scheduled property in his favor on the basis of non-existing agreement of sale is wholly unsustainable in law."

29. In A. Kanthamani (supra), the decision in I.S. Sikandar (supra) was considered, and it was held:

"30.3. Third, it is a well settled principle of law that the plea regarding the maintainability of suit is required to be raised in the first instance in the pleading (written statement) then only such plea can be adjudicated by the trial court on its merits as a preliminary issue under Order 14 Rule 2 CPC. Once the finding is rendered on the plea, the same can be examined by the first or/and second appellate court. It is only in appropriate cases, where the court prima facie finds by mere perusal of plaint allegations that the suit is barred by any express

provision of law or is not legally maintainable due to any legal provision; a judicial notice can be taken to avoid abuse of judicial process in prosecuting such suit. Such is, however, not the case here.

30.4. Fourth, the decision relied on by the learned counsel for the appellant in I.S. Sikandar turns on the facts involved therein and is thus distinguishable."

30. In R. Kandasamy (since dead) v. T.R.K. Sarawathy, this Court considered both I.S. Sikandar (supra) and A. Kanthamani (supra), and clarified the law by observing as under:

"47. However, we clarify that any failure or omission on the part of the trial court to frame an issue on maintainability of a suit touching jurisdictional fact by itself cannot trim the powers of the higher court to examine whether the jurisdictional fact did exist for grant of relief as claimed, provided no new facts were required to be pleaded and no new evidence led."

31. From the aforesaid decisions what is clear is that though a plea regarding maintainability of the suit, even if not raised in written statement, may be raised in appeal, particularly when no new facts or evidence is required to address the same, the issue whether a declaratory relief is essential or not would have to be addressed on the facts of each case.

32. <u>In our view, a declaratory relief would be required where a doubt or a cloud is there on the right of the plaintiff and grant of relief to the plaintiff is dependent on removal of that doubt or cloud. However, whether there is a doubt or cloud on the right of the plaintiff to seek consequential relief, the same is to be determined on the facts of each case. For example, a contract may give right to the parties, or any one</u>

of the parties, to terminate the contract on existence of certain conditions. In terms thereof, the contract is terminated, a doubt over subsistence of the contract is created and, therefore, without seeking a declaration that termination is bad in law, a decree for specific performance may not be available. However, where there is no such right conferred on any party to terminate the contract, or the right so conferred is waived, yet the contract is terminated unilaterally, such termination may be taken as a breach of contract by repudiation and the party aggrieved may, by treating the contract as subsisting, sue for specific performance without seeking a declaratory relief qua validity of such termination.

(Emphasis Supplied)

43. Thus, in view of the above discussion, the following principles of law are discernible:

(i). Unilateral termination of the agreement to sell by one party is impermissible in law except in cases where the agreement itself is determinable in nature in terms of Section 14 of the Act of 1963;

(ii). If such unilateral termination of a non-determinable agreement to sell is permitted as a defence, then virtually every suit for specific performance can be frustrated by the defendant by placing an unfair burden on the plaintiff, who despite performing his part of the obligations and having showcased readiness and willingness, would require to also seek a separate declaration that the termination was bad in law. In such cases, the burden cannot be casted upon the plaintiff to challenge the alleged termination of agreement;

(iii). Where a party claims to have valid reasons to terminate or rescind a non-determinable agreement to sell, with a view to err on the side of caution, it should be such terminating party, if at all, who ideally should approach the court and obtain a declaration as to the validity of such termination or rescission, and not the non-terminating party. However, this must not mean that the defendant (the terminating party) in such cases would mandatorily be required to seek a declaration because Sections 27 and 31 of the Act of 1963 respectively, while using the phrase "may sue" merely give an option to any person to have the contract rescinded or adjudged as void or voidable;

(iv). Once the alleged termination of a non-determinable agreement in question is found to be not for *bona fide* reasons and being done in a unilateral manner on part of the defendant, it cannot be said that any declaration challenging the alleged termination was required on part of plaintiff;

(v). If a contract itself gives no right to unilaterally terminate the contract, or such right has been waived, and a party still terminates the contract unilaterally then that termination would amount to a breach by repudiation, and the non-terminating party can directly seek specific performance without first seeking a declaration; and

(vi). In the event it is found that the termination of agreement to sell by the defendant was not valid, then such an agreement to sell will remain subsisting and executable.

44. Before applying the aforesaid principles of law to the facts of the present case, and bearing in mind that unilateral termination of an agreement to sell by one party is impermissible in law except where

the agreement is by its very nature determinable, it is, as a necessary corollary, essential to also determine whether the ATS dated 28.04.2000 was determinable in nature or not.

(b) Whether the ATS dated 28.04.2000 was in nature determinable?

45. The Commentary on the Indian Contract Act and Specific Relief Act authored by Pollock & Mulla (17th Edition) states that determinable contracts derive their existence from the determination clause envisaged in the contract and there are essentially three types of determination clauses, *viz*. (i) termination for cause that allows a party to terminate the contract if the other party breaches a specific term or if a specified event occurs, (ii) termination for convenience that allows a party to end the contract without having to give a reason and (iii) termination upon expiry of the term of the contract.

46. The law regarding the contracts that are determinable first came up before this Court in ***Indian Oil Corporation v. Amritsar Gas Service and Ors.***, reported in **(1991) 1 SCC 533**, wherein this Court had held the contract to be determinable in nature because one of the clauses of the contract permitted either parties to terminate the same without assigning any reason and by sending a 30 day notice to the other party. The relevant paragraph is reproduced as follows:

> *"12. The arbitrator recorded finding on Issue No. 1 that termination of distributorship by the appellant-Corporation was not validly made under clause 27. Thereafter, he proceeded to record the finding on Issue No. 2 relating to grant of relief and held that the plaintiff-respondent 1 was entitled to compensation flowing from the breach of contract*

till the breach was remedied by restoration of distributorship. Restoration of distributorship was granted in view of the peculiar facts of the case on the basis of which it was treated to be an exceptional case for the reasons given. The reasons given state that the Distributorship Agreement was for an indefinite period till terminated in accordance with the terms of the agreement and, therefore, the plaintiff-respondent 1 was entitled to continuance of the distributorship till it was terminated in accordance with the agreed terms. The award further says as under:

> *"This award will, however, not fetter the right of the defendant Corporation to terminate the distributorship of the plaintiff in accordance with the terms of the agreement dated April 1, 1976, if and when an occasion arises."*
>
> *This finding read along with the reasons given in the award clearly accepts that the distributorship could be terminated in accordance with the terms of the agreement dated April 1, 1976, which contains the aforesaid clauses 27 and 28. Having said so in the award itself, it is obvious that the arbitrator held the distributorship to be revokable in accordance with clauses 27 and 28 of the agreement. It is in this sense that the award describes the Distributorship Agreement as one for an indefinite period, that is, till terminated in accordance with clauses 27 and 28. The finding in the award being that the Distributorship Agreement was revokable and the same being admittedly for rendering personal service, the relevant provisions of the Specific Relief Act were automatically attracted. Sub-section (1) of Section 14 of the Specific Relief Act specifies the contracts which cannot be specifically enforced, one of which is 'a contract which is in its nature determinable'. In the present case, it is not necessary to refer to the other clauses of sub-*

section (1) of Section 14, which also may be attracted in the present case since clause (c) clearly applies on the finding read with reasons given in the award itself that the contract by its nature is determinable. This being so granting the relief of restoration of the distributorship even on the finding that the breach was committed by the appellant-Corporation is contrary to the mandate in Section 14(1) of the Specific Relief Act and there is an error of law apparent on the face of the award which is stated to be made according to 'the law governing such cases'. The grant of this relief in the award cannot, therefore, be sustained."

(Emphasis Supplied)

47. The High Court of Madras in ***A Murugan and Others v Rainbow Foundation Ltd and Ors***., reported in **2019 SCC OnLine Mad 37961**, had further elaborated on the aspect of determinable contracts. For the purpose of ascertaining determinability, the court bifurcated contracts into several categories: (i) contracts that are unilaterally and inherently revocable or capable of being dissolved such as licenses and partnerships at will; (ii) contracts that are terminable unilaterally on a "without cause" or "no fault" basis; (iii) contracts that are terminable forthwith for cause or that cease to subsist "for cause", without a provision for remedying the breach; (iv) contracts which are terminable for cause subject to a breach notice being issued and an opportunity to cure the breach being given, and; (v) contracts without a termination clause, which could be terminated for breach of a condition but not a warranty, as per applicable common law principles. The court held that the abovementioned (iii), (iv) and (v) categories of contract are not determinable contracts. The court further observed that although the (iv) and (v) categories are

terminable yet the same cannot be said to be in nature *determinable*. The relevant observations are as under:

> *"17. On examining the judgments on Section 21(d) of SRA 1877 and Section 14(c) of the Specific Relief Act, as applicable to this case, i.e. before Act 18 of 2018, I am of the view that Section 14(c) does not mandate that all contracts that could be terminated are not specifically unenforceable. If so, no commercial contract would be specifically enforceable. Instead, Section 14(c) applies to contracts that are by nature determinable and not to all contracts that may be determined. If one were to classify contracts by placing them in categories on the basis of ease of determinability, about five broad categories can be envisaged, which are not necessarily exhaustive. Out of these, undoubtedly, two categories of contract would be considered as determinable by nature and, consequently, not specifically enforceable : (i) contracts that are unilaterally and inherently revocable or capable of being dissolved such as licences and partnerships at will; and (ii) contracts that are terminable unilaterally on "without cause" or "no fault" basis. Contracts that are terminable forthwith for cause or that cease to subsist "for cause" without provision for remedying the breach would constitute a third category. In my view, although the Indian Oil case referred to clause 27 thereof, which provided for termination forthwith "for cause", the decision turned on clause 28 thereof, which provided for "no fault" termination, as discussed earlier. Thus, the third category of contract is not determinable by nature; nonetheless, the relative ease of determinability may be a relevant factor in deciding whether to grant specific performance as regards this category. The fourth category would be of contracts that are terminable for cause subject to a breach notice and an opportunity to cure the breach and the fifth category would be contracts without a termination clause, which could be terminated for breach of a condition*

but not a warranty as per applicable common law principles. The said fourth and fifth categories of contract would, certainly, not be determinable in nature although they could be terminated under specific circumstances. Needless to say, the rationale for Section 14(c) is that the grant of specific performance of contracts that are by nature determinable would be an empty formality and the effectiveness of the order could be nullified by subsequent termination."

(Emphasis Supplied)

48. In ***Narendra Hirawat & Co. v. Sholay Media Entertainment Pvt. Ltd.***, reported in **(2020) SCC OnLine Bom 391**, the Bombay High Court observed that the phrase *"a contract which is in its nature determinable"* would mean a contract which is determinable at the sweet will of a party to it, without reference to the other party or without reference to any breach committed by the other party or without any eventuality or circumstance. In other words, the phrase would contemplate a *unilateral right* in a party to a contract to determine the contract without assigning any reason. The relevant observation is as under:

"8. […] When the relevant provision [section 14(d) of the Specific Relief Act] uses the words "a contract which is in its nature determinable", what it means is that the contract is determinable at the sweet will of a party to it, that is to say, without reference to the other party or without reference to any breach committed by the other party or without reference to any eventuality or circumstance. In other words, it contemplates a unilateral right in a party to a contract to determine the contract without assigning any reason or, for that matter, without having any reason. The

contract in the present case is not so determinable; it is determinable only in the event of the other party to the contract committing a breach of the agreement. In other words, its determination depends on an eventuality, which may or may not occur, and if that is so, the contract clearly is not "in its nature determinable"."

(Emphasis Supplied)

49. The Delhi High Court in ***DLF Home Developers Limited v. Shipra Estate Limited***, reported in **2021 SCC OnLine Del 4902**, while considering an agreement to sell a property held that the question whether a contract is in its nature determinable must be answered by ascertaining whether the party against whom it is sought to be enforced would otherwise have the *right to terminate or determine* the contract when the other party is willing to perform and is not in default. In other words, where a contract cannot be terminated so long as the other party remains willing to perform its part, such a contract is not determinable and, in equity, is specifically enforceable. The relevant observation is as under:

"78. Section 14 of the Specific Relief Act, 1963 sets out certain classes of contracts that are not specifically enforceable. One such class of contracts comprises of contracts, which are in their nature determinable. Clause (d) of Section 21 of the Specific Relief Act, 1877 expressly provided that contracts which are in their nature 'revocable' are unenforceable. The said statute was repealed and replaced by the Specific Relief Act, 1963. Clause (c) of Section 14(1) of the Specific Relief Act, 1963, as was in force prior to Specific Relief Act, 1877, expressly provided that contracts, which are in the nature determinable, were not specifically enforceable. The word 'revocable' as used in

Clause (d) of Section 21 of the Specific Relief Act, 1877 was replaced by the word 'determinable'. The rationale for excluding such contracts, which are in their nature determinable, from the ambit of those contracts which may be specifically enforced, is apparent. There would be little purpose in granting the relief of specific performance of a contract, which the parties were entitled to terminate or otherwise determine. The relief of specific performance is an equitable relief. It is founded on the principle that the parties to a contract must be entitled to the benefits from the contracts entered into by them. However, if the terms or the nature of that contract entitles the parties to terminate the contract, there would be little purpose in directing specific performance of that contract. Plainly, no such relief can be granted in equity.

79. Viewed in the aforesaid perspective, it is at once apparent that the contract is in its nature determinable if the same can be terminated or its specific performance can be avoided by the parties. Thus, contracts that can be terminated by the parties at will or are in respect of relationships, which either party can terminate; would be contracts that in their nature are determinable. If a party can repudiate the contract at its will, it is obvious that the same cannot be enforced against the said party.

80. However, if a party cannot terminate the contract as long as the other party is willing to perform its obligations, the contract cannot be considered as determinable and it would, in equity, be liable to be enforced against a party that fails to perform the same. Almost all contracts can be terminated by a party if the other party fails to perform its obligations. Such a contract cannot be stated to be determinable solely because it can be terminated by a party if the other party is in breach of its obligations. The party who is not in default would, in equity, be entitled to seek

performance of that contract. In such cases, it cannot be an answer to the non-defaulting party's claim that the other party could avoid the contract of the party seeking specific performance, had breached the contract; therefore, the same is not specifically enforceable. Thus, the question whether a contract is in its nature determinable, must be answered by ascertaining whether the party against whom it is sought to be enforced would otherwise have the right to terminate or determine the contract even though the other party are ready and willing to perform the contract and are not in default.

81. The contention advanced on behalf of Indiabulls that the ATS is in its nature determinable as Indiabulls could terminate it on failure of the other parties to perform their obligations is, plainly, unmerited. This contention is premised on the basis that Indiabulls is correct in its assumption that the other parties had breached the terms of their obligation. Concededly, if the other parties were ready and willing to fully perform their obligations, Indiabulls would not have any recourse to the termination clause. Such recourse is contingent on the failure of the other parties to perform the contract. It cannot be stated that the contract by its very nature is not specifically enforceable because it entitles a party to terminate the contract if the other parties have failed to perform their obligations.

xxx xxx xxx

94. The question whether the contract by its very nature is determinable is required to be answered by ascertaining the nature of the contract. Contracts of agency, partnerships, contracts to provide service, employment contracts, contracts of personal service, contracts where the standards of performance are subjective, contracts that require a high degree of supervision to enforce, and

contracts in perpetuity are, subject to exceptions, in their nature determinable. These contracts can be terminated by either party by a reasonable notice.

(Emphasis Supplied)

50. In ***Affordable Infrastructure & Housing Projects (P) Ltd. v. Segrow Bio Technics India (P) Ltd.***, reported **2022 SCC OnLine Del 4436**, the lease deed provided for a termination clause. Under the termination clause, the respondent had an option to terminate the lease deed by serving a 15 days' written notice in case the petitioner failed to make the payment for two consecutive months. The Delhi High Court on the strength of ***DLF Home*** *(supra)* observed that almost all contracts can be terminated by a party, if the other party fails to perform its obligations and that such contracts cannot be stated to be determinable solely because it can be terminated by a party if the other party is in breach of an obligation. The non-defaulting party would in equity be entitled to seek performance of that contract. The court held that the question whether a contract is in its nature determinable must be answered by ascertaining whether the party against whom it is sought to be enforced would otherwise have a right to terminate or determine the contract even though the other party is ready and willing to perform the contract and is not in default. The relevant observation is as under:

"37. The law as stated above mandates against grant of stay against Termination Notice in respect of the Contracts which are determinable. The petitioner has relied upon DLF Home Developers Limited v. Shipra Estate Limited, (2022) 286 DLT 100, wherein it was observed that a party cannot terminate the Contract so long as the other party is willing

to perform its obligations. The Contract cannot be considered as determinable as it would in equity be liable to be enforced against a party that fails to perform the same. Almost all Contracts can be terminated by a party, if the other party fails to perform its obligations. Such a Contract cannot be stated to be determinable solely because it can be terminated by a party if the other party is in breach of the obligations. The party who is not in default would in equity be entitled to seek performance of that Contract. In such cases, it cannot be an answer to a non-defaulting party's claim that the other party could avoid the Contract of the party seeking specific performance and the same is not specifically enforceable. Thus, the question whether the Contract is in its nature determinable must be answered by ascertaining whether the party against whom it is sought to be enforced would otherwise have a right to terminate or determine the Contract even though the other party is ready and willing to perform the Contract and is not in default."

(Emphasis Supplied)

51. The Bombay High Court in ***Kheoni Ventures (P) Ltd. v. Rozeus Airport Retail Ltd.***, reported in **2024 SCC OnLine Bom 773**, also observed that in order to arrive at a conclusion whether a contract is determinable or not, it is to be ascertained whether the parties have a *right to terminate* it on their own, without the stipulation of any contingency and without assigning any reason. The relevant observation is as under:

"11. In order to infer whether a contract is determinable or otherwise, it is to be ascertained, whether the parties have a right to terminate it on their own, without stipulation of any contingency and without assigning any reason. An inherently determinable contract would permit either party

to terminate it without assigning any reason and merely by indicating, that the contract shall come to an end, either by giving a notice for specified period, if stipulated or even without such a notice."

(Emphasis Supplied)

52. Having discussed the law on unilateral termination *vis-a-vis* determinable contracts as above, we now advert to the facts of the present matter. The existence of the ATS executed between the original vendors and the original vendees is not in dispute. The question that falls for our consideration is with respect to the requirement of seeking a declaration from the court as regards the legality and validity of the purported termination of the said ATS by the notice of termination dated 10.03.2003 issued by the original vendors. It may not be out of place to state at this stage that the ATS in question does not contain any clause enumerating the events of default under which the ATS could be terminated. Nor is it the case of the parties that time was made the essence of contract. In fact, the Trial Court has already gone into this issue and held that the terms of the ATS did not reflect any intention to make time the essence of the contract as no specific date for execution of the sale deed is to be found in the ATS. Clause 7 of the ATS clearly provides that upon change of entries in the record of rights from new tenure to old tenure, the sale deed would be executed. Clause 11 further provides that it was for the original vendors to intimate the original vendees upon completion of the work of sub-division, survey, and fixation of boundary of the subject land, and only thereafter the sale deed was to be executed within one month of such intimation. Thus, the execution of the sale deed was pegged not to a fixed date but to future

contingencies dependent upon the acts of the original vendors themselves. There is nothing on record to indicate that the original vendors had performed their part of the obligation by informing the original vendees about the completion of the work of sub-division, survey, and fixation of boundary of the subject land.

53. Despite such stipulations, the original vendors issued the notice of termination dated 10.03.2003 upon the original vendees purporting to terminate the ATS on two grounds, namely, (i) the pendency of Original Suit No. 30 of 2001 and the order of *status quo* therein, and (ii) the death of one of the original vendors, i.e. Late Smt. Godavari @ Mahalaxmi Kulkarni. The notice also called upon the original vendees to take back the earnest money paid and to treat the ATS as cancelled within one month, failing which the ATS would be deemed to have been cancelled and the original vendors would be at liberty to deal with the land.

54. We have given our thoughtful consideration to the reasons so assigned in the notice of termination. We find it difficult to accept that either of the grounds could constitute a valid basis for terminating the ATS. The pendency of a civil suit and an order of *status quo* therein cannot by itself frustrate the ATS. At the highest, the performance of the ATS could have stood suspended pending the disposal of the said proceedings. Since the original vendees had no role to play in the institution or continuance of the Original Suit No. 30 of 2001, they could not have been made to suffer the consequences of a litigation to which they were complete strangers. Likewise, the death of one of the original vendors did not and could not have absolved the other

remaining vendors of their obligations. The legal heirs could have very well stepped into the shoes of the deceased vendor and performed the contract. The reasons assigned, therefore, appears not only tenuous but also wholly extraneous to the obligations of the original vendors. It is also pertinent to note that the original vendees immediately responded to the notice of termination by way of their detailed reply dated 21.03.2003. In the said reply, the original vendees categorically denied the validity of the termination and refuted the grounds stated therein. In the reply, the original vendees asserted that they had already performed their obligations by making substantial payments of Rs. 8,12,500/- out of the total sale consideration of Rs. 26,95,501/- , by getting the land surveyed, measured, boundaries fixed, and the tenure converted on the original vendors' behalf. The original vendees also asserted that the performance of ATS was only suspended by virtue of the *status quo* order which could not have rendered the ATS impossible of performance and that the death of one of the vendors did not in law affect the enforceability, and thus, the ATS remained subsisting. They further made it clear that in such circumstances there was no question of refund of earnest money at all.

55. Despite such a categorical stance of the original vendees, no response was sent by the original vendors to further assign reasons or substantiate the termination. The original vendors chose to remain silent, content to live off their unilateral notice without taking the termination to its logical conclusion. This conduct on the part of the original vendors cannot be countenanced as a *bona fide* exercise. We are of the firm view that the ATS being non-determinable in nature (as discussed below), no unilateral expression of termination could have

lawfully extinguished the obligations undertaken thereunder. What emerges from the record is that the grounds cited in the notice of termination were pressed into service more as a matter of convenience to the original vendors rather than as a consequence of any breach or failure attributable to the original vendees. The pendency of an earlier suit and the death of one of the vendors were circumstances wholly extraneous to the performance of the ATS and incapable in themselves of furnishing a lawful foundation for termination. Such grounds merely afforded a convenient pretext to the original vendors to disown their obligations. We are of the firm view that the law ought not be read in a manner to permit the original vendors to invoke convenience as a cloak for such unilateral cancellation of the ATS.

56. It is further significant to note that in the notice of termination dated 10.03.2003, the original vendors purported to call upon the original vendees to *"take back"* the earnest money and other amounts already paid under the ATS. However, the record reveals that even after issuance of the said notice and despite original vendees having immediately repudiated the termination of ATS through their reply dated 21.03.2003, no steps whatsoever were taken by the original vendors to actually effectuate the refund. No draft, cheque, or any other mode of repayment was tendered at any point of time. In substance, therefore, the recital in the notice asking the original vendees to *"take back"* the money was nothing more than an empty formality, bereft of any real intent to restore the parties to their respective original positions. This conduct of the original vendors assumes significance for more than one reason. *First*, none of the clauses of the ATS empowered the original vendors to either terminate

the agreement unilaterally or to forfeit the earnest money. *Secondly*, if the original vendors were genuinely desirous of putting an end to the ATS, the natural and necessary corollary of such termination would have been to refund the amounts received without casting upon the original vendees the burden of physically claiming or taking back what was rightfully theirs. It appears from the conduct of the original vendors that by seeking to shift the burden in this manner, the original vendors sought to cloak their inaction and conveniently get rid of themselves of the obligations flowing from the ATS, while continuing to retain the monies that had been paid towards part performance of the ATS by the original vendees. Termination, if at all validly effected, requires both relinquishment of rights under the contract and restitution of benefits already received. In failing to refund the earnest money, the original vendors not only acted contrary to the terms of the ATS which contained no clause of forfeiture but also demonstrated the lack of *bona fide* intention to truly rescind the agreement. If indeed the original vendors were assiduous in their attempt to bring the ATS to an end, in principle they should have approached a competent court to seek a declaration as to the termination of contract as observed by various precedents as above-mentioned.

57. We are of the view, having regard to the peculiar and distinguishable facts of the present case, that the decisions of this Court in ***I.S. Sikander*** *(supra)* and ***Sangita Sinha*** *(supra)* would not be of any help to the subsequent purchasers as both of them are distinguishable as far as the present case is concerned.

58. The reliance placed by the subsequent purchasers upon the decision of this Court in ***I.S. Sikandar*** *(supra)*, in our considered view, is wholly misconceived. The factual foundation of ***I.S. Sikandar*** *(supra)* was materially distinct from the circumstances of the present case and therefore, the ratio thereof cannot be invoked to the aid of the subsequent purchasers herein. In ***I.S. Sikandar*** *(supra)*, the purchaser had defaulted in performing his part of the contract despite being afforded multiple opportunities by the vendors. The vendors therein had, by way of a legal notice, specifically called upon the purchaser to tender the balance sale consideration and complete the execution of the sale deed within a stipulated period. Upon the purchaser's failure to comply, the vendors further extended the time, coupled with a caveat that if the purchaser did not perform his obligations by the extended date, the agreement would stand terminated. It was only after the purchaser again defaulted, despite such repeated opportunities, that the vendors terminated the agreement. In such circumstances, this Court held that the purchaser could not maintain a suit for specific performance without first seeking a declaration that the termination was invalid, since by his own conduct he had allowed the agreement to become determinable and its termination was rooted in his own breach. However, the present case stands on an entirely different footing. The alleged termination was not preceded by any call upon the original vendees to perform their obligations nor was any opportunity granted to the original vendees to tender the balance sale consideration or secure execution of the sale deed. On the contrary, the original vendors sought to terminate the ATS citing reasons entirely extraneous to the performance of the original vendees. In ***I.S. Sikandar*** *(supra)*, the

termination was an outcome of the purchaser's repeated failure to perform his contractual obligations despite reminders and extensions, thereby rendering the agreement determinable. In contrast, the termination in the present case was a unilateral act of convenience on the part of the original vendors unconnected with any default on the part of the original vendees in the performance of ATS. This unilateral termination was effected without any preceding notice, without opportunity to the original vendees of further performance, and without refund of earnest money.

59. Further, the decision in ***Sangita Sinha*** *(supra)* is also distinguishable for in that case this Court held the suit for specific performance to be not maintainable owing to the absence of a declaratory relief, since the vendee's act of encashing the demand drafts amounted to acceptance of the vendor's repudiation and having no readiness and willingness to perform the contract, thereby effectively cancelling the agreement to sell, whereas, in the present case, the termination was effected by the original vendors despite the readiness and willingness of original vendees, which we shall discuss below, and despite the fact that no part of the earnest money or any further sums paid by the original vendees was ever refunded by the original vendors while terminating the ATS.

60. In fact, as explained in ***Brahm Dutt*** *(supra)*, the unilateral cancellation of an agreement to sell is impermissible except where the agreement is determinable within the meaning of Section 14 of the Act of 1963. This principle now stands affirmed by this Court also in

Brahm Dutt *(supra),* ***Balwinder Sarpal*** *(supra)* and ***S.K. Ravichandran*** *(supra)* respectively.

61. In view of the above discussion, it is as clear as a noon day that as far as the facts of present case are concerned, the notice of termination dated 10.03.2003 was nothing but a unilateral act of repudiation by the original vendors. As discussed above, the ATS contained no clause permitting termination in the circumstances cited. The reasons relied upon by the original vendors for termination were matters over which the original vendees had no control. Further, the act of the original vendors merely asking the original vendees to *"take back"* the monies paid, while never actually refunding it, reinstates that the alleged termination was not genuine on their part but rather a device of convenience to escape their contractual obligations under the ATS. Moreover, there is no evidence on record to indicate that the original vendors ever called upon the original vendees to perform their part of the contract prior to such termination. In view of all that is stated above, the termination of ATS *vide* notice of termination dated 10.03.2003 was not only unilateral but also not *bona fide* and cannot be sustained. Once such termination is found to be invalid, what next follows is that the ATS continues to remain alive, subsisting, and executable. Further, as the law subsists, once the alleged termination of agreement in question is found to be not *bona fide* and being done in a unilateral manner, no declaration challenging the alleged termination is required.

62. Since in principle unilateral termination of the contract is impermissible except where the agreement is determinable within the

meaning of Section 14 of Act of 1963, it also becomes necessary, at this juncture, to examine whether the ATS dated 28.04.2000 was in its nature determinable. This question requires to be answered on a scrutiny of the terms of the ATS and the nature of the rights and obligations flowing therefrom.

63. On perusal of the clauses of the ATS, it becomes clear that none of the terms thereof conferred upon either party any right to unilaterally terminate or rescind the contract, whether for cause, for convenience, or on the happening of any contingency. The scheme of the contract, as discernible from its clauses, particularly clauses 7 and 11 respectively, indicate that the execution of the sale deed was made conditional upon the fulfilment of certain antecedent events, namely, the conversion of the subject land from new tenure to old tenure and the completion of the work of sub-division. Clause 7 of the ATS contemplated that upon change of entries in the record of rights from new tenure to old tenure, the sale deed would be executed whereas clause 11 provided that it was for the original vendors to intimate the original vendees about the completion of the work of sub-division, survey, and fixation of boundary of the subject land, and only thereafter the sale deed was to be executed within one month of such intimation. It is therefore clear that the ATS was not a contract conferring any right upon either party to bring it to an end at will. Its life and performance were tethered to the completion of certain obligations. None of the clauses of the ATS envisaged that the same could be terminated on any cause or no-cause basis, much less that the original vendors could retain the amounts already paid by the original vendees.

64. In this backdrop, it would be useful to advert to the classification set out in ***A. Murugan*** *(supra)*, wherein the Madras High Court categorised contracts into five broad classes depending on their ease of determinability. Out of those, the first two i.e., (i) contracts inherently revocable such as licences and partnerships at will, and (ii) contracts terminable unilaterally on a "without-cause" basis, were held to be determinable in nature. The remaining classes, namely, (iii) contracts terminable for cause without provision for cure, (iv) contracts terminable for cause with notice and opportunity to cure, and (v) contracts without a termination clause but terminable only for breach of a condition, were all held not determinable in nature.

65. Further, as laid down in ***DLF Home*** *(supra)*, the question whether a contract is in its nature determinable lies in ascertaining whether the party against whom specific performance is sought has the right to terminate the contract even when the other party is ready and willing to perform. This means if the contract cannot be terminated so long as the other party stands willing to perform, it is not determinable in its nature and would, in equity, be specifically enforceable. The same reasoning was followed in ***Affordable Infrastructure*** *(supra)*, where it was held that a contract terminable for breach cannot merely for that reason be regarded as determinable, otherwise, no contract could ever be specifically enforced.

66. Applying these principles, the ATS in the present case cannot be said to be a determinable contract. Viewed in light of the classification as set out in ***A. Murugan*** *(supra)*, the ATS would squarely fall within

category (v) as mentioned above. The ATS was devoid of any clause enabling termination for convenience or otherwise empowering either party to terminate unilaterally. The only conceivable circumstance in which ATS could be brought to an end in the present case was upon a breach of a condition by either of the parties. Thus, the original vendors did not possess any contractual right to terminate the ATS in the absence of default by the original vendees. The grounds cited in the notice of termination dated 10.03.2003, namely, the subsistence of a status quo order and the death of one of the original vendors cannot be said to be based on any default or breach by the original vendees. The original vendees had performed their part by paying a substantial amount and were also ready and willing to perform the terms of ATS.

(II). *Bona fides* of the subsequent purchasers in purchasing the subject land

67. The counsel for subsequent purchasers submitted that appellants / subsequent purchasers are *bona fide* purchasers of the subject land for value without the notice of the prior ATS. It is the case of the subsequent purchasers that they made *bona fide* enquires about the title of the original vendors and all other particulars that they could enquire upon. The case of the subsequent purchasers before the Trial Court and High Court respectively was that they had purchased the subject land on the information and instructions furnished by the original vendors wherein the subsequent purchasers were informed that the original vendors had a clear and alienable title on the subject land and that the ATS executed in favour of the original vendees had

been terminated by the original vendors by issuing the notice of termination dated 10.03.2003. The subsequent purchasers have admitted that they were made aware of the termination of the ATS by the original vendors and were handed over a copy of the notice of termination by the original vendors prior to their purchase of the subject land. It is also the case of the subsequent purchasers that they had verified the documents of title of the original vendors and had also ascertained that the Original Suit No. 30 of 2001 had been withdrawn and the *status quo* order has come to an end due to such withdrawal. The subsequent purchasers have further submitted that from the date of execution of sale deeds dated 20.02.2007 and 02.03.2007 executed by the original vendors in their favour, they are in physical possession of the subject land and their names have been mutated in the revenue records.

68. In such circumstances referred to above, the subsequent purchasers are seeking to bring themselves within the status of a *bona fide* purchaser under Section 19(b) of the Act of 1963. Section 19 provides for the categories of persons against whom specific performance of a contract may be enforced. Amidst all, Clause (b) of Section 19 states that specific performance may be enforced against any other person claiming under him by a title arising subsequently to the contract except a transferee for value who has paid his money in good faith and without notice of the original contract. Thus, a transferee for value who has paid his money in good faith and without notice of the original contract is excluded from the purview of the said clause. In the case of ***Ram Niwas v. Bano***, reported in **(2000) 6 SCC 685**, this Court had set out three factors that a subsequent transferee must

show to fall within the excluded class: (a) he has *purchased for value* the property, which is the subject matter of the suit for specific performance; (b) he has paid his money to the vendor in *good faith*; and (c) he had *no notice* of the earlier contract for sale specific performance of which is sought to be enforced against him. The court observed that "notice" can be (i) actual notice or (ii) *constructive notice*, or (iii) imputed notice. As per Section 3 of Transfer of Property Act, 1882, a person is said to have notice of a fact when he actually knows that fact or when but for wilful abstention from inquiry or search which he ought to have made, or gross negligence, he would have known it. The relevant observation is as under:

> *"3. Section 19 provides the categories of persons against whom specific performance of a contract may be enforced. Among them is included, under clause (b), any transferee claiming under the vendor by a title arising subsequently to the contract of which specific performance is sought. However, a transferee for value, who has paid his money in good faith and without notice of the original contract, is excluded from the purview of the said clause. To fall within the excluded class, a transferee must show that: (a) he has purchased for value the property (which is the subject-matter of the suit for specific performance of the contract); (b) he has paid his money to the vendor in good faith; and (c) he had no notice of the earlier contract for sale (specific performance of which is sought to be enforced against him).*
>
> *4. The said provision is based on the principle of English law which fixes priority between a legal right and an equitable right. If 'A' purchases any property from 'B' and thereafter 'B' sells the same to 'C' the sale in favour of 'A', being prior in time, prevails over the sale in favour of 'C' as*

both 'A' and 'C' acquired legal rights. But where one is a legal right and the other is an equitable right

"a bona fide purchaser for valuable consideration who obtains a legal estate at the time of his purchase without notice of a prior equitable right is entitled to priority in equity as well as at law". (Snell's Equity — 13th Edn., p. 48.)

This principle is embodied in Section 19(b) of the Specific Relief Act.

5. It may be noted here that "notice" may be (i) actual, (ii) constructive, or (iii) imputed."

(Emphasis Supplied)

69. Similarly, in ***Durg Singh v. Mahesh Singh***, reported in **2004 SCC OnLine MP 9**, the Madhya Pradesh High Court had observed that there are two factors that are necessary for the adjudication of suit for specific performance of the contract where the subject matter property has been sold to a subsequent purchaser: *(i) that whether the plaintiff remained always ready and willing to perform his part of the contract to purchase the suit property and the readiness and willingness should exist till the date of the passing of the decree*, and *(ii) that whether subsequent transferee was having prior knowledge of the earlier agreement executed in favour plaintiff*. Both these factors need to have nexus with the facts of each case and conduct of parties. The relevant observation is as under:

"11. In a suit of specific performance of the contract where the property in dispute has been sold to the subsequent purchaser, two things are necessary for the adjudication, they are; (i) that whether the plaintiff remained always ready and willing to perform his part of the contract to

purchase the suit property and the readiness and willingness should exist till the date of the passing of the decree; and (ii) whether the subsequent transferee was haying prior knowledge of the earlier agreement executed in favour of plaintiff. In other words, we may say that if plaintiff fails to plead and prove by his conduct the readiness and willingness to purchase the suit property and if the subsequent purchaser was a bona fide purchaser without prior notice of the original contract who had paid the value of the suit property to the vendor, the suit of specific performance cannot be decreed. Both these essential ingredients are having nexus with the facts of each case as well as the conduct of the parties of that case. No straight-jacket formula can be framed in this regard and each case should be tested on the touchstone of its own facts and circumstances coupled with the evidence. Thus, I shall now examine the present case in that regard."

(Emphasis Supplied)

70. The expression *"wilful abstention from inquiry or search"* recalls the expression used by Sir James Wigram VC in the case of ***Jones v. Smith***, reported in **(1841) 1 Hare 43**, wherein the High Court of Chancery of England & Wales had held that constructive notice is basically a manifestation of equity which treats a man who ought to have known a fact, as if he had actually known it. The court noted that:

"It is, indeed, scarcely possible to declare a priori what shall be deemed constructive notice, because, unquestionably, that which would not affect one man may be abundantly sufficient to affect another. But I believe, I may, with sufficient accuracy for my present purpose and without

danger assert that the cases in which constructive notice has been established resolve themselves in two classes:

First, cases in which the party charged has had actual notice that the property in dispute was in fact charged, encumbered or in some way affected, and the court has thereupon bound him with constructive notice of facts and instruments, to a knowledge of which he would have been (sic) led by an enquiry after the charge, encumbrance or other circumstances affecting the property of which he had actual notice; and secondly, cases in which the court has been satisfied from the evidence before it that the party charged had designedly abstained from enquiry for the very purpose of avoiding notice [...]"

(Emphasis Supplied)

71. Similar to the importance of the term *"notice"* used in Section 19(b) of the Act of 1963, the term *"good faith"* which is also used in Section 19(b) is equally important. The term "good faith" is defined in Section 3(22) of the General Clauses Act, 1897 (for short, "**GC Act**") as well as Section 2(11) of the Bhartiya Nyaya Sanhita, 2023 (for short, "**BNS**"). Section 3(22) of GC Act defines "*good faith"* is defined in the following terms:

> *"3(22). A thing shall be deemed to be done in good faith where it is in fact done honestly whether it is done negligently or not."*

72. Section 2(11) of the BNS defines *"good faith"* in the following terms:

"2(11). "Good faith - Nothing is said to be done or believed in "good faith" which is done or believed without due care and attention"

73. Therefore, in order to come to a conclusion that an act was done in good faith it must have been done with (i) due care and attention, and (ii) there should not be any dishonesty. This Court recently in case of ***Manjit Singh v. Darshana Devi***, reported in **2024 SCC OnLine 3431**, wherein one of us, J.B. Pardiwala, J., forming a part of the Bench, construed the usage of the term *"good faith"* under Section 19(b) of the Act of 1963 in the above sense and held that each of the abovementioned aspects is a complement to the other and not an exclusion of the other. This Court observed that the definition of the BNS emphasizes due care and attention whereas the definition of the GC Act emphasizes honesty. The relevant observation is as under:

"13. Section 3(2) of the General Clauses Act defines 'good faith' as follows:—

3(22). A thing shall be deemed to be done in good faith where it is in fact done honestly whether it is done negligently or not.

14. Section 2(11) of the Bhartiya Nyaya Sanhita, 2023 defines "good faith", as follows:—

2(11). "Good faith- Nothing is said to be done or believed in "good faith" which is done or believed without due care and attention;

15. <u>The abovesaid definitions and the meaning of the term 'good faith" indicate that in order to come to a conclusion</u>

that an act was done in good faith it must have been done with due care and attention and there should not be any negligence or dishonesty. Each aspect is a complement to the other and not an exclusion of the other. The definition of the Penal Code, 1860 emphasises due care and attention whereas General Clauses Act emphasises honesty.

16. The effect of abstention on the part of a subsequent purchaser, to make enquiries with regard to the possession of a tenant, was considered in Ram Niwas v. Bano, (2000) 6 SCC 685 […]

17. In the case reported in Kailas Sizing, Works v. Municipality, B. & N., reported in 1968 Bombay Law Reporter 554, the Bombay High Court observed as follows:—

> *A person cannot be said to act honestly unless he acts with fairness and uprightness. A person who acts in a particular manner in the discharge of his duties in spite of the knowledge and consciousness that injury to someone or group of persons is likely to result from his act or omission or acts with wanton or wilful negligence in spite of such knowledge or consciousness cannot be said to act with fairness or uprightness and, therefore, he cannot be said to act with honesty or in good faith. Whether in a particular case a person acted with honesty or not will depend on the facts of each case. Good faith implies upright mental attitude and clear conscience. It contemplates an honest effort to ascertain the facts upon which the exercise of the power must rest. It is an honest determination from ascertained facts. Good faith precludes pretence, deceit or lack of fairness and uprightness and also precludes wanton or wilful negligence."*
>
> (Emphasis Supplied)

74. This aspect also deserves a reference to the case of ***Jammula Rama Rao v. Merla Krishnaveni***, reported in **2002 SCC OnLine AP 646**, wherein the Andhra Pradesh High Court while holding that honesty is the essential condition in *'good faith'* observed that when subsequent purchasers were informed about the existence of the agreement in favour of the prior vendee, then the subsequent purchasers should have made enquiries from the prior vendee to satisfy themselves whether the agreement in favour of prior vendee is only a nominal one as alleged by the vendors. The court held that the failure on the part of the subsequent purchasers in not conducting such an enquiry with the prior vendee would render them susceptible to the complaint that subsequent purchasers had not acted honestly and in good faith. The relevant observation is as under:

> *"7. In view of the language employed in Sec. 19(b) of Specific Relief Act, the subsequent purchaser has to establish that he paid money in good faith, without notice of the original contract. Since 'good faith' is not defined in Specific Relief Act, its meaning has to be understood from the definition of 'good faith' in General Clauses Act, 1897, Sub-sec. 22 of Sec. 3 of General Clauses Act, defined 'good faith' as "a thing shall be deemed to be done in 'good faith' if it is done honestly". So, honesty is the essential condition in 'good faith'. When appellants, were informed about the existence of the suit agreement in favour of the 1st respondent, appellants should have made enquiries from the 1st respondent to satisfy themselves whether the agreement in favour of 1st respondent is only a nominal one, as alleged by respondents 2 to 5. If they have not done so, it cannot be said that they acted honestly, and consequently it cannot be said that appellants acted in good faith."*

(Emphasis Supplied)

75. At the outset, it must be noted that the subsequent purchasers have themselves admitted that prior to their purchase they were handed over a copy of the notice of termination dated 10.03.2003 by the original vendors and were also specifically informed that the ATS stood terminated by virtue of the said notice. This single fact is of decisive importance. The said notice of termination in the present case is not a peripheral document, rather, it is a self-contained recital of the very material terms of the contract. The said notice of termination makes a clear reference to the fact of existing ATS dated 28.04.2004 and the material terms agreed therein including but not limited to the description of subject land, area of the subject land agreed to be sold, sale consideration, payment of earnest money and payment stages thereafter, and names and residential addresses of the original vendees. Thus, by their own admission, the subsequent purchasers were put in possession of all material particulars of the ATS. Having been confronted with a document of this character, no prudent purchaser acting in good faith could have remained passive. The subsequent purchasers had at their disposal clear and concrete means to demand from the original vendors a copy of the ATS itself or at the very least verify from the original vendees the correctness of the assertions contained in the notice of termination, however, the subsequent purchasers chose not to pursue either course.

76. Further, the operative portion of the notice of termination itself ought to have aroused curiosity in the mind of any *bona fide* purchaser. The said notice did not state that the ATS stood terminated on 10.03.2003.

Instead, in the notice of termination, the original vendees were called upon by the original vendors to *"take back"* their earnest money within a period of one month from the date of the notice of termination and upon their failure to take the earnest money back in one month the ATS would be *'deemed'* cancelled. The plain implication of this stipulation is that the ATS did not in fact stand terminated on the date of notice of termination i.e., 10.03.2003, rather any effective termination of the ATS would have arose, if at all, only a month later, that too, in the event of inaction by the original vendees. This aspect alone should have been a giveaway to the subsequent purchasers when they came to purchase the subject land in 2007 because a *bona fide* purchaser acting with due care and attention would necessarily have inquired whether the earnest money had in fact been refunded by the original vendors and accepted by the original vendees with or without protest, or whether the original vendees had contested the termination or what had transpired after the period of one month. This is especially so because the date of notice of termination could not have been the date of actual termination and deemed termination would have followed only if no response was afforded by the original vendees within one month. Had the subsequent purchasers made such an inquiry, it would have been revealed to them that not only was no refund ever made by the original vendors but that the original vendees had immediately repudiated the validity of the termination by their reply dated 21.03.2003.

77. Moreover, the sequence of events in and around the notice of termination and the impleadment application filed by the original vendees in the Original Suit No. 30 of 2001 also carries considerable

weight. The subsequent purchasers have admitted that they had ascertained that the original vendees had moved an application for impleadment in the Original Suit No. 30 of 2001 on 02.05.2001 which came to be dismissed only on 16.03.2005. Significantly, the alleged termination of the ATS by the original vendors was during this very interregnum i.e., on 10.03.2003. This sequence of events was sufficient to raise a suspicion in the mind of any prudent *bona fide* purchaser that if the said ATS is said to have been terminated on 10.03.2003 by the original vendors then what were the original vendees trying to achieve by seeking to implead themselves in the Original Suit No. 30 of 2001 until 2005. In other words, a reasonable man, apprised of both these events, would have asked that if the ATS stood cancelled in 2003 what then were the original vendees still seeking in the Original Suit No. 30 of 2001 until 2005. This glaring inconsistency ought to have raised a suspicion. Instead, the subsequent purchasers ignored everything and confined themselves to the *ipse dixit* of the original vendors.

78. The language of the termination notice itself discloses the unilateral and self-serving character of the so-called termination. A bare reading of the notice of termination shows that the original vendors had stated therein that due to the *status quo* order in effect and the death of one of the original vendors, they were *"unable to execute a regular sale deed in respect of land in question"* and that they *"cannot wait for an indefinite period"*. Thus, the original vendors cited their own inability to execute a sale deed in view of the *status quo* order operating in the Original Suit No. 30 of 2001 and the death of one of the original vendors. Such grounds, as already discussed, were matters of

inconvenience very much personal to the original vendors and not the breaches attributable to the original vendees. The subsequent purchasers, upon a bare reading of the said notice of termination, ought to have made inquiries to ascertain whether the original vendees had challenged the factum of termination by any subsequent communication. This was all the more necessary because the language employed by the original vendors in the notice of termination itself clearly gave away that what was being asserted was not a termination arising out of any breach or default attributable to the original vendees but rather a unilateral act grounded in the original vendors' own inability and inconvenience. It is a trite law that a subsequent purchaser who relies merely on the assertions of the vendor or who chooses to remain content with his own limited knowledge while consciously abstaining from making further inquiry into the subsisting interests in the property cannot escape the consequences of deemed notice. Equity ought not assist a transferee who deliberately avoids the truth that lies open to discovery. Thus, a purchaser who has before him a document which on its very face shows the termination to be unilateral and rooted in the vendors' inconvenience cannot by shutting his eyes claim the benefit of "good faith".

79. Even more significant is the fact that the subsequent purchasers had sufficient means to unearth the prudent queries as the same notice of termination that subsequent purchasers have gone through provided all means to them to contact the original vendees. This is because the notice of termination itself provided the names and addresses of all the original vendees. Thus, the subsequent purchasers had in their

hands the most direct and reliable means of verifying the truth of the assertions made by the original vendors. They could, with little effort, have contacted the original vendees to ascertain whether the ATS had indeed been terminated or whether any amount had been refunded. Their deliberate abstention from this inquiry despite having the means readily available cannot be dismissed as mere oversight. It would constitute in the words of Sir James Wigram VC *"designed abstention for the very purpose of avoiding notice"*.

80. The law as stated above is unequivocal on this point. In ***Ram Niwas*** *(supra)*, this Court laid down that to claim protection under Section 19(b) of the Act of 1963, the purchaser must show three things: (a) purchase for value, (b) payment in good faith, and (c) absence of notice of the earlier contract. *"Notice"*, it was emphasized, includes not merely actual knowledge but also constructive and imputed knowledge. In ***Durg Singh*** *(supra)*, the Madhya Pradesh High Court reiterated that *bona fide* purchase depends *inter alia* on the purchaser's knowledge of the prior agreement. In ***Jammula Rama Rao*** *(supra)*, the Andhra Pradesh High Court went further and held that where subsequent purchasers were aware of the existence of a prior agreement, their failure to make inquiries from the prior vendees negated both honesty and good faith.

81. From the discussion as above, what can be deduced is that the subsequent purchasers had sufficient notice of the facts that an ATS dated 28.04.2000 existed; the names and addresses of the original vendees; that an earnest money amounting to Rs. 2,00,000/- had been paid by the original vendees to the original vendors; that the

original vendors had sought to terminate the ATS due to their inability to execute the sale deed in favour of the original vendees on account of a *status quo* order; that the date of actual termination could not have coincided with the date of notice; and that deemed termination would have arose only if the original vendees had failed to claim the earnest money within one month; and that despite the issuance of the notice of termination in 2003, the original vendees continued to contest the impleadment application in the Original Suit No. 30 of 2001 until 2005. These circumstances should have reasonably aroused suspicion or at the very least prompted further inquiry by any prudent *bona fide* purchaser. Yet the subsequent purchasers despite having ample opportunity to become aware of these facts abstained from making any such inquiries. It is therefore beyond cavil that the subsequent purchasers cannot take shelter under Section 19(b) of the Act of 1963. Far from showing honesty and due care, their conduct reveals studied indifference to facts which were staring them in the face.

(III). Readiness and willingness of the Original Vendees to perform the ATS

82. Section 16(c) of the Act of 1963 requires that a plaintiff must both plead and prove that he has either performed, or has always been ready and willing to perform, the essential terms of the contract incumbent upon him. It is now a settled law that a party seeking enforcement of a contract must establish that all conditions precedent have been satisfied, and that he has either discharged or stood prepared and willing to discharge his obligations under the contract.

The expressions "ready" and "willing" under Section 16(c) carry distinct connotations. In ***JP Builders v. A. Ramadas Rao***, reported in **(2011) 1 SCC 429**, this Court clarified this distinction, holding that "readiness" relates to the plaintiff's capacity to perform the contract, including his financial ability to pay the consideration, whereas "willingness" is demonstrated through the plaintiff's conduct, evidencing his genuine intent to perform the contract. The relevant observation is 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 Roo 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."

(Emphasis Supplied)

83. Further, in the case of ***Satya Jain v. Anis Ahmed Rushdie***, reported in **(2013) 8 SCC 131**, this Court had further observed that the test of readiness and willingness would depend on the overall conduct of the plaintiff both prior to and subsequent to the filing of the suit for specific performance and such conduct of the plaintiff has to be viewed in light of the conduct of the defendant. The relevant observation is as under:

"36. The principles of law on the basis of which the readiness and willingness of the plaintiff in a suit for specific performance is to be judged finds an elaborate enumeration in a recent decision of this Court in J.P. Builders v. A. Ramadas Rao [(2011) 1 SCC 429: (2011) 1 SCC (Civ) 227]. In the said decision several earlier cases i.e. R.C. Chandiok v. Chuni Lal Sabharwal [(1970) 3 SCC 140], N.P. Thirugnanam v. R. Jagan Mohan Rao [(1995) 5 SCC 115] and P. D'Souza v. Shondrilo Naidu [(2004) 6 SCC 649] have been noticed. To sum up, no straitjacket formula can

be laid down and the test of readiness and willingness of the plaintiff would depend on his overall conduct i.e. prior and subsequent to the filing of the suit which has also to be viewed in the light of the conduct of the defendant. Having considered the matter in the above perspective we are left with no doubt whatsoever that in the present case Plaintiff 1 was, at all times, ready and willing to perform his part of the contract. On the contrary it is the defendant who had defaulted in the execution of the sale document. The insistence of the defendant on further payments by the plaintiff directly to him and not to the Income Tax Authorities as agreed upon was not at all justified and no blame can be attributed to the plaintiff for not complying with the said demand(s) of the defendant."

(Emphasis Supplied)

84. At the outset, it is significant to note that the Trial Court, upon examining the peculiar facts of the case and the evidence on record, held that the original vendees had established their continuous readiness and willingness to perform the ATS. Relying on this finding and further satisfying itself that the subsequent purchasers are not *bona fide* purchasers, the High Court decreed the suit for specific performance in favour of the original vendees. The Trial Court observed that the original vendees had successfully demonstrated: (i) that the original vendors had undertaken to execute the sale deed within one month of completing the subdivision work; (ii) that the original vendors failed to inform the original vendees about the completion of the subdivision, thereby preventing execution of the sale deed and payment of the balance consideration; (iii) that the original vendees had already paid a total sum of Rs. 8,12,500/-, inclusive of Rs. 2,00,000/- as earnest money; and (iv) that they had, at all material

times, remained ready and willing to perform their obligations under the contract. The Trial Court's finding on this issue is as under:

> *"[…] Ex. P.35 proves that defendants No.1 to 6 have admitted the contents of Ex. P.31. I perused Ex. P.31 and 35: Ex. P.35 shown that defendants No. 1 to 6 are unable to execute the sale deed on the ground that OS No. 30/2001 was pending and prohibitory order was passed. Further proves that one Mahalaxmi (Godavari was died. These are only two grounds shown for cancellation of agreement. In Ex. P.35 does not disclose that plaintiffs have not paid the amount as per the terms of agreement and further Ex. P.35 does not disclose that defendants No. 1 to 6 have intimated to the plaintiffs as per para No. 11 of agreement. In para No. 11 of the agreement shown defendants No. 1 to 6 agreed to intimate to the plaintiffs after measurement and fixation of boundaries. The para No.11 of agreement is very relevant to decide the facts in issue. So, I am of the opinion that defendants have not intimated to the plaintiffs as per contents of para No. 11 of Ex. P.31 […]*
>
> *[…] So I am of the opinion that as peer the contents of Ex. P.35 there is no refusal on the part of the defendants No. 1 to 6 for execution of sale deed but only shown inability to execute sale deed on the ground of status quo order. So, I am of the opinion that plaintiffs successfully to prove that defendants No. 1, 2, 4, 6 and two others have agreed to sell suit land for Rs. 26,95,501/- and paid Rs. 2,00,000/- as earnest money on 28.4.2000. Further plaintiffs successful to prove defendants No. 1, 2, 4, 6. and others have agreed to execute sale deed within 1 month after completion of work of sub division. The plaintiffs claim that they have paid amount of Rs. 9,45,000/-. I perused contents of Ex. P.31, 39 and 47. So documents proves that plaintiffs have paid sum of Rs. 8, 12,500/-. So plaintiffs*

failed to prove that they have paid amount of Rs. 9,45,000/- to the owners. So, I am of the opinion that plaintiffs successful to prove that they have paid amount of Rs. 8,12,500/- to the defendants No. 1, 2, 4, deceased Neelakanthrao and Godavari and others. So plaintiffs failed to prove that they have paid amount i of Rs. 9,45,000/- and defendants failed to rebut the claim of the plaintiffs in respect of issues No. 1 to 3. Further plaintiffs successful to prove that they are ready ever ready and always ready to perform their part of contract after disposal of OS No. 30/2001 […]

[…] So, I am of the opinion that defendants: No. 1 to 6 failed to perform their part of contract and plaintiffs immediately after disposal of the suit taken steps to perform of their part of contract and immediately defendants No. 1 to 6 have executed sale deed in favour of the defendants No. 9 to 16 […]"

(Emphasis Supplied)

85. As per the terms of the ATS, the original vendees had agreed to purchase the subject land for a total sale consideration of Rs. 26,95,501/- out of which the they had already paid an amount of Rs. 2,00,000/- as earnest money to the original vendors. Under Clause 7 of the ATS, the original vendees were required to pay an additional amount of Rs. 5,00,000/- to the original vendors at the time of registration of ATS or within two months from the date of execution of ATS and the balance amount was to be paid at the time of registration of the sale deed. It was the case of the original vendors in their notice of termination that the original vendees did not come forward to pay the said amount of Rs. 5,00,000/- to the original vendors nor did the original vendees get the ATS registered. The original vendees vehemently denied the allegation of non-payment of Rs. 5,00,000/- in

its reply. In fact, the receipts of payment to the tune of Rs. 8,12,500/- were placed on record before the Trial Court and relying on the same the Trial Court reached the conclusion that payments were made to the original vendors from time to time to the tune of Rs. 8,12,500/-. No evidence was adduced by the original vendors to prove that such amount was not paid or was not accepted by them. In fact, it appears from the record that the original vendees had assisted the original vendors in the process of conversion of land and shifting of 19 tenants to one particular place. The averments made by the original vendees in their impleadment application in the Original Suit No. 30 of 2001, and the averments before the Trial Court, the High Court and now before this Court all show that they were always ready and willing to pay the balance consideration and execute the sale deed with respect to the subject land. The conduct of the original vendees, both prior to and subsequent to the filing of the Original Suit No. 36 of 2007, like payment of substantial sums, their active assistance to original vendors in completing the necessary formalities, their categorical refutation of the termination notice, and their continuous pursuit of legal remedies, all directs towards the conclusion that they have at all times remained compliant with the mandate of Section 16(c) of the Act of 1963. The findings of Trial Court being a finding on facts cannot be said to be perverse.

86. Accordingly, we find no infirmity in the conclusion reached by the Trial Court, which after a detailed examination of the evidence, rightly held that the original vendees had performed their part of the contract to the extent required, and had consistently been ready and willing to perform their remaining obligations under the ATS.

87. In such circumstances referred to above, we find no good reason to re-examine the question of limitation at this stage. The Trial Court, while deciding the issues as framed had specifically considered whether the suit for specific performance instituted by the original vendees was barred by limitation and upon a detailed assessment returned a finding that the suit was well within the prescribed period. Significantly, when the subsequent purchasers carried the matter in appeal before the High Court, no ground of challenge was raised against the said finding. The subsequent purchasers, having consciously chosen not to assail the finding on limitation, must be deemed to have acquiesced therein. Once the finding of the Trial Court on the question of limitation attained finality, re-agitation of the same before this Court ought not be entertained. Accordingly, we hold that the issue of limitation raised by the subsequent purchasers is untenable and stands concluded against them.

88. In so far as the contention of the subsequent purchasers that since one of the original vendees i.e., the Respondent No. 14 (defendant no. 8) neither entered appearance before the Trial Court or appeared before this Court nor contested the relief of specific performance and that the ATS being indivisible cannot be enforced in the absence of all parties seeking enforcement is concerned, we see no force in the argument in as much as the Respondent No. 14 had released and relinquished his rights and interest under the ATS in favour of the remaining original vendees i.e., the Respondent Nos. 15 to 22 (plaintiffs) and the Respondent Nos. 1 to 5 (defendant nos. 7) respectively by executing an agreement dated 28.12.2002. In view of

such relinquishment, the Respondent No. 14 ceased to have any subsisting claim or obligation under the ATS. Consequently, the right to seek enforcement validly vested in the remaining vendees, who alone pursued the remedy of specific performance.

D. CONCLUSION

89. In view of the foregoing, the appeals fail and are hereby dismissed.

90. The Appellants are hereby directed to execute a sale deed in respect of the subject land in favour of the Respondent Nos. 15 to 22, respectively & the Respondent Nos. 1 to 5, respectively, and also hand over vacant and peaceful possession of the subject land to them within six months from the date of this judgment, subject to the fulfilment of directions issued by us in paragraphs 91 and 92, respectively, of this judgment.

91. In the peculiar facts of the present case, we deem it fit to direct the Respondent Nos. 15 to 22, respectively & the Respondent Nos. 1 to 5, respectively, to pay the balance sale consideration of Rs. 18,83,001/- with an interest at the rate of 16% p.a. from the date of the execution of the ATS, to the Appellants within a period of six months from the date of this judgment.

92. Further, having regard to the fact that almost 18 years have passed by since the sale deeds in favour of the Appellants were executed, and with a view to do substantial justice, we direct the original vendees, i.e., the Respondent Nos. 15 to 22, respectively & the Respondent Nos.

1 to 5, respectively, to pay to the Appellants an additional amount of Rs. 5,00,00,000/- over and above the balance sale consideration with interest referred to above within a period of six months from the date of this judgment.

93. It is only after the balance sale consideration of Rs. 18,83,001/- with interest at the rate of 16% p.a. from the date of the execution of the ATS and the additional amount of Rs. 5,00,00,000/- is paid to the Appellants, that they shall proceed to execute the sale deed and handover vacant and peaceful possession of the subject land to the Respondent Nos. 15 to 22, respectively & the Respondent Nos. 1 to 5, respectively.

94. In the event of any default on either side to comply with our aforesaid directions or in case of any other difficulty, the parties are at liberty to move to this Court.

95. The pending applications, if any, shall stand disposed of.

..... J.
(J.B. Pardiwala)

..... J.
(R. Mahadevan)

New Delhi;
10th November, 2025.