

**IN THE HIGH COURT AT CALCUTTA
EXTRAORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE**

Present:

The Hon'ble Justice Sugato Majumdar

EOS/12/1999

PAWAN KR. TEBREWALLA & ORS.

VS

MRS. SET SUKO SARKAR

For the Plaintiffs : Mr. S. N. Mitra, Sr. Adv.
Mr. Malay Kr. Ghosh, Sr. Adv.
Mr. Biswanath Chatterjee, Adv.
Mr. A.P. Agarawalla, Adv.

For the Defendant no. 2 : Mr. Megnad Dutta, Adv.
Mr. Anirban Pramanick, Adv.
Mr. Punarbasu Nath, Adv.
Ms. Bhagyasree Dey, Adv.

Hearing concluded on : 23/03/2026

Judgment on : 24/04/2026

Sugato Majumdar, J.:

This is a suit for specific performance of contract along with other prayers.

The suit was initially filed in this Court which was registered as Suit No. 137 of 1996 on 6th June, 1996. The plaint was returned by Order dated 30th August, 1996 for presenting the same before the appropriate Court. Therefore, the suit was presented and registered in the Court of Learned 8th Assistant District Judge at Alipore and was numbered as Title Suit No. 91 of 1996. Subsequently, on the basis of

one ALP No. 36 of 1998, this Court, in terms of Order dated 18th February, 1999 transferred the matter to this Court in terms of Clause 13 of the Letters Patent 1865. The suit became renumbered as present.

PLAINT CASE:

- a) The premises nos. 215 and 217 Netaji Subhas Chandra Bose Road, Tollygunge, Kolkata (hereinafter mentioned as the “said premises”) were owned by Shankar Lal Sarkar. The said premises are continuous to each other being amalgamated, covering a total area of 34 cottah of land with building. This is Schedule-A property.
- b) The Plaintiffs carry on business jointly. The Plaintiffs are in control and management of Defendant No.3 and the Plaintiff Nos.1 and 2 are the directors thereof. The Plaintiffs through the Defendant No.3 carry on the business of real estate development.
- c) The Defendant Nos.1 and 2 expressed their intention to develop the said premises which could be done only after shifting the tenants. Following several discussions it was orally agreed in the month of July 1987 between the Plaintiffs and the Defendant Nos.1 and 2 that the property would be developed. Various terms have been negotiated. On 5th August, 1987, the following agreements were executed:
 - i) The agreement for development and construction of building by the Defendant No.3 was executed by and between the Defendant Nos.1 and 2 on the one hand and the Defendant No.3 on the other providing therein payment of cost of construction at the specified rate.

- ii) The agreement for sale of undivided $1/4^{\text{th}}$ share of the Defendant Nos.1 and 2 in premises no. 217, Netaji Subhas Chandra Bose Road, Tollygunge, Calcutta by the Defendant Nos.1 and 2 in favour of the Plaintiff no. 1 was executed by the said parties showing consideration amount of Rs.5,98,500/-.
- iii) The agreement for sale of undivided $1/4^{\text{th}}$ share of the Defendant Nos.1 and 2 in premises no. 215, Netaji Subhas Chandra Bose Road, Tollygunge, Calcutta by the Defendant Nos.1 and 2 in favour of the Plaintiff No. 1 was executed by the said parties showing consideration amount of Rs.5,33,000/-.
- iv) The agreement for sale of undivided $1/4^{\text{th}}$ share in premises no.215, Netaji Subhas Chandra Bose Road, Tollygunge, Calcutta by the Defendant Nos.1 and 2 in favour of the Plaintiff No.2 was executed by the said parties showing consideration amount of Rs.5,33,000/-.
- v) The agreement for sale of undivided $1/4^{\text{th}}$ share in premises no.217, Netaji Subhas Chandra Bose Road, Tollygunge, Calcutta by the Defendant Nos.1 and 2 in favour of the Plaintiff No.2 was executed by the said parties showing consideration amount of Rs.5,98,500/-.
- vi) The agreement for sale of undivided $1/4^{\text{th}}$ share in premises no.215, Netaji Subhas Chandra Bose Road, Tollygunge, Calcutta by the Defendant Nos.1 and 2 in favour of the

Plaintiff No.3 was executed by the said parties showing consideration amount of Rs.5,33,000/-.

- vii) The agreement for sale of undivided 1/4th share in premises no.217, Netaji Subhas Chandra Bose Road, Tollygunge, Calcutta by the Defendant Nos.1 and 2 in favour of the Plaintiff No.4 was executed by the said parties showing consideration amount of Rs.5,98,500/-.

There were six agreements for sale and one agreement for development and construction. The six agreements for sale contained identical, terms and conditions, particulars of which are given in the plaint.

- d) Pursuant to the said six agreements, the Plaintiff paid earnest money to the Defendant Nos.1 and 2 as follow:

- a) Rs.7,000/- was paid by the Plaintiff No. 1 to each of the Defendant Nos.1 and 2 aggregating to Rs.14,000/-.
- b) Rs.7,000/- was paid by the Plaintiff No.2 to each of the Defendant Nos.1 and 2 aggregating to Rs.14,000/-.
- c) Rs.7,000/- was paid by the Plaintiff Nos.3 and 4 to each of the Defendant Nos.1 and 2 aggregating to Rs.14,000/-.

Payment of earnest money was made by twelve bankers cheques issued by HSBC Limited, all dated 4th August, 1987. The Defendant Nos.1 and 2 received the payment at the office of M/s Fox & Mondal and had been encashed. In respect of the development agreement, the

Defendant No. 3 paid a sum of Rs.5,000/- to each of the Defendant Nos.1 and 2 on 7th August, 1987 by cheque. In performance of the said agreement for sale, various steps were taken by the Plaintiff through the Defendant No.3.

- e) There was litigation on the issue of incorporation of amendment of Section 98A of the Calcutta Municipal Corporation Act, 1980 whereunder all pending plans for construction of building of more than 18 meters high stood rejected. Cancellation of building plan stood upheld by the Supreme Court of India, requiring the preparation of fresh building plan and submitting the same for sanction by Kolkata Municipal Corporation.
- f) The Defendant No.1 in terms of letter dated 20th October, 1995 asked the Plaintiff to go-ahead with the project with the Defendant no. 2 alone but the Defendant No. 2 changed her mind and by letter dated 5th December, 1995 expressed intention not to proceed further with the said development project refusing thereby, to perform the agreement for sale as aforesaid.
- g) It is averred in the plaint that the Plaintiffs are ready and willing to perform all terms and obligations of the agreement.
- h) Since the Defendant Nos.1 and 2 refused to perform their contractual obligation, the instant suit has been filed, praying for specific performance of six agreements for sale dated 5th August, 1987 which are Annexure B to G, directing the Defendant Nos.1 and 2 to execute the deed of conveyance for transfer of the premises nos.215 and 217, Netaji Subhas Chandra Bose Road, Kolkata in favour of each of the

Plaintiff Nos.1 and 2 and in favour of the Plaintiff Nos. 3 and 4 jointly against the amount of consideration along with other prayers.

The Defendant Nos.1 and 2 being the mother and the daughter filed two separate written statements.

WRITTEN STATEMENT OF THE DEFENDANT NO.1

- (i) The Defendant No.1 challenged the suit as being barred by waiver and acquiescence and not maintainable.
- (ii) The Defendant No.1 is a Japanese citizen by birth and her only daughter being the Defendant No.2 is the Indian citizen by birth. She was born in the month of December 1967. Soon, after death of the sole owner of the premises bearing no. 211, 215 and 217, Netaji Subhas Chandra Bose Road on 30/01/1987, the Defendant Nos.1 and 2 inherited those properties.
- (iii) On advice of D. Mondal and M/s Fox and Mondal, Defendant No.1 had negotiation with Plaintiff No. 1 on reconstruction of the buildings at 215 and 217, Netaji Subhas Chandra Bose Road. According to the agreement for construction of buildings at 215 and 217, Netaji Subhas Chandra Bose Road, the owners of the land, namely, the Defendant Nos. 1 and 2 would receive jointly 25% super build up area at premises no. 215, Netaji Subhas Chandra Bose Road on or before 5th August, 1990. Thereafter, the old building at premises no. 217 would be demolished for construction of another building. The owners, namely, the

Defendant Nos. 1 and 2 would receive jointly 25% of the super build up area at premises no. 217, Netaji Subhas Chandra Bose Road on or before the month of August 1992. There was no monetary transaction except security deposit against 75% of 35 cottah lands recorded in another agreement dated 05/08/1987.

- (iv) On 3rd August, 1987 was the date fixed for signature and execution. The Defendant Nos. 1 and 2 visited the chamber of M/s Fox & Mondal. It was alleged in the written statement that the agreement was without any witness on the owners' side. There was misspelling of the surname. The Defendant No. 1 had left the said agreement to Mr. D. Mondal and M/s Fox and Mondal. Meanwhile, the Plaintiff No. 1 issued two cheques where the Defendant Nos. 1 and 2 signed without witness. The agreement become un-registerable and the Plaintiff No. 1 did not obtain any sanction from Calcutta Municipal Corporation in terms of Clause 15.
- (v) The Defendant No. 1 received a photo copy of letter dated 25th August, 1990 seeking settlement of dispute by way of arbitration. Arbitration proceeding failed in 1990 thereafter the Plaintiff filed the instant suit in June 1996.
- (vi) It was further averred that the Plaintiff had failed to submit a map attached to the agreement on which red marked lines are important to adjudicate the dispute. It was further

averred that in view of provision of arbitration clause, the disputes herein are to be settled by arbitration.

WRITTEN STATEMENT OF DEFENDANT NO.2:

- (i) The Defendant No. 2, in the written statement, challenged the maintainability of the suit on the ground that it was time barred, barred by the principles of estoppel, waiver and acquiescence and absence of any cause of action.
- (ii) It was denied that premises no. 215 and 217, Netaji Subhas Chandra Bose Road, Calcutta is wholly tenanted premises. It was averred that the Defendants reside there.
- (iii) It was further averred that on 5th August, 1987, the Defendant No. 2 was induced by her mother the Defendant No.1 and her advocate Mr. D. Mondal to execute several papers purporting to be agreement for development of the said two premises. The actual contents were not disclosed to her inspite of requests. The Defendant No. 2 was dependent on her mother and could not go against her wishes. The Defendant No. 2 never agreed to sell any portion of the premises to any of the Plaintiffs or the Defendant No. 3. The Defendant No. 1, namely, the mother and the advocate compelled the Defendant No. 2 to sign the papers purported to be agreements. It was specifically averred that all the said seven agreements are not products of free-will and volition of the Defendant No. 2. The Defendant No. 2 has duly avoided the said agreements. It

was further averred that the Defendant No. 2 did not receive any earnest money as alleged by the Plaintiff. It was also denied that she received the alleged sum of Rs.5,000/-. According to the Defendant No. 2, the development agreement is illegal, invalid, unenforceable and inadmissible as evidence since unregistered.

- (iv) It was further averred that there was no occasion for signing the agreements. The purported development agreement became impossible to perform by reason of change in the municipal law, hence become unlawful, null and void.
- (v) The Defendant No. 2 stated that she was not aware of letter dated 05/12/1995.
- (vi) The Defendant No. 2 denies all other allegations contained in the plaint.

On the basis of rival pleadings, following issues were framed:

- i) Whether the six agreements dated August 5, 1987 are valid and enforceable agreements and binding on the Defendant No.2?*
- ii) Whether the said agreements have brought about by coercion and undue influence exercise upon the Defendant No. 2 by the Plaintiffs and their Advocate?*
- iii) Whether the said six agreements for sale are void for want of voluntary consent?*

- iv) *Whether the agreement dated August 5, 1987 entered into between the Plaintiff Nos. 1 to 4 with the Defendant No. 2 is for any valid consideration.*
- v) *Whether the Plaintiffs have performed the Acts as stated in Para 8 of the plaint? Whether the Plaintiffs have performed their part of obligation under the six several agreements for sale?*
- vi) *Whether the Plaintiffs had the means and capability to perform their obligations under the agreement?*
- vii) *Whether in the absence of performance of the purported development agreement by the Defendant No. 3 is the agreement for sale enforceable in law?*
- viii) *Whether the suit filed by the Plaintiffs for specific performance of the said agreement is barred by limitation?*
- ix) *Whether the suit filed by the Plaintiffs for specific performance of the six agreements for sale barred by law?*
- x) *Whether the suit is barred for mis-joinder of causes of action?*
- xi) *Whether the Plaintiffs Nos. 1 to 4 were at all material times ready and willing to perform the said agreements?*
- xii) *To what relief, if any, are the Plaintiffs entitled?*

During pendency of the suit, Defendant No. 1 settled the matter and suit was decreed on compromise against the Defendant No. 1, in terms of the compromised decree dated 24th September, 2014. Therefore, the Defendant No. 2 continued to contest the suit.

Issue Nos. (viii), (ix) & (x):

Issue Nos. (viii), (ix) and (x) are taken up together since these three issues are foundational.

Issue No. (viii) is whether the instant suit for specific performance is barred by the law of limitation.

Mr. Dutta, the Learned Counsel for the Defendant No.2 argued that the six agreements in question were executed on 5th August, 1987. No specific date of performance was mentioned in the agreement. Para.21 of the plaint shows that cause of action arose on 05/12/1995 when the Defendants, by a letter refused to perform their part of the agreement. The suit was filed in the year 1996. Though the cause of action in the instant suit is based on the letter of refusal dated 05/12/1995, that letter has not been adduced in evidence. The letter is, in fact, illusory and fictitious and was created to make up a cause of action, according to the Learned Counsel for the Defendant No. 2. Therefore, as argued, the date of refusal is not proved. In that case, limitation should start running from the date of execution of the said agreements which was 5th August, 1987. According to Article 54 of the Limitation Act, 1963, a suit for specific performance has to be filed within three years from the date fixed for performance and if no such date is fixed then within three years when the Plaintiff has notice of refusal. Since date of refusal is not proved, limitation period expired within three years from the date of execution, which had lapsed long ago. The suit was filed nine years after execution of the said agreement for sale. Therefore, according to Mr. Dutta, the suit is barred by the law of limitation. Mr. Dutta referred to **Sabbir Vs. Anjuman [(2023) SCC OnLine SC 1292]**.

The Learned Senior Counsels appearing for the Plaintiffs argued that Para.21 of the plaint averred that the Defendant No. 1 had refused performance by a letter

dated 05/12/1995. Para.21 was dealt in the Para.15 of the written statement where there was no denial of the said fact. Moreover, in the written statement, the Defendant No.2 alleged that performances of the agreements were refused by her on the early date. Ext. Q is a letter dated 25/12/1995, in terms of which the Defendant No.1 refused to perform the agreements and asked the Plaintiff to proceed with the project with the Defendant No.2 who was then willing to carry out the project. It was further submitted that the observations made in **Sabbir Vs. Anjuman** has no application in the present case.

The agreements were executed on 05/08/1987 by the parties. No specific time frame was mentioned for performance. In Para 21 of the plaint, it was averred that the Defendant No. 1, in terms of a letter dated 05/10/1995 expressed that the performance of the agreements may be carried out with the Defendant No. 2. Subsequently, the Defendant No. 2 expressed her unwillingness to perform the agreement in terms of a letter dated 05/12/1995. Existence or issuance of this letter dated 05/12/1995 was denied by the Defendant No. 2. There was no mention of this letter either by the PW-1 or by the DW-1. Existence of this letter was not proved. On the other hand, the letter dated 15/10/1995 by the Defendant No. 1 is proved and is Ext. Q. This letter in a way convey that the Defendant No. 1 was not willing to proceed with the work in terms of the said agreements. This came to the notice on or about the date of the letter and the suit was filed within three years from the said date. Absence of the letter written by the Defendant No. 2 dated 05/12/1995 is of no consequence.

Sabbir (Dead) Vs. Anjuman (since deceased), relied on by the Learned Counsel for the Defendant No.2 was decided on facts and circumstances specified to that case.

On appreciation of evidence and hearing rival submissions, this Court comes to the conclusion that the suit is not barred by law of limitation.

Issue No.(viii) is decided in favour of the Plaintiffs.

Issue No. (ix) is whether the suit for specific performance is barred by the law.

Mr. Dutta argued that the six agreements in question were executed by Mrs. Setsuko Sarkar and Ms. Mallika Sarkar as vendors and the Plaintiffs as the purchasers. Mrs. Setsuko Sarkar was a Japanese citizen by birth. Section 31 of the Foreign Exchange Regulation Act, 1973 imposes restrictions on foreign citizens on transaction of immovable properties. For carrying out transactions on immovable properties, previous permission of the Reserve Bank of India was needed. There is no evidence that prior to execution of the said agreements, any permission had been obtained by the Defendant No.1. According to Mr. Dutta, the said agreements are bad in law and are void *ab initio*. Mr. Dutta referred to **Asha John Divianathan Vs. Vikram Malhotra [(2021) 19 SCC 629]**.

Per contra, the Learned Senior Counsels for the Plaintiffs argued that the plaintiffs are not claiming any decree against the Defendant No. 1. The issues had been settled between the Plaintiffs and the Defendant No. 1 and terms of settlements were duly executed and rendered into writing. Subsequently, a consent decree was passed on 24/09/2014. The said consent decree had not been challenged by the Defendant No. 2. This apart, the Defendant No. 2 is not foreign citizen. Therefore, there is no bar in passing decree of specific performance against the Defendant No.2. It was further argued that the said agreements for sale by themselves did not convey any title of the properties. At the time actual shares had been transferred by the Defendant No. 1, in the year 2014, the Foreign Exchange Regulation Act, 1973 got

repealed. Therefore, according to the Learned Counsels, the pending suit against the Defendant No. 2 is not barred by the law.

The agreement for sale was executed by the Defendant No. 1 who was a Japanese citizen by birth. Although Mr. Dutta argued that the agreements themselves offend FERA 1973. Firstly, FERA 1973 never put any embargo on execution of any agreement for sale by a foreign citizen. Section 31 put restriction on acquisition, holding etc. of immovable property in India by of foreign national, however, the transfer itself is not totally barred but subject to permission of the Supreme Court of India. Agreement for sale was liable to be barred under FERA Act if it intended to offend any of the provisions of FERA. There is no such provision in the agreements. Furthermore, the suit has already been decreed in respect of the Defendant No. 1 when FERA 1973 was no longer in existence. No appeal was preferred by the Defendant No. 2 against the said decree. In other words, the decree stands confirmed. The present Defendant No. 2 is an Indian citizen and provisions of FERA is not applicable in this case. Ratio of **Asha John Divianathan's** case is not applicable in the facts and circumstances of the present case. Therefore, the argument made by Mr. Ghosh holds no ground and this Court is of opinion that the enforcement and specific performance of the agreements are not barred.

The Issue No. (ix) is decided in favour of the Plaintiffs.

There was no argument by the Learned Counsel for the Defendant No. 2 in respect of the Issue No. (x).

Issue No. (i), (ii), (iii), (iv) and (vii) :

Issue Nos. (i), (ii), (iii) and (iv) are taken up together for consideration.

Mr. Dutta, the Learned Counsel for the Defendant No. 2 submitted at the outset that the six aforesaid agreements dated 05/08/1987 are neither valid nor enforceable. Execution of the agreements were vitiated by coercion and undue-influence, exercised on the Defendant No.2. In Para. 7 and 8 of the written statement, the Defendant No. 2 specifically stated how the Defendant No. 2 had been coerced and had been subjected to undue-influence for signing those documents. In course of oral testimony, the Defendant No. 2 elaborated the circumstances under which she was compelled to sign those agreements. Therefore, the agreements are not enforceable and decree of specific performance of the agreements cannot be allowed.

Per contra, the Learned Senior Counsels for the Plaintiffs argued that the defence of unenforceability of the said agreements are not tenable. Firstly, it was argued that coercion and undue-influence, as defined in Sections 15 and 16 of the Indian Contract Act, 1872 are not attracted in this case. In course of examination, the Defendant No. 2 admitted that the Solicitor who subjected her to undue-influence and coercion was his father's friend, and known to her since 1985. She met with him with his father on two occasions prior to execution of the agreements dated 05/08/1987. There is no evidence that after execution of the agreements, he consulted with her uncle who was a lawyer and took any step to cancel the agreements on the alleged grounds of coercion. After signing the agreements the Defendant No. 2 willingly and physically appeared before the Registrar of Assurance, Calcutta on 17/08/1987 along with the Defendant No. 1 to sign and register the power of attorney in favour of the Plaintiff No. 1. Furthermore, neither it is in pleading, nor is it in evidence that the agreement for sale, all dated 05/08/1987 had been cancelled. Therefore, this defence is not tenable.

I have heard rival submissions.

DW-1 in course of examination-in-chief stated the circumstances under which she was forced to sign the agreements. She was cross-examined on those statements. It came out from cross-examination that she did not lodge any complaint before any police station alleging forceful signature and coercion. She deposed that she had never seen the agreements. For the first time when the suit came up for hearing, she saw these documents. But in answer to the next question (Q.28) she stated that she was coerced to sign the papers then allowed to go through it, though they did not allow to read the papers. She stated in respect of Ext.J that it was one of the blank papers she was forced to sign. In fact ext. J is a registered power of attorney and signatures of the DW-1 appeared on every page and in presence of the Registrar of Assurance. Contention of signing blank documents is not believable and this part of evidence is not trustworthy. Although alleged coercion, the Defendant No. 2 did not take any step since 1987 to set aside such agreements as voidable; nor did she produce any document evidencing avoiding of the agreements. Even in this suit there is no counter-claim to this effect. Agreements are voidable if executed under undue influence and coercion. These kinds of agreements are not void ab initio. They loss their lives only on avoidance. Unless avoidances be there, the agreements remain live and enforceable. After lapse of the period of limitation and in the face of contradictory and feeble testimony and in absence of avoidance of the agreements it cannot be said that the allegations of undue-influence or coercion have been proved by cogent evidence. There is no evidence on record that performance of the agreements had been refused on the ground of undue influence and coercion.

The Defendant No. 2 stated that she had not received any part of the consideration money. But she admitted her signature on the memorandum of consideration. Then in answer to Q.162, DW-1 stated that she signed on a blank sheet being Ext.T. But her signature ran over a revenue stamp. When asked on this

she failed to explain. The testimony of the Defendant No.2 to the extent that she did not receive consideration money is also hardly trustworthy. In effect, evidence failed to stand as rebuttal of the PW-1's testimony and discharge of burden of proof that she received consideration money.

On appreciation of evidence, this Court, therefore, comes to the conclusion that the six agreements are neither voidable, and even if so, nor avoided the result of which is unaffected efficacy of the same. On these grounds it is wrong to say that the six agreements are not enforceable at law.

Issue Nos. (i), (ii), (iii) and (iv) are decided in favour of the Plaintiffs.

Next Issue No. (vii) should be considered.

It was argued by Mr. Dutta was that all the six agreements dated 05/08/1987 as well as the construction agreements were executed on non-judicial stamp papers of Rs.5/- each and unregistered. For this reason also those agreements for sale could not be enforced in law and decree for specific performance should not be allowed.

Mr. Dutta further argued that the agreement for sale is completely unenforceable in law in absence of performance of the purported development agreement by the Defendant No. 3. The present suit is for specific performance of the alleged six agreements for sale executed between the Defendant Nos. 1 & 2 as the owners and the Defendant No. 3 as the developer. The Defendant No. 3 is a private limited company and is a distinct legal entity.

The Learned Senior Counsels for the Plaintiffs argued, so far as non-registration is concerned, agreement for sale of immovable properties became liable to bear stamp duty as conveyance under Schedule IA to the Indian Stamp Act, 1899, as applicable to the State of West Bengal, by the West Bengal Act XVII of 1990 by

incorporation of Clause (d) in Serial No. 5 of the Schedule IA. Similarly, provision for stamping of construction agreement was made by the West Bengal Finance Act 2012 with effect from 01/04/2012 by incorporating Clause (f) in Serial No. 5 of the Schedule IA. Registration of agreements for sale and construction agreements were made compulsory by introduction of sub-section IA in Section 17 of the Registration Act 1908. This new sub-clause provides that documents containing contracts to transfer for consideration any immovable property for the purpose of Section 53A of the Transfer of Property Act 1882 shall be registered if they have been executed on or after the commencement of the Registration and Other Related Laws (Amendment) Act, 2001 and if such documents were not registered on or after such commencement, then they shall have no effect for the purpose of Section 53A of the Transfer of Property Act, 1882. According to the Learned Senior Counsels, at the time when those agreements dated 05/08/1987 had been executed these laws were not in force. Therefore, the agreements are not vitiated on the ground of non-registration.

In continuation it was further argued that various steps had been taken towards performance of the development agreement. Apart from making payments to the Defendant Nos. 1 & 2, two separate power of attorney had been executed on 05/08/1987 by the Defendant Nos. 1 & 2 which were registered on 17/08/1987. These power of attorneys were in respect of the two premises, namely, 215 and 217 Netaji Subhas Road, authorizing the Defendant No.3 to negotiate with the tenants/occupiers to obtain vacant possession, and to do all the incidental and needful acts. The Defendant No. 3 took various steps for implementation of the agreements and the development agreements. Evidences were adduced to substantiate those actions. Therefore, according to the Learned Senior Counsels for

the Plaintiffs, it is wrong to contend that there was no performance of the development agreement.

I have heard rival submissions.

So far as the issue of registration of the agreement for sales are concerned I agree with the arguments made by the Learned Senior Counsels for the Plaintiffs. At the time of execution of the agreements for sale, the existing law of the land were the governing *lex loci*. Subsequently enacted law without having retrospective effect cannot affect the previously executed documents. The six agreements cannot be decided as non-enforceable on this score, at least.

It was also a point raised by the Defendant No. 2 that in absence of performance of the development agreement, the aforesaid six agreements for sale are not enforceable at law. The agreements for sale, which are documentary evidence in the instant suit does not place any such pre-condition. Nowhere it is there that performance of the development agreement makes only the agreement for sale enforceable. As observed above, definite steps had been taken pursuant to the development of the properties. Now this Court cannot introduce an alien term in the executed agreements overriding the intention of the parties.

This Issue No. (vii) is decided, thus, in favour of the Plaintiffs.

Issue Nos. (v), (vi) & (xi):

Issue No. (v) is related to performance of the Plaintiffs of their contractual obligations arising out of the six agreements. Issue Nos. (xi) and (vi) deal with the points whether the Plaintiffs were at all material times ready and willing to perform the said agreements and whether the Plaintiffs had the means and capability to perform their obligations under the agreements.

It was argued by Mr. Dutta, the Learned Counsel for the Defendant No. 2 that the suit is barred by the law and limitation, as such not maintainable. For the sake of argument, that the suit is not barred by laws of limitation and the FERA, 1973, Mr. Dutta proceeded to argue on these issues.

Mr. Dutta submitted at the outset that the Plaintiffs are never ready and willing to perform the said agreements, and that the Plaintiffs had no means or capability to perform their obligations. Referring to different paragraphs of the plaint, Mr. Dutta submitted that there is no whisper in the plaint that the Plaintiffs are ready and willing to perform the said agreements. Mr. Dutta referred to Ext.L, which is an application for mutation; Ext. M which is a letter issued by the C.M.C authority in relation to amalgamation; Ext. N certificate of Tally Tax Department; Ext.P, a letter written by the Defendant No.3 to the Defendant No.1 asking for signature and approval, as well as the Ext.Q, a letter issued by the Defendant No. 1. It was submitted that in the pleading, the Defendant No. 2 denied that the Plaintiffs are ready and willing to perform the agreements. This was asserted by the Defendant No. 2 in course of her oral testimony. There is no statement that the Plaintiffs approached the Defendant No. 2 with money. In the conspectus of facts, according to Mr. Dutta, the Plaintiffs failed to establish their readiness and willingness to perform the said agreements. Therefore, according to him, the instant suit for specific performance should fail.

Mr. Dutta referred to, in support of his argument, **U. N. Krishnamurthy Vs. A. M. Krishnamurthy [(2022) SCC OnLine SC 840]**; **Vijay Kumar Vs. Om Prakash [(2019) 17 SCC 429]**; **Ritu Saxena Vs. J.S. Grover [(2019) 9 SCC 132]**. With reference to the aforesaid decisions, it was argued by Mr. Dutta that a Court has to examine the financial capacity of the purchaser who seek specific performance; evidence is to be produced by the purchaser to establish his capacity to

pay the sale consideration. It was further argued that self-serving statements do not establish readiness and willingness without production of documents relating to financial resources. The Plaintiffs, failed to prove that. Therefore, they are not entitled to decree of specific performance of the agreements.

In reply, the Learned Counsels for the Plaintiffs referred to averments made in Para.22 of the plaint where it was specifically stated that the Plaintiffs are ready and willing to perform the said agreements. PW-1 also stated the same in evidence. There was no cross-examination on this point. In fact, in answer to Question No. 62, it was specifically put to the DW-1 but she did not deny that the Plaintiffs are ready and willing to perform the agreements. There is no iota of evidence produced by the Defendant No. 2 that the Plaintiffs neglected to pay the agreed money. In fact the readiness of the Plaintiffs can be inferred from the fact that 50% of the consideration money had already been paid to the Defendant No. 1. Therefore, according to the Learned Senior Counsels, the suit should not be defeated for this reason.

To appreciate rival submissions and for adjudication of the issues, evidences adduced should be looked into. PW-1 in course of examination-in-chief stated that pursuant to the execution of the agreements, an Architect was appointed to survey the property; plan had been signed both by the plaintiffs and the Defendants and had been submitted for sanction by the Kolkata Municipal Corporation. PW-1 continued to take further steps, consequent to execution of the agreements. Pursuant to the steps taken, two plots of land being 215 & 217, Netaji Subhas Chandra Bose Road, got amalgamated. It was further stated by PW-1, the Defendant No.2 was in active participation in documentation for mutation and amalgamation. PW-1 produced Ext.M, Ext.N, Ext.O and other documents to substantiate and prove that steps had been taken by the Plaintiffs towards performance of the agreements. In course of cross-examination, oral testimony of the PW-1 that steps had been taken pursuant to

the agreements remained unchallenged. Following the ratio of **A.E.G. Carapiet Vs. A.Y. Derderian (AIR 1961 Cal 359)** on the principle of non-traversal it is concluded that the Plaintiffs took steps pursuant to the agreements.

Issue No. (v) is thus decided in favour of the Plaintiffs.

Next should be considered the point of readiness and willingness of the Plaintiffs to perform their part.

Mr. Dutta, the Learned Counsel appearing for the Defendant No.2, strenuously argued, referring to **Vijay Kumar's case** (supra) that the Plaintiffs have not deposited the balance consideration money with the Court to demonstrate their ability and capacity to pay and perform. This raises doubt on financial capacity of the Plaintiffs to perform their part, in so far as, payment of consideration is concerned.

Section 16 (c) of the Specific Relief Act provides that a contract cannot be specifically enforced in favour of a person who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than the terms the performance of which has been prevented or waived by the defendant. This principle was explained and reiterated by the Supreme Court of India in **U. N. Krishnamurthy's case** (supra) as well as in **Vijay Kumar's case** (supra). Referring to the earlier authorities, it was held in **U. N. Krishnamurthy's case**:

“**45.** It is settled law that for relief of specific performance, the plaintiff has to prove that all along and till the final decision of the suit, he was ready and willing to perform his part of the contract. It is the bounden duty of the plaintiff to prove his readiness and willingness by adducing evidence. This crucial facet has to be

determined by considering all circumstances including availability of funds and mere statement or averment in plaint of readiness and willingness, would not suffice.”

Thus, in this case, the Supreme Court of India did not lay down any straight jacket formula to infer readiness and willingness. What was stressed, was consideration of all the attenuating circumstances. In **Vijay Kumar’s case** too, no straight jacket formula had been laid down. In the facts and circumstances of the case, specific to itself, the Supreme Court of India held that the plaintiff had not shown its capacity to pay as failed to deposit money.

Coming the case in hand, the Plaintiffs averred in Para.22 of the plaint that they are ready and willing to perform the obligations. It has been observed above, while considering the Issue No.(v) that the Plaintiffs performed their part of obligations arising out of the six agreements. The Plaintiffs compromised the suit and got decree in respect of the Defendant No.1 as they paid proportionate share of the consideration money to her and got the deed of sale executed and registered by the Defendant No.1. These amply demonstrate that the Plaintiffs are ready and willing to perform.

Issues No. (vi) and (xi) are also decided in favour of the Plaintiffs.

ISSUE NO. (xii):

All the Issues are decided in favour of the Plaintiffs. Therefore, it is concluded that the Plaintiffs are entitled to specific performance of the aforesaid agreement for sale dated 05/08/1987.

In nutshell, the instant suit succeeds and it is ordered that the Plaintiff do get a decree of specific performance of the agreements for sale dated 05/08/1987, in terms of prayer (a) of the plaint. However, the agreements were executed in the

year 1987. There has been considerable enhancement of the market value, which the Learned Counsel for the Plaintiffs agreed to pay. Therefore, Mr. Goutam Mukherjee, an empaneled Chartered Valuer of this Court, be appointed hereby to value the properties in question and submit a report to this Court, costs of which would be borne by the Plaintiffs. The suit will appear in the list on 17th June, 2026 for Report and further order.

(Sugato Majumdar, J.)