

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.02.2026

PRONOUNCED ON : 30.04.2026

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CORAM

**THE HON'BLE MR JUSTICE C.V. KARTHIKEYAN**

**AND**

**THE HON'BLE MR.JUSTICE K.KUMARESH BABU**

**APPEAL(CAD) No. 51 of 2024**

M/s.Para Enterprises Pvt. Limited,  
No. 7th Floor, Tamarai Tech Park,  
No. 16-20A(SP) Developed Plots,  
Jawaharlal Nehru Road, Guindy Industrial Estate,  
Guindy, Chennai Tamil Nadu 600032.  
Represented by its Authorised Signatory  
Mr.Pradeep Sankar

..Appellant

Vs

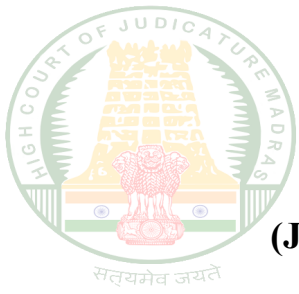
M/s. A.R. Dairy Food Private Limited  
Having office at No. 10/5C, Madurai Road,  
Begampur Post, Dindigul 624002.

..Respondent

**PRAYER:** Appeal filed under Section 96 of CPC r/w Section 13 (1-A) of Commercial Court Act, 2015 to set aside the Fair and Decretal order dated 27.07.2023 passed in C.O.S. No. 413 of 2022 on the file of Principal Judge, Commercial Courts Egmore, Chennai.

For Appellant : Mr.P.J.Rishikesh

For Respondent : Mr.R.Sathish Kumar



## JUDGMENT

**(Judgment of the Court was delivered by C.V.Karthikeyan J.)**

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The plaintiff in COS No.413 of 2022, on the file of the Principal Commercial Court at Chennai is the appellant herein aggrieved by the judgment and decree dated 27.07.2023, by which judgment, the suit filed by the plaintiff was dismissed.

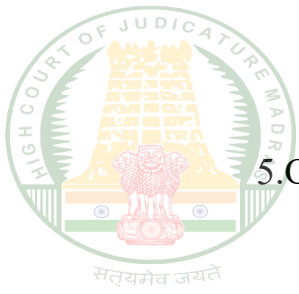
2.The suit in COS No.413 of 2022 had been filed under Order VII Rule 1 and Order XIII-A Rule 1 and 2 of the Code of Civil Procedure, 1908 read with the provisions of the Commercial Courts Act, 2015 seeking a direction against the defendant/respondent herein to pay a sum of Rs.72,15,000/- together with interest at 18% per annum from the date of the plaint till the date of recovery and for costs.

3.It had been contended in the plaint that the plaintiff/appellant herein was engaged in the manufacture, supply, erection and commissioning of Wind Energy Generators. The defendant/respondent herein had placed a purchase order on 09.11.2016 for purchase of a P750/49-750 KW Wind Generator for a sum of Rs.3.85/-crores. It had been further contended that the defendant/respondent had failed to effect complete payment and a balance sum of Rs.38,00,000/- was still due and payable. The appellant/plaintiff had addressed several E-mails from 09.05.2018 to 06.07.2020 and also made



telephonic reminders for payment of the outstanding amount. A final notice was issued on 24.09.2020. It had been contended that there was admission of placing of the purchase order in the reply dated 01.10.2020. Thereafter, the suit had been filed seeking recovery of the principal amount and interest.

4. In the written statement, it had been contended that the contract had obligations to be performed by both parties and one of the important obligations was that the land for such erection of Wind Energy Generator was to be provided by the appellant herein. It was contended that the land should be fit for the said purpose. The parties had also entered into a sale deed on 09.11.2016 for the land at S.Nos.1848/1C (part) and 1845/6 (part) of about 1.8 acres and a sum of Rs.3,65,000/- had been paid and the deed had also been registered in the Sub Registrar Office at Gangaikondan. It was stated that the land sold by the plaintiff to the defendant did not have any free and public access and therefore, the defendant was not in a position to carry out the objectives of the Wind Energy Generator. In this connection, they had pointed out that there was no common pathway or exclusive pathway for the defendant and there was no proper response by the plaintiff for the complaints made in this regard. It had been further stated that under such circumstances, the respondent/defendant was not liable for the suit claim.



5. On the basis of the above pleadings, the following issues were framed:

(i) *Whether the plaintiff is entitled to the suit claim?*

(ii) *Whether the plaintiff was guilty of breach of contract by not providing the pathway to the defendant?*

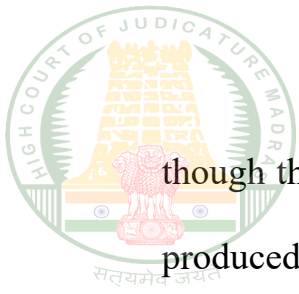
(iii) *Whether the suit was barred by limitation?*

(iv) *Whether the interest claimed was proper?*

(v) *To what relief the parties are entitled to?*

6. During trial, the plaintiff examined one witness as PW1 and marked Exs.A1 to A17. Ex.A3 dated 09.11.2016 was the purchase order. Exs.A4 – A13 were E-mails exchanged between the plaintiff and the defendant. Exs.A14 & A15 were legal notices exchanged between the parties. Ex.A16 was the statement of accounts. The defendant also examined one witness and marked Exs.D1 to D3. Ex.D2 series were E-mail correspondences exchanged between the parties. Ex.D3 was the FMB sketch drawings.

7. On the basis of the pleadings and the oral and documentary evidence adduced, the Trial Court held that among the conditions in the purchase order/Ex.A3 was that the plaintiff should provide suitable land at a specified site on point basis. It had also been provided that the pathway rights for smooth movement of crane and vehicles should be provided. It was observed that



though there was a reference to a sale deed dated 09.11.2016, neither party had produced a copy of the same. It was held that the initial burden of proof was on the plaintiff to prove that non availability of the pathway was not true. The E-mails exchanged between the parties were also examined and it was found that the dispute was access to the site for maintenance and service of the Wind Energy Generator. The learned Trial Judge then placed reliance on Section 20 of the Specific Relief Act and observed that without a pathway, it would not be possible for the defendant to go to the site for service and maintenance. Holding as above, it was held that the plaintiff was not entitled for recovery of any amount or interest thereon. The suit was then dismissed necessitating the plaintiff to file the present appeal.

8.Heard Mr.P.J.Rishikesh, learned counsel for the appellant and Mr.R.Sathish Kumar, learned counsel for the respondent.

9.It was the contention of the learned counsel for the appellant that the respondent had placed a purchase order on the appellant for supply, erection and commissioning of 750 KW Wind Generator. The total price was fixed at Rs.3.85crores. The terms of the payment was that 20% of the total order value should be paid along with the order which amounted to Rs.77,00,000/-. However, it was contended by the learned counsel that a sum of Rs.10,00,000/- alone had been paid as token advance. It was contended that the respondent did



not effect payments in accordance with the terms of the purchase order, but however the appellant had supplied the Wind Turbine Generator along with ancillary equipments and also erected and commissioned the same. It was also contended by the learned counsel that the appellant had to provide land with pathway rights for smooth movement of crane and vehicles. It was further contended that the appellant had also identified land and had also executed a sale deed in favour of the respondent on 21.10.2016 conveying 1.80 acres in Pirancheri Village, Tirunelveli District. It was further contended that the appellant had raised bills for a total sum of Rs.3.85/- crores and the respondent had left a balance of Rs.38,00,000/-. It had been contended that several E-mails had been issued calling upon the respondent to effect payment. It was further contended that the clause in the purchase order did not contemplate exclusive pathway to be granted to the site. It was further stated that a common pathway had been provided and it was used by the respondent. It was therefore contended by the learned counsel for the appellant that the judgment and decree of the Trial Court should be set aside.

10. On the other hand, the learned counsel for the respondent pointed out the terms and conditions of the purchase order which necessitated the appellant to provide suitable land at a specified site on point basis and the same should also be registered in favour of the respondent. The main contention of the learned counsel for the respondent was that the appellant had not provided an



exclusive pathway to be used by the respondent for maintenance of the Wind Turbine Generator. In this connection, the learned counsel for the respondent quite apart from laying specific reliance to Section 20 of the Specific Relief Act also placed reliance on the judgment of the Hon'ble Supreme Court in *Surinder Kaur (Dead) through legal representative Jasinderjit Singh (Dead) through legal representatives Vs Bahadur Singh (Dead) through legal representatives* reported in (2019) 8 SCC 575, wherein, the question which arose in the appeal was as follows:

*The question of law arising in these appeals is whether a vendee who does not perform one of his promises in a contract can obtain the discretionary relief of specific performance of that very contract.*

11. The Hon'ble Supreme Court had held as follows:

*13. Explanation (ii) to Section 16(c) of the Specific Relief Act lays down that it is incumbent on the party, who wants to enforce the specific performance of a contract, to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract. This the plaintiff miserably failed to do insofar as payment of rent is concerned.*

*14. A perusal of Section 20 of the Specific Relief Act clearly indicates that the relief of specific performance is discretionary. Merely because the*



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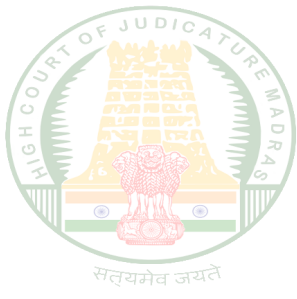
*plaintiff is legally right, the court is not bound to grant him the relief. True it is, that the court while exercising its discretionary power is bound to exercise the same on established judicial principles and in a reasonable manner. Obviously, the discretion cannot be exercised in an arbitrary or whimsical manner. Sub-clause (c) of sub-section (2) of Section 20 provides that even if the contract is otherwise not voidable but the circumstances make it inequitable to enforce specific performance, the court can refuse to grant such discretionary relief. Explanation (2) to the section provides that the hardship has to be considered at the time of the contract, unless the hardship is brought in by the action of the plaintiff.*

12. Pointing out the above dictum, the learned counsel for the respondent argued that since the appellant had failed to perform their obligation to provide pathway, the respondent was not liable to effect payment to the appellant and stated that the Trial Court had correctly dismissed the suit.

13. We have carefully considered the arguments advanced and perused the material records.

14. The points which arise for consideration are as follows:

*(i) Whether the appellant herein was entitled for the suit relief irrespective of whether they had*



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*provided land to the respondent as access pathway for maintenance and servicing of the Wind Turbine Generator supplied to the respondent?*

*(ii) Whether the land conveyed by the appellant satisfied the condition in the purchase order for providing suitable land by the appellant?*

*(iii) Whether the Trial Court was correct in holding that the appellant had not performed their reciprocal promise and that therefore the respondent was not liable to effect payment for the Wind Turbine Generator supplied, erected and commissioned?*

15. Since evidence on all the three points overlapped, all the three points are taken up for consideration and determination together.

16. The respondent had placed a purchase order on 09.11.2016 for supply of P750/49-750 KW Wind Turbine Generator, at SF No.1848, Ayyanaruthu Site, Near Kayathar. It was stated that land would be provided by the appellant as per the terms of the purchase order. The total price for supply, installation, commissioning and payment of infrastructure development charges to TANGEDCO was Rs.385/- Lakhs. This fact is not in dispute.



17. The payment terms had also been reduced in writing and the terms of such payment are also not in dispute. The completion charge for the project was determined as 31.12.2016 subject to receipt of the payment. Thereafter in the Appendix to the purchase order, further terms and conditions had been given.

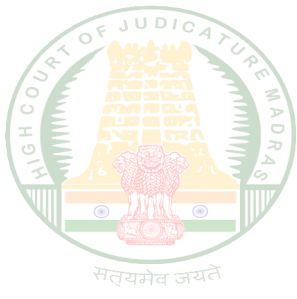
18. Clause 2 in the said Appendix was as follows:

**2.Land:**

*Para Enterprises agrees to provide suitable Land at the specified site on point basis. Encumbrance Certificate for last 30 years and Patta copy upto previous owner's name and pathway rights for smooth movement of crane and vehicles will be provided by Para Enterprises. The expenses for registration of land in favour of Customer will be borne by Para Enterprises. Charges, if any, for OH line and O&M charges payable to TANGEDCO will also be borne by Para Enterprises.*

19. There is also no dispute raised that the Wind Turbine Generator was supplied, erected and commissioned. The only dispute between the parties was with respect to the land provided by the appellant for access by the respondent for maintenance and other purpose of the Wind Turbine Generator. The appellant had produced a series of E-mails marked as Ex.A4 to Ex.A13. In Ex.A4 dated 09.05.2018, they had stated as follows:

*The site was accessed through a pathway for*



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*construction and electrification. We feel your request for an alternate pathway is impractical and frivolous. Any attempt to provide you with an alternate pathway is out of courtesy and is a contractual obligation. Please pay your balance.*

20.In Ex.A5 dated 30.05.2018, the appellant had called upon the respondent to pay the balance amount payable to them. In Ex.A6 also dated 30.06.2018, the respondent had stated as follows:

*The balance payment is being held with us because you have not completed the project by not providing legal pathway to our site.*

*However we were reminding you for the, provision of legal pathway to complete the project for a long time. Kindly, go through our earlier mails requesting you to provide legal pathway. That too was ignored by you.*

21.In Ex.A8 dated 01.06.2018, the appellant again called upon the respondent to effect payment of the balance amount. In Ex.A9, the respondent had replied as follows:

*We have dues only regarding the project which is incomplete. Provide a legal pathway and your money which is held for the purpose.*

22.In Ex.A10, the respondent had stated as follows:



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*We have been corresponding with each other in the matter of providing a clear title over the path way rights. Even though you have initially agreed to provide the same with an accepted time frame, the matter is not getting settled and is being continuing as an issue till now in spite of our protracted pressures. Hence, as the wind season has commenced now, we require the clear title made over on us towards the path way rights, so as to move men and materials to the spot. Hence, we request you to arrange to provide us the clear title over the path way rights on or before 15.06.2018. In case of continuing default in providing the title over the path way rights, we would be taking appropriate action to get the path way right on our own and all the costs involved over the same should be to your account only. Therefore, please arrange to get the title of the path way right at your earliest and however, not later than 15.06.2018. This may be treated urgent and important and also a final notice issued to you on this matter of providing us with the title of the path way rights."*

23.The appellant had by Ex.A13 dated 06.07.2020 stated as follows:

*Further to our telecom earlier on the pathway to your wind turbine, please find attached the alternate route sketch.*

*There is a subdivided road (yellow marked) coming*



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*from Ayyanaroothu and goes upto to ABT location (SF no.1838). You can approach your wind turbine at 1848 either from Ayyanaroothu or from coming via SF no.1833. From the subdivided road, we have planned a approach road till SF no.937 (Deva & Co) and already from Deva & Co to your location there is pathway which needs pathway rights from Deva, which we will facilitate and get it.*

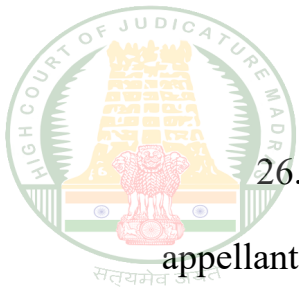
*Now the proposed road is From the subdivided road to Deva WTG which is highlighted in blue (Proposed) is a private land and we are in discussion with the land owner.*

*Please let us have you views on the above.*

*For any clarification, you may contact our GM - Land Mr. Rajasekar stationed at Tirunelveli.*

24.A rough map had also been attached by the appellant to the respondent indicating the alternative pathway.

25.It is thus seen that the only issue between the parties was with respect to the provision of the pathway for the respondent to access the Wind Turbine Generator. In its correspondence under Ex.A13 extracted above, the appellant claimed to provide an alternate pathway. This would indicate an admission that the appellant was aware that the pathway provided was not conducive for the respondent.



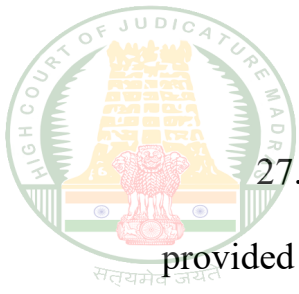
26. It is seen that notices had been exchanged between the parties with the appellant demanding payment of Rs.38,00,000/- together with interest and the respondent reiterating that the issue relating to land must first be resolved. The respondent had also marked Ex.B2 series containing E-mail correspondences between the parties. The appellant had issued a mail on 10.08.2017, wherein they had stated as follows:

*Dear sir*

*While we are thanking you and completely agree with you, we would like to highlight that we have commissioned your WTG while Rs, 38.00 lacs payment in balance. This is not happened to anyone of our client. We did this purely because of your supports in critical situation and Intention to build long-term relationship.*

*As we discussed the path way issue will not take more than Rs.3.00 lacs to solve it, but present atmosphere is not being suitable for that from our end. So considering this situation and enjoying benefits from WTG we kindly request you to accept our commitment to provide break free o&m services irrespective of path way issue and solve the path way issues as quickly as possible, please stretch your support further as earlier.*

*Thanking you and looking forward for your supports.*

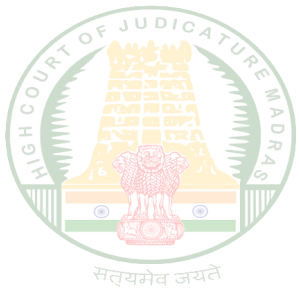


27. It is thus seen that again the appellant had admitted that the pathway provided was not conducive. The respondent replied stating that the alternate pathway lies in Government poromboke land and that they are not agreeable to utilize the same. This would effectively mean that the appellant had failed to provide a pathway and the solution provided was to encroach onto Government poromboke land which is clearly unlawful.

28. The correspondences between the parties continued only on this issue. The appellant had in subsequent correspondences stated that the respondent may withhold a sum of Rs.3,00,000/- which was the cost of one acre of land in Kayatharu Village till the pathway issues are cleared and pay the balance amount to restart the Wind Turbine Generator. The respondent had however replied that they would withhold 10% of the total amount payable to the appellant and justified the same since proper pathway to the property had not been conveyed or even provided. The correspondences thereafter turned hostile with both parties not prepared to shift from their original stand.

29. During his cross examination, PW1, stated that under Ex.A13, an alternate passage pathway had been provided for which the respondent had not issued any reply. He had stated as follows:

வா.சா.ஆ.13 ில மாற்று பாதை கொடுக்கப்பட்டதாக



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குறிப்பிடப்பட்டுள்ளது, அது தயா விசயமாக  
கொடுக்கப்பட்டுள்ளது சட்டப்படியான வழிப்பாதை கொடுக்க  
முடியாத காரணத்தினால்தான் மாற்றுப்பாதை கொடுத்துள்ளோம்  
என்றால் சரியல்ல. அதற்கு பிரதிவாதிகள் தரப்பில் பதில்  
எதுவும் வரவில்லை.

30.The witness specifically denied that an alternate pathway was provided only because they were not able to provide a conducive pathway DW1, during his cross examination admitted supply of the Wind Turbine Generator and its erection, but stated that it was not possible to maintain the same since there was no separate pathway. During his cross examination with respect to the clause on this aspect as provided in the purchase order Ex.A3, the witness stated as follows:

வா.சா.ஆ.3 ல் தனிப்பட்ட பாதை எங்களுக்கு  
தரவேண்டுமென்று குறிப்பிடப்படவில்லை என்றால்  
சரியல்ல. பக்கம் -6ல் சொல்லப்பட்டுள்ளது. அதில்  
தனிப்பட்ட பாதை என்று குறிப்பிடப்படவில்லை என்றால்  
சரிதான், சாட்சி எந்த பாதையும் சொல்லப்படவில்லை  
என்கிறார். இப்போது ஒரு பாதையில் வண்டிகள்  
சென்று வருகின்றன என்றால் சரிதான், சாட்சி பட்டா  
நிலத்தில் செல்கிறது என்கிறார்.



31. It is seen that DW1 had denied that there was no specific clause in the purchase order about provision of a separate pathway and had further stated that as on date, vehicles are moving in a pathway but on patta land. This would obviously mean that the respondent had made alternate arrangements for pathway from a patta land.

32. Section 16 (c) of the Specific Relief Act 1963 is as follows:

*16. Personal bars to relief.—*

*Specific performance of a contract cannot be enforced in favour of a person—*

*(a).....*

*(b).....*

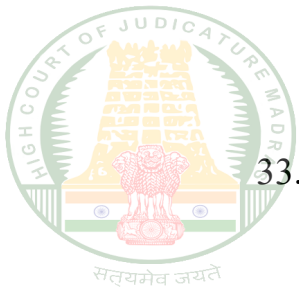
*(c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.*

*Explanation.—*

*For the purposes of clause (c),—*

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

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



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33. Section 20 of the Specific Relief Act 1963 is as follows:

*20. Discretion as to decreeing specific performance.—*

*(1) The jurisdiction to decree specific performance is discretionary, and the court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal.*

*(2) The following are cases in which the court may properly exercise discretion not to decree specific performance:—*

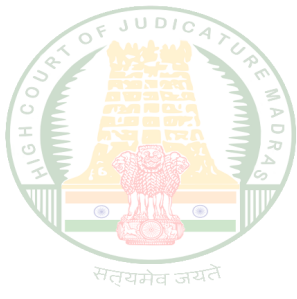
*(a) where the terms of the contract or the conduct of the parties at the time of entering into the contract or the other circumstances under which the contract was entered into are such that the contract, though not voidable, gives the plaintiff an unfair advantage over the defendant; or*

*(b) where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff; or*

*(c) where the defendant entered into the contract under circumstances which though not rendering the contract voidable, makes it inequitable to enforce specific performance.*

*Explanation 1.—*

*Mere inadequacy of consideration, or the mere fact that the contract is onerous to the defendant or*



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*improvident in its nature, shall not be deemed to constitute an unfair advantage within the meaning of clause (a) or hardship within the meaning of clause (b).*

*Explanation 2.—*

*The question whether the performance of a contract would involve hardship on the defendant within the meaning of clause (b) shall, except in cases where the hardship has resulted from any act of the plaintiff subsequent to the contract, be determined with reference to the circumstances existing at the time of the contract.*

*(3)The court may properly exercise discretion to decree specific performance in any case where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.*

*(4)The court shall not refuse to any party specific performance of a contract merely on the ground that the contract is not enforceable at the instance of the party.*

34.In the instant case, the respondent had placed a purchase order on the appellant for supply of 750 KW Wind Generator. There is no dispute that the Wind Turbine Generator was supplied. It had been commissioned. It had been erected and it had been working. It is to be noted from the evidence of DW1 that as on date, the respondent has an alternate pathway to access to the Wind Turbine Generator which they accessed through patta land and not on the land



provided by the appellant. But however, they claim that there was an obligation on the part of the appellant to provide a separate pathway exclusively to the respondent to access the Wind Turbine Generator. They placed reliance on Clause 2 of the purchase order. The said Clause had been extracted above and the same is extracted again for better appreciation.

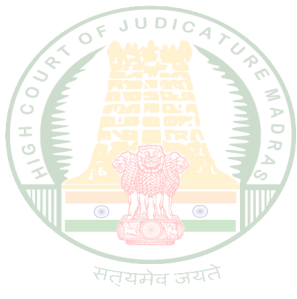
**2.Land:**

*Para Enterprises agrees to provide suitable Land at the specified site on point basis. Encumbrance Certificate for last 30 years and Patta copy upto previous owner's name and pathway rights for smooth movement of crane and vehicles will be provided by Para Enterprises. The expenses for registration of land in favour of Customer will be borne by Para Enterprises. Charges, if any, for OH line and O&M charges payable to TANGEDCO will also be borne by Para Enterprises.*

35.The appellant had agreed to provide a suitable land and pathway rights for smooth movement of crane and vehicles.

36.There is a reference in the written statement of a sale deed executed by the appellant. It had been specifically pleaded in the written statement as follows:

*It is stated that the land sold by the plaintiff to the defendant herein does not have any free and*



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*public access to the defendant and therefore, the defendant is not and would not be in a position to peacefully carry out the objectives of the Wind Energy Generator.*

37.The provision of land which does not provide free access can never be stated to be compliance of Clause 2 of the Annexure to the purchase order. We hold that the respondent was justified in withholding payment of the last 10% of the amount payable under the purchase order.

38.The judgment relied on by the respondent has proceeded on the ground that the purchaser of the property did not pay rent and therefore was not entitled for specific performance of the agreement. It was observed that payment of rent was a reciprocal promise and failure to pay rent disentitled the vendee to seek specific performance. In the instant case, the appellant had provided the pathway, land which cannot be put to effective use. The learned Trial Judge had proceeded to hold that the appellant had failed in their reciprocal promise. The correspondences extracted above also reflect that the appellant had not actually provided an effective alternate pathway.

39.In view of that particular fact, in answer to the points framed for consideration, we hold that the learned Trial judge was justified in holding that the respondent had lawful reasons for not effecting payment of the balance sale



consideration. We also hold that the appellant has to be non suited as there is evidence that they have not produced exclusive pathway to the respondent. We further hold that the land provided was not conducive for the respondent. We also hold that the appellant had not performed their part of the agreement to provide access land to the respondent.

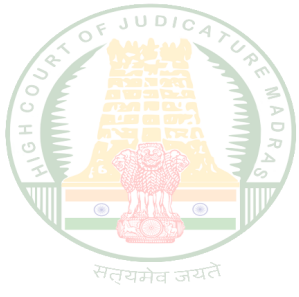
40.Holding as above, we would dismiss the Appeal and confirm the judgment and decree dated 27.07.2023 in C.O.S. No. 413 of 2022, on the file of Principal Judge, Commercial Courts Egmore, Chennai. The Appeal stands dismissed with costs.

**(C.V.K.,J.) (K.B.,J.)**  
**30.04.2026**

Index: Yes/No  
Speaking/Non-speaking order  
Neutral Citation: Yes/No  
sli

To

The Principal Judge,  
Commercial Courts Egmore,  
Chennai.



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APPEAL(CAD) No. 51 of 2



**C.V.KARTHIKEYAN, J.  
AND  
K.KUMARESH BABU, J.**

sli

**Pre-delivery Judgment in  
APPEAL(CAD) No. 51 of 2024**

**30.04.2026**