DECREE IN ORIGINAL SUIT

IN THE COURT OF THE VII ADDL. SENIOR CIVIL JUDGE,
R.R.DIST. AT L.B.NAGAR; HYD.

PRESENT: SMT.B. PUSHPALATHA
VII ADDL SENIOR CIVIL JUDGE
RANGA REDDY DISTRICT.

Dated this the 16th Day of April, 2019

OS No.994 of 2007

BETWEEN:-
Vinay Agarwal, S/o. Vasudev,
Aged about 52yrs, R/o. Flat no. 403,
Sushil Residency, Hyderguda,
Hyderabad. .....Plaintiff

AND

1. Modi Ventures, rep.by its partner
   Represented by its Partner,
   Sri. Sohan Modi, S/o. Satish Modi,
   Aged about 47yrs, Office at # 5-4-187/3,
   MG Road, Secunderabad – 500 003.

2. Vinod Yadlapati, S/o. Y.S.N.Sarma,
   Aged about 31yrs, R/o. 12-11-1371,
   Bhovdanagar, Secunderabad – 500 061. ..... Defendants

Claim: Suit filed praying this court to pass a judgment and decree in favour of the plaintiff and against the defendants, to execute registered sale deed in favour of the plaintiff in respect of the suit schedule property and consequentially to grant perpetual injunction restraining the defendants from interfering with the peaceful possession of the suit schedule property and to grant costs of the suit.

Cause of Action: The cause of action arose at Mallapur, R.R.district on 19.02.2007 when the plaintiff got issued legal notice to the defendants calling them, to execute registered sale deed and on 22.02.2007 when the defendant replied with false allegations and on 12.03.2007 when the plaintiff got issued rejoinder notice making the legal position clear to the defendant that he has to perform his part of contract and on 28.03.2007 when the defendant got issued reply notice refusing to execute the registered sale deed and the cause of action is subsisting and continuing.

Suit Valuation: The suit market value of suit property is Rs. 6,69,250/- and half of it is Rs. —/- and court fee of Rs. 9,540/- is paid under sec. 26(c) under Article 1 (b) and (c) of A.P Court fee and Suits Valuation Act, which is sufficient.

Suit Presented on: 24.04.2007
Suit Numbered on: 24.04.2007
Suit Decreed on : 16.04.2019

Gopal, Advocate for Defendant no.1, Defendant no.2 remained exparte and having stood over for consideration till this day, this Court doth Order and decree as follows:

1) That the suit of the plaintiff be and the same is dismissed with out costs.

2) That there is no order as to costs.

Given under my hand and seal of this court on this the 16th day of April, 2019

VII ADDL. SENIOR CIVIL JUDGE,
FOR RANGA REDDY DISTRICT

COSTS OF THE PETITION

		FOR PLAINTIFFS	FOR DEFENDANTS
1) Stamp on plaint	Rs.	954/-	
2) Stamp on power	Rs.	21/-	
3) Service of Process Fee	Rs.	75	
4) Advocate fee	Rs.	---	
5) Misc. Charges.	Rs.	---	
6) Publication	Rs.	---	
7) FC not filed	Rs.	---	
Total	**Rs.**	9,617/-	

VII ADDL. SENIOR CIVIL JUDGE,
FOR RANGA REDDY DISTRICT

SCHEDULE OF PROPERTY

All that the Flat no. C-506 on fifth floor in "Gulmohar Gardens" apartment, forming part of land in Sy.nos. 93 and 95, situated at Mallapur, R.R.District, admeasuring 750sq.yds together with proportionate undivided share of land and bounded by:

NORTH	:	6ft wide corridor
SOUTH	:	Open to sky
EAST	:	Corridor and open to sky
WEST	:	Flat no. 507

VII ADDL. SENIOR CIVIL JUDGE,
FOR RANGA REDDY DISTRICT

READY BY:
COMPARED BY
CERTIFIED TRUE PHOTO COPY

IN THE COURT OF VII ADDITIONAL SENIOR CIVIL JUDGE ::
RANGA REDDY DISTRICT AT L. B. NAGAR.

PRESENT: SMT.B. PUSHPALATHA
VII ADDL SENIOR CIVIL JUDGE
RANGA REDDY DISTRICT.

Dated this the 16th Day of April, 2019

OS No.994 of 2007

BETWEEN:-

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Aged about 52yrs, R/o. Flat no. 403,
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Hyderabad.
.....Plaintiff

AND

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Represented by its Partner,
Sri. Sohan Modi, S/o. Satish Modi,
Aged about 47yrs, Office at # 5-4-187/3,
MG Road, Secunderabad – 500 003.

2. Vinod Yadlapati, S/o. Y.S.N.Sarma,
Aged about 31yrs, R/o. 12-11-1371,
Bhovdanagar, Secunderabad – 500 061.
..... Defendants

This suit is coming for final hearing before me in the presence of M/s.Shyam S.Agarwal, Advocate for the Plaintiff and Sri.C.Bal Gopal, Advocate for Defendant no.1, Defendant no.2 remained exparte and upon hearing the arguments and upon perusal of the record and the matter having stood over for consideration till this day, this Court delivered the following:

JUDGMENT

1. This is a suit filed by the plaintiff against defendants no.1 and 2 for specific performance of contract.

2. The brief averments of plaint are that the defendant is the owner and developer of Gulmohar Gardens apartments situated in Sy.nos. 93 to 95 at Mallapur, R.R.District and on noticing the advertisement the plaintiff approached the defendant and selected flat no. C-506 in Gulmohar Gardens, admeasuring 750sq.ft (hereinafter called as suit schedule property) with undivided share of land. After negotiations, the consideration

sum of Rs. 10,000/- under receipt no. 114 through cheque no. 819353 dt. 14.03.2006, drawn on M/s.HDFC Bank towards earnest money and part payment of consideration which was encashed by the defendant. The defendant informed that he would intimate the plaintiff about progress of construction of complex. The plaintiff has been waiting for the letter of the defendant informing the status and progress of the complex and about amounts to be paid by him, but did not receive any correspondence. But on 08.06.2006, the plaintiff received letter alleging that the agreement was only a provisional booking and despite repeated reminders the plaintiff has not come forward to execute a sale agreement and to make further payments. That when the plaintiff addressed a letter dt. 22.06.2006 stating that he has not received any reminders and intimations from the defendant, the defendant stated that they have issued said letter only to ascertain whether the plaintiff is interested in purchasing the suit schedule property. Thereafter the plaintiff has issued cheque no. 691785 dt. 11.07.2006 for Rs.25,000/- drawn on M/s. HDFC Bank Ltd., Himayathnagar Branch towards further part payment and the same was acknowledged by the defendant. At the intimation of defendant about completion of construction, the plaintiff applied for housing loan with M/s. ICICI Bank Ltd., and was sanctioned loan to a tune of Rs. 8,45,056/- vide sanction letter dt. 18.01.2007 and informed the defendant to come forward for execution of registration. But there was no response from the defendant and hence, on 19.02.2007, the plaintiff got issued legal notice to the defendant calling to execute registered sale deed in respect of suit schedule property. On receipt of said legal notice, the defendant got issued reply notice dt. 22.02.2007 stating that as per the terms of booking, the purchaser was required to execute an agreement within thirty days and failure of the same would result in cancellation of the alleged provisional booking. The plaintiff further submits that, he has not received any cancellation notice from the defendant at any point of time and the plaintiff has got issued rejoinder notice on 12.03.2007 denying receipt of cancellation notice and made it clear that the defendant cannot terminate the agreement unilaterally. The defendant got issued reply through advocate on 28.03.2007

taking the same stand which is false. The defendant having received money towards part payment of construction, is not ready to execute registered sale deed. The plaintiff further submits that he is ready to pay the balance sale consideration of Rs. 6,34,250/-, but the defendant is not ready to perform his part of contract. Hence the plaintiff is constrained to file this suit.

3. Defendant filed written statement denying the averments made in the plaint and contended that the plaintiff being fully aware of the terms and conditions for obtaining flat, approached the defendant for booking suit schedule property and had signed the booking form on 13.04.2006 which was a provisional booking and did not gain any rights in respect of the suit schedule property but issued cheque for the first payment on 14.04.2006. The booking form makes it clear that the booking form is only provisional and an agreement had to be executed and it is not a concluded contract. The booking form clearly stipulates the formalities to be completed in respect of the property including the schedule of property. The plaintiff cannot claim that he was ignorant as to the schedule payments and after initial payment of Rs. 10,000/- the plaintiff did not make any further payment until the letter addressed by the defendant. Even thereafter he has not complied with the requirements for completion of a valid contract, therefore, the defendant addressed a letter to the plaintiff canceling the agreement and informing him of this development. But the plaintiff had issued a letter containing false and baseless allegations. Thereafter, the correspondence between the parties is self revealing. The defendant further submits that the plaintiff cannot seek the equitable reliefs of specific performance as he has relied on false averments suppressing all facts and not performing his obligation under the contract and the plaintiff has approached this court with unclean hands. At last prayed to dismiss the suit.

4. Basing on the above pleadings, following issues are settled for trial.

1. Whether the defendant executed any sale agreement in favour of the plaintiff?
2. Whether the plaintiff is always ready and willing to perform his part of contract?

4. To what relief?

5. Heard both sides. Perused the record.

6. Following points are not disputed:

1. There is no dispute with regard to payment of Rs.10,000/- by way of Ex.A1 receipt no. 114.

2. There is no dispute with regard to the booking done by plaintiff with the defendant company in booking form on 13.04.2006.

3. There is no dispute that the plaintiff issued cheque for an amount of Rs. 25,000/- as in Ex.A4 towards booking of flat no. 506, C-Block.

4. There is no dispute that there was exchange of notices by both the parties.

7. It is well settled law that undisputed points need not be proved.

8. **ISSUEs no.1 to 3**: The counsel for the plaintiff vehemently argued and submitted that the plaintiff has entered into an agreement with the defendant i.e., Modi Ventures and that the plaintiff is ready and willing to perform his part of contract. He further submitted that he has also made part payment of Rs. 25,000/- vide Ex.A4 and Rs.10,000/- vide receipt under Ex.A1 and prayed to allow the suit and direct the defendants to register the flat no. 506, C-Block i.e., suit schedule property.

9. On the other hand the counsel for defendant contended that there is no such contract between the plaintiff and defendants and that the amount paid by the plaintiff under Ex.A1 and A4 was only towards booking of the flat no. 506 for total consideration of Rs. 6,70,000/- and that as per the booking order the plaintiff is supposed to pay the remaining consideration as per the schedule fixed by the defendant which is written on the backside of the booking form. Since there is no valid contract between the plaintiff

and the defendant, the plaintiff cannot claim right and seeking for relief of specific performance.

10. On perusing the entire material along with the documents under Ex.A1 to A11, this court, upon considering the oral evidence and the authorities submitted by the defendant counsel, it goes to show that though the plaintiff has stated that he entered into an agreement with the defendant i.e., Modi Ventures and booked a flat no. 506 i.e., suit schedule property. Since it is not disputed that the plaintiff has agreed to purchased flat no. 506 from the defendant company and also paid Rs.10,000/- vide receipt under Ex.A1. It is also not disputed as per the booking order.

11. It is further stated by PW1 that the defendants have issued a letter canceling the booking made by PW1 under Ex.A2 dt. 08.06.2006. Thereafter, the plaintiff has issued legal notice to the defendant company question regarding the cancellation of his booking. Wherein the defendant company has also given a reply letter stating that his booking was cancelled for not executing an agreement of sale within thirty days as per the terms of booking clause – 1 which resulted in the cancellation of provisional booking. It is also seen from the evidence of PW1 who has categorically admitted in his cross examination that he has not sent the booking form. Since the defendant did not ask him to sign and also did not made payments and also to make the payment as per the schedule of the booking. Further, PW1 has categorically admitted in the cross examination that he has not entered into sale agreement of the defendant but denied that he did not pay Rs. 25,000/- towards part of the sale consideration for booking of flat with the defendant company. The defendant no.1 examined the representative of the defendant company who was cross examined as DW1 has categorically stated that the plaintiff has submitted that the total consideration of flat no. 506 for sale consideration of Rs. 5,99,250/-. Whereas, the actual sale consideration was Rs. 6,70,000/-. The DW1 has categorically submitted in his cross examination that the plaintiff did not agree or come forward to express his readiness to execute registered sale deed within 30 days as per the booking clause no.1, as such, the booking of plaintiff was cancelled.

by the plaintiff showing that there was an agreement between the plaintiff and defendant company towards sale of flat no. 506 i.e., suit schedule property. But the plaintiff has submitted in paragraph no. 13 of Ex.A5 that he has entered into an agreement of sale which cannot be considered in the absence of any such document before court. Secondly, the plaintiff has contended that he has made part payment towards the sale consideration. As per the evidence of PW1 and DW1, it is evident that the plaintiff has entered into a booking of flat no. 506, Gulmohar Gardens and made payment under cheque and receipt Ex.A4 towards booking chages, but not part of the sale consideration.

13. Even as per the terms and conditions of the booking done by the defendant company it is seen that the schedule has to be followed while making remaining part of consideration. The plaintiff has made a provisional booking in form nos. 123 dt. 13.03.2006 and made payment of Rs. 10,000/- and Rs. 25,000/-. Subsequently, the plaintiff failed to enter into an agreement within thirty days which resulted in the cancellation of the provisional booking as per Ex.A2 cancellation letter. Further, as per the terms of booking, the plaintiff is supposed to make payment for an amount of Rs.50,000/- on or before 12.04.2006 and Rs. 2,03,333/- before 01.07.20056 and Rs. 2,03,333/- before 01.10.2006 and Rs. 2,00,334/- before 31.12.2006. But the plaintiff failed to establish. Therefore oral evidence as well as documentary evidence for making payment in accordance to the schedule. Except that the amount paid while booking.

14. It is further contended by PW1 that he has obtained bank loan and the canction letter was also issued by ICICI bank on 18.01.2007. It is pertinent to mention here that said sanction was subsequent to cancellation letter.

15. The counsel for the defendant has submitted a bunch of authorities as follows:

1. Vijay Bahadur And Champalal Vs. Surendra Kumar reported in AIR MP 117
2. Syed Dastagir Vs. T.R. Gopalakrishna Setty reported in AIR 1999 SC 3029

3. Phuljhari Devi Vs. Mithai Lal and others reported in AIR 1971 Allahabad 494

4. Her Highness Maharani Shantidevi P Gaikwad Vs. Savjibhai Haribhai Patel and others reported in AIR 2001 SC 1462

16. According to said citations, it is opined that when the plaintiff aver and prove that he has performed or always ready and willing to perform the essential terms of the contract which are to be performed by him and expresses his readiness and willingness to perform the contract and agreed to its true contract has no right to seek relief of specific performance.

17. In the instant case, in the entire pleadings and the evidence PW1, nowhere specifically expressed his readiness and willingness to perform his part of the contract. Further the provisions as per the Sec. 34 of Specific relief act shows no agreement between the parties and the plaintiff fails to establish his readiness and willingness to perform the contract the plaintiff cannot seek the relief of specific performance as a right.

18. In view of the above discussion, this court is of the opinion that the plaintiff has not established the contract between him and defendant no.1 and this court holds that the plaintiff is not entitled for the relief of specific performance of contract. Issues no.1 to 3 are answered accordingly.

19. **ISSUE no.4**: In view of the findings and discussion given in issues no.1 to 3, this court holds that the plaintiff is not entitled for consequential relief of permanent injunction as prayed for.

20. In the result, this suit is dismissed without costs.

Dictated to stenographer-II, corrected and pronounced by me in the open court on this the 16th day of April 2019.

VII ADDITIONAL SENIOR CIVIL JUDGE
RANGA REDDY DISTRICT

WITNESS EXAMINED

FOR PLAINTIFF:
PW1: Vinay Agarval

Defendants:
DW1: D.Pavan Kumar

EXHIBITS MARKED

FOR PLAINTIFF:
Ex.A1: Receipt issued by Defendant no.1 dt. 14.03.2006
Ex.A2: Letter addressed by defendant no.1 dt. 08.06.2006
Ex.A3: Reply letter addressed by the plaintiff
Ex.A4: Copy of Cheque no. 691785 with endorsement of receipt
Ex.A5: Loan Sanction letter
Ex.A6: Office copy of legal notice
Ex.A7: Reply letter of defendant no.1
Ex.A8: Office copy of rejoinder notice
Ex.A9: Reply notice of defendant no.1
Ex.A10: Encumbrance Certificates (2nos)
Ex.A11: Brouchure of typical floor plan of the suit flat

RESPONDENTS: NIL

VII ADDITIONAL SENIOR CIVIL JUDGE
RANGA REDDY DISTRICT

COURT OF THE DISTRICT & SESSIONS JUDGE
RANGA REDDY DISTRICT
C.A. No 1779/09 of 20
Application Filed on: 26/4/09
Charges Called on: 14/5/09
Charges Deposited on: 18/5/09
Receipt No 31721/09 Rs: 40/-
Copy made ready on: 18/5/09
Copy delivered on: 18/5/2019

READY BY:
COMPARED BY:
CERTIFIED TRUE PHOTO COPY
Copying Superintendent

DECREE IN ORIGINAL SUIT

IN THE COURT OF THE VII ADDL. SENIOR CIVIL JUDGE,
R.R.DIST. AT L.B.NAGAR; HYD.

PRESENT: SMT.B. PUSHPALATHA
VII ADDL SENIOR CIVIL JUDGE
RANGA REDDY DISTRICT.

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BETWEEN:-
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Aged about 52yrs, R/o. Flat no. 403,
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AND

1. Modi Ventures, rep.by its partner
   Represented by its Partner,
   Sri. Sohan Modi, S/o. Satish Modi,
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   MG Road, Secunderabad – 500 003.

2. Vinod Yadlapati, S/o. Y.S.N.Sarma,
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   Bhovdanagar, Secunderabad – 500 061. ..... Defendants

Claim: Suit filed praying this court to pass a judgment and decree in favour of the plaintiff and against the defendants, to execute registered sale deed in favour of the plaintiff in respect of the suit schedule property and consequentially to grant perpetual injunction restraining the defendants from interfering with the peaceful possession of the suit schedule property and to grant costs of the suit.

Cause of Action: The cause of action arose at Mallapur, R.R.district on 19.02.2007 when the plaintiff got issued legal notice to the defendants calling them, to execute registered sale deed and on 22.02.2007 when the defendant replied with false allegations and on 12.03.2007 when the plaintiff got issued rejoinder notice making the legal position clear to the defendant that he has to perform his part of contract and on 28.03.2007 when the defendant got issued reply notice refusing to execute the registered sale deed and the cause of action is subsisting and continuing.

Suit Valuation: The suit market value of suit property is Rs. 6,69,250/- and half of it is Rs. —/- and court fee of Rs. 9,540/- is paid under sec. 26(c) under Article 1 (b) and (c) of A.P Court fee and Suits Valuation Act, which is sufficient.

Suit Presented on: 24.04.2007
Suit Numbered on: 24.04.2007
Suit Decreed on : 16.04.2019

Gopal, Advocate for Defendant no.1, Defendant no.2 remained exparte and having stood over for consideration till this day, this Court doth Order and decree as follows:

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2) That there is no order as to costs.

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VII ADDL. SENIOR CIVIL JUDGE,
For RANGA REDDY DISTRICT

COSTS OF THE PETITION

		FOR PLAINTIFFS	FOR DEFENDANTS
1) Stamp on plaint	Rs.	95401-	
2) Stamp on power	Rs.	21-	
3) Service of Process Fee	Rs.	75	
4) Advocate fee	Rs.	---	
5) Misc. Charges.	Rs.	---	
6) Publication	Rs.	---	
7) FC not filed	Rs.	---	
Total	**Rs.**	9,617/-	

VII ADDL. SENIOR CIVIL JUDGE,
For RANGA REDDY DISTRICT

SCHEDULE OF PROPERTY

All that the Flat no. C-506 on fifth floor in "Gulmohar Gardens" apartment, forming part of land in Sy.nos. 93 and 95, situated at Mallapur, R.R.District, admeasuring 750sq.yds together with proportionate undivided share of land and bounded by:

NORTH	:	6ft wide corridor
SOUTH	:	Open to sky
EAST	:	Corridor and open to sky
WEST	:	Fla no. 507

VII ADDL. SENIOR CIVIL JUDGE,
For RANGA REDDY DISTRICT

CERTIFIED COPYING SECTION * RANGA REDDY DISTRICT

READY BY:
COMPARED BY:
CERTIFIED TRUE PHOTO COPY

Superintendent

IN THE COURT OF VII ADDITIONAL SENIOR CIVIL JUDGE ::
RANGA REDDY DISTRICT AT L. B. NAGAR.

PRESENT: SMT.B. PUSHPALATHA
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JUDGMENT

1. This is a suit filed by the plaintiff against defendants no.1 and 2 for specific performance of contract.

2. The brief averments of plaint are that the defendant is the owner and developer of Gulmohar Gardens apartments situated in Sy.nos. 93 to 95 at Mallapur, R.R.District and on noticing the advertisement the plaintiff approached the defendant and selected flat no. C-506 in Gulmohar Gardens, admeasuring 750sq.ft (hereinafter called as suit schedule property) with undivided share of land. After negotiations, the consideration

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taking the same stand which is false. The defendant having received money towards part payment of construction, is not ready to execute registered sale deed. The plaintiff further submits that he is ready to pay the balance sale consideration of Rs. 6,34,250/-, but the defendant is not ready to perform his part of contract. Hence the plaintiff is constrained to file this suit.

3. Defendant filed written statement denying the averments made in the plaint and contended that the plaintiff being fully aware of the terms and conditions for obtaining flat, approached the defendant for booking suit schedule property and had signed the booking form on 13.04.2006 which was a provisional booking and did not gain any rights in respect of the suit schedule property but issued cheque for the first payment on 14.04.2006. The booking form makes it clear that the booking form is only provisional and an agreement had to be executed and it is not a concluded contract. The booking form clearly stipulates the formalities to be completed in respect of the property including the schedule of property. The plaintiff cannot claim that he was ignorant as to the schedule payments and after initial payment of Rs. 10,000/- the plaintiff did not make any further payment until the letter addressed by the defendant. Even thereafter he has not complied with the requirements for completion of a valid contract, therefore, the defendant addressed a letter to the plaintiff canceling the agreement and informing him of this development. But the plaintiff had issued a letter containing false and baseless allegations. Thereafter, the correspondence between the parties is self revealing. The defendant further submits that the plaintiff cannot seek the equitable reliefs of specific performance as he has relied on false averments suppressing all facts and not performing his obligation under the contract and the plaintiff has approached this court with unclean hands. At last prayed to dismiss the suit.

4. Basing on the above pleadings, following issues are settled for trial.

1. Whether the defendant executed any sale agreement in favour of the plaintiff?
2. Whether the plaintiff is always ready and willing to perform his part of

4. To what relief?

5. Heard both sides. Perused the record.

6. Following points are not disputed:

1. There is no dispute with regard to payment of Rs.10,000/- by way of Ex.A1 receipt no. 114.

2. There is no dispute with regard to the booking done by plaintiff with the defendant company in booking form on 13.04.2006.

3. There is no dispute that the plaintiff issued cheque for an amount of Rs. 25,000/- as in Ex.A4 towards booking of flat no. 506, C-Block.

4. There is no dispute that there was exchange of notices by both the parties.

7. It is well settled law that undisputed points need not be proved.

8. **ISSUEs no.1 to 3**: The counsel for the plaintiff vehemently argued and submitted that the plaintiff has entered into an agreement with the defendant i.e., Modi Ventures and that the plaintiff is ready and willing to perform his part of contract. He further submitted that he has also made part payment of Rs. 25,000/- vide Ex.A4 and Rs.10,000/- vide receipt under Ex.A1 and prayed to allow the suit and direct the defendants to register the flat no. 506, C-Block i.e., suit schedule property.

9. On the other hand the counsel for defendant contended that there is no such contract between the plaintiff and defendants and that the amount paid by the plaintiff under Ex.A1 and A4 was only towards booking of the flat no. 506 for total consideration of Rs. 6,70,000/- and that as per the booking order the plaintiff is supposed to pay the remaining consideration as per the schedule fixed by the defendant which is written on the backside of the booking form. Since there is no valid contract between the plaintiff

and the defendant, the plaintiff cannot claim right and seeking for relief of specific performance.

10. On perusing the entire material along with the documents under Ex.A1 to A11, this court, upon considering the oral evidence and the authorities submitted by the defendant counsel, it goes to show that though the plaintiff has stated that he entered into an agreement with the defendant i.e., Modi Ventures and booked a flat no. 506 i.e., suit schedule property. Since it is not disputed that the plaintiff has agreed to purchased flat no. 506 from the defendant company and also paid Rs.10,000/- vide receipt under Ex.A1. It is also not disputed as per the booking order.

11. It is further stated by PW1 that the defendants have issued a letter canceling the booking made by PW1 under Ex.A2 dt. 08.06.2006. Thereafter, the plaintiff has issued legal notice to the defendant company question regarding the cancellation of his booking. Wherein the defendant company has also given a reply letter stating that his booking was cancelled for not executing an agreement of sale within thirty days as per the terms of booking clause – 1 which resulted in the cancellation of provisional booking. It is also seen from the evidence of PW1 who has categorically admitted in his cross examination that he has not sent the booking form. Since the defendant did not ask him to sign and also did not made payments and also to make the payment as per the schedule of the booking. Further, PW1 has categorically admitted in the cross examination that he has not entered into sale agreement of the defendant but denied that he did not pay Rs. 25,000/- towards part of the sale consideration for booking of flat with the defendant company. The defendant no.1 examined the representative of the defendant company who was cross examined as DW1 has categorically stated that the plaintiff has submitted that the total consideration of flat no. 506 for sale consideration of Rs. 5,99,250/-. Whereas, the actual sale consideration was Rs. 6,70,000/-. The DW1 has categorically submitted in his cross examination that the plaintiff did not agree or come forward to express his readiness to execute registered sale deed within 30 days as per the booking clause no.1, as such, the booking of plaintiff was cancelled.

by the plaintiff showing that there was an agreement between the plaintiff and defendant company towards sale of flat no. 506 i.e., suit schedule property. But the plaintiff has submitted in paragraph no. 13 of Ex.A5 that he has entered into an agreement of sale which cannot be considered in the absence of any such document before court. Secondly, the plaintiff has contended that he has made part payment towards the sale consideration. As per the evidence of PW1 and DW1, it is evident that the plaintiff has entered into a booking of flat no. 506, Gulmohar Gardens and made payment under cheque and receipt Ex.A4 towards booking chages, but not part of the sale consideration.

13. Even as per the terms and conditions of the booking done by the defendant company it is seen that the schedule has to be followed while making remaining part of consideration. The plaintiff has made a provisional booking in form nos. 123 dt. 13.03.2006 and made payment of Rs. 10,000/- and Rs. 25,000/-. Subsequently, the plaintiff failed to enter into an agreement within thirty days which resulted in the cancellation of the provisional booking as per Ex.A2 cancellation letter. Further, as per the terms of booking, the plaintiff is supposed to make payment for an amount of Rs.50,000/- on or before 12.04.2006 and Rs. 2,03,333/- before 01.07.20056 and Rs. 2,03,333/- before 01.10.2006 and Rs. 2,00,334/- before 31.12.2006. But the plaintiff failed to establish. Therefore oral evidence as well as documentary evidence for making payment in accordance to the schedule. Except that the amount paid while booking.

14. It is further contended by PW1 that he has obtained bank loan and the canction letter was also issued by ICICI bank on 18.01.2007. It is pertinent to mention here that said sanction was subsequent to cancellation letter.

15. The counsel for the defendant has submitted a bunch of authorities as follows:

1. Vijay Bahadur And Champalal Vs. Surendra Kumar reported in AIR MP 117
2. Syed Dastagir Vs. T.R. Gopalakrishna Setty reported in AIR 1999 SC 3029

3. Phuljhari Devi Vs. Mithai Lal and others reported in AIR 1971 Allahabad 494

4. Her Highness Maharani Shantidevi P Gaikwad Vs. Savjibhai Haribhai Patel and others reported in AIR 2001 SC 1462

16. According to said citations, it is opined that when the plaintiff aver and prove that he has performed or always ready and willing to perform the essential terms of the contract which are to be performed by him and expresses his readiness and willingness to perform the contract and agreed to its true contract has no right to seek relief of specific performance.

17. In the instant case, in the entire pleadings and the evidence PW1, nowhere specifically expressed his readiness and willingness to perform his part of the contract. Further the provisions as per the Sec. 34 of Specific relief act shows no agreement between the parties and the plaintiff fails to establish his readiness and willingness to perform the contract the plaintiff cannot seek the relief of specific performance as a right.

18. In view of the above discussion, this court is of the opinion that the plaintiff has not established the contract between him and defendant no.1 and this court holds that the plaintiff is not entitled for the relief of specific performance of contract. Issues no.1 to 3 are answered accordingly.

19. **ISSUE no.4**: In view of the findings and discussion given in issues no.1 to 3, this court holds that the plaintiff is not entitled for consequential relief of permanent injunction as prayed for.

20. In the result, this suit is dismissed without costs.

Dictated to stenographer-II, corrected and pronounced by me in the open court on this the 16th day of April 2019.

VII ADDITIONAL SENIOR CIVIL JUDGE
RANGA REDDY DISTRICT

WITNESS EXAMINED

FOR PLAINTIFF:
PW1: Vinay Agarval

Defendants:
DW1: D.Pavan Kumar

EXHIBITS MARKED

FOR PLAINTIFF:
Ex.A1: Receipt issued by Defendant no.1 dt. 14.03.2006
Ex.A2: Letter addressed by defendant no.1 dt. 08.06.2006
Ex.A3: Reply letter addressed by the plaintiff
Ex.A4: Copy of Cheque no. 691785 with endorsement of receipt
Ex.A5: Loan Sanction letter
Ex.A6: Office copy of legal notice
Ex.A7: Reply letter of defendant no.1
Ex.A8: Office copy of rejoinder notice
Ex.A9: Reply notice of defendant no.1
Ex.A10: Encumbrance Certificates (2nos)
Ex.A11: Brouchure of typical floor plan of the suit flat

RESPONDENTS: NIL

VII ADDITIONAL SENIOR CIVIL JUDGE
RANGA REDDY DISTRICT

COURT OF THE DISTRICT & SESSIONS JUDGE
RANGA REDDY DISTRICT
C.A. No. 1779 of 19 20
Application Filed on: 26/4/19
Charges Called on: 14/5/19
Charges Deposited on: 16/5/19
Receipt No: 3172/19 Rs: 40/-
Copy made ready on: 18/5/19
Copy delivered on: 18/5/19

READY BY:
COMPARED BY:
CERTIFIED TRUE PHOTO COPY
Copying Superintendent