

IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an Appeal under Section 5C of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990, as amended by Act No. 54 of 2006.

SC Appeal No: 78/2024

CP/HCCA/Kandy No: 161/2018 (F)

DC Kandy Case No: SPL/524/2006

Dissanayake Mudiyansele Devapirya Bandara
Dehideniya,
301/35, Sir Cuda Ratwatte Mawatha,
Didamwala,
Kandy.

PLAINTIFF

Vs.

Kumburegama Walawwe Ratnayake Mudiyansele
Ralahamilage Anoma Subashinie Ratnayake,
'Ratnagiri', Arambegama, Kumburugama.

DEFENDANT

And

Dissanayake Mudiyansele Devapirya Bandara
Dehideniya,
301/35, Sir Cuda Ratwatte Mawatha,
Didamwala,
Kandy.

PLAINTIFF – APPELLANT

Vs.

Kumburegama Walawwe Ratnayake Mudiyansele
Ralahamilage Anoma Subashinie Ratnayake,

'Ratnagiri', Arambegama, Kumburugama.

DEFENDANT – RESPONDENT

And Now Between

Kumburegama Walawwe Ratnayake Mudiyansele
Ralahamilage Anoma Subashinie Ratnayake,
'Ratnagiri', Arambegama, Kumburugama.

DEFENDANT – RESPONDENT – APPELLANT

Vs.

Dissanayake Mudiyansele Devapirya Bandara
Dehideniya,
301/35, Sir Cuda Ratwatte Mawatha,
Didamwala,
Kandy.

PLAINTIFF – APPELLANT – RESPONDENT

Before: Kumudini Wickremasinghe, J
A.L. Shiran Gooneratne, J
Arjuna Obeyesekere, J

Counsel: Chathura Galhena with Devmini Bulegoda for the Defendant –
Respondent – Appellant

Yuwin Matugama with Patalee Doratiyawa, Gihini Yapa and Tharushi
Bethmage for the Plaintiff – Appellant – Respondent

Argued on: 10th October 2025

Written Submissions: Tendered by the Defendant – Respondent – Appellant on 1st August 2024
Tendered by the Plaintiff – Appellant – Respondent on 17th June 2025

Decided on: 20th March 2026

Obeyesekere, J

- (1) The primary issue that needs to be decided in this appeal is whether the Plaintiff – Appellant – Respondent [the Plaintiff] is entitled to specific performance of the obligation undertaken by the Defendant – Respondent – Appellant [the Defendant] in terms of the Agreement to Sell No. 73 dated 9th October 2005 [P1] to transfer the property referred to in the Schedule of P1 to the Plaintiff.

Facts in brief

- (2) The Defendant is the owner of the property referred to in P1 in extent of 4A OR 26P by virtue of Deed No. 36710 dated 20th June 1994 [P7]. The Plaintiff and the Defendant entered into P1 in terms of which the Defendant agreed to sell the aforementioned property to the Plaintiff for a sum of Rs. 2,200,000. The Plaintiff made an advance payment of Rs. 300,000 to the Defendant, and was required to pay the Defendant the balance sum of Rs. 1,900,000 within six months of the execution of P1, that being on or before 9th April 2006. The Defendant was required at that point, and simultaneously with the payment of money, to execute a deed of transfer in favour of the Plaintiff.
- (3) In order to raise the balance sum of money, the Plaintiff states that he obtained an overdraft facility of Rs. 1 million from the Bank of Ceylon in January 2006. The statement issued by the Bank of Ceylon [P3] confirms that the current account of the Plaintiff had a credit balance of Rs. 1,013,591 by 5th April 2006. In need of a further sum of Rs. 900,000 to complete the transaction in terms of P1, the Plaintiff states that he made arrangements with Ceylon Trust Investment and Finance Company Limited [Ceylon Trust Limited] to obtain a sum of Rs. 2,500,000. The Plaintiff claims that the said sum of money was made available to him by Ceylon Trust Limited on 4th April 2006.
- (4) The Plaintiff states that he met the Defendant on 5th April 2006, informed her that he is ready to complete the transaction and requested the Defendant to call over at the office of Ceylon Trust Limited in order to sign the deed. He states further that the Defendant refused to do so on the basis that the property has a higher value than what the parties had agreed to sell it for in P1. The Defendant however denies

that she was informed by the Plaintiff that he was ready to proceed with the transaction and/or that he has raised the balance sum of money to pay her and/or was asked to come to sign the deed. It is admitted by the Plaintiff that other than having informed the Defendant verbally, the Plaintiff did not send the Defendant a letter informing her that he is ready to complete the transaction or requesting her to be present at a particular location and on a particular date in order to execute the deed.

- (5) The Plaintiff claims further that after the Defendant declined to proceed with the transaction in terms of P1, he sought the advice of the Attorney-at-Law who had prepared P1 on the course of action he should adopt. The Plaintiff states that he was advised to file a caveat at the Land Registry, which he did on 6th April 2006 [P5], and to make a complaint to the Police that the Defendant had not come to sign the deed which he did on the same day at the Galagedara Police Station [P9]. The Plaintiff however did not call as a witness the Attorney-at-Law who is said to have advised him.
- (6) The Attorney-at-Law for the Plaintiff had thereafter sent a letter of demand dated 24th April 2006 [P8] to the Defendant demanding that the deed be executed within 14 days as undertaken by the Defendant in P1. The Plaintiff states that the Defendant did not respond to P8. Thus, the position of the Plaintiff is that he was ready and willing to perform his obligation in terms of P1, but that the Defendant had breached her obligation undertaken in P1 to transfer the said property upon payment of the balance sum of money.

Specific Performance

- (7) Withers, J stated in **Holmes v Alia Marikar** (1 NLR 282; at page 285) that, *“The right specifically to compel a person to give something which he has promised to give, or to do something which he has promised to do, has been frequently recognized and given effect to in our Courts. If the thing cannot be given or done, then its equivalent, id quod creditoris interest praestationem fieri, is exacted.”*
- (8) In **Jeremias Fernando and another v Perera and another** [(1926) 28 NLR 183; at page 184] Lyall Grant, J stated that, *“unless the Court is satisfied that the plaintiffs have*

fulfilled their part of the contract, so far as it is possible for them to do so, namely, by tender of the price, it seems obvious that it cannot order the defendants to perform their part of the contract inasmuch as the condition precedent to such performance has not been fulfilled.” [emphasis added]

- (9) Gratiaen, J stated in **Thaheer v Abdeen** (57 NLR 1; at page 3) that, *“In this country, the right to claim specific performance of an agreement to sell immovable property is regulated by the Roman-Dutch Law and not by the English Law. ... Under the Roman-Dutch Law, on the other hand, the accepted view is that **every party who is ready to carry out his term of the bargain prima facie enjoys a legal right to demand performance by the other party**; and this right is subject only to the overriding discretion of the Court to refuse the remedy in the interests of justice in particular cases.” [emphasis added]*

- (10) In **Dedigama Group Private Limited v Nagoda Manalage Piyasena and another** [SC Appeal No. 49/2017; SC minutes of 8th October 2025], Janak De Silva, J stated as follows:

“It is trite law that the party seeking to enforce the contract must be ready and willing to perform his part of the bargain. ...

*... A plaintiff who has failed to perform his obligation, **which is conditional to requiring the defendant to perform his obligation**, will not be granted the remedy of specific performance.*

*... In the case of a contract which imposes reciprocal obligations on the parties, **the plaintiff is entitled to specific performance only if he has in fact made performance of his own obligations, or if he is able and prepared to do so. ...”***
[emphasis added]

- (11) Having considered the law relating to specific performance in detail, Wegappuli, J stated in **P.N. Wimalaratne v T.T.P. Anthony Fernando and another** (SC Appeal No.244/2014; SC minutes of 16th June 2022] as follows:

“Thus, it appears from the above cited judicial precedents that the actual tendering of the purchase price in the form of cash by the purchaser was not

*particularly insisted on by the Courts as an absolute pre-condition to hold that there was in fact a tender of the agreed purchase price. If the attendant circumstances indicate the purchaser's demonstration of willingness, readiness and **ability to pay the purchase price**, coupled with an unqualified and unconditional offer of same to the seller, it is reasonable to conclude that there was proper tender of the purchase price by the purchaser."* [emphasis added]

- (12) While each case would depend on the intention of the parties as reflected in their agreement to sell and on the evidence that had been presented before the trial Court, it is clear that in order to succeed a plaintiff must prove that he had the money to proceed with the transaction and that he was ready and willing to proceed with the transaction.

Action in the District Court and the appeal to the High Court

- (13) It is in the above factual background that the Plaintiff filed action in the District Court of Kandy [the District Court] on 29th May 2006 seeking specific performance of the obligation undertaken by the Defendant under and in terms of P1 to transfer to the Plaintiff the said property.
- (14) By its judgment delivered on 5th June 2017, the District Court dismissed the action of the Plaintiff. The District Court held that although the Plaintiff had claimed that he had obtained a sum of Rs. 2,500,000 from Ceylon Trust Company and was therefore ready and willing to complete the transaction with the Defendant, that was not so since Ceylon Trust Company was only willing to make available the said sum once the Plaintiff had transferred the property that he was due to purchase from the Defendant to Ceylon Trust Company, whereas in terms of P1, the obligation of the Defendant was to execute the deed transferring the property to the Plaintiff at the time that the Plaintiff hands over the money to the Defendant.
- (15) Aggrieved, the Plaintiff invoked the appellate jurisdiction of the Civil Appellate High Court of the Central Province holden in Kandy [the High Court] which allowed the appeal of the Plaintiff by its judgment dated 2nd September 2022.

- (16) The High Court has correctly identified the legal position that in order to obtain specific performance of a contractual obligation, the party seeking such performance must establish that he/she was ready and willing to proceed with the obligation cast on such party but that the other party, in breach of their contractual undertaking, failed or refused to perform their part of the bargain.
- (17) Having done so, the High Court concluded that the Plaintiff was ready and willing to fulfill the terms of P1 by 9th April 2006. In arriving at the said conclusion, the High Court relied on three items of evidence. The first is that the Plaintiff had filed a caveat on 6th April 2006, the second is that the Plaintiff had filed a police complaint on the same date and the third was that Ceylon Trust Company had “*approved a sum of Rs. 2,500,000*” to the Plaintiff.
- (18) Accordingly, the High Court concluded that the District Court had failed to consider the above three items of documentary evidence presented by the Plaintiff which in the view of the High Court, was sufficient evidence that the Plaintiff was ready and willing to perform his part of the bargain. The High Court thereafter set aside the judgment of the District Court and granted the Plaintiff the relief prayed for.

Questions of Law

- (19) The Defendant sought and obtained leave to appeal from this Court on 13th June 2024 against the judgment of the High Court on the following three questions of law:
- (a) Did the High Court err in law in evaluating the conduct of the Plaintiff in having the transaction completed on or before the due date?
 - (b) Did the High Court err in law in analysing the evidence and the documents submitted by the Finance Company regarding the release of the money for the transaction?
 - (c) Did the High Court err in law in concluding that the Plaintiff has proved the fact that he has made himself available before the Defendant to complete the transaction with the required amount of money on or before the due date?

Transaction with Ceylon Trust Company

- (20) In my view, of the three documents relied upon by the High Court, the most important is the transaction that the Plaintiff claimed that he had with Ceylon Trust Company, since it is only if that transaction is established can it be said that the Plaintiff was ready and willing to perform his obligation on 9th April 2006. The complaint to the Police and the filing of the caveat would at its best only be supportive evidence of the position of the Plaintiff and would become relevant only if the Plaintiff succeeds in establishing that Ceylon Trust Company had given him at least a sum of Rs. 900,000 in order to pay the Defendant.
- (21) In **Muhandiram and another v Salam and another** [(1947) 49 NLR 80; at page 82] it was held that *“Unless otherwise agreed delivery of the property and payment of the price are **concurrent conditions**: the seller must be ready and willing to give possession of the property to the buyer and the buyer must be ready and willing to pay. ... It is a fundamental principal that the payment of the purchase money and the delivery of the conveyance are to be simultaneous acts to be performed interchangeably.”* [emphasis added]
- (22) With regard to the transaction with Ceylon Trust Company, there are three items of evidence that must be considered. They are, a letter issued by Ceylon Trust Company on 21st April 2006 [P4], the evidence of the Plaintiff and the evidence of an officer from Ceylon Trust Company.
- (23) P4 has been issued by the Manager of Ceylon Trust Company to the Plaintiff and reads as follows:

“නීතිඥ ගාස්තු හා ආයතනයේ අනෙකුත් පරිපාලන වියදම් ලබා ගැනීම සම්බන්ධයෙනි.

ඉහත නම් සඳහන් ඩී.එම්.ඩී. බණ්ඩාර දෙනිදෙණිය වන ඔබ විසින් අප ආයතනයෙන් ශ්‍රී ලංකා වලංගු මුදලින් රුපියල් විසිපන් ලක්ෂයක (රු.2,500,000/-) මුදලක් නීතිඥ ජේ.රිච්ගහපොල මහතා විසින් ලියා සහතික කල ඔප්පු අංක 36710 හා බලයලත් මිනින්දෝරු ආර්.ටී.සමරසිංහ මහතා විසින් මැන සහතික කල පිඹුරුපත් අංක 980 හි සඳහන් දේපල වන අක්කර - 4, රුඩ් - 2, පර්චස් - 26 ක බිම් ප්‍රමාණය සින්තක්කරව ඉහත ආයතනයට විකුණා ඉහත සඳහන් මුදල 2006.04.04 සිට 2006.04.10 දින දක්වා, නිකුත් කල අතර එම මුදල ඔබ විසින් ලබා නොගැනීම නිසා අප ආයතනය විසින් දැරීමට සිදු වූ නීතිඥ ගාස්තු හා අනෙකුත් වියදම් ලෙස ඔබ විසින් අප ආයතනයට ශ්‍රී ලංකා වලංගු මුදලින් රුපියල් තිස් හතර දහස් හත්සිය පනහක (රු.34,750/-) ක මුදලක් ගෙවිය යුතු බව මෙයින් ඔබ වෙත දන්වා සිටිමි.”

(24) On a first reading of P4, it appears that the Plaintiff has sold a property that he owned by virtue of Deed No. 36710 to Ceylon Trust Company for a sum of Rs. 2,500,000 but that the Plaintiff has not taken the money from Ceylon Trust Company. In other words, that the Plaintiff was ready and willing to pay the Defendant the balance sum as he had sold a property owned by him to Ceylon Trust Company and obtained the said sum of Rs. 2,500,000. However, what is important is that Deed No. 36710 is the deed by which the Defendant had become the owner of the said property and therefore the Plaintiff could not have raised any money by the sale of that property since the Plaintiff was yet to become its owner. It is perhaps important to state that it was not the position of the Plaintiff that he was obtaining a loan from Ceylon Trust Company and that he was due to mortgage the said property as security for the said loan. Thus, the claim of the Plaintiff that he was due to receive a sum of Rs. 2,500,000 from Ceylon Trust Company by 6th April 2006 and that he was ready and willing to pay the balance sum of money to the Defendant on or before 9th April 2006 is not supported by P4.

(25) This takes me to the evidence of Ravindranath Athauda, Manager at Ceylon Trust Company. His position that the arrangement was for the Plaintiff to sell the said property to Ceylon Trust Company is borne out by the following evidence:

“ආයතනයෙන් එම දේපළ මිලදී ගැනීම සඳහා ඔහු වෙනුවෙන් ලක්ෂ 25 ක මුදලක් වෙන් කර තිබුණා. ඒ වගේම එම දේපළ මිලට ගන්න කටයුතු කරලා තිබුණා. ඒ බව මෙම ලිපියෙන් සනාථ කරලා තිබෙනවා.”

ප්‍ර :- එතකොට පැ.04 දරණ ලේඛනය නිකුත් කරලා තිබෙන්නේ සිලෝන්ට්‍රස්ට් ඉන්වෙස්ට්මන්ට් ඇන්ඩ් රිනෑන්ස් සමාගමෙන්?

උ :- එහෙමයි.

ප්‍ර :- එතකොට ඔය දෙහිදෙනිය කියන පුද්ගලයා එයාට අයිති ඉඩමක් ඔය ආයතනයට විකුණලා රුපියල් ලක්ෂ 25 ක මුදලක් ආයතනයේ තිබිලා තිබෙනවා. ඔහු වෙනුවෙන්?

උ :- එහෙමයි.

ප්‍ර :- එම මුදල රුපියල් ලක්ෂ 25ක මුදල 2006.04.04 වනදා සිට 2006.04.10 වන දින දක්වා කාලය තුලදී ඔහුට ලබා ගන්න අවස්ථාව තිබිලා තිබෙනවා?

උ :- ඔව්.

ප්‍ර :- නමුත් අරගෙන නැහැ?

උ :- අර ගත්තේ නැහැ. අපිට පැවරුවේ නැහැ.

ප්‍ර :- කොහොමහරි පැවරුවා නම් තමයි මේ මුදල ඔහුගේ නමින් තැන්පත් වෙන්නේ?

උ :- තැන්පත් කරලා තිබුණා.

ප්‍ර :- කවුද තැන්පත් කලේ?

උ :- ආයතනයෙන් තැන්පත් කලේ.

ප්‍ර :- මෙම දේපළ විකුණනවා නම් රුපියල් ලක්ෂ 25 ක් ඕන වේලාවක දෙන්න සූදානම් කරලා තිබුණා?

උ :- ඔව්.

ප්‍ර :- නමුත් ඔහු එම දේපළ පැවරුවේ නැහැ?

උ :- පැවරුවේ නැති නිසා දුන්නේ නැහැ.

ප්‍ර :- එතකොට ඔහු පොරොන්දු වුණා ඔහුට අයිති දේපළක් විකුණලා රුපියල් ලක්ෂ 25 ක මුදල ඕන කියලා. එම මුදල මට ලබා ගැනීම සඳහා මට අයිති මෙම දේපළ අපි විකුණනවා මෙම ආයතනයට කියලා?

උ :- ඔව්.

ප්‍ර :- නමුත් එහෙම විකුණුවේ නැහැ එයා?

උ :- නැහැ.

ප්‍ර :- ඔහුට මෙම දේපළ රිලීස් කරන්න පුළුවන්කමක් තිබුණද තමුන්ලාට?

උ :- මේක රිලීස් කරන්නේ ඔප්පුව ලිව්වට පස්සේ.

ප්‍ර :- එහෙම සින්නක්කර ඔප්පුවක් ලිව්වේ නැහැ නේද?

උ :- නැහැ.

ප්‍ර :- ඒක නිසා මෙම කාලය තුළ මෙම ඩී.පී. දෙහිදෙනිය කියන පුද්ගලයාට රුපියල් ලක්ෂ 25 ක මුදලක් ලබා ගැනීමට ඔහුට හැකියාවක් තිබුණේ නැහැ?

උ :- ලබා ගන්න හැකියාවක් තිබුණේ නැහැ කියන්නේ තිබුණා.

ප්‍ර :- හැකියාවක් තිබුණා වෙන්නයි නැති වෙන්නයි දෙකක් වෙන්න බැහැ නේද?

උ :- ඔව්.

පු :- ඒ කියන්නේ සමාගම සුදානම් වෙලා හිටියා ලක්ෂ 25ක් ඔහුට දෙන්න?

උ :- එහෙමයි.

පු :- ඒක දෙන්න නම් සමාගමට ඔහු විසින් දේපළ විකිණිය යුතුව තිබුණා?

උ :- එහෙමයි.

පු :- ඒක විකිණුවේ නැහැ?

උ :- නැහැ.

පු :- විකිණුවේ නැති නිසා එම මුදල ඔහුට නිදහස් කරන්න බැරි වුණා සමාගමට?

උ :- ඔව්.

(26) The Plaintiff admitted the above arrangement in his evidence. It is thus clear that the Plaintiff had agreed with Ceylon Trust Company to sell the property that he was buying from the Defendant to Ceylon Trust Company and for the payment to be made directly to him, and thereafter to utilise the money that he had by then received from Ceylon Trust Company to settle the Defendant.

(27) In other words, the Plaintiff was going to do a “double transaction” and make a quick profit. While I don’t see anything objectionable with a double transfer, it was not the position of the Plaintiff that two deeds of transfer were to be executed, one from the Defendant to the Plaintiff and immediately thereafter another deed by the Plaintiff to the Ceylon Trust Company. The latter deed must be preceded by the former, for the Plaintiff could not have effected a transfer without him having title.

(28) A single deed executed by the Defendant in favour of Ceylon Trust Company is contrary to what the Plaintiff and the Defendant had contracted in terms of Clause 2 of P1, which was for the Defendant to be paid the balance sum and for her to simultaneously execute a deed in favour of the Plaintiff, **and no other**. That was the intention of the parties reflected in P1 and as pointed by Sisira De Abrew, J in **Ginthota Sarukkale Vitharanage Hemalatha Piyathilake v Wicrama Pathiranage Mahesh Ruwan Pathirana** [SC Appeal No: 218/2014, SC minutes of 15th February 2017], “When taking a decision whether to grant relief or not in a case of breach of

contract it is necessary to examine the intention of the parties at the time that they signed the agreement.” Thus, to my mind, the Plaintiff cannot seek to enforce the contractual obligations of the Defendant in terms of P1 without him complying with his obligation to pay the Defendant.

- (29) I must also state that in any event, the arrangement that the Plaintiff claimed he had with Ceylon Trust Company has not been supported by any other evidence. If his claim was genuine, the Plaintiff ought to have produced:
- (a) The draft deed that was to be executed in favour of Ceylon Trust Company;
 - (b) Evidence of the search that Ceylon Trust Company would have carried out of the title pertaining to the said property at the Land Registry prior to agreeing to purchase the said property;
 - (c) Any other evidence that reflects the discussions that the Plaintiff had with the Ceylon Trust Company pertaining to the sale of the property; and
 - (d) The evidence of the Attorney-at-Law who was due to attest the deed of transfer from the Defendant to the Plaintiff, as well as from the Plaintiff to Ceylon Trust Company.
- (30) In view of the above finding, I am of the view that the complaint made to the Police and the filing of the caveat does not support the position of the Plaintiff that he was ready and willing to complete the transaction. I am satisfied that the decision of the District Court is based on a correct interpretation of P4 and the evidence relating thereto. I am therefore unable to agree with the decision of the High Court.
- (31) There are two other matters that I wish to advert to. The first is that the Plaintiff did not inform the Defendant in writing that he is ready to conclude the transaction, even though according to him, the Defendant had changed her mind. The Plaintiff had been cross examined on this matter and his response was that he acted on legal advice which was to lodge a caveat and complaint to the Police.
- (32) The second matter that I wish to advert to is Clause 5 of P1, which reads as follows:

“දෙවෙනි පක්ෂය විසින් ඉහත කී රුපියල් ලක්ෂ දහ නවයක (රු.1,900,000.00) ක මුදල ගෙවූ පසු මෙහි පහත උපලේඛනයේ සඳහන් දේපල සින්තක්කර ඔප්පුවක් මගින් විකුණා පවරා දීම පළමු පක්ෂය විසින් පැහැර හරිනු ලැබුවහොත් දෙවෙනි පක්ෂය විසින් එකී රුපියල් ලක්ෂ 1,900,000.00 ක මුදල මහනුවර දිසා අධිකරණයේ තැන්පත් කොට ඉහත කී රුපියල් 2,200,000 ක මුදලක් සඳහා දෙවෙනි පක්ෂය නමින් අධිකරණයේ රෙජිස්ට්‍රාර් ලවා ඔප්පුවක් ලියවා ගැනීමට දෙවෙනි පක්ෂයට අයිතියක් ඇති බවත් පළමුවෙනි පක්ෂය පිළිගනී.”

(33) I must admit that the above clause appears slightly ambiguous as to when the payment should be made but the intention of the parties appears to have been that in the event of the Defendant not performing her part of the bargain, the Plaintiff could deposit the said sum of Rs. 1,900,000 in the District Court and thereafter move the Registrar to execute a fiscal’s conveyance in terms of an action that is filed. It is admitted that the Plaintiff has not deposited the said sum of Rs. 1,900,000 in the District Court at the time action was filed or at any time thereafter.

(34) The High Court has stated that, *“Clause 5 shows if the Defendant failed to fulfill and convey the transfer, the Plaintiff has the right to deposit the said sum of Rs. 1,900,000 in the Court Registry and get a fiscal conveyance from the Registrar of the District Court. This is the exact relief prayed for from the District Court in this action.”* Thus, the High Court has taken the view that the necessity to deposit the money arises only after judgment has been delivered.

(35) However, in **Dedigama Group Private Limited v Nagoda Manalage Piyasena and another** [supra], Janak De Silva, J referring to clause 6 of the agreement P5 in that case which required the buyer to deposit in Court the sum payable in the event the seller refused to transfer the property in spite of the buyer being able and willing to perform his part of the bargain, stated that, *“This is a clear expression of the intention of the parties that, the Appellant has the right to seek specific performance of the agreement to sell **only upon** depositing the balance amount due in Court. The Court must give effect to their express intention.”*[emphasis added]

(36) Justice De Silva went on to state follows:

“... it is a fundamental legal principle in Roman Dutch Law that the party seeking to enforce a contract must be ready and willing to perform his part of the bargain. This necessarily leads to the conclusion that a party seeking to obtain specific

*performance of a contractual stipulation which is conditional upon the payment of a sum of money, must bring the amount due to Court and **deposit it to the credit of the action at the time of filing the plaint.***

Imposing such a requirement certainly meets the interest of justice. In addition to the principle that a party seeking to obtain specific performance must be willing and able to perform his part of the bargain, it ensures that a defendant is not dragged through a time consuming and costly litigation only to find at the end of the trial that the plaintiff is not in a position to perform his part of the bargain which is conditional to the obligation of the defendant.” [emphasis added]

(37) Thus, the Plaintiff ought to have deposited the said sum of money in the District Court at the time of filing action. Failure to do so is a further reflection of the fact that the Plaintiff was not ready and willing to conclude the transaction as contemplated by P1.

Conclusion

(38) In the above circumstances, I answer the three questions of law in the affirmative. The judgment of the High Court is set aside, the judgment of the District Court is affirmed and this appeal is allowed, with costs fixed at Rs. One Hundred and Fifty Thousand.

JUDGE OF THE SUPREME COURT

Kumudini Wickremasinghe, J

I agree

JUDGE OF THE SUPREME COURT

A.L. Shiran Gooneratne, J

I agree

JUDGE OF THE SUPREME COURT