

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.336 OF 2021
WITH CA/3862/2020 IN SA/336/2021

- | | |
|---|--|
| <ol style="list-style-type: none"> 1. Javrilal Shantilal Kothari,
Age 48 years, Occu. Business 2. Sau. Manisha Javrilal Kothari,
Age 46 years, Occu. Household,
Both R/o. New Plot, Amalner,
Tq. Amalner, Dist. Jalgaon | <p>.. Appellants
(Original plaintiffs)</p> |
|---|--|

Versus

- | | |
|---|---|
| <ol style="list-style-type: none"> 1. Gurucharansingh Bisansingh Bagga,
Age 67 years, Occu. Business,
R/o. New Plot, Amalner, Tq. Amalner,
Dist. Jalgaon 2. Mahavir Nagari Sahakari Path Maryadit,
Amalner, situated at New Plot,
Amalner, Tq. Amalner, Dist. Jalgaon 3. Mangalmurti Nagari Sahakari Path Maryadit,
Amalner, situated at New Plot, Amalner,
Tq. Amalner, Dist. Jalgaon 4. Amalner Co-op. Urban Bank,
Amalner, situated at Amalner,
Tq. Amalner, Dist. Jalgaon | <p>.. Respondents
(Original defendants)</p> |
|---|---|

Mr. Mukul S. Kulkarni, Advocate instructed by Mr. Vinod P. Patil,
Advocate for Appellants

CORAM : S. G. MEHARE, J.

DATE : 26-10-2023

PER COURT :-

1. The plaintiffs have impugned the judgment and decree of the learned Civil Judge, Senior Division, Amalner, passed in Special Civil Suit No.27 of 2013, dated 07.01.2016 and judgment and decree of Regular Civil Appeal No.8 of 2016 passed by the learned District Judge-1, Amalner, dated 05.08.2019.

2. Both Courts denied the specific performance and held that the suit was time-barred. However, allowing the suit partly surprisingly, directed respondent no.1/vendor to refund the earnest amount with interest.

3. The learned counsel for the appellants has vehemently argued that both Courts did not consider the facts of the case. Both parties to the agreement were reciprocally accommodating to each other. The sale deed was to be executed after clearing the debts and encumbrance. The appellants and respondent No.1 were residing in one building. The appellants were tenants in the suit premises. The appellants possess the suit premises through a registered agreement to sell. Since the vendor had some difficulty, the appellants extended the time twice by executing separate agreements. However, in the last document extending the time to perform the part of the contract by the vendor, the deadline was 30.06.2008.

4. The learned counsel for the appellants has tried to convince the Court that since clearance of the debt was a condition precedent for execution of the sale deed, there was no delay in filing the suit. Since the landlord did not clear the loan, a notice was served upon him, and that was the cause of action to file a suit. However, both Courts erred in law in disbelieving the appellants. He has also argued that the witnesses have been examined to prove readiness and willingness. It has been

specifically averred in the plaint that the appellants were ready and willing to perform their part of the contract. However, the trial Court committed a serious error of law in ignoring the pleadings and recording a finding contrary to the pleadings. He has also argued that the first part of Article 54 of the Limitation Act would not apply to the facts and circumstances of the case. When there was a reciprocal agreement, though the date was part of the contract was extended up to 30.06.2008, it cannot be said that it was the agreed date to perform the part of the contract. Until the filing of the suit, the vendor did not clear the debts. Hence, the society and the bank were also arrayed as defendants. The appellants were financially sound to pay the remaining consideration. Since they were residing in one building, they used to meet and know his family's condition. The appellants trusted him. Therefore, considering the family condition of the vendor, they did not insist on executing the sale deed as there was a clear understanding that the sale deed would be executed after clearing the debts.

5. The learned counsel for the appellants further submits that the appellants have complied with Section 16(c) of the Specific Reliefs Act. However, the learned trial Court wrongly applied the ratio in the case of *Hasan Nurani Malak Vs. Mohansing and another*, 1974 Mh.L.J. 120 and *Manunath Anandappa Urf Shivappa Hansi Vs. Tammanasa and others*, AIR 2003 SC 1391.

6. The thrust of the arguments of the appellants was that both Courts have erroneously held that the appellants were never ready and willing to perform their part of the contract, and the suit is barred by limitation. In pursuance of this observation, he read the last document extending the time. He has interpreted the terms of the said document that the date 30.06.2008 was not the date for the specific performance of the contract, but it was the date for clearing the debts. Hence, it cannot be said that 30.06.2008 was the date the limitation began to run to bring the suit as per Article 54 of the Limitation Act.

7. He has also referred to the original agreement dated 31.10.2007 and argued that clearance of the debt was a condition precedent for execution of the sale deed. If this aspect is considered, the suit was well within limitation. He has also argued that the interpretation of this document and the limitation for filing the suit are the substantial questions of law involved in this case.

8. Admitting the facts, as pleaded by the appellants in the plaint itself, the appellants were to satisfy the Court that in the facts and circumstances of the case, when the limitation begins to run.

9. Both Courts categorically held that the suit is barred by limitation, but surprisingly, they have decreed the suit partly directing the respondent/defendant No.1 to pay Rs.3,00,000/- to

the plaintiffs as earnest amount with interest at the rate of 9% per annum from the date of institution of the suit till its actual realization. The respondents did not impugn the said judgment and decree.

10. The learned first Appellate Court held that it was an agreement to sell against the findings of the trial Court that it was a security document against the loan. However, he maintained the findings of the learned trial Court about readiness and willingness to perform the part of the contract and limitation.

11. Before addressing the issue of readiness and willingness, the issue of limitation that goes to the root of the matter must be highlighted first.

12. The arguments of the learned counsel for the appellants that the last document of fixing the deadline was for extending the time for clearance of the debt falls for interpretation and Whether the said date was for clearing the debts or for the execution of a sale deed is also a substantial question of law.

13. This Court read that document in open Court with the learned counsel for the appellants. The document is to be interpreted when there is an ambiguity in its content. The rule of reading a document as a whole is to be borne in mind to find out the intention of the parties, and it can be gathered from the terms of the agreement if reduced to writing. The fact that an

agreement of sale was executed and time was extended is not disputed. Therefore, the last document of the agreement dated 31.03.2008, is relevant to understand the real intention of the parties and interpret it correctly. Hence, paragraph No.6 of the said agreement has been reproduced thus;

“6. सदर मिळकती पैकी वरचा मजला सौदयाचे वेळीच लिहून घेणार श्री. व सौ. कोठारी यांना लिहून देणार श्री. बग्गा यांना कब्जात दिला आहे. अशा परिस्थितीत लिहून देणार श्री. बग्गा यांनी शेवटची मुदत वाढ म्हणून पुन्हा तीन महिन्यांच्या कालावधीची मागणी केली. तसेच या तीन महिन्यांच्या कालावधीत सदर मिळकतीवर पतसंस्थेचे असलेले बोजे करून देण्याची हमी लिहून देणार श्री. बग्गा देत आहेत. लिहून देणार श्री. बग्गा यांनी त्याचा किंमतीचा विचार करून लिहून घेणार श्री. व सौ. कोठारी यांनी देखील लिहून देणार श्री. बग्गा यांनी विनंती मान्य केली व लिहून देणार श्री. बग्गा यांची विनंती नुसार दि. 30 जुन 2008 पावेतो अगर त्या अगोदर लिहून देणार श्री. बग्गा यांनी कलम 1 मधील वर्णन केलेल्या मिळकतीचे खरेदीखत लिहून घेणार श्री. व सौ. कोठारी यांचे लाभात लिहून नोंदवून द्यावयाचे आहे. दिनांक 30 जुन 2008 ही अंतिम मुदत वाढ देण्यात आली हाय.”

14. Though the learned counsel for the appellants interpreted that 30.06.2008 was not the date for the specific performance of the contract, a plain reading of the said document only reflects that it was the last date for execution of the sale deed and not clearing the debts. The intention of the appellants was clear that anyhow, the debt should be cleared before 30.06.2008, and there shall be no extension of time to clear the debt, and the sale deed shall be executed. The terms of the said document are clear. There

is no ambiguity in the terms of the agreement. Hence, this Court is of the view that in the facts and circumstances of the case, the said document does not fall for interpretation, and no substantial question of law is involved in this case.

15. Article 54 of the Limitation Act applies to the suit for the performance of the contract. It is divided into two parts. In the first part, the limitation begins to run from the date fixed for the performance of the contract. In the second part, if no such date is fixed, the limitation begins to run when the plaintiff notices that the performance was refused. The law is very clear that when the particular date for the performance of the contract is fixed, the limitation starts to run as provided in the first part of Article 54 of the Limitation Act.

16. Reading the contents of the aforesaid last agreement, the Court is of the view that the parties were at clear terms that the sale deed by clearing debt shall be executed on 30.06.2008. Hence, the first part of Article 54 of the Limitation Act was to be applied. On this point, both Courts have clearly recorded the findings. Hence, the Court is not convinced that there is a substantial question of law on the limitation involved in this case.

17. The Court is not oblivious that the judgments and decrees are not interfered with by the Court unless the party aggrieved prefers the appeal. But, this is a unique case in which, on the one

hand, the learned Courts held that the suit was barred by limitation and allowing the suit partly directed the respondent/defendant No.1 to refund the earnest amount of Rs.3,00,000/- with interest on the other. Surprisingly, the learned first Appellate Court did not touch this issue and maintained the judgment of the trial Court. The High Court must correct the Court if any apparent error of law has been committed by the trial and first appellate Courts that gives a wrong message to the society that the laws are not strictly applied. In such circumstances, the High Court should exercise its power and correct the illegalities of the trial Courts. It is the prime duty of the Court to apply the provisions of the law strictly and not to exercise discretion where the law has given a specific effect, no matter how harmful it is to the parties to the suit. Once the suit is held barred by the limitation, there was no reason for any Court to grant the other relief, which was also barred by the limitation, and the Court cannot grant the relief which the law does not empower the Court. Granting such a relief is exceeding the jurisdiction not vested in the Court. Sympathy makes a law ineffective. The first output of the sympathy is bias. The bias spreads the instability, uncertainty, distrust on the system and all these makes a chaos. The judicial system runs on the trust. The Judge has no choice to form his independent opinion against the principle of law. He may show leniency that too as the law framed. The Court can not exercise

the discretion arbitrarily. It is to be exercised rationally and not contrary to the law. The Courts cannot distract from the law. Sympathy has no place in the law. The Hon'ble Supreme Court, in the case of ***Teri Oat Estates (P) Ltd. Versus U. T. Chandigarh and Ors., (2004) 2 SCC 130***, has observed that sympathy or sentiment by itself cannot be a ground for passing an order in relation whereto the appellants miserably fail to establish a legal right. The order directing the vendor to refund the earnest amount with interest, when it had no jurisdiction was a judicial indiscipline. When the High Court notices such apparent illegalities on the face of the record, it must correct the illegalities. Hence, the order directing respondent No.1 to refund the earnest amount of Rs.3,00,000/- together with interest at the rate of 9% per annum, stands quashed and set aside, and the suit stands dismissed.

18. For the above reasons, the appeal stands dismissed at the admission stage.

19. Pending civil application stands disposed of.

20. No order as to costs.

**(S. G. MEHARE)
JUDGE**