

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

SECOND APPEAL NO. 384 OF 2022

Najmunnisa w/o Ghulam Ahmed ..Appellants
thr. Legal heirs & Anr.

Versus

Mohan Dharma Khairnar (Patil) & Ors. ...Respondents

**WITH
INTERIM APPLICATION NO. 2789 OF 2022
IN
SECOND APPEAL NO. 384 OF 2022**

Mr. Ranjit Thorat, Senior Advocate, Mr. Anilkumar Patil, Ms.
Zeel Jain a/w Digvijay Patil, for appellants.
Mr. P.K. Dhakephalkar, Senior Advocate (through VC), i/b. Mr.
Sachin Dhakephalkar, for the Respondents.

CORAM: N. J. JAMADAR, J.

DATE : 24th DECEMBER 2025

ORDER:

1. This Second Appeal is directed against a judgment and decree passed by the learned District Judge at Malegaon in Regular Civil Appeal No. 100/2017 whereby the appeal preferred by the appellants-original plaintiffs against the judgment and decree in Special Civil Suit No. 131/1993 dated 21st July, 2017, dismissing the suit for specific performance of the contract for sale of immovable property, came to be dismissed.

2. The appellants instituted a suit for specific performance of the contract to sale 30 gunthas land alongwith a bungalow admeasuring 2000 sq. feet situated at Survey No. 89/2+3/6, Malegaon, Dist. Nashik, contained in an agreement for sale dated 03rd November, 1990. Under the terms of the said agreement, the consideration was settled at Rs. 2,00,000/- (Rupees Two Lakhs). An amount of Rs. 5,000/- (Rupees Five Thousand) was paid thereunder in cash. The sale deed was agreed to be executed upon payment of balance amount of Rs. 1,95,000/- (Rupees One Lakh Ninety Five thousand), after five months of the execution of the said agreement for sale.

3. The respondents/defendants addressed a notice to the petitioner on 13th July, 1992 contending that, there was default on the part of the plaintiffs in making the payment of balance consideration. It was contended that, after the initial amount of Rs. 5,000/- (Rupees Five Thousand), a sum of Rs. 30,000/- (Rupees Thirty Thousand) only was paid to the defendants in the month of June, 1992. The plaintiffs were, thus, called upon to pay balance consideration of Rs. 1,60,000/- (Rupees One Lakh Sixty Thousand), along with interest at the rate of 18% p.a., and, complete the transaction of sale. In the reply dated

29th July, 1992, the plaintiffs claimed that, a sum of Rs. 1,55,000/- (Rupees One Lakh Fifty Five Thousand) was already paid to the defendants and only an amount of Rs. 45,000/- (Rupees Forty Five Thousand) remained to be paid. In the wake of the dispute, the plaintiffs instituted the suit with the assertion that, out of the total consideration, the plaintiffs had paid a sum of Rs. 1,96,000/- (One Lakh Ninty Six Thousand) by the time the suit came to be instituted as there was refusal on the part of the defendants to perform their part of the contract.

4. By a judgment and order dated 21st July, 2017, the learned Civil Judge was persuaded to dismiss the suit holding *inter alia* that, the plaintiffs had committed breach of the terms of contract and they were not ready and willing to perform their part of the contract. It was observed *inter alia* that, the plaintiffs had suppressed material facts and did not approach the Court with clean hands. The receipts acknowledging the payment passed by defendants and the claim of the plaintiffs, if considered together, would indicate that, the plaintiffs had paid more amount than the agreed consideration.

5. In the First Appeal, the learned District Judge concurred with the views of the learned Civil Judge. Carrying out a similar

exercise of comparing and contrasting the claim of the plaintiffs as was evident from the reply to the notice issued on behalf of Defendant Nos. 1 to 4, averments in the plaint and the evidence adduced before the Court, the learned District Judge found that, if the claim of the plaintiff was to be accepted, the plaintiffs had already paid a sum of Rs. 2,26,000/- (Rupees Two Lakhs Twenty Six Thousand) against the agreed consideration of Rs. 2,00,000/- (Rupees Two Lakhs) and that belied the genuineness of the receipts sought to be pressed into service by the plaintiffs.

6. Dr. Ranjit Thorat, the learned Senior Advocate for the appellants-plaintiffs, would urge that, the Courts below have committed a manifest error in law in returning the findings that, the plaintiffs were not ready and willing to perform their part of the contract. It is not the requirement of law that, a party seeking specific performance of the contract must deposit the consideration before the Court to show his readiness and willingness. Moreover, in respect of three other plots which were agreed to be sold by the defendants to the plaintiffs, the sale transaction were effected without any hindrance. If the plaintiffs purchased three other plots from the defendants by paying the

agreed consideration, there was no reason to commit the alleged default in payment of the balance consideration, in this case.

7. Dr. Thorat further submitted that, though the execution of receipts, as such, was not disputed, yet, the Courts below discarded those receipts by doubting their genuineness sans any evidence. Such misconstruction of the documents and resultant miscarriage of justice gives rise to substantial questions of law, submitted Dr. Thorat.

8. In opposition to this, Mr. Dhakephalkar, the learned Senior Advocate for respondents, would urge that, the learned Civil Judge as well as learned District Judge have demonstrated by weighty reasons as to how the case set up by the plaintiffs was belied by their own version. It was submitted that, the relief of specific performance being discretionary in nature, the Courts below were justified in dismissing the suit on account of glaring inconsistencies in the plaintiffs case.

9. The execution, as such, of the agreement for sale dated 03rd November, 1990 is incontrovertible. Nor there is much controversy over the material terms of the contract, including the consideration which was agreed to be paid thereunder.

Indisputably, the first salvo was fired by the defendants by addressing a notice to the plaintiffs calling upon the later to pay the balance consideration of Rs.1,60,000/- (Rupees One Lakh Sixty Thousand) acknowledging the payment of Rs. 30,000/- (Rupees Thirty Thousand) in the month of June, 1992. In response the plaintiffs claimed that they had, in fact, paid a sum of Rs. 1,55,000/- (Rupees One Lakh Fifty Five Thousand) and two receipts were sought to be relied upon to substantiate the said claim. Pertinently, the suit came to be instituted, with the assertion that, the plaintiffs had paid a sum of Rs. 1,96,000/- (Rupees One Lakh Ninety Six Thousand) to the defendants.

10. It is aforesaid discrepancy in the claim of the plaintiffs as regards the consideration allegedly parted with, that weighed with the Courts below. Firstly, the payment of Rs. 30,000/- (Rupees Thirty Thousand) in the month of June, 1992, which the defendants acknowledged, and the plaintiffs confirmed, in the reply to the notice addressed by the defendants, was not accounted for. Secondly, the plaintiffs tried to improve upon their version by asserting that, a sum of Rs. 19,000/- (Rupees Nineteen Thousand) was paid in cash to the defendants in

tranches, in the last week of June, 1992 and first week of July, 1992. There was no material to substantiate the said claim. Taking into account the aforesaid facts, the learned District Judge found that, if the claim of the plaintiffs was to be accepted, the plaintiffs claimed to have paid a sum of Rs. 2,26,000/- (Rupees Two Lakhs Twenty Six Thousand) to Defendant Nos. 1 to 4, far more than the agreed consideration.

11. The aforesaid evaluation of evidence by the Courts below cannot be said to be perverse. Upon a proper evaluation of the evidence, in the light of the glaring inconsistencies in the claim of the plaintiffs, the Courts below have arrived at justifiable findings. The broad submission canvassed by Dr. Thorat that, the plaintiffs who had purchased three other plots, could not have committed default in payment of the balance consideration cannot be acceded to.

12. It is trite, the plaintiffs should be ready and willing to perform his part of the contract in accordance with its true terms. It is impermissible to set up a different contract than the one agreed between the parties and, then assert that, the plaintiff is ready and willing to perform his part of the contract.

A useful reference in this context can be made to a judgment of the Supreme Court in the case of **Umabai & Anr. Vs. Nilkanth Dhondiba Chavan (Dead) by LR's & Anr.**¹, wherein the nature of the readiness and willingness of the plaintiff must show was expounded as under:-

“30. It is now well settled that the conduct of the parties, with a view to arrive at a finding as to whether the plaintiff-respondents were all along and still are ready and willing to perform their part of contract as is mandatorily required under Section 16(c) of the specific Relief Act must be determined having regard to the entire attending circumstances. A bare averment in the plaint or a statement made in the examination-in-chief would not suffice. The conduct of the plaintiff-respondents must be judged having regard to the entirety of the pleadings as also the evidences brought on records.

31. In terms of Forms 47 and 48 appended to Appendix A of the Code of Civil Procedure, the plaintiff must plead that “he has been and still is ready and willing specifically to perform the agreement on his part of which the defendant has had notice” or “the plaintiff is still ready and willing to pay the purchase money of the said property to the defendant”. The offer of the plaintiff in the instant case is a conditional one and, thus, does not fulfil the requirements of law.”

13. In the case of **P. Daivasigamani Vs. S. Sambandan**², the Supreme Court emphasized that, the readiness and willingness to perform the contract must be according to its true construction. The observations in Paras 20 & 21 read as under:-

1 (2005) 6 SCC 243

2 (2022) 14 SCC 793

“20. From the bare reading of the aforesaid provisions, it clearly emerges that the specific performance of the contract, may in the discretion of the court, be enforced, when the act agreed to be done, was such that compensation in money for its non-performance would not afford adequate relief, and that the breach of a contract to transfer immovable property could not be adequately relieved by compensation in money. It also emerges that specific performance of a contract could not be enforced in favour of a person, who failed to aver and prove that he had performed or had always been ready and willing to perform the essential terms of the contract, which were to be performed by him. It could also not be enforced in favour of a person who failed to aver in the plaint the performance of, or readiness and willingness to perform the contract according to its true construction.

21. Readiness and willingness are not one, but two separate elements. Readiness means the capacity of the plaintiff to perform the contract, which would include the financial position to pay the purchase price. Willingness refers to the intention of the plaintiff as a purchaser to perform his part of the contract. Willingness is inferred by scrutinising the conduct of the plaintiff purchaser, including attending circumstances. Continuous readiness and willingness on the part of the plaintiff purchaser from the date the balance sale consideration was payable in terms of the agreement to sell, till the decision of the suit, is a condition precedent for grant of relief of specific performance.”

14. In the case at hand, the evidence on record indicated that, the plaintiffs attempted to plead and prove a case of parting with more consideration than the actual payment. As the said endeavor was belied by the documents and evidence on record, the Courts below were justified in returning a finding that, the plaintiffs were not ready and willing to perform their part of the contract in accordance with its true terms, and did not deserve the equitable relief, as they did not approach the Court with clean hands.

15. In the aforesaid view of the matter, no question of law, much less, a substantial question of law, arises for consideration. Hence, the Second Appeal deserves to be dismissed.

16. Hence, the following order:

: O R D E R :

(i) The Second Appeal stands dismissed.

(ii) In view of the dismissal of the Second Appeal, the Interim Application No. 2789/2022 also stands dismissed.

No costs.

[N. J. JAMADAR, J.]

15. At this stage, Learned Counsel for the appellants seeks continuation of interim order granted during the pendency of the Second Appeal.

16. In the light of the view taken by this Court, the oral application for continuation of the interim order stands rejected.

[N. J. JAMADAR, J.]