

IN THE HIGH COURT OF BOMBAY AT GOA**SECOND APPEAL NO. 92 OF 2008**

Ganpat L. Madwal,
major in age, businessman,
c/o. Star Power Laundry,
Molar, Tiswadi, Goa.

..... Appellant.

V/s.

1. Smt. Sumati V. Fernandes alias
Velingkar, of major age,
housework, resident of
Mollar, Corlim, Tiswadi, Goa.

2. Prakash Kuncolienkar,
proprietor of M/s. Prakash Constructions,
Vijayanagar, Corlim, Tiwadi, Goa.

..... Respondents.

Mr. A. D. Bhobe, Advocate for the appellant.

None for the respondents, though served.

CORAM :- F.M. REIS, J.

Date : - 10 DECEMBER 2015.

ORAL JUDGMENT :-

Heard Mr. A. D. Bhobe, learned Counsel appearing for the
appellant. None for the respondents, though served.

2. The matter was adjourned from time-to-time to give opportunity to the respondents to appear, but, however, none appeared for the respondents despite of such opportunities.

3. The above appeal came to be admitted by an order dated 4th March, 2009, on the following substantial question of law :

“ Whether the interpretation put by the learned Judge of the First Appellate Court to clause 1 of the agreement can be said to be perverse ?

4. Mr. A.D. Bhobe, learned Counsel appearing for the appellant points out that the suit filed by the appellant was for specific performance of the Agreement executed by the respondent No.1 in favour of the appellant, whereby the respondents were supposed to deliver, free of costs, one room in lieu of admitted occupation of the appellant in a portion of the disputed property belonging to the respondent No.1. The learned Counsel further points out that the structure which was occupied by the appellant came to be demolished in view of the development being carried out by the respondents in the disputed property. The learned Counsel has, thereafter, taken me through the subject-agreement to point out that in terms thereof, a room

had to be delivered to the appellant. The learned Counsel has further taken me through the Judgment of the learned Trial Judge to point out that the learned Trial Court has taken a view that the temporary structure given by the respondents cannot be construed to be a room, as a room is a permanent structure. The learned Counsel has, thereafter, taken me through the Judgment of the Lower Appellate Court to point out that the learned Lower Appellate Court has allowed the appeal preferred by the respondents on the ground that the particulars of the room, in terms of the agreement, have not been clearly specified and consequently, the structure which is presently being occupied by the appellant is, in fact, a structure/room which the respondents were bound to deliver in terms of the said agreement. The learned Counsel further submits that this finding of the learned Lower Appellate Court is contrary to the material on record by misconstruing the agreement entered into between the parties.

5. I have carefully considered the submissions of the learned Counsel appearing for the appellant and I have also gone through the record. The fact finding Court has come to the conclusion, on the basis of the material on record, that the temporary structure being occupied by the appellant was a room which was agreed to be delivered

in terms of the agreement for sale in respect of which the appellant seeks specific performance. On perusal of such agreement, I find that the specifications or particulars thereof have not been clearly stated in such agreement. It is not disputed that, in fact, the appellant is occupying the structure in the nature of a room wherein he has been carrying on his business activities, though it is contended that the area which is being occupied is less than the area which was originally occupied by the appellant at the time of the demolition of the said structure.

6. In such circumstances, I find that the findings of the learned Lower Appellate Court to the effect that the subject room, agreed to be delivered in terms of the agreement is, in fact, the structure which is being presently occupied by the appellant for carrying on his business activities, cannot be faulted. On perusal of the said agreement dated 15.11.1996, which is at Exhibit PW1/D, it clearly provides that the appellant had agreed to deliver the vacant possession of the room occupied by him in house no.163 as the respondent no.1 has agreed to provide a room to the appellant in the said reconstructed house or anywhere in the said plot. Thus, what was agreed to deliver is one room to the appellant and not a shop as sought to be contended by

the appellant and directed by the learned Trial Judge. The learned Lower Appellate Court, as such, rightly construed the agreement between the parties to come to the conclusion that the room presently occupied by the appellant was the one agreed to be given pursuant to the said agreement. The contention of the appellant that such occupation is only a temporary one has also been rightly discarded by the learned Lower Appellate Court. There is nothing to suggest in the agreement that such room had to be located in the newly constructed building, and as such the learned Lower Appellate Court has rightly construed the agreement to come to the conclusion that the room being occupied by the appellant presently is a room agreed to be given in terms of the subject agreement. There is no perversity in the findings of the learned Lower Appellate Court on that count and as such the substantial question of law is answered accordingly.

7. With the aforesaid clarification, no case is made out for interference by this Court. The substantial question of law is answered accordingly. The appeal stands disposed of accordingly.

F.M. REIS, J.

ssm.