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

**FIRST APPEAL NO.889 OF 2005**

Mantri Chandak Developers Private Limited.
Through its Director,
Kishor Shrivallabh Chandak,
Age : 51 years, Occupation Business,
Residing at Park Chowk, ...Appellant
Solapur – 413 001. (Orig. Plaintiff)

v/s.

1. Vimal Malhar Dhamnekar
   Age adult, Occu. Household,
   Residing at 8A/B, Vivekanand Nagar,
   Vijapur Road, Solapur.

2. Hemlata Vikas Patil,
   Age adult, Occu. Household
   Residing at 8A/B, Vivekanand Nagar,
   Vijapur Road, Solapur.

3. Seema Ulhas Kakatkar,
   Age adult, Occu. Household,
   Residing at Hulbutte Colony,
   Mahatma Phule Road,
   Shahapur,
   Belgaum (Promoter of proposed)
   Trimurti Sahakari Grihanirman Sanstha.

4. Seema Ulhas Kakatkar
   Age adult, Occu. Household,
   Residing at Hulbutte Colony,

Mahatma Phule Road, Shahapur,
Belgaum (Chief Promoter of Proposed
Sambhajinagar Sahakari Grihanirman Sanstha). ...Respondents.

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Mr.G.S.Godbole a/w Mr.Drupad S. Patil and Ms.Shruti Tulpute i/b Mr.Nitin Mulye, for the Appellant.

Mr.P.R.Arjunwadkar, for the Respondent Nos.1 to 4,

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**CORAM: A. S. OKA &**
**REVATI MOHITE DERE, JJ.**

**DATED : 22nd JULY, 2015.**

**ORAL JUDGMENT (Per A.S.Oka, J.) :-**

1. The submissions were concluded on the earlier date. Today the Appeal is fixed for Judgment.

2. The Appellant is the original plaintiff who has taken an exception to the Judgment and Decree dated 31st March, 2005, passed by the Civil Judge, Senior Division, Solapur in Special Civil Suit No.381 of 1999.

3. The suit was filed by the appellant for Specific Performance of Contract in the form of Visar Pavati (a receipt)/Kararnama dated 13th July,

1993. The prayer in the suit is for a decree directing the respondents to execute a regular agreement and power of attorney on accepting balance consideration of Rs.22,14,650/-. In the alternative, a prayer was made for grant of a decree in the sum of Rs.1,86,91,650/- together with interest thereon.

4. With a view to appreciate the submissions canvassed at the bar, it will be necessary to make a reference to the pleadings of the rival parties. The subject matter of the suit is the suit lands more particularly described in clause (a) and (b) of paragraph 1 of the plaint. It is alleged that the lands described in clause – (a) of paragraph 1 of the plaint were owned by Late Malhar Somnath Dhamnekar who was the Chief Promoter of Timurti Cooperative Housing Society (Proposed). It is alleged that the first to third respondents are the legal heirs of the said Late Malhar Somnath Dhamnekar. It is alleged that the property described in clause – (b) is owned by the Sambhajinagar Co-operative Housing Society (proposed) of which the Chief Promoter is the fourth respondent.

5. The appellant – company is carrying on business of development of real estate and construction at various places including

Pune, Mumbai, Delhi etc. It is alleged that late Malhar and the fourth respondent met the appellant's Director Mr.Kishor Shrivallabh Chandak, and offered to give the suit lands to the appellant for the purposes of development. It is alleged in the plaint that at that time it was revealed that the suit lands were affected by the Urban Land (Ceiling and Regulation) Act, 1976 (for short 'the ULC Act'). It is alleged in the plaint that the said Malhar and the fourth respondent agreed to allow the appellant to develop the suit lands at the consideration of Rs.2 lacs per acre. The case made out in the plaint is that on 13th July, 1993, the said Malhar and the fourth respondent executed a Visar Pavti (Earnest amount receipt), agreement and authority letter and an irrevocable power of attorney. It is alleged that the irrevocable power of attorney was executed on 24th September, 1993 and the Visar Pavati was executed on 13th July, 1993. The case made out in the plaint is that on the basis of the said irrevocable power of attorney, the appellant was placed in possession the suit lands and the work of development has been started thereon. It is alleged in the plaint that a sum of Rs.35,350/- has been paid by the appellant to the said Malhar. It is further alleged that a sum of Rs.30,770/- has been recovered from the appellant by the Stamp Collector towards stamp duty on the aforesaid irrevocable Power of Attorney. It is alleged that though a demand was made by the appellant to the said Malhar and the fourth respondent to comply with the terms and conditions of the agreement, except for giving promises, no steps were taken by both of them. It is alleged that as per the order of the State Government dated 1st October, 1997 the provisions of ULC Act ceased to apply to the suit lands and therefore, there is no impediment in the way of execution of the sale deed.

6. In paragraph 6 of the plaint, reliance is placed on the order dated 2nd April, 1998 issued by the Competent Authority and Deputy Collector by which the suit lands were excluded from the applicability of the ULC Act. The appellant is relying upon the letters dated 25th June, 1998 and 6th July, 1998 addressed to the respondents. It is alleged that on 5th August, 1998 a meeting was held in the presence of Kishor Chandak, the husband of the fourth respondent (Ulhas Kakatkar), the first respondent (Vimal Malhar Dhamnekar) and one Dr.Vikas Patil. In the said meeting, a discussion was held regarding the sale of the suit lands and it was decided to take a decision by September, 1998. Though a meeting was agreed to be held in September, 1998 the respondents avoided to convey their decision to the appellant. Therefore, a legal notice dated 13th May, 1999 was issued by the appellant to the respondents which was replied by the

Advocate for the respondents.

7. Initially, a reply to the Application for interim relief was filed by the respondents contending that in relation to a transaction in respect of the suit lands certain amount was accepted as earnest money by the deceased – Malhar. It is stated that as the suit lands were found to be reserved for S.R.P., the said transaction was cancelled and during his life time, the said Malhar returned the said amount to the appellant. Reliance has been placed on the suit filed by the respondents against the appellant restraining them from causing obstruction to the respondents in their enjoyment and possession of the suit lands. It is contended that the respondents were in possession and they were under no obligation to perform any contract as alleged in the plaint. It was denied that the respondents have accepted a sum of Rs.35,350/- from the appellant. Subsequently, a written statement was filed by the respondents at Exhibit – 31. The written statement is of denials.

8. The learned Trial Judge framed 8 issues. The appellant examined Mr.Kishor Chandak, its Director as the first witness. The appellant also examined one Shamsundar Mohandas Darak, as the second

witness. On the side of the respondents, the first respondent was examined. The learned Trial Judge in the impugned Judgment held that the execution of Visar Pavati/agreement, authority letter and irrevocable power of attorney were not properly proved. The learned Judge held that the appellant failed to establish that a sum of Rs.35,350/- was paid to the late Malhar. The learned Judge held that the Visar Pavati dated 13th July, 1993 is not legal and similarly, the authority letter of the same date is not legal and valid. The learned Judge held that the appellant failed to prove that the possession of the suit lands was handed over to it. The learned Judge held that the claim for compensation was not established by the appellant. In paragraph 56 of the Judgment, a finding was recorded by the learned Judge that the suit was not filed within the stipulated period of limitation.

9. The learned counsel appearing for the appellant has taken us through the pleadings. He invited our attention to the legal notice dated 13th May, 1999 and the reply to the said legal notice. Inviting our attention to the contents of the reply, he urged that wherever the respondents intended to specifically deny the execution of the documents they have done so. He invited our attention to paragraph 9, wherein the execution of

the Authority letter dated 13th July, 1993 has been specifically denied. Inviting our attention to paragraph 8, he urged that the execution of the Visar Pavati dated 13th July, 1993 is not only not denied specifically, but it is contended that it is not legal and valid. He pointed out that after the entire reply is read, it becomes apparent that the execution of Visar Pavati dated 13th July, 1993 has been admitted. He invited our attention to the reply at Exhibit – 19 filed by the respondents to the application for temporary injunction. He pointed out that the execution of none of the documents has been denied in the said reply which was filed prior to the written statement. He pointed out that the written statement proceeds only on denials. He therefore submitted that the appellant was under no obligation to prove the execution of Visar Pavati dated 13th July, 1993 as it was admitted by the respondents. Inviting our attention to the evidence of both the witnesses examined by the appellant, he urged that the execution of Visar Pavati at Exhibit – 52 has been duly proved. Inviting our attention to the evidence of the first respondent and in particular her cross examination, he pointed out that the first respondent is the widow of late Malhar who did not deny the signature of the said Malhar appearing on Exhibit – 52 and she merely stated that she was unable to state that her husband had put signature on the said document. He pointed out that in the cross examination when the authority letter at Exhibit – 47 was shown to her, she stated that due to difference in the signature, she is unable to identify the same. He submitted that thus the first respondent has not specifically denied the execution of the relevant documents by her husband – Malhar. He submitted that the fourth respondent has not chosen to deny her signature on the said document. He urged that the Visar Pavati, Power of Attorney and the authority letter were duly proved. He submitted that the defence of the respondents was only of denial. Inviting our attention to the contents of Visar Pavati at Exhibit – 52, he submitted that though the relief claimed in the plaint is of execution of a proper agreement and though the Visar Pavati refers to execution of sale deed, this Court can always mould the reliefs. He also invited our attention to the power of attorney at Exhibit – 44 executed by the said Malhar and especially the recitals therein. He urged that even the execution of the said document has been proved. Dealing with the argument that the stamp paper on which the Visar Pavati is written is of 19th September, 1991 and therefore, the date on which the Visar Pavati was executed, the said stamp paper was not valid, he urged that the document does not become inadmissible and subject to payment of deficit stamp duty and penalty, the said document can always be read in evidence. He urged that the document can be at the most treated as the one which is not duly stamped.

10. He invited our attention to the document at Exhibit – 52 and submitted that the said document has been initialed against every correction made by hand and that the said Malhar has signed the said document in his capacity of Constituted Attorney of the fourth respondent. He urged that the terms and conditions in the Visar Pavati at Exhibit – 52 are capable of being specifically performed**.** He pointed out that though the total consideration may not have been mentioned, the agreed rate thereof at Rs.2 lacs per Acre is specifically mentioned. The installments payable towards consideration have been specifically incorporated in the Visar Pavati. He submitted that the denial to perform their part of contract by the respondent was for the first time in the reply issued by the respondents through their Advocate to legal notice dated 13th May, 1999. Therefore the suit filed on 29th August, 1999 was within limitation and the finding of the learned Judge to that extent is wrong. The learned counsel relied upon the decision of the Apex Court in the case of ***Aloka Bose v/s Parmatma Devi and Others***[1] ***and Omprakash v/s Laxminarayan and Others***[2]**.** He also relied upon a decision of the learned Single Judge in the

1 (2009) 2 SCC 582
2 (2014) 1 SCC 618

case of ***Shrikant Gopalkrushna Tare and Another v/s Vasant Nagorao Mahalley and Others***[3].

11. The learned counsel appearing for the respondents invited our attention to the reply filed by the respondents to the application at Exhibit – 5. He pointed out that in the said reply in paragraphs 2 and 3, the contentions raised by the appellant in the plaint were specially denied. Inviting our attention to the written statement at Exhibit – 31, he pointed out that the averments made in paragraph 4 of the plaint regarding the execution of the aforesaid documents are not only denied but it is specifically stated that the contents thereof are false. Inviting our attention to the plaint he urged that in paragraph 4 there is a specific averment that apart from Visar Pavati, authority letter and power of attorney, even an agreement was allegedly executed. He urged that the said agreement is not forthcoming. He contended that the contents of the said agreement have not been disclosed. Inviting our attention to the evidence of the Director of the Appellant, he urged that the payment of sum of Rs.35,350/- has not been established at all. Inviting our attention to the averments made in the plaint, he pointed out that even according to the case of the appellant,

3 2009(6) Bom. C.R.591

when the alleged Visar Pavati was executed, the provisions of ULC Act, were applicable to the suit lands and infact in the plaint, there are averments that after the suit lands were released from the provisions of the ULC Act, there were fresh negotiations for the sale of the suit lands. He submitted that taking the averments made in the plant as correct, a decree of specific performance could never have been passed. He has taken us through the various admissions by both the witnesses examined by the appellant. He urged that this Court should not interfere with the exercise of the discretion by the trial court under Section 20 of the Specific Relief Act, 1963.

12. We have carefully perused the record of the Suit and have considered the submissions. The first point which arises for consideration is whether the execution of the documents relied upon by the appellant were proved.

13. Firstly it will be necessary to consider whether Visar Pavati dated 13th July, 1993 has been proved. The Visar Pavati at Exhibit – 52 has been allegedly signed by Malhar, the deceased husband of the first respondent. The power of attorney at Exhibit – 43 appears to have been

executed by the deceased – Malhar for himself and also on behalf of the fourth respondent. At Exhibit – 44, a power of attorney executed by the fourth respondent appointing the said Malhar as Constituted Attorney has been produced. The authority letter at Exhibit – 47 is again allegedly signed by the said Malhar for himself and as the Constituted Attorney of the fourth respondent. The Visar Pavati is allegedly signed by Malhar for himself and as the Constituted Attorney of the fourth respondent. The first witness examined by the appellant deposed regarding the execution of the said documents by the said Malhar in his presence. Shamsundar Mohandas Darak, the second witness examined by the appellant is attesting witness to the said Visar Pavati at Exhibit - 52. He has identified the signature of the said Malhar on the said document. As stated earlier, the first respondent was examined as a witness by the respondents. She filed her affidavit-in-lieu of examination-in-chief at Exhibit – 92. We have perused the affidavit- in-lieu of examination-in-chief. When the said affidavit-in-lieu of examination-in-chief was filed, the document at Exhibit – 52 was already marked as an Exhibit. Paragraph 8 shows denial of the of the execution of the documents by the said Malhar. She contended that the authority letter has been fabricated by the appellant. In the cross examinations she was confronted with various documents. Firstly she was confronted with the document at Exhibit - 44 which is the power of attorney allegedly executed by the fourth respondent in favour of Malhar. The fourth respondent is incidentally her daughter. She merely stated that she was unable to identify whether there are signature of the fourth respondent and her husband - Malhar on the said document. When she was confronted with the signature on the said document which is allegedly of her son-in-law, she stated that she is unable to identify the said signature. Thereafter she was shown power of attorney at Exhibit – 43. She stated that :- *"There are signatures of my husband in all at three places on it. I cannot identify those signatures."* After she was confronted with the Visar Pavati at Exhibit – 52 she stated that : *"I cannot say whether my husband had put signature on said document on 13.7.1993 and I cannot identify the signature"*. When she was confronted with the documents at Exhibit – 47 which is the authority letter, she pleaded her inability to identify the signatures. It is pertinent to note that the first respondent did not deny the signatures but merely stated that she is unable to identify the same. As stated earlier, the fourth respondent has not stepped in the witness-box. It is in this context that the reply at Exhibit – 50 to the suit, the notice issued by the Advocate for the Defendant on 6$^{th}$ June, 1999 will have to be appreciated. In paragraphs 9 and 10 thereof, the execution of the authority letter and irrevocable power of attorney dated 24th September, 1992 have been denied. However in paragraph 8 which deals with the Visar Pavati, it is merely stated that the averments in paragraph 2 of the notice were not admitted and the Visar Pavati is not legal and valid as at the relevant time, the suit lands were governed by the provisions of ULC Act. Therefore, there is a great deal of substance in the submissions canvassed by the learned counsel appearing for the appellant that the execution of the said documents at Exhibit – 43, 44, 47 and 52 was proved by the appellant.

14. The second and the main question is whether a case is made out for grant of the discretionary relief of specific performance as prayed. It will be necessary to go back to the averments made in the plaint. In paragraph 4 of the plaint, the specific case made out by the appellant is that the suit lands were affected by the provisions of the ULC Act and therefore, the same were declared as lands held in excess of ceiling limits. The specific pleading is that the appellant offered to obtain sanction for a scheme of exemption in respect of the suit lands from the State Government and to implement the scheme. It is stated that as the appellant – company offered to get the scheme sanctioned from the State Government and to implement the same, there were talks between the

appellant on one hand and between the said Malhar and the fourth respondent on the other hand wherein it was agreed that the respondents shall allow the appellant to develop the suit lands for consideration calculated at the rate of Rs.2 lacs per acre. It is specifically alleged that not only the Visar Pavati, the authority letter and the power of attorney, but an agreement (Kararnama) was executed by the Malhar and the fourth respondent. At this stage it will be necessary to make a reference to the examination-in-chief of Mr.Kishor Chandak, a Director of the appellant. In the first paragraph it is stated that the suit lands were affected by the ULC Act and it was beyond the reach of Malhar to get the scheme finalized from the Government for development of the suit lands and therefore, he requested the appellant to implement the scheme. Though in the examination-in-chief, the said Kishor Chandak did not refer to the agreement, in the suit notice dated 13th May, 1999, in paragraph 2 it is specifically contended that apart from Visar Pavati, the authority letter and the irrevocable power of attorney, an agreement was executed. It is also important to note that in the plaint, in the suit notice as well as in the examination-in-chief of the said Kishor, it is contended that the possession of the suit lands was handed over to the appellant at the time of execution of the Visar Pavati. When we invited the attention of the learned counsel appearing for the appellant to this aspect and the recitals in the Visar Pavati, on instructions he fairly stated that there is no evidence to show that the appellant was placed in possession of the suit lands. The case made out by the appellant in the suit regarding the possession is thus admittedly incorrect. From the averments in paragraph 4 of the plaint and from the examination-in-chief of Kishor Chandak, it is crystal clear that the transaction of 13th July, 1993 of Visar Pavati was executed to enable the appellant to get the scheme of exemption sanctioned from the State Government as at that time, the suit lands were declared as lands held in excess of the prescribed ceiling limits. The reason for the execution of documents was to enable the appellant to get the scheme sanctioned and to implement the scheme by developing the suit lands. At this stage it is necessary to refer to the Visar Pavati at Exhibit – 52. The Visar Pavati does not refer to the appellant agreeing to get the scheme sanctioned and to implement the scheme by developing the suit lands but on the contrary, the clause – 5 provides for the execution of the sale deed by the respondents. The Irrevocable General Power of Attorney executed by the said Malhar specifically confers a power on the appellant to apply for exemption under Section 20 or Section 21 of the ULC Act. Going by the case pleaded by the appellant in the plaint as well as the examination-in-chief, the only conclusion which can be drawn is that the transaction executed on 13th July, 1993 was to enable the appellant to develop the suit lands after getting a scheme of exemption under the ULC Act sanctioned from the State Government.

15. It is again reiterated in the plaint that the appellant was ready and willing to implement the scheme under the ULC Act. It is alleged that though a demand was made to the respondents to comply with their part, they did not comply with their part. In paragraph 6 of the plaint it is contended that by order dated 2nd April, 1998, the Competent Authority under the ULC Act released the suit lands from the provisions of ULC Act. It is specifically pleaded that on 5th August, 1998 there was a meeting which was attended by Mr.Kishor Chandak, the husband of the fourth respondent, Dr.Vikas Patil and the first respondent in which there was a discussion regarding the sale of the suit lands. It is further pleaded that in the meeting it was decided to take a decision by September, 1998 and it was decided to hold a meeting in the month of September, 1998. It is pleaded that thereafter, the respondents did not convey their decision to the appellant.

16. Again going back to the deposition of Mr.Kishor Chandak, in examination-in-chief, he has stated that the Government had withdrawn the ceiling on the suit lands from 1st October, 1997 and there was no restriction on the execution of the sale deed in respect of the suit lands. He stated that as no sale deed has been executed in favour of the appellant, loss is being suffered by the appellant every year. It is interesting to note that in the suit there is no prayer for execution of the sale deed. The only prayer is for execution of proper agreement and power of attorney.

17. Surprisingly, in the suit notice dated 13th May, 1999 there is not even a reference to the alleged subsequent meetings allegedly held in August 1998 in which there was a discussion for sale of the suit lands. The notice is silent about the appellant's offer of obtaining an order of the State Government for sanction of the scheme under the ULC Act and implementing the same by developing the suit lands. Thus, if the averments made in the plaint in paragraph 4 and the first paragraph of the examination-in-chief of Mr.Kishor Chandak are taken as correct, the real transaction was of the development agreement in respect of the suit lands after obtaining an order of exemption under the ULC Act from the State Government. The appellant had agreed to obtain the order of exemption

from the State Government and to implement the same. In the plaint and in the evidence, there is a further statement that in the year 1998, there was an order passed by the Competent Authority holding that he ULC is not applicable to the suit lands. The said order is of 2nd April, 1998. As stated earlier, the case made out in the plaint that on 5th August, 1988 there was a meeting held between the parties wherein the issue of sale of the suit lands was discussed. Thus going by the averments made in the plaint, even according to the appellant, after the ULC Act ceased to apply to the said lands, there was a meeting held to discuss the terms and conditions of sale of the suit lands. To reiterate, there is no prayer in the plaint for the execution of a sale deed. The prayer is for execution of an Agreement and a Power of Attorney.

18. There is one more aspect of the matter. Though the specific case made out right from the inception by the respondents was that the said Malhar did not receive the consideration as stated in the Visar Pavati at Exhibit - 52, there is absolutely no evidence adduced by the appellant to show that the two cheques in the sum of Rs.10,000/- were encashed either by Malhar or by the fourth respondents. In the cross examination, on this aspect of encashment of cheques, the witness Kishor Chandak

stated that the cheques may not have been deposited within time. He further stated that Malhar returned two cheques of Rs.10,000/- during his life time. There was a specific question asked whether he was ready to give proof showing that Malhar encashed the two cheques in the sum of Rs.10,000/- during his life time. The answer was if the cheques are honoured, the amount may be debited. In the further cross, he stated that he does not remember how much amount the appellant - company had given to Malhar during his life time. He stated that a sum of Rs.30,000 to 35,000/- might have been given to him. He stated that Malhar died on 10th November, 1994. We find that there is no evidence on record to establish the payment of consideration by the appellant to the said Malhar as pleaded in the plaint.

19. In the cross examination, a question was asked to Malhar whether in July 1993, the appellant has not taken a decision of purchasing the suit lands, the answer was at that time the lands could not be purchased and it could be purchased after developing the lands as per the ULC.

20. Thus, as narrated earlier, taking the case of the appellant – company as correct, the transaction of July 1993 was to enable the

Appellant to get a scheme under the ULC sanctioned and to develop the suit lands. The said transaction, admittedly, is not capable of being executed as with effect from 1st October, 1997 ULC Act ceased to apply to the suit lands. Moreover, the appellant failed to prove the payment of consideration under the Visar Pavati at Exhibit – 52.

21. It is pertinent to note that even according to the case of the appellant from 13th July, 1993 till 25th June, 1998, not even a letter was addressed by the appellant calling upon the respondents to perform their part of contract. Going by the averments made in paragraph 6 only after the ULC Act ceased to apply to the suit lands that on 25th June, 1998 and 6th July, 1998 according to the case of the appellant letters were sent to the respondents. Thus, even going by the case of the appellant, though there was a specific power of attorney executed by Malhar, no steps whatsoever seems to have been taken by the appellant to get the scheme of exemption sanctioned from the State Government. The case made out in the plaint that if the appellant was placed in possession of the suit lands turns out to be a false case. Thus, it appears that even the suit notice was issued only after the ULC ceased to apply to the suit lands. Thus there is complete inaction on the part of the appellant on the basis of the Visar Pavati dated

13th July, 1993 till 25th June, 1998. The readiness and willingness to perform its part has not been shown by the appellant. Though in paragraph 4 of the plaint, it is alleged that the appellant had called upon the respondents earlier to perform their part of the contract, there is no evidence in support of the said plea. Infact in the examination-in-chief of Mr.Kishor Chandak, he has not specifically come out with such a case with details. Surprisingly, he came out with the case that after the execution of the Visar Pavati, the appellant started development work on the suit lands. Thus, the conclusion is that the transaction which took place in July, 1993 could not have been enforced on the date of the suit as the transaction was to get the scheme of ULC sanctioned from the State Government and thereafter, to develop the suit lands.

22. Apart from the aforesaid facts, the conduct of the appellant will have to be considered. There is complete inaction on the part of the appellant till June 1998. The appellant failed to prove the payment under Visar Pavati dated 13th July, 1993. Though the appellant claims that the power of attorney was executed by Malhar and in turn the fourth respondent had executed a power of attorney in favour of Malhar, no steps were taken by the appellant on the basis of the power of attorney.

Moreover, the appellant came out with a false case that it was placed in possession of the suit lands. Apart from the fact that the original transaction as reflected from the document at Exhibit – 52 is not capable of being legally enforced, the question is whether the Court should exercise discretionary power under Section 20 of the Specific Relief Act, 1963. Considering the conduct of the appellant which is reflected from the findings recorded above, in our opinion, this is not a fit case where a discretion could be exercised in favour of the appellant.

23. As stated earlier, the prayer in the suit is for execution of an agreement and power of attorney. The learned counsel appearing for the appellant tries to contend that the relief can be molded by directing the respondents to execute a sale deed. Going by the averments made in the plaint, in August, 1998 there was a meeting between the parties to discuss the transaction of sale but the said negotiations could not be materialized. Therefore, by no stretch of imagination, the prayer of passing a decree for execution of the conveyance can be granted.

24. In view of what we have held above, it is not necessary to consider the issue of validity of the stamp paper on which Exhibit – 52 has

been written.

25. As far as prayer in the alternative is concerned, apart from the bald statements in the plaint and in the examination-in-chief that the appellant has suffered loss to the extent of Rs.1,86,91,650/-, there is absolutely no evidence adduced to prove the said loss. Infact in the cross examination Mr.Kishor Chandak admitted that even particulars of the said amount have not been set out in the plaint.

26. Though, we are not in a position to concur with all the findings recorded by the learned Trial Judge, for the reasons which are recorded above, no relief could have been granted to the appellant in the suit. Therefore, the appeal must fail and we pass the following order :-

**ORDER**

i) The appeal is dismissed with costs.

**(REVATI MOHITE DERE,J.)** **(A.S. OKA,J.)**