

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CIVIL JURISDICTION
FIRST APPEAL NO.170 OF 1992
WITH
CIVIL APPLICATION NO.697 OF 1992
IN
FIRST APPEAL NO.170 OF 1992

Bai Kahli w/o. Chamar Dhodia ... Appellant/Applicant
(Org.Deft.No.1)
vs.
1. Smt. Josodaben Bhailal Waghela
2. Beekay Textile Mills Limited ... Respondents
(Org.Plfff & Deft.No.2)

Mr.Suhas Deokar i/by Mr.C.G.Gavnekar for the Appellant.

None for the Respondents.

CORAM : MRS.MRIDULA BHATKAR, J.
DATE : 03rd SEPTEMBER, 2015.

P.C.

. This appeal is directed against the Judgment and order dated 28th October, 1991 passed by the learned Civil Judge, Dadra & Nagar Haveli, Silvassa, thereby partially decreeing the Regular Civil Suit No.16 of 1987.

2. The Appellant is the original Defendant No.1 and Respondent No.1 is the original Plaintiff. The Respondent No.2 is

Defendant No.2 in the original suit. In order to maintain consistency, the parties are referred to herewith by their original status in the suit. The original Plaintiff filed suit for specific performance of contract against the Defendants and alternatively she claimed for damages against the Defendant No.1/Appellant. The Defendant No.1/Appellant is a owner of a land survey No.106/2, admeasuring 27 Acres. It was an agricultural land. The Defendant No.1/Appellant agreed to sell the said land to the original Plaintiff in the year 1981, pursuant to which she entered into an agreement of sale dated 16th November, 1981 for a total consideration of Rs.29,700/-. The original Plaintiff pursuant to that agreement paid amount of Rs.25,000/- out of Rs.29,700/- to the Defendant No.1/Appellant. Though Defendant No.1/Appellant had accepted the money entered into the Sale-deed dated 28th April, 1983 with the Defendant no.2 about the said land. The possession of the land was also handed over to the Defendant No.2. As the Sale-deed of 1983 was illegally executed by the Defendant No.1/Appellant and the Defendant No.2, the Plaintiff filed this suit for specific performance of contract. Alternatively, she claimed damages to the tune of Rs.22,000/- and recovery of Rs.25,000/- which was paid by the original Plaintiff to the Defendant No.1/Appellant. Thus, the total

claim was for Rs.47,000/- against the Defendant No.1/Appellant. The Defendant No.1/Appellant though appeared, she did not file written statement. However, tendered evidence of other witnesses and perused the written arguments. The Defendant No.2 who was a main contestant as he was in possession of the suit property, filed written statement and denied the claim of the Plaintiff and claimed that he is a *bonafied* purchaser from the original landlord i.e. the Defendant No.1/Appellant and he had paid the consideration for the said amount and has got the land approval through registered Sale-deed. The learned Judge framed the issues and thereafter evidence of the parties was tendered. The learned Judge after considering the evidence, documents as well as oral arguments dismissed the suit for the specific performance of contract, however allowed the alternate claim for damages and recovery against the Defendant No.1/Appellant.

3. The learned counsel for the Appellant has submitted a main contention in the Appeal is that the learned Judge has committed error in granting compensation of Rs.2,00,000/- when the damages of Rs.22,000/- were asked by the original Plaintiff himself. He submitted that the learned Judge ought not to have granted compensation which

was more than the amount claimed. He further submitted that the meaning of the word 'Compensation' is 'giving an equivalent or substitute of equal value'. The learned counsel for the Appellant further submitted that the learned Judge ought not to have considered the provisions under the Contract Act and also the Specific Performance Act, while granting this excess amount of compensation to the original Plaintiff. He submitted that the Appeal should succeed. He further pointed out that the Respondent No.1/original Plaintiff did not appear in the Appeal, though served and under these circumstances, the order passed by the learned Judge of the Civil Court in respect of excess damages is to be set-aside.

4. None appeared for the Respondents.

5. The Civil Court has power to award compensation in certain cases under section 21 of the Specific Performance Act and also under Section 73 of the Indian Contract Act, 1872. Under Contract Act, the Court is vested with the power for granting compensation for loss or damages caused by the breach of contract. In a suit for the specific performance under the Specific Relief Act,

primary burden lies on the Plaintiff to prove that there was a valid agreement.

6. In the present matter, after going through the evidence of the parties, it appears that the original plaintiff could prove successively that he had entered into a legal, valid contract with the Defendant No.1/Appellant on 16th November, 1981 and has paid an amount of Rs.25,000/- out of Rs.29,700/-. The Defendant No.1/Appellant in her written arguments has admitted that there was a contract between the original Plaintiff and the Defendant No.1/Appellant. However, subsequently the Defendant No.1/Appellant had entered into a second contract with the Defendant No.2 on 28th April, 1983 and the compensation was handed over to the Defendant No.2. Thus, there was a breach of contract by the Defendant No.1/Appellant with the original Plaintiff. However, the learned Judge has dismissed the entire evidence and also the further developments and considered that the Defendant No.2 is a *bonafied* purchaser of the land by registered Sale-deed and therefore the suit on the point of the Specific Performance of Contract failed. However, the learned Judge has rightly decreed the suit on the point of repayment of the amount of

Rs.25,000/-, which was paid by the original Plaintiff to the Defendant No.1/Appellant .

7. The challenge for the amount claimed for damages/compensation is of Rs.22,000/- which was increased to the amount of Rs.2,00,000/- by the Court. The section 21 of the Specific Relief Act and Section 76 of the Contract Act, both sections though state that the Court has power to grant appropriate compensation in the case of breach of contract, in the present case it is to be noted that the suit land in the year 1981 was valued for Rs.29,700/-. The suit was decided 10 years thereafter i.e. in the year 1991. The trial Court has therefore considered the time gap of 10 years and the increased value of the land. So also while computing the compensation, it is not necessary for the Court to confine only to pecuniary loss but also the Court can consider the other factors i.e. the loss of opportunity or the trouble taken by the plaintiff to follow the suit, so also the expenses paid for the suit. Considering this, the learned Judge has awarded compensation of Rs.2,00,000/- payable by the Defendant No.1/Appellant to the original Plaintiff. Therefore, I am of the view that the amount is not either arbitrary or exorbitant. The amount of

Rs.2,00,000/- after 10 years of the agreement is reasonable and this amount was rightly given when the suit for the specific performance was failed. Moreover, in section 21 of the Specific Relief Act and section 73 of the Contract Act, there is no such ceiling put or any specific directions given to the Court as to the above, which the Court cannot grant compensation or damages. Under these circumstances, I am of the view that the learned Judge has rightly quantified the amount of damages.

8. Hence, the Appeal is dismissed alongwith Civil Application.

(MRS.MRIDULA BHATKAR, J.)