

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL ST. NO.6140 OF 2005
WITH
CIVIL APPLICATION (C.A.S.) NO.1129 OF 2009

*(Pandurang Tukaram Patil (deceased) thr. his Lrs. Smt. Bhagiratibai Pandurang Patil
and others Vs. Krishnadeo Prabhu Bodake and others)*

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.

Court's or Judge's orders.

Shri S.G. Deshmukh, Advocate for Appellant.

CORAM: R.K. DESHPANDE, J.

DATE: 20th JULY, 2015.

Special Civil Suit No.28 of 1986 for specific performance of contract was partly decreed by the trial court on 31.10.1992. The claim for specific performance was rejected, but the trial Court directed the refund of earnest money of Rs.30,000/- to the plaintiff along with interest at the rate of Rs.12% per annum from the date of the suit till its recovery. Regular Civil Appeal No.71 of 2001 preferred by the plaintiff was dismissed by the Lower Appellate Court on 30.09.2004. The plaintiff is therefore, before this Court against the concurrent finding of fact of dismissal of the suit for specific performance of contract by holding that the plaintiff has failed to establish readiness and willingness to perform his part of contract.

During the pendency of the appeal for admission, the respondent No.7 expired and therefore, the Civil Application No.1129 of 2009 was filed for bringing his legal heirs on record. After condoning the delay of 563 days

caused in filing such application, this application was dismissed in default on 14.09.2011 and therefore, Civil Application No.1781 of 2013 was filed for restoration of second appeal with a prayer to condone the delay of 3 years and 71 days. Civil Application No.663 of 2009 was filed for bringing the names of legal representatives of the original appellant – plaintiff on record with a prayer to condone 83 days delay caused in filing such application. This application was dismissed in default and hence, Civil Application No.662 of 2009 was filed for restoration along with condonation of 3 years and 28 days caused in filing application. Civil Application No.545 of 2010 is for substitute service and Civil Application No.1780 of 2013 is filed to restore Civil Application No.663/2009 along with the prayer for condonation of 2 years and 195 days caused in filing such application.

One Prabhu Godke was the owner of the property and upon his death, he was survived by three sons Krishnadeo, Ganpati and Vishwanath. Ganpati expired hence, his widow Trivenibai along with Krishnadeo entered into an agreement to sale the suit property to the plaintiff for total consideration of Rs.90,000/- in the month of June, 1984. On 05.11.1985 Krishnadeo and Trivenibai issued a notice calling upon the plaintiff to get the sale-deed executed in respect of 2/3rd portion of the property. In response to it the plaintiff has stated in his reply dated 21.11.1985 that he is prepared to pay balance amount of consideration of Rs.60,000/- provided the charge on the property held by the Bank is removed and that the name of the Dhondiba the defendant No.3 who was the son of Vishwanath is removed

from the record of rights. This was not done and therefore, the suit was filed on 07.03.1986. Prior to that on 08.01.1986 the defendant Nos.1, 2 and 3 sold the property by registered sale-deed to the defendant Nos.4 to 8.

Undisputedly, the contract for entire property has not be proved. But it seems that the contract in respect of 2/3rd portion of the property was established for total consideration of Rs.90,000/- out of which Rs.30,000/- was paid by way of earnest money. The learned counsel for the appellant could not point out any evidence on record or even a stand of the plaintiff that there was an agreement between the parties that the vendor shall remove the charge of the property and the name of the defendant No.2 in respect of the rights of the suit property. In the absence of any such evidence brought on record, no substantial question of law arises by this Court in respect of the concurrent finding of fact. That the plaintiff has failed to establish his readiness and willingness to perform his part of contract. The second appeal is therefore, liable to be dismissed.

The civil application is allowed. The amendment be carried out within a period of two weeks from today.

In view of the dismissal of the Second Appeal, none of the applications survive the same stands disposed of.

JUDGE