

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

SECOND APPEAL NO.446 OF 2012

Vithoba Vishnu Bhujbal ... Appellant

V/s.

Ramdas Murlidhar Bhujbal & Anr. ... Respondents

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Mr. N. R. Bubna, Advocate for the Appellant.

Mr. V. B. Tapkir, Advocate for the Respondents.

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CORAM : R.K. DESHPANDE, J.

DATED : JULY 28, 2015.

P.C.

The trial Court passed a decree for specific performance of contract in Special Civil Suit No.104 of 2000 on 9th August, 2006. This was the subject matter of challenge in the Civil Appeal No.30 of 2007, which is dismissed by the Lower Appellate Court on 29th September, 2009. The original defendant is, therefore, before this Court in this Second Appeal.

2 The decree is for specific performance of contract dated 28th August, 1994 at Exhibit - 55. The total consideration

agreed was of Rs.1,20,000/- and the sale - deed was required to be executed within a period of two months there from i.e. on or before 28th October, 1994. The amount of Rs. 40,000/- was paid by way of earnest money at the time of execution of the agreement and thereafter an amount of Rs.34,000/- was paid on 22nd August, 1995, and an amount of Rs.25,000/- on 30th November, 2011. The balance amount was directed to be deposited by the trial Court for getting the sale - deed executed in terms of the decree passed.

3 The Courts below have recorded the finding of fact that the agreement has been proved. The plaintiff has established the payment made on 28th August, 1994, 22nd August, 1995 and 30th January, 1995. The Courts have also held that the plaintiff has established readiness and willingness on his part to perform the contract. These findings of fact do not give rise to any substantial question of law.

4 The learned counsel for the appellant has urged that the suit in question was barred by limitation. The limitation is governed by Article 54 of the Limitation Act, which runs as under:

54	<i>For specific performance of a contract</i>	<i>Three years</i>	<i>The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.</i>
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According to the learned counsel, the limitation would start running from date fixed for execution of the sale deed i.e. 28th October, 1994 and the suit filed on 20th January, 2000, was therefore, barred by the period of limitation of three years. He submits that issuance of notices by the plaintiff on 29th March, 1997 and 27th December, 1999, shall not extend the period of limitation beyond three years from 28th October, 1994.

5 No doubt, that the agreement contains the clause fixing the date for execution of sale-deed within a period of three years which expired in the present case on 28th October, 1994. The defendant has accepted further payments made on 22nd August, 1995 and 30th November, 1995. Hence, the date fixed for performance of contract has lost its significance. In the facts and circumstances of the present case, the period of limitation starts running from the date when the plaintiff gets the notice that the performance is refused. The first notice calling

upon the defendants to execute the sale-deed was issued on 29th March, 1997. Even if the period of three years is counted from this date, taking it to be the date of refusal to perform the part of the contract by the defendant, the suit filed on 20th January, 2000, shall be within a period of limitation. No substantial question of law arises on this count.

6 The learned counsel for the appellant has urged that the condition in the contract was to execute the sale-deed upon obtaining the permission from the Rehabilitation Officer. The Appellate Court, therefore, ought to have made the decree subject to fulfillment of this condition. The learned counsel for the plaintiff has invited my attention to paragraph 24 of the Judgment delivered by the Appellate Court which in clear terms states that the decree for specific performance of contract becomes executable upon obtaining such permission from the appropriate Authority. Hence, what is made implicitly in the order of the Appellate Court can be expressed by making the decree passed by the Appellate Court, subject to such conditions.

7 In view of the above, the decree passed by the Courts below is modified and it is made subject to grant of permission of

the Rehabilitation Officer, as contained in the agreement. The decree shall not become executable, unless such permission is obtained. The plaintiff shall be at liberty to take all such steps to get the permission from the Rehabilitation Officer and, thereafter to file execution proceedings to execute the decree. The Second Appeal is thus allowed in the aforesaid terms.

8 At the request of the learned counsel for the appellant, the following directions are issued :

- (i) The parties shall approach the Rehabilitation Officer for obtaining the permission;
- (ii) The Rehabilitation Officer shall decide the application made to it, within a period of six months from the date of presentation of such application.

JUDGE