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SA-63-2014
(sr. no.5)

Monday, 9 February, 2015

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 63 OF 2014
ALONGWITH
CIVIL APPLICATION NO. 146 OF 2014
IN
SECOND APPEAL NO. 63 OF 2014

Shri. Satyawan S. Khilare
: V/S :

.....Appellant

Shri. Abdul Kadar Babasaheb Mujawar

.....Respondent

* * * * *

Mr. Priyal G. Sarda, Advocate for the appellant.

Mr. Sarang S. Aradhya, Advocate for the respondent.

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Coram :- Smt. R.P. SondurBaldota, J.

9th February, 2015.

P.C. :-

1). The appellant is the original defendant who, by this Second Appeal, challenges the concurrent finding of facts and law of the Courts below.

2). The respondent had filed suit for specific performance of agreement for reconveying the suit property. By the registered sale-deed dated 28th August, 2002 the respondent had sold the suit property

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to the appellant. On the same day, another agreement was executed between the parties pursuant to which, on the respondent refunding the amount of Rs.1,40,000/-, the appellant was to reconvey the suit property to the respondent. The respondent had, by his notice dated 10th August, 2004, called upon the appellant to accept the amount of Rs.1,40,000/- and to execute the deed of reconveyance within a period of 8 days. When the appellant failed to comply with the request, he filed suit for specific performance. By the judgment and order dated 30th January, 2010, the trial Court decreed the suit holding that the respondent was ready and willing to perform his part of contract by paying Rs.1,40,000/- to the appellant.

3). Mr. Sarda, the learned Advocate appearing for the appellant submits that respondent no.1 was infact not ready and willing to perform his part of the contract. He did not offer at any point of time to deposit that amount in the Court or to make payment to the appellant. Being aggrieved by the judgment and decree of the trial Court, the appellant had approached the District Court. However, in the memo of appeal there is no challenge to the finding of the trial Court that the respondent was ready and willing to perform his part of the contract. Consequently, the Appellate Court did not have to consider the aspect.

4). Mr. Sarda, then sought to contend that the issue whether the respondent is ready and willing to perform his part of the contract would

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go to the root of the matter and therefore it was necessary for the Appellate Court to suo-moto specifically frame a point of determination on the question and also decide it. There can be no substance in the submission of Mr. Sarda. The question, whether the respondent was willing to perform his part of the contract did not arise for consideration of the appellate Court for the simple reason that, the finding thereon was not subject of challenge in the memo of appeal. He had thus accepted the finding and hence cannot be permitted to challenge the same before this Court. Hence, there is no substance in the appeal. Also, there is no substantial question of law arising for consideration of the Court. The Second Appeal is therefore dismissed.

5). At the request of Mr. Sarda, the ad-interim order is extended for a period of 6 weeks from today.

(SMT. R.P. SONDURBALDOTA, J)