

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL (LODGING) NO.676 OF 2015
ALONG WITH
NOTICE OF MOTION (LODGING) NO.2508 OF 2015
IN
SUMMONS FOR JUDGMENT NO.43 OF 2013
IN
SUMMARY SUIT NO.324 OF 2013

Dinesh Arjan Ramnani & Ors.		Appellants / Org. Defendants
V/s.		
Pratima Prakash Wagh & Ors.		Respondents / Org. Plaintiffs

Ms. Dipti Panda a/w. Mr. Rajendra Jain, i/by
M/s. Thakore Jariwala & Associates, for the
Applicants/Appellants/Original Defendants.

Mr. Rohan Cama a/w. Mr. Gobinda Mohanty, i/by
M/s. Mohanty & Associates, for the
Respondents/Original Plaintiffs.

CORAM : V.M. KANADE &
DR. SHALINI PHANSALKAR-JOSHI, J.J.

DATE : 23RD SEPTEMBER, 2015.

P.C. :

1. Leave to amend is granted in terms of the Draft Amendment.
Amendment to be carried out forthwith.

2. Heard learned counsel for the Appellants and learned counsel for the Respondents.

3. Appellants/Original Defendants are aggrieved by the order passed by the learned Single Judge of this Court refusing to grant unconditional leave, as prayed by the Appellants in the Summons for Judgment taken out by the Respondents/Original Plaintiffs. By the said order, the learned Single Judge was pleased to direct the Appellants/Original Defendants to deposit the principal sum of Rs.79,36,700/- within six weeks from the date of the order.

4. Brief facts of the case are stated as under :

. Plaintiffs/Respondents and the Defendants/Appellants entered into an Agreement of Sale, in which it was agreed that the Plaintiffs, pursuant to a Memorandum of Understanding dated 17th October, 2001, agreed to purchase from the Defendants a piece of agricultural land for a total consideration of Rs.1,44,68,467/-. Plaintiffs paid to the Defendants part consideration of Rs.1,01,06,700/-. The balance consideration, however, has not been paid and the Plaintiffs were unable to pay the balance

amount. Therefore, as was agreed between the parties, the MOU was terminated and a Deed of Surrender was executed. It was agreed that the balance amount shall be paid in six installments, as per the Schedule mentioned in the said Deed of Surrender. According to the Defendants, if Plaintiffs fail to pay the balance consideration, as per Schedule mentioned in the Deed of Surrender, the Defendants would file a Summary Suit claiming principal sum of Rs.79,36,700/- with interest @ 18% p.a.

5. The learned counsel appearing on behalf of the Appellants submitted that the Letter of Confirmation was not produced. The Deed of Surrender was notarized, but it did not reflect serial number and register number and, therefore, the said document could not be relied upon. Secondly, it was submitted that the Suit itself was barred by limitation.

6. We have perused the impugned order. The learned Single Judge has considered all aspects of the case including the order passed by the Income Tax Appellate Tribunal, in which the Defendants/Appellants herein had clearly admitted the transaction between the Appellants/Defendants and the Respondents/Plaintiffs and repayment of the principal sum to the Respondents/Plaintiffs. The learned Single Judge has relied on the said observations and further it was observed that a fresh period of limitation

will have to be computed from the date of acknowledgement from when the liability was taken.

7. We are, therefore, not inclined to interfere with the order passed by the learned Single Judge.

8. The Apex Court in the case of ***Wander Ltd. & Anr. Vs. Antox India P. Ltd., reported in 1990 (Supp) SCC 727***, in para 14, has observed as under :-

“14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant of refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably

possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage, it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner, the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles, Gajendragadkar, J. in Printers (Mysore) Private Ltd. Vs. Pothan Joseph, (1960) 3 SCR 713, (SCR 721),

“..... These principles are well established, but as has been observed by Viscount Simon in Charles Osenton & Co. Vs. Jhanaton, 1942 AC 130, '.... the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case'.”

The appellate judgment does not seem to defer to this principle.”

9. We are of the opinion that the findings given by the learned Single Judge are not perverse. Therefore, we are not inclined to interfere with the same. It is clarified that the observations made by the learned Single Judge are of a prima facie nature and, therefore, the learned Single Judge shall hear the Suit and decide the same on merits and in accordance with law. The learned Single Judge shall not be influenced by the observations made in this order.

10. Appeal is, therefore, dismissed.

11. Time to deposit the aforesaid amount is extended by a period of six weeks.

[DR. SHALINI PHANSALKAR-JOSHI, J.]

[V.M. KANADE, J.]

CERTIFICATE

**Certified to be true and correct copy of the
original signed Order.**