

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

Second Appeal No.411/2012
(Waman Balaji Bangade .vs. Smt. Meerabai Warlu Chakbandalwar and
ors.)

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

Court's or Judge's orders.

Mr. R.S. Kalangiwale, Advocate for Appellant.

Mr. M.P. Khajanchi, Advocate for Respondents 1 to 7.

CORAM : A.V. Nirgude, J.

DATED : April 07, 2015.

Heard.

This appeal challenges concurrent findings of the Courts below that the appellant/plaintiff could not prove his case for specific performance of suit contract. The learned Judge of the lower appellate Court held that the appellant/plaintiff could not show readiness and willingness to perform his part of the contract continuously. This conclusion was drawn because one of the conditions mentioned in the agreement enjoined appellant/plaintiff to pay Rs.1000/- on or before 15.7.1972. The appellant/plaintiff could not prove this payment and so the learned Judge of the appeal Court held that due to this breach of the condition of the agreement, readiness and willingness to perform his part of the contract could not be proved. The learned counsel for the appellant tried to assert that this finding recorded by the learned Judge of the lower appellate Court is perverse. According to him the appellant/plaintiff and his witness coherently stated in their depositions that

amount was paid as per the agreement and such evidence had gone unchallenged. On perusal of cross-examination of the appellant/plaintiff, it is found that this statement was denied and challenged in the cross-examination. The Courts below also referred to certain other pleadings of the appellant/plaintiff for holding that his case in respect of payment of Rs.1000/- in other pleadings was different. Due to such inconsistency in the pleadings and evidence, the learned Judge of the lower appellate Court rejected the case of the appellant/plaintiff. The appeal does not give rise to any substantial question of law. Dismissed.

JUDGE

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