

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

FIRST APPEAL NO.749/2014

Narendra s/o Parasram Patle and another

...Versus...

Hetram s/o Gujoba Madarkar and another

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

Court's or Judge's orders

Shri N.G. Solao, Advocate for appellants

CORAM : Z.A. HAQ, J.

DATE : 19.01.2015

Heard Shri N.G. Solao, the learned Advocate for the
appellants.

ADMIT.

The appellants shall file private paper-book within a
period of six months from today, failing which the appeal shall
stand dismissed without further reference to this Court.

CIVIL APPLICATION F. NO.2582/2014

By this application, the appellants seek stay of
operation of the impugned judgment and decree.

By the impugned judgment and decree, the trial Court
has directed the appellants to pay Rs.9,00,000/- with interest
@ 6% per annum, the interest being calculated from 9.4.2010, till

the amount is paid to the respondents/plaintiffs. The learned trial Court has rejected the claim of the respondents/plaintiffs for specific performance of the agreement, however, considering the material on record, the direction to repay the amount with interest has been given.

Shri Solao, the learned Advocate for the appellants has not been able to point out that the agreement of sale included any term, which entitles the appellants to forfeit the amount paid by the respondents/plaintiffs. The learned Advocate has relied on the judgment given by the Hon'ble Supreme Court in the case of *Shree Hanuman Cotton Mills and another...Versus...Tata Air Craft Ltd.*, reported in *AIR 1970 SC 1986*, particularly paragraph no.24 thereof and has submitted that if there is default on the part of the purchaser to pay the balance amount and to get the sale-deed executed as per the terms of the agreement of sale, then the vendor has right to forfeit the amount paid by the purchaser at the time of agreement.

However, considering the facts of the present case, *prima facie*, I am of the view that the appellants are not entitled for the interim order as sought by the appellants.

Civil Application is dismissed.

JUDGE

Wadkar