

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

920 CIVIL APPLICATION NO. 2674 OF 1993
IN SA/369/1992 WITH CA/2771/1993 IN CA/2674/1993

G B MORE
VERSUS
V D PATTEWAR & ANR

Shri. S.S. Pawar, Advocate, for applicant.

CORAM: T.V. NALAWADE, J.

DATE : 3rd AUGUST 2016

ORDER:

1) The application is filed for restoration of Second Appeal No.369/1992 which is dismissed by this Court by order dated 20-8-1992 and for condonation of delay, if any, caused in filing restoration application. Heard learned counsel for the appellant.

2) The suit was filed by the present appellant for relief of specific performance of contract of sale of agricultural land. The suit was contested by defendants by filing written statement. Defendant No.2 contended that defendant No.1 was not the owner of the suit property, house. There was agreement of sale between defendant

No.1 and the plaintiff but sale deed was executed by defendant No.1 in favour of defendant No.2 already so the said defence was taken. Defendant No.2 contended that defendant No.1 was simpleton person, he was addicted to bad vices and he used to sign on any document in favour of third parties and there is possibility that in that way the document was executed in favour of the plaintiff.

3) Issues were framed on the basis of aforesaid pleadings. The Courts below held that there was agreement of sale and part of consideration, Rs.9,000/- out of Rs.13,500/- was already paid on the date of the agreement and some amount was paid subsequently to make it Rs.10,567/-. However, relief of specific performance was refused by holding that plaintiff failed to prove that he was ready and willing to perform his part of contract. The trial Court had given decree of return of the aforesaid amount taken from plaintiff by defendant No.1. The first appellate Court has granted interest at the rate of 6% per annum on aforesaid amount by partly allowing the appeal of the plaintiff.

4) It appears that the decision of the first appeal was challenged in 1992 but steps were not taken to bring legal representatives of original plaintiff on record. Civil application filed for condonation of delay to bring legal representatives on record was allowed in the year 2008 by condoning the huge delay by this Court. Those legal representatives were brought on record in civil application in the year 2008. Present Civil Application No.2674/1993 filed for restoration was then dismissed for non prosecution. Application was moved for restoration of that application with condonation of delay of 322 days. This Court again condoned the delay and restored the present civil application.

5) The aforesaid circumstances are sufficient to infer that no interest was shown to prosecute the matter at any time by the appellant, original plaintiff. The findings given by the Courts below on the point of readiness and willingness are against the plaintiff and they are the findings of facts. As there are concurrent findings this Court holds that there is no arguable case in the appeal itself and so nothing can be achieved by

restoring the appeal dismissed in the year 1992. In the result, the application stands rejected. Other pending civil application is disposed of.

Sd/-
(T.V. NALAWADE, J.)

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