

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

25 SECOND APPEAL NO. 225 OF 2016

KAPURCHAND SHANKAR PAWAR

VERSUS

RAMCHANDRA RAMKRISHNA CHAVAN

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Mr. S.S.Bora, Advocate for Appellant.

Mr. P.S.Shendurnikar, Advocate for R – 1 to 3.

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CORAM : T.V.NALAWADE, J.

DATE : 18th JULY, 2016

ORDER :-

. The Appeal is filed to challenge the Order made in C.A. No. 99 of 2015 which was pending in the Court of the District Judge – 4, Jalgaon. The said proceeding was filed for condonation of delay caused in filing First Appeal against the Judgment and decree of R.C.S. No. 41/2006 which was pending in the Court of the Civil Judge [Jr.Division], Yerandol. The trial Court has given decree of specific performance of contract of sale in favour of the present respondent/plaintiff and the first appellate Court has refused

to condone the delay of 3027 days. Heard both sides.

2. It is the case of the plaintiff that under registered agreement of sale dated 12/02/1999, defendant agreed to sale 1 H. 80 R. portion, which is western portion of land G.No. 435/4 situated at Nagduli, Tahsil Yerandol, district Jalgaon. According to the plaintiff, the agreed consideration was Rs. 98,000/- and the amount of Rs. 92,000/- was paid till the date of the agreement. It is contended that permission was necessary under the provisions of the Bombay Tenancy Act and so after obtaining the permission by the owner, defendant, sale deed was to be executed by the defendant in favour of the plaintiff. It is contended that the defendant was indebted and the amount of Rs. 52,000/- which was due to one co-operative society of Warkhed was directly paid by the plaintiff and that amount was shown in the agreement. It is contended that on the date of the transaction, the consideration of Rs. 40,000/- was paid in cash to the defendant.

3. It is the case of the plaintiff that the defendant did not take steps to obtain the permission and he avoided to execute the sale deed under one or the other pretext. It is

contended that ultimately notice was issued on 09/01/2006 and defendant was asked to execute the sale deed. It is contended that defendant did not accept the notice and notice was returned as 'refused'. The Suit came to be filed on 09/03/2006.

4. The defendant appeared in the Suit through Advocate. Vakalatnama was filed and even address memo was filed for the defendant. But, then he did not file Written Statement and did not remain present in the Court to contest the matter. Necessary orders in that regard were made. The plaintiff gave evidence and he proved the aforesaid contentions by examining himself and producing the record like registered agreement, record of notice, etc. The Suit came to be decided on 06/03/2007.

5. In the application filed for condonation of delay, present appellant contended that he was working as labour and for cutting sugarcane he used to remain out of station. It is contended that he was not aware of filing of the Suit and no suit summons was served on him. He contended that only when he learnt from one relative viz. Nimba Pawar that the suit field was sold in the Court proceeding, he approached

the Advocate and then he filed the Appeal along with delay condonation application. He contended that even the notice of the execution proceeding was not served on him.

6. The District Court has considered the relevant record and has held that the defendant/present appellant was duly served with suit summons and also notice of executing proceeding. The District Court has refused to use the discretion in favour of the appellant by holding that no sufficient cause is shown.

7. Learned counsel for the appellant submitted that nothing could have been achieved by the present appellant by not remaining present before the trial Court and by not filing Appeal in time. Learned counsel submitted that there is no convincing record of service of suit summons or notice of execution proceeding and so the contentions made by the present appellant ought to have been accepted by the District Court.

8. The submissions made by the learned counsel for the respondent/plaintiff and the record show that there is no force in the aforesaid contentions made on behalf of the

present appellant. In the Suit, the address given in the document of agreement was mentioned which is of Khedgaon. The notice was sent to the defendant on the same address through registered post and there is endorsement of post office that the defendant refused to take notice. The notice of the execution proceeding was served on the father of the defendant. In the application filed for condonation of delay also the same address was mentioned by the present appellant. Further, one Advocate had filed appearance for the appellant in the trial Court. In view of these circumstances, it was necessary for the appellant to explain all the aforesaid circumstances. Present appellant failed to do so.

9. Learned counsel for the appellant argued on one more ground. He submitted that there was agreement between the defendant with one more person which was prior to the date of agreement made in favour of the present plaintiff and the said person had filed Suit against the present appellant and in that Suit also, the same property, western portion, was mentioned and this circumstance creates suspicion about the case of the plaintiff. This submission is also not acceptable. The relevant record shows that in the

said Suit also the defence was taken by the present appellant that he was deceived and his signature was obtained on the agreement. The submissions made in the present proceeding show that in the present proceeding also the appellant wants to take such defence. The submissions made show that the plaintiff of that case succeeded, but the matter was compromised and the plaintiff of the said case gave up his right to purchase the property. Thus, there is no hindrance in executing the present decree against the appellant. Further, the nature of defence taken in all cases shows that there is no force in his defence. There is convincing record of making payment of consideration as the payment of most of the amount was directly made to the co-operative society by the plaintiff.

10. The submissions made for the appellant show that it is not disputed that permission was required to be obtained under Bombay Tenancy Act for executing the sale deed. In view of these circumstances, not much can be made out due to some circumstances like Suit was filed in the year 2006 whereas the agreement was made in the year 1999. However, the appellant wants to take the defence that he was deceived and his signature was obtained on the

document. It is registered agreement of sale and so there is no force in such defence. Nothing can be achieved by giving an opportunity to the appellant by setting aside the decree of the trial Court.

11. For condonation of delay in Appeal, the parties are expected to show that there was sufficient cause and also that they have some arguable case. In the present matter, huge delay of more than 8 years 11 months is there and no sufficient cause is shown. Further, there is virtually no arguable case in favour of the appellant. This Court holds that no substantial question of law as such is involved in the matter.

12. In the result, Second Appeal stands dismissed.

[T.V.NALAWADE, J.]