

specific performance. The learned trial Judge held that the said document is tendered by the defendant in support of his counter claim for specific performance of contract and therefore, it can be received in evidence. The learned trial Judge accordingly held that document is admissible and having been proved in evidence by the defendant, the same is taken on record and marked at Exhibit 76.

3. It is the case of the respondent – defendant that on 03/03/2008, the plaintiff agreed to sell room No. 13 situate in 'Sneha Deep' building, Revenue Village, Panchpakhadi, Kisan Nagar, Wagle Estate, Thane for total consideration of Rs.22,000/-. To that effect, receipt was issued by the plaintiff acknowledging receipt of Rs.16,000/- on 03/03/2008. Balance of Rs.6,000/- was to be paid on or before 31/03/2008. The parties agreed to share 50% expenses each for preparing documents from advocate and the said work was to be completed on or before 07/04/2008. Mr.Patil submitted that the plaintiff has instituted Suit for possession of the said room among other prayers. The defendant filed written statement and set up counter claim for specific performance of contract dated 03/03/2008. During the course of examination-in-chief, defendant produced receipt and objection was raised by the plaintiff that as it is an agreement of sale, it is compulsorily required to be registered and as it is not registered, document is not admissible. Mr.Patil submitted that the learned trial Judge committed error in relying upon Sections

17 and 49 of the Act and holding that the document is not an agreement for sale and therefore, does not require registration.

4. I have considered the submissions advanced by Mr.Patil. I have also perused the receipt dated 03/03/2008. Perusal of that receipt, prima facie, shows that plaintiff agreed to sell the room No. 13 on 03/03/2008 for a total consideration of Rs.22,000/- and to that effect, prima facie, he has executed receipt acknowledging receipt of Rs.16,000 on 03/03/2008. Balance consideration of Rs.,6,000/- was to be paid on or before 31/03/2008 and parties agreed to share expenses to the extent of 50% each for documentation and the said work was to be completed upto 07/04/2008.

5. After considering the receipt, the learned trial Judge held that the document cannot be called as an agreement for sale. I agree with the finding recorded by the learned trial Judge. Hence no case is made out for invocation of powers under Article 227 of the Constitution of India. Petitions fails and the same is dismissed. It is needless to observe that the learned trial Judge will decide the Suit on the basis of evidence on record and in accordance with law uninfluenced by the observations made in the impugned order and this order. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set

forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) of C.P.C.

(R.G.KETKAR, J.)