

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.699 OF 2015

Ranjit Surendranath Pardeshi

.. Appellant

-Versus-

Tanaji Sama Margal and Anr.

..Respondents

Mr. Shriram Kulkarni for appellant

Mr.M.V.Rajput with N.V.Bajpai i/b. Uday Warunjikar for respondent No.1

CORAM : R.D.DHANUKA, J.

DATE : 18th October 2016.

P.C.

1] By this appeal filed under section 100 of Code of Civil Procedure, 1908 the appellant (original defendant) has impugned the judgement and decree dated 29th November 2014 passed by the learned Dist. Judge-5, Pune partly allowing the appeal filed by the respondent No.1 (Original plaintiff) and setting aside the judgement and decree passed by the learned trial Judge and granting specific performance of the sale deed in respect of the suit flat.

2] The parties in this judgement are described as per their original status before the learned trial Judge.

3] The original defendant was the owner and was in possession of the

suit flat. The plaintiff entered into an agreement of sale of suit flat with defendant for a consideration of Rs. 4 lakhs. The plaintiff had paid Rs.1 lakh to the defendant. It is the case of the plaintiff that it was the obligation of the defendant to get the transaction cleared under the Gunthewari notification which the defendant failed. It is the case of the plaintiff that the defendant was required to comply with the said requirement and was to hand over the possession of the suit property within two months from the date of execution of the sale deed. The plaintiff had indicated that he would obtain loan of Rs. 3 lakhs from the bank.

4] The defendant terminated the agreement which was opposed by the plaintiff. Since the defendant did not obtain any permission from the authorities and terminated the agreement, the plaintiff filed a suit for specific performance. Learned trial Judge framed various issues. Both the parties examined their respective witnesses. Learned trial Judge partly decreed the suit on 13th July 2009. The trial Judge directed first defendant to refund the amount of Rs. 1 lakh within one month from the date of the said judgement and decree. Prayer for specific performance came to be rejected. The said judgement came to be impugned by the plaintiff by filing an appeal being Civil Appeal No.827 of 2004 before the learned Ad-hoc Dist. Judge -V, Pune. The first appellate court framed

several points for determination and after considering the oral and documentary evidence passed the judgement and decree on 29th November 2014 and partly allowed the said appeal. The first appellate court was pleased to set aside the judgement and decree dated 13th July 2009 passed by the learned trial Judge and directed the plaintiff to deposit the balance amount within 30 days and directed the defendant to execute the sale deed in respect of the suit flat in favour of the plaintiff. This judgement and decree is impugned by the defendant in the present second appeal.

5] Mr. Kulkarni, learned Counsel for defendant invited my attention to the agreement to sale entered into by and between the parties. He submits that time was not an essence of the contract. He, submits that unless the plaintiff would have complied with his reciprocal obligations under the sale deed, the defendant could not have made the transaction clear from the Authorities. He submits that the plaintiff admittedly could not have complied with his obligation since the loan in favour of the plaintiff was not sanctioned. He submits that as and by way of an after thought, the plaintiff examined a witness in support of his claim that he would have obtained loan from his friend for making payment of balance consideration. It is submitted by the learned Counsel that the trial court had considered the oral and documentary evidence of both parties in right

perspective and dismissed the relief of specific performance as prayed by the plaintiff. The lower appellate court has reversed the finding without considering various admissions made by the plaintiff and his witness on the issue of readiness and willingness and on the issue that the loan in favour of the plaintiff was not sanctioned by the bank.

6] The learned Counsel for the original plaintiff on the other hand submits that it was the obligation of the defendant to get the property cleared within the time prescribed and unless the defendant would have got the property cleared under the Gunthewari notification, the plaintiff could not have got the loan from the bank for making payment of balance consideration of Rs. 3 lakhs to the defendant. He submits that the defendant thus, could not have, illegally terminated the suit agreement.

7] It is submitted that the plaintiff had already made an arrangement of Rs.3 lakhs for payment of balance consideration within the time prescribed under the agreement for sale. He submits that the first appellate court has rightly considered the oral and documentary evidence in proper perspective.

8] A perusal of the agreement to sale entered into between the parties indicates that both parties were required to comply with certain part of the

obligation. It is not in dispute that the defendant had to clear the property under the gunthewari notification before sale deed could be executed by defendant in favour of plaintiff. Admittedly, the defendant did not make any application for clearing the property under the Gunthewari notification within the prescribed time.

9] In my view, unless the defendant would have got the property cleared by complying with his part of obligation, the obligation of plaintiff to make the payment of balance consideration did not commence. The learned Trial Judge however, did not consider this crucial aspect in the impugned judgement and decree and wrongly refused to grant relief of specific performance.

10] A perusal of the judgement and decree passed by the first appellate court indicates that the first appellate court independently decided the points for determination framed, after considering the oral and documentary evidence and has rightly rendered a finding of fact that the plaintiff had proved that he was ready and willing to perform his part of the contract. It is also held that the defendant had committed breach of the agreement.

11] The first appellate court while considering the points for

determination has rightly considered the oral and documentary evidence led by the plaintiff and in the right perspective and further held that the plaintiff should make payment of Rs.3 lakhs to the defendant towards payment of balance consideration. In my view, the findings recorded by the first appellate court do not indicate any infirmity.

12] The learned Counsel for the defendant however submits that since the plaintiff had failed to make balance payment of Rs.3 lakhs it would be difficult for the defendant to acquire any property at this stage with the meagre payment of consideration of Rs.3 lakhs at this stage and thus this Court shall balance the equity between the parties. In my view, no substantial question of law arises in this appeal.

13] The learned Counsel for the plaintiff however on this issue submits that it was not the fault of the plaintiff since the plaintiff was always ready and willing to pay the balance consideration and which was not paid because of non compliance of the obligation on the part of defendant. In my view, the fact remains that the loan applied for by the plaintiff was not sanctioned by the bank. Though the plaintiff had agreed to make alternate arrangement, even if the plaintiff would have done so, it would be with some interest. I am thus inclined to consider the submission of the learned Counsel for the defendant on this issue.

14] In my view Court has to balance the equity between the parties. In my view, the defendant has made out a case for payment of reasonable rate of interest on the amount of balance consideration, which was not paid by the plaintiff to the defendant at the relevant time. I, therefore, pass following order:-

(a) Second Appeal No.699 of 2015 is dismissed, however with a modification that the plaintiff shall pay balance consideration of Rs. 3 lakhs with interest at 6% p.a. from the date of filing of the suit i.e. 6th December 2006 till payment to the defendant which shall be paid within eight weeks from today. Upon receipt of such payment by the plaintiff, the defendant would execute the sale deed and register the same as directed by the first appellate court.

(b) It is made clear that in the meanwhile, if the defendant has not cleared the property under the Gunthewari notification, the defendant shall complete the said obligation.

(c) No order as to costs. In view of dismissal of the second appeal, the civil application does not survive and the same is disposed of.

(R.D.DHANUKA, J)