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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION***

*SECOND APPEAL NO. 528 OF 2016
with
CIVIL APPLICATION NO. 1074 OF 2016*

Mr. Gnyanba Khandu Jadhav. ... Appellant/Applicant.

V/s.

Mr. Vasant Waman Malusare. ... Respondent.

Mr. Jaydeep Deo for the Appellant/Applicant.

Mr. S.C. Wakankar for the Respondent.

CORAM : N.M. Jamdar, J.

03 August, 2016.

Oral Order :-

The Appellant challenges the concurrent Judgments and Orders passed by the Civil Judge, Senior Division, Pune and the District Judge, Pune decreeing the Suit filed by the Respondent – Plaintiff for specific performance and dismissing the Appeal filed by the Appellant.

2. Heard the learned Counsel for the parties.

3. The sole contention advanced by the learned Counsel for the Appellant is that the Respondent – Plaintiff was not ready and willing to perform his part of the contract. According to the learned Counsel for the Appellant, the Respondent – Plaintiff, inspite of extension did not not come forward to deposit the remaining amount. He submitted that inspite of a joint pursis filed in the Civil Court, the Respondent – Plaintiff did not deposit the balance amount. He submitted that the Respondent – Plaintiff had only paid partial amount to block the property and in view of the conduct of the Respondent – Plaintiff, the specific performance of the agreement in his favour ought not to have been granted. The learned Counsel for the Respondent – Plaintiff submitted that various notices issued to show that the Respondent – Plaintiff was always willing and after the notice was issued, Defendant No.2 had executed a sale deed in favour of Defendant No.1.

4. Whether the Respondent – Plaintiff was ready and willing to perform his part of the contract is essentially a finding of fact which is to be rendered on the basis of appreciation of evidence. Both the Courts have taken note of the various notices that have been issued by the Respondent – Plaintiff calling upon the Appellants to execute the sale deed. The Respondent – Plaintiff has denied the suggestion that he did not remain present in the Sub-

Registrar's Office when called for. Even though the amount may not have been deposited pursuant to the joint pursis, from the date of the executing the agreement till filing of the Suit, the Appellant had repeatedly called upon the Appellant to execute the sale deed. To nullify the case put-forth by the Respondent – Plaintiff regarding oral reminders, the Defendant No.2 has avoided to step into the witness box on the ground of loss of memory and his son has submitted that he has no knowledge as regard the circumstances. Thought the sale deed was executed inter-se between the Defendant Nos.2 and 1, nothing has been placed on record, the reason for executing such sale deed and it appears to have been executed to create complications and to avoid the specific performance of the agreement.

5. In the circumstances, it is not possible to re-appreciate the evidence and set aside the findings of fact merely on the ground that another view is possible. The findings rendered are not perverse. No substantial question of law arises in this Second Appeal. The Second Appeal is dismissed. Civil Application stands disposed of accordingly.

6. The learned Counsel for the Respondent submits that if any application for adjournment is made by the Appellant in the execution proceedings seeking adjournment of six weeks, the

Respondent will not oppose the same. In view of the same, the learned Executing Court will grant suitable adjournment as above, if an application is made by the learned Counsel for the Appellant. The learned Counsel for the Appellant states that an undertaking will be filed in this Court within period of one week by the Appellant, he will not create any third party rights and the names of the adult family members residing with him.

(N.M. Jamdar, J.)