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

***SECOND APPEAL NO. 539 OF 2016
with
CIVIL APPLICATION NO. 1094 OF 2016***

Dr. Shamrao Shivram Babar. ... Appellant/Applicant.

V/s.

Mrs. Shila Balkrishna Kadam. ... Respondent.

Mr. Milind Sathaye for the Appellant/Applicant.

Mr. Vivek Kantawala i/b. Vivek Kantawala & Co. for the Respondent.

CORAM : N.M. Jamdar, J.

25 July, 2016.

P.C. :-

The Appellant challenges the concurrent judgments and orders passed by the Civil Judge, Junior Division, Satara and the District Judge, Satara whereby a Suit filed by the Respondent – Plaintiff for specific performance was decreed and the Appeal filed by the Appellant was dismissed.

2. Heard learned Counsel for the parties.

3. The learned Counsel for the Appellant firstly submitted that the Respondent – Plaintiff was not ready and willing to perform her part of the contract. He submitted that nothing was done by the Respondent – Plaintiff to execute a sale deed after the Appellant visited the residence of the Plaintiff in January 2006 alongwith two witnesses and informed her that he was in need of money. The learned Counsel submitted that two notices were sent by the Appellant, first one on 16 September 2006 and the second on 9 January 2007 and in the notice dated 9 January 2007 an ultimatum was given to execute the sale deed within eight weeks. He submitted that there is no readiness and willingness on the part of the Respondent – Plaintiff from January 2006 till the institution of the Suit on 26 February 2007.

4. The submission regarding readiness and willingness cannot be accepted. The Appellant has a side business of purchasing and selling of land by changing their use for non-agricultural purpose and laying plots in the lands purchased. The non-agricultural permission was received on 7 November 2005. Therefore, the parties could not have done anything till the year 2005. Even though the case of the Appellant that he visited the residence of the Respondent – Plaintiff in January 2006 is accepted, the Appellant had given a final notice to execute the sale deed within eight days on 9 January 2007 which notice was received on 15

January 2007. If the Appellant was really in need of money, it is not believable that once the Respondent – Plaintiff was ready to execute the sale deed which she intimated by issuing a notice on 31 January 2007 that is very short time that the Appellant would then refuse. Apart from this position, as far as the readiness and willingness is concerned, the moment the notice was received stipulating eight days' period, which was not one of the conditions in the agreement, the conduct of the Respondent – Plaintiff was of taking immediate steps within 15 days, the Respondent – Plaintiff issued a notice on 31 January 2007 that she was ready and instituted a Suit on 26 February 2007. In these circumstances, the finding of fact recorded by both the Courts that the Respondent – Plaintiff was ready and willing to perform her part of contract cannot be said to be an incorrect finding in law or a perverse approach.

5. The learned Counsel for the Appellant then submitted that both the Courts ought to have considered the rise in prices as the agreement was of the year 1995 and the Suit was instituted in the year 2007. This contention is also cannot be accepted. Under the agreement of 1995 it was incumbent upon the Appellant to get the N.A. permission and carry out such other formalities, which task was completed only in the year 2005. There is nothing provided in the agreement that in case, if there is any rise in the price of the land, the Plaintiff will have to pay higher amount. This was also the

understanding of the Appellant when he gave notice to the Respondent – Plaintiff in January 2007 as he sought simplicitor execution of the sale deed. Furthermore, both the Courts have found that in the cross-examination the Appellant has conceded that he has no documentary evidence to show that there has been rise in prices and more particularly to what effect.

6. The learned Counsel then submitted that in the Suit the evidence led by the Power of Attorney of the Respondent – Plaintiff should not have been accepted. He relied upon the decisions of the Apex Court in the case of *Janaki Vashdev Bhojwani Vs. Indusind Bank Ltd.* reported in (2005) 2 SCC 217, which was relied upon in the Courts below. As pointed out by the learned Counsel for the Respondent, the Power of Attorney was given to the father of the Plaintiff who had full knowledge of the transaction. In any case the transaction itself is not disputed and as far as readiness and willingness is concerned, it is seen from the time period within which the Respondent – Plaintiff has acted, that there was readiness and willingness. Therefore, in these circumstances, the evidence led by the father of the Respondent – Plaintiff on behalf of her has been rightly accepted.

7. Non other ground was urged. In the circumstances, no questions of law much less any substantial question of law arises.

The Second Appeal is dismissed. The Civil Application is disposed of accordingly.

8. The learned Counsel for the Respondent states that if the Appellant/Applicant makes an application for adjournment in the execution proceedings for three weeks, the Respondent will not oppose the same. The statement is accepted.

(N.M. Jamdar, J.)