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

*SECOND APPEAL NO. 742 OF 2014
with
CIVIL APPLICATION NO. 1723 OF 2014*

Sandeep Raman Dalvi. ... Appellant/Applicant.

V/s.

Ketan Kishor Nirurkar. ... Respondent.

Mr. Kiran Joshi for the Appellant/Applicant.
Mr. Gandhar Raikar for the Respondent.

CORAM : N.M. Jamdar, J.

08 June, 2016.

Oral Order :-

The Appellant challenges the concurrent judgments and orders passed by the Civil Judge, Senior Division, Thane and the District Court, Thane whereby the suit filed by the Respondent is decreed and the Appellant is directed to executed a sale deed in specific performance of the agreement entered into between the parties upon receipt of balance consideration.

2. The learned Counsel for the Appellant submitted that both the Courts have not correctly appreciated that the Respondent was never ready and willing to perform his part of the contract. He submitted that

on 27 April 2006 the Respondent had a cheque in his possession payable to the bank where the title deeds of the suit flat were deposited and within six days thereof he issued a notice on 4 May 2006 to the Appellant which shows that the Respondent made no efforts to contact the Appellant and neither any case to that effect is made out. The learned Counsel also submitted that there is no averment in the plaint that the Respondent was ready and willing to perform his part of the contract which is a necessity, and without which which a decree of specific performance cannot be granted. The learned Counsel submitted that the Respondent ought to have waited till the date stipulated in the agreement and before the said date he could not have presumed that the Appellant was not going to perform his part of the contract.

3. Firstly it has to be kept in mind that readiness and willingness of a party is a question of fact. Both the Courts have concurrently held that the Respondent was ready and willing to perform his part of the contract. The agreement is proved and the part consideration was also paid. Since the Respondent was ready with the cheque of the balance amount and gave a notice to that effect, the finding recorded by both the Courts that the Respondent was ready and willing cannot be stated to be perverse. The argument that the Respondent ought to have waited till the date specified in the agreement cannot be accepted. The Respondent had taken a loan from the bank for this purpose and it was being deducted from his monthly salary and therefore, his anxiety to get the transaction concluded early can be well understood.

4. As regard the pleadings in the plaint are concerned, the Respondent has narrated that the Respondent came to know that the Appellant is not willing to perform his part of the agreement and therefore he gave the notice and informed that he is ready and willing to perform the part of the contract. This averment coupled with the deposition on oath is sufficient requirement of requisite pleading. Therefore, on this ground also the concurrent finding regarding readiness and willingness cannot be disturbed.

5. The learned Counsel for the Respondent rightly pointed out that the title deeds could not have been handed over to the Respondent without the application by the Appellant for which the Appellant took no steps.

6. In the circumstances, the decree of specific performance of an agreement of which part amount is received and that the Respondent was ready and willing to pay the remaining amount cannot be faulted with. No other point was raised. No other question of law arises. The Second Appeal is dismissed. Civil Application is accordingly disposed of.

(N.M. Jamdar, J.)