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

***SECOND APPEAL NO. 203 OF 2016
with
CIVIL APPLICATION NO. 366 OF 2016***

Mr. Sushilkumar Kundalik Patil and Anr. ... Appellants/Applicants.

V/s.

Late Mr. Shivanna Hanmant Devkar
(Since deceased) Smt. Ratnabai Shivanna
Devkar and Ors. ... Respondents.

Mr. A.L. Gore for the Appellants/Applicants.
Ms. Geeta Mulekar for the Respondents.

CORAM : N.M. Jamdar, J.

16 June, 2016.

Oral Order :-

By this Appeal the Appellants challenge the judgment and order passed by the District Judge, Solapur allowing the Appeal filed by the Respondents – Original Defendants setting aside the decree of specific performance granted by the learned Civil Judge, Senior Division, Solapur in favour of the Appellants – Plaintiffs.

2. The Appellants had instituted a suit for specific performance of an agreement dated 16 February 1997 which was entered into by the Appellants with one Shivanna. It was the case of the Appellants that as per the agreement out of Rs.55,000/-, Rs.50,000/- was paid by the Appellants and agreement was to be executed with permission of the Collector which Shivanna had to obtain. According to the Appellant the cause of action for instituting the suit arose on 14 October 2009, as after the death of Shivanna, his heirs present Respondents sought the possession of the suit property from the Appellants. The learned Civil Judge had decreed the suit and in the Appeal the learned District Judge had reversed the judgment of the Civil Judge.

3. The learned Counsel for the Appellants submitted that the Appellants are in possession of the property and substantial amount is paid. He submitted primarily on the ground that the Trial Court ought to have directed the parties to get the agreement executed through the Collector, the learned District Judge has passed the impugned judgment and order. He submitted that the Appellants had made request to the deceased Shivanna to execute the agreement on various occasions and when the Respondents sought the possession of the property back, the suit had to be instituted. The learned Counsel for the Respondents submitted that in view of various admissions given by the Appellants, the finding

rendered that the Appellants are not ready and willing to perform their part of the contract is not just and proper.

4. The main ground on which the learned District Judge has allowed the Appeal is that the Appellants are not ready and willing to perform their part of the contract. The grant of specific relief is discretionary and readiness and willingness of the Plaintiffs is an important ingredient for grant of such equitable relief.

5. In the present case the suit has been filed after 12 years. The agreement is of the year 1997 and it is only on 9 November 2011 that the suit has been filed. In the cross-examination the Appellants had admitted that since the Appellants wanted to purchase the property, the responsibility of obtaining permission was on the Appellants. The Appellants also admitted that they cannot say when the application for permission was made and who made the same. It was also stated by them that they are unable to state as to when Shivanna expired. It was further admitted that after the agreement, no entries in the record were made nor there is anything to show that the property was developed. There is absolutely no reason placed on record as to why the Appellants did not file the suit for specific performance earlier or even gave notice to Shivanna when he was alive till the year 2008. On their own showing Appellants never called upon the Respondents to apply for permission or called upon to execute the sale deed. After signing

the agreement, the Appellants did not take any steps for 12 years.

6. Whether a party is ready or willing to perform its part of the contract, is a question of fact. In view of the above mentioned factors, the conclusion reached by the First Appellate Court that the Appellants were not ready and willing cannot be stated as perverse so as to warrant interference in the limited jurisdiction under Section 100 of the Code of Civil Procedure. No substantial question of law arises.

7. Second Appeal is dismissed. Civil Application stands disposed of accordingly.

(N.M. Jamdar, J.)