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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CIVIL APPLICATION NO. 2247 OF 2017
IN/WITH
SECOND APPEAL (ST.)NO. 2666 OF 2017
WITH
CIVIL APPLICATION NO. 2795 OF 2017**

Pravin s/o Deepchand Singhvi,
Age: 45 years, Occu: Business,
R/o. 12, Jay Apartment,
Behind Labour Court,
Savedi, Ahmednagar

..APPLICANT
(Orig.appellant)

VERSUS

1. Motilal s/o Khushalchand Bafna,
Age: 51 years, Occ: Business,
R/o. Rahuri, Taluka Rahuri,
Dist. Ahmednagar

2. Anilkumar s/o Raychand Katariya,
Age: 52 years, Occu: Business,
R/o. Uday Apartment, Savedi,
Dist. Ahmednagar

..RESPONDENTS

Mr Shantanu Deshpande, Advocate holding for Mr N. V. Gaware, Advocate for applicant;
Mr R. R. Sancheti, Advocate for respondents

CORAM : N.W. SAMBRE, J.

DATE : 13th July, 2017

ORAL ORDER

Heard.

2. For the reasons disclosed in the application and since not seriously opposed by the non-applicants, the delay of 540 days caused in filing second appeal stands condoned.

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3. The appeal is taken up for final hearing at admission stage.

4. The present appellant is original defendant No.1, against whom the 3rd Joint Civil Judge Senior Division, Ahmednagar decreed Special Civil Suit No.85 of 2002, vide judgment and order dated 29th January, 2003, thereby directing the defendants to execute sale deed regarding suit property in favour of plaintiff and to deliver vacant possession of the suit property, for which balance consideration of Rs.75,000/- shall be paid by the plaintiff within a period of one month from the date of the order.

5. It is claimed by appellant - defendant No.1 that he has transferred the suit property in favour of defendant No.2. As such defendant No.2 is also impleaded as party.

6. Feeling aggrieved, the appellant-defendant No.1 preferred an appeal before this Court, which was subsequently transferred to the Court of learned District Judge-4, Ahmednagar and re-numbered as Regular Civil Appeal No.175 of 2012. The said appeal came to be dismissed by the learned District Judge, vide judgment and decree dated 20th April, 2015. As such, this second appeal.

7. Learned Counsel appearing on behalf of the appellant would urge that the defence of the present appellant-defendant No.1 was not properly appreciated. He would invite attention of this Court to the written statement at Exh.14 and submits that the blank stamp papers given to original plaintiff during some business transaction were mis-used, which issue was not properly appreciated by the Courts below.

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8. According to him, the Courts below have lost sight of the scheme of Section 20 of the Specific Relief Act, 1963. He would then urge that the respondent-plaintiff was not ready and willing to perform his part of contract and as such, suit ought not to have been decreed.

9. Per contra, Mr Sancheti, learned Counsel appearing on behalf of the respondents would urge that the burden which was shifted on appellant-defendant No.1 for proving the fact that the stamp papers were mis-used, was not properly discharged. According to him, oral and documentary evidence brought on record, the conduct of appellant-defendant No.1 in executing sale deed in favour of defendant No.2, speaks voluminous about intention. He sought dismissal of the appeal as same is against the concurrent findings.

10. Having considered rival submissions, it is required to be noted that the suit in question was based on agreement dated 25th June, 1998. The plaintiff has examined himself at Exh.19 and one Shantabai at Exh.20 to prove his case.

11. The defendant No.1-appellant has examined himself at Exh.23 and a witness, namely, Ravindra Mutha at Exh.28. A copy of sale deed executed by defendant No.1 in favour of defendant No.2 is at Exh.24.

12. The learned Trial Court then proceeded to analyze the issue and while dealing with the plaint for specific performance, has observed that the respondent-plaintiff was ready and willing to perform his part of contract. Apart from above,

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while dealing with issue No.2, which casts burden on appellant-defendant No.1 to prove that the plaintiff has mis-used the blank stamp papers, has in detail analyzed the evidence to that effect brought before it and recorded findings of fact that the appellant has failed to prove mis-use of the said stamp paper by discharging burden.

13. The Court below then proceeded to consider the provisions of Sections 16 and 20 of the Specific Relief Act and readiness and willingness of respondent-plaintiff to perform his part of contract.

14. The learned Appellate Court re-appreciated the entire evidence and noted that the findings recorded by the learned Trial Court are in accordance with the pleadings and oral and documentary evidence as is brought on record. It is then to be noted that the learned District Judge, while considering the points as were framed, has recorded a positive finding of fact that the appellant-defendant No.1 has accepted an amount of Rs.2,25,000/- and executed the agreement of sale on 1st June, 1998. The issue as regards discharge of burden by the present appellant-defendant No.1 qua mis-use of stamp papers was also re-appreciated.

15. In the aforesaid background, in my opinion, concurrent findings recorded against present appellant, hardly call for any interference as the plaintiff has proved his case for grant of specific performance by establishing his readiness and willingness.

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16. In view of above, the appeal lacks merit and stands dismissed. In view of dismissal of appeal, Civil Application No.2795 of 2017 does not survive and same stands disposed.

(N.W. SAMBRE, J.)

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