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

SECOND APPEAL NO. 282 OF 2012

Rekha Nandu Sapate,
Age: 44 years, Occ: Household,
R/o. Savedi, Ahmednagar. ..APPELLANT

VERSUS

1. The Maharashtra Housing and
Area Development Authority,
Bombay-51, through its Secretary
2. The State Manager,
Nasik Housing & Area
Development Board, Nasik. ..RESPONDENTS

Mr N.C. Garud, Advocate for appellant;

CORAM : N.W. SAMBRE, J.

DATE : 14th JUNE, 2017

ORAL ORDER :

The appellant filed Regular Civil Suit No. 366 of 1995 for permanent and mandatory injunction seeking declaration that Plot No.191, out of Survey No. 29/1, area 58.71 sq. mtrs., within municipal limits of Ahmednagar Municipal Council is entitled to be allotted in favour of the appellant. The suit of the appellant was decreed by Civil Judge,

(2)

Senior Division, Ahmednagar vide judgment and decree dated 24th July, 2003. However, upon appeal by the defendants-respondents herein being Regular Civil Appeal No. 23 of 2004, the said judgment and decree was set aside and suit came to be dismissed. As such, present second appeal.

2. Mr. Garud, learned Counsel for the appellant, while inviting attention of this Court to certain eventualities qua communication between the appellant and respondents, would try to urge that there was concluded contract between the parties and as such, decree of the trial Court is required to be upheld by setting aside the judgment and order of the lower appellate Court. According to him, the appellant for the said property was highest bidder after making initial payment of Rs.500/- and respondents have confirmed the said sale in favour of the appellant. As such, he would urge that there is a substantial question of law and the appeal needs consideration.

(3)

3. With the assistance, I have evaluated the said submissions of learned Counsel for the appellant.

4. Initially, Maharashtra Housing and Area Development Board/Authority was having its office at Pune and Ahmednagar area was attached to Pune Office when bid process in question was started. It was in 1992 decision was taken of bifurcation of Pune Office for administrative convenience in to Pune Office and Nashik Office. As a consequence whereby though the present appellant was highest bidder, neither final bid amount was confirmed and communicated to the appellant nor the said amount (towards full and final consideration of property in question) was deposited with the original defendant-respondent.

5. The essential elements for concluded contract between the parties were consequentially absent, as such, lower appellate Court has proceeded to set aside the judgment and decree in the matter.

(4)

6. Learned trial Court has taken recourse to the provisions of Section 41 of the Specific Relief Act and Section 73 of Indian Contract Act, however, necessary ingredients thereof if analyzed, particularly for inferring concluded contract are not satisfied.

7. Learned lower appellate Court while reversing the decree has considered about the above referred facet of the appeal and then recorded findings of fact that amount was never deposited but for initial amount of Rs.500/-. Even deposit of initial amount was also not proved.

8. In the aforesaid background, in my opinion, no substantial question of law is involved in the present second appeal. As such, appeal lacks merit and stands dismissed.

(N.W. SAMBRE, J.)

Tupe