

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 520 OF 2015
AND
CIVIL APPLICATION NO. 12168 OF 2015

1. Omprakash Sitaram Agrawal
Age – 65 years, Occ – Agriculture & Business,
R/o Jalgaon, Taluka and District – Jalgaon
 2. Satish Soma Bhole
Age – 60 years, Occ – Agriculture
& Business, R/o Jalgaon,
Taluka and District – Jalgaon
- .. APPELLANTS
(Original Plaintiffs)

VS

1. Trimbak Abhiman Patil
Age – 78 years, Occ – Agriculture,
R/o Khedi (Bk), Taluka and District – Jalgaon
 2. Ambadas Trimbak Patil,
Age – 58 years, Occ – Agriculture
R/o As above
- .. RESPONDENTS
(Original Defendants)

Mr. Anand P. Bhandari, Advocate for the appellant
Mr. Narsing L. Jadhav, Advocate for the respondents - caveators

CORAM : SUNIL P. DESHMUKH, J.
DATE : 14/03/2017

ORAL JUDGMENT :

1. Heard learned advocates for the parties.
2. The appellants - plaintiffs had filed Special Civil Suit No.367 of 1992 seeking specific performance of agreement of sale dated 19th November, 1981 for an area of land approximately

admeasuring 3 acre, 7 guntha situated at village Khedi (Budruk) in Taluka and District – Jalgaon. Amount of consideration agreed upon according to the plaintiffs – appellants had been at the rate of Rs.60,000/- per acre and an earnest amount of Rs.10,000/- had been paid to the defendants at the time of agreement of sale, which had been reduced into writing. Subsequently, in 1985 a sum of Rs.40,000/- had been tendered and accepted and further amounts of Rs.10,000/- and Rs.15,000/- had also been tendered and accepted by the defendants No.1 and 2. As such, aggregate sum of Rs.75,000/- had been paid by the plaintiffs to the defendants in furtherance of the agreement extending period for execution of sale deed upto 31st December, 1991.

3. Around February, 1985, a notification came to be issued by Government of Maharashtra, proposing acquisition of lands, inter-alia, land under the agreement of sale, for industrial purpose under Maharashtra Industrial Development Corporation Act, and further notification in February, 1992 was published proceeding with acquisition proceedings.

4. The appellants – plaintiffs had issued notice dated 6th August, 1992 to the respondents – defendants requesting to refund the amount, thus far paid. Said notice had been responded to by the respondents denying transaction in its totality.

5. As such, aforesaid civil suit ensued at the instance of the appellants – plaintiffs for recovery of amount paid in pursuance of the agreement of sale of 1981 along with interest @ 15% p.a. Suit was met with in the written statement denying execution of agreement of sale and liability to refund the amount. As such, suit proceedings went on.

6. Around June, 2003, the property under agreement of sale had been released from acquisition. Thereafter, the appellants – plaintiffs moved an application for amendment under Exhibit-128 requesting the defendants to perform their part of contract in pursuance of the agreement of sale. The amendment application had been allowed and writ petition there against, at the behest of the defendants failed before this court and amended written statement came to be filed by the defendants persisting with denial of execution of agreement of sale.

7. Issues came to be framed by the trial court with reference to pleadings of the parties, *inter alia*, as to whether agreement of sale had been executed among the parties; whether amount of Rs.75,000/-had been paid; whether suit is maintainable; whether the suit is within limitation; whether the plaintiffs are ready and willing to perform their part of the contract; whether the plaintiffs are entitled to decree of specific performance; do the

defendants prove that time is essence of the contract and whether the agreement of sale is bogus, illegal and not binding.

8. The trial court has partly decreed the suit holding the plaintiffs entitled to decree of refund of amount of Rs.75,000/- together with interest @ 13% p.a. from the date of receipt of last payment till realization of the amount. Claim with regard to specific performance had been rejected. Suit was held to be outside the period of limitation. It was held that the plaintiffs were not ready and willing to perform their part of the contract, further holding that agreement had not been fraudulent, bogus or illegal.

9. Aggrieved by aforesaid judgment and decree dated 4th November, 2006 of the trial court, Regular Civil Appeal No.69 of 2007 had been preferred by the plaintiffs. The appellate court had framed points for determination viz., whether there was agreement of sale; whether the plaintiffs proved payment of Rs.75,000/-; whether plaintiffs were ready and willing to perform their part of the contract; whether the suit was within the period of limitation; whether the plaintiffs are entitled to specific performance and about entitlement of relief of refund of amount.

10. The appellate court confirmed the findings of the trial court with respect to execution of agreement of sale, payment of amount of Rs.75,000/-, about plaintiffs not proving to be ready and

willing to perform their part of agreement and further entitlement of the plaintiffs for refund of amount. The appellate court, however, found the suit to be within the period of limitation.

11. Mr. Anand P. Bhandari, learned advocate appearing on behalf of the appellants – plaintiffs submits that the plaintiffs had proved execution of agreement of sale whereas the same had been flatly denied by the defendants. The plaintiffs were constrained to approach the court of law seeking refund of amount in the facts and circumstances of the case prevailing then and as soon as the cloud over enforceability of the agreement had disappeared, their right to seek specific performance revived and accordingly they have asked for specific performance causing amendment to the plaint, which has been approved even by the High Court. He submits that while the defendants have denied execution of agreement of sale itself and while in evidence it has emerged that execution of agreement of sale stands proved, specific performance being equitable relief, upon emerging that denial of execution of agreement having not been correct and had been fallacious, discretion ought to have been exercised in favour of the plaintiffs granting specific performance. In the alternative, he submits that if specific performance is to be declined, in the circumstances, parties, rather plaintiffs shall get an equitable relief in the form of refund of amount equivalent to the prevailing market price of the area of land under the agreement of

sale. He goes on to submit that if the enforceability of the agreement for a temporary period on account of certain contingency is in eclipse, no sooner eclipse is over, than enforceability of the agreement springs back and this is precisely the situation in the present matter. In fact, it was the impermissibility of enforcement of agreement for sale, which had forced the plaintiffs to issue notice and seek refund and there was no other reason otherwise for them to seek refund of amount and not to go ahead seeking specific performance. However, as stated above, with release of land under agreement of sale from acquisition, enforceability of agreement having been revived, the same has been immediately claimed by causing amendment including statutorily required amendments about readiness and willingness. He, in the circumstances, considers that the trial as well as appellate courts have been in error in not granting specific performance for the reason of giving a finding, that plaintiffs were not ready and willing to perform their part of contract. To support his alternative about the equities in pecuniary terms, he places reliance on a decision of the Supreme Court in the case of *“Rajinder Kumar V/s Shri Kuldeep Singh and Others”* reported in 2014 AIR (SCW) 1121 putting emphasis on observations in paragraphs No.37, 44 and 45 from the same. He, as such, entreats this court to indulge into his request to either decree the suit for specific performance or direct refund of the amount as per the prevailing market price of the land

under agreement of sale. Paragraphs No.37, 44 and 45 of aforesaid judgment are being reproduced herein below for ready reference.

“ 37. In the instant case, converse is the position. If the purchaser is entitled to claim compensation for deterioration, a fortiori it must be held that vendor should also be entitled to compensation for accretion in value of the subject matter of the agreement for specific performance, in case the execution thereof is unduly delayed by the purchaser. Section 28 of the Specific Relief Act provides that the court has to pass an order as the justice of the case may require. Justice is not an abstract proposition. It is a concrete reality. The parties on approaching the court must get the feeling that justice has been done in the facts and circumstances of the case, particularly in specific performance related cases, in terms of equity, equality and fairness.

44. The circle rate of the residential property based on which the unearned increase is calculated by the L & DO, would show a sharp increase during the period. Sunder Nagar comes under Category 'A' colonies. Under the Delhi Stamp (Prevention of Undervaluation of Instruments) Rules, 2007, the notified circle rate for Category 'A' colonies from July 2007 was Rs.43,000/- per square meter and from February 8, 2011, it was Rs.86,000/- per square meter. From November 16, 2011, it was Rs.2,15,000/- per square meter and from January 5, 2012 it is Rs.6,45,000/- per square meter.

45. In the peculiar facts and circumstances of the case, we are of the view that the trial court should have passed an equitable order while considering the application for rescission. Having regard to the fact that the decree was passed in 1984, we feel that it would be unjust and unfair to relegate the parties to the trial court at this distance of time. For doing complete justice to the parties, we are of the view that it is a case where the purchaser should be directed to pay the

land value to the vendors as per the circle rate notified for the residential property in Category 'A' colonies prevailing during November 16, 2011 to January 5, 2012, at the rate of Rs.2,15,000/- per square meter. The purchaser shall also be liable to meet the liability arising by way of unearned increase to be paid to the Land and Development Office. He is free to withdraw the amounts deposited by him in the court as per order dated 06.01.2010. It is also ordered that in case the plaintiff does not deposit the amount to be paid to the vendors within three months from today, the vendors shall deposit in court within two months thereafter the amount calculated as per the circle rate referred to above by way of compensation to be paid to the purchaser, and in which event, they shall stand discharged of their obligations under the contract and the decree. In the event of the purchaser depositing the amount as above, the execution proceedings shall be finalized within another one month. The Court in seisin of the Suit OS No.1428 of 1981 shall dispose of the same within three months from today.”

12. Countering aforesaid submissions, Mr. Narsing L. Jadhav, learned advocate for respondents No.1 and 2 submits that it cannot be said that a case has at all been made out by the plaintiffs for grant of specific performance on any count, which is a discretionary relief. He submits that relevant provisions of the Specific Relief Act, 1963 have been couched in negative language, which generally suggests that specific performance of agreement is not to be ordinarily granted. He submits that submissions have been advanced that the defendants have denied very execution of agreement of sale and since evidence shows that the same having been executed, it

will be equitable to grant specific performance of agreement of sale. Yet, facts and circumstances of the case would not warrant any consideration in favour of the plaintiffs for grant of specific performance. He submits, chronology of events would show that the plaintiffs had lost their right to have specific performance of agreement on their own doing, way back in 1991-92 itself, in the first place when notice seeking refund of the amount had been issued and secondly while the suit had been instituted plainly for refund of the amount. In such a case, even if it is assumed that agreement is proved to have been executed, the plaintiffs would not be entitled to switch their stands with the circumstances once they have opted for refund of the amount with interest. A change in circumstances would not allow them to alter their stand and seek specific performance. Even circumstances about acquisition and its release, are not attributable to the defendants at all.

13. During his submissions, he purports to rely on judgment in the case of *Ram Kumar Agrarwal Vs. Thawar Das* reported in 1999 DGLS (Soft.) 867 : 1999 AIR (SC) 3248, to buttress his submission that readiness and willingness is a *sine qua non* for grant of decree of specific performance. For said purpose, he presses into service observations in paragraph no.7 of the same, which are reproduced hereinbelow for ready reference;

“7. In our opinion, the judgment of the High Court suffers from serious infirmities. It also suffers from the vice of exercise of such jurisdiction as did not vest in the High Court under the law. Under Section 100 of the Civil Procedure Code (as amended in 1976) the jurisdiction of the High Court to interfere with the judgments of the courts below is confined to hearing on substantial question of law. Interference with finding of fact by the High Court is not warranted if it involves reappreciation of evidence (see *Panchugopal Barua & Ors. Vs. Umesh Chandra Goswami & Ors.*- JT 1997 (12 SC 554 and *Kshitish Chandra Purkait Vs. Santosh Kumar Purkait & Ors.* JT 1997 (5 SC 202)). The High Court did not frame any substantial questions of law as contemplated by Ss. (5 of Section 100 of the Civil Procedure Code.) It has not even discussed any evidence. No basic finding of fact recorded by the courts below has been reversed much less any reason assigned for taking a view to the contrary still the finding on the question of readiness and willingness to perform the contract which is a mixed question of law and fact has been upset. Plea under [Section 53A](#) of the Transfer of Property Act which again involves a mixed question of law and fact has been allowed to be urged and upheld by the High Court though there is no foundation for the same laid in the pleadings of Thawar Das and though the plea was not raised either before the Trial Court or before the First Appellate Court even at the time of hearing. Before us also at the time of hearing of the appeals the learned counsel for the respondent Thawar Das found it very difficult indeed to demonstrate availability of material on record whereon the findings as to readiness and willingness for performance of his part of the contract on the part of Thawar Das and as to his possession being available to be protected under the plea of part performance emanating from [Section 53A](#) of Transfer of

*Property Act could be sustained. The suit for specific performance filed in the year 1969, i.e, nearly nine years after the expiry of four years from 18/7/1956, the date of the agreement, was hopelessly barred by delay and laches. We do not propose to enter into the question of limitation though the plea that the suit for specific performance was barred by time was specifically raised by Phool Chand before the Trial Court. It is statutorily provided by **Section 16(c) of the Specific Relief Act, 1963** that to succeed in a suit for specific performance of a contract the plaintiff shall aver and prove that he has performed and has always been ready and willing to perform the essential terms of the contract which were to be performed by him other than the terms the performance of which has been prevented or waived by the defendant. In the facts and circumstances of the case raising of the plea by Thawar Das that on 19/9/1966 there was a fresh agreement between the parties and he had paid Rs.2,000/- to Phool Chand associated with positive finding arrived at by the two courts below which finding has not been upset by the High Court that the plea was false and was sought to be substantiated by producing a false and fabricated document makes the situation worse for Thawar Das. **A person who falsely alleges to have paid Rs.2,000/- and also attempts at proving the plea at the stage of the trial cannot be said to have been ever ready and willing to pay Rs.7,000/- which under the contract it was his obligation to pay. The present one is not a case where a plea as to payment was raised bona fide but abandoned at or before the trial for inability to prove.**"*

14. Learned counsel Mr. Jadhav, however, is not in a position to impeach findings recorded by the courts hitherto about execution

of agreement of sale although he purports to debate over the same.

15. After hearing the parties, as aforesaid, the controversy appears to get narrowed down to entitlement of appellants - plaintiffs to grant of specific performance in the background of facts and circumstances and the question that may substantially arise in the matter appears to be,

" Whether the courts can be said to have erred in refusing to grant specific performance of agreement of sale dated 19th November, 1981? "

16. The sequence of events, as referred to hereinabove recorded hitherto by the courts does not appear to be a matter of controversy amongst the parties. Agreement is of the year 1981 and in furtherance of the same, majority of payments appear to have been made during 1985 and period of execution of sale deed had been extended to 1991.

17. In the interregnum, it appears the government had given an indication through a notification that the land comprised under agreement of sale would be considered for acquisition. Subsequently, around 1992, it appears that the government had declared its intention to acquire the land. Upon the notification issued in 1992 in this regard, one of the parties to the agreement of sale, had altered its intention and decided not to go ahead with

agreement and settle down on refund of the amount paid to the defendants. Plaintiffs had declared their said intention through a notice to the defendants, plainly asking refund of the amount without any reservation.

18. It, thus, appears that the plaintiffs had resigned to the circumstances and had decided that the amount be paid back to them making it clear that they were not interested in going ahead with the transaction. May be for whatever reason the plaintiffs were required to do it, they had thus made it clear through notice and subsequently by instituting a suit seeking refund of the amount. In the suit as well, it appears there had been no intention of the plaintiffs to preserve their right to specific performance in case of change in the circumstances.

19. In this scenario, the *simili of eclipse*, which is being pressed into service on behalf of the appellants – plaintiffs, is difficult to be conceived, as in changed circumstances, they on their own volition have acted and sent a notice for refund as well as in their pleadings in the suit had claimed *simplicitor* relief of refund without any intention to revert to agreement. In the process, they have clipped their rights to claim specific performance, confining them to seeking refund of amount and thus, making intention clear they do not want to proceed ahead pursuant to agreement. Thus, it is difficult to

consider that plaintiffs can be said to be ready and willing to go ahead performing their part of the contract.

20. In this respect, one may have to refer to the relevant provisions which may circumscribe exercise of discretion by the courts while granting specific performance in respect of immovable property wherein it has been generally considered that specific performance of contract is a rule and its refusal an exception. It would be pertinent to refer to sections 14, 16 and 20, reading thus:-

14. Contracts not specifically enforceable.—

(1) The following contracts cannot be specifically enforced, namely:—

(a) a contract for the non-performance of which compensation in money is an adequate relief;

(b) a contract which runs into such minute or numerous details or which is so dependent on the personal qualifications or volition of the parties, or otherwise from its nature is such, that the Court cannot enforce specific performance of its material terms;

(c) a contract which is in its nature determinable;

(d) a contract the performance of which involves the performance of a continuous duty which the Court cannot supervise.

(2) Save as provided by the Arbitration Act, 1940 (10 of 1940), no contract to refer present or future differences to arbitration shall be specifically enforced; but if any person who has made such a contract (other than an arbitration agreement to which the provisions of the said Act apply) and has refused to perform it, sues in respect of any subject which he has contracted to refer, the existence of such contract shall bar the suit.

(3) Notwithstanding anything contained in clause (a) or clause (c) or clause (d) of sub-section (1), the Court may enforce specific performance in the following cases:—

(a) where the suit is for the enforcement of a contract,—

(i) to execute a mortgage or furnish any other security for securing the repayment of any loan which the borrower is not willing to repay at once:

Provided that where only a part of the loan has been advanced the lender is willing to advance the remaining part of the loan in terms of the contract; or

(ii) to take up and pay for any debentures of a company;

(b) where the suit is for,—

(i) the execution of a formal deed of partnership, the parties having commenced to carry on the business of the partnership; or

(ii) the purchase of a share of a partner in a firm;

(c) where the suit is for the enforcement of a contract for the construction of any building or the execution of any other work on land:

Provided that the following conditions are fulfilled, namely:—

(i) the building or other work is described in the contract in terms sufficiently precise to enable the Court to determine the exact nature of the building or work;

(ii) the plaintiff has a substantial interest in the performance of the contract and the interest is of such a nature that compensation in money for non-performance of the contract is not an adequate relief; and

(iii) the defendant has, in pursuance of the contract, obtained possession of the whole or any part of the land on which the building is to be constructed or other work is to be executed.

16. Personal bars to relief.—*Specific performance of a contract cannot be enforced in favour of a person—*

(a) who would not be entitled to recover compensation for its breach; or

(b) who has become incapable of performing, or violates any essential term of, the contract that on his part remains to be performed, or acts in fraud of the contract, or wilfully acts at

variance with, or in subversion of, the relation intended to be established by the contract; or

(c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.

Explanation.—For the purposes of clause (c),—

(i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in Court any money except when so directed by the Court;

(ii) the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction.

20. Discretion as to decreeing specific performance.—

(1) The jurisdiction to decree specific performance is discretionary, and the Court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the Court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a Court of appeal.

(2) The following are cases in which the Court may properly exercise discretion not to decree specific performance—

(a) where the terms of the contract or the conduct of the parties at the time of entering into the contract or the other circumstances under which the contract was entered into are such that the contract, though not voidable, gives the plaintiff an unfair advantage over the defendant; or

(b) where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff;

(c) where the defendant entered into the contract under circumstances which though not rendering the contract voidable, makes it inequitable to enforce specific performance.

Explanation 1.—Mere inadequacy of consideration, or the mere fact that the contract is onerous to the defendant or improvident in its nature, shall not be deemed to constitute an unfair advantage within the meaning of clause (a) or hardship within the meaning of

clause (b).

Explanation 2. — The question whether the performance of a contract would involve hardship on the defendant within the meaning of clause (b) shall, except in cases where the hardship has resulted from any act of the plaintiff subsequent to the contract, be determined with reference to the circumstances existing at the time of the contract.

(3) The Court may properly exercise discretion to decree specific performance in any case where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.

(4) The Court shall not refuse to any party specific performance of a contract merely on the ground that the contract is not enforceable at the instance of the other party.

21. It emerges, the present matter, is not of category covered by sub-section 3 of section 14 of Specific Relief Act nor it can be said to be a case wherein it would emerge that as required under section 16(c), the plaintiffs could prove they always have been ready and willing to perform the essential terms of the contract which are to be performed by them. Section 20 provides that court is not bound to grant specific performance merely because it is lawful to do so and the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles.

22. The courts have found on evidence that the plaintiffs cannot be said to be always ready and willing. On the contrary, they had issued notice. Readiness and willingness is a statutory requirement to be satisfied while granting specific performance. The courts having regard to the background of the case, have

refused to buy line that right of specific performance as contended to have recoiled after the concerned land had been released from acquisition proceedings.

23. In the present matter, the period for execution of the sale deed was deferred upto end of 1991. Till 1991, the plaintiffs were expected to fulfill their part of agreement of sale. It is not the case of plaintiff they had paid any amount after 1985 till 1991. It was expected by 1991, plaintiffs would pay entire consideration and seek execution of sale deed. It is also not a case of the plaintiffs, till December, 1991, they had taken further steps towards compliance of the terms and conditions of agreement of sale and had done any act in furtherance of the same. It does not appear to be a case of the plaintiffs, they had in fact been always ready and willing to perform their part of the contract till end of December, 1991 at the time of institution of suit and had done any act in furtherance of agreement of sale from 1985 to 1991. Nor had they shown their readiness and willingness all through till 1991 and even after that upto 2004 that they had ever been ready and willing to go ahead with the agreement of sale. On the other hand, they had made it explicit by issuing notice in February, 1992 and instituting the suit thereafter that they do not intend to go ahead with the agreement of sale and had sought refund of the amount paid by them. As such, the claim of the plaintiffs appears to be deficient in

respect of compliance of statutory requirement of being always ready and willing necessary for grant of decree of specific performance.

24. In the present matter, the plaintiffs appear to have resigned to the circumstances as were prevailing in 1991-92. They had acted in furtherance of their intention to claim refund without any reservation. On the contrary, intention not to go ahead with the agreement of sale and showing unwillingness had been made explicit long before. In the circumstances, the evidence on which the decision has been based, does not appear to be impeachable.

25. It is not a case that the plaintiffs can be said to have been always ready and willing to perform the terms of contract. Absence of required statutory compliance of readiness and willingness, appears to have been properly adjudged by the two courts. It is not a case wherein it can be said that exercise of discretion refusing to grant specific performance is in any way arbitrary.

26. The request under the appeal for refund equivalent to now prevailing market price for the area with reference to judgment in the case of "*Rajinder Kumar*" (supra), is difficult to be considered and acceded to, in the given facts and circumstances of present case. In the cited case, court had found it difficult to relegate parties

to trial, the purchaser had been directed to enhance land value as referred to in the judgment. Notably, the supreme court had particularly observed, it was in the peculiar facts and circumstances of that case, the court had considered accordingly. It is difficult to draw analogy from the said judgment and apply the observations therein to the present case whereunder specific performance has been refused by the court for the reason that the plaintiffs had not been found to be always ready and willing to perform their part of contract. The act of truncating the agreement of sale had been at the instance of plaintiffs themselves on their own volition. Defendants can hardly be attributed any fault in respect of the same. As such, as observed hereinbefore, it is difficult to consider the request to grant enhanced refund at the prevailing market price, wherein specific performance is refused to be granted for the reason attributed to the plaintiffs.

27. The other aspect that may deserve attention, it would not be out of place to advert to is that suit is considered to be outside the period of limitation by the trial court, a finding which has been recorded, has been reversed by appellate court, and reversal appears to be vulnerable in the sense that although the suit has been instituted in 1992 had been simplicitor for refund of the amount without reservation of the right to have specific performance of agreement of sale and the amendment to have specific performance is carried out in 2004.

28. The plaint undergoing amendment in 2004 after the land had been released from acquisition, while the refusal to perform the part of agreement of sale by the defendants had been made clear and known in 1991-92. Claim by virtue of amendment in 2004, being considered within limitation is rather susceptible on sustainability on facts and law.

29. Even otherwise, it can not be said that guidelines of the supreme court in *Santosh Hazari V. Purushottam Tiwari (Dead) by LRs. 2001 AIR SCW 723* while reversing the findings on limitation by the trial court, appear to have been followed in the present case.

30. Though learned counsel for the appellants has urged me to have another view of the matter, yet, it may not be a case wherein the matter could have been viewed from another angle. The reasons do not appear to be strong enough to entitle the plaintiffs to force a decree of specific performance, overruling discretion exercised by the courts hitherto.

31. Taking into account the provisions of Specific Relief Act, 1963, reproduced in foregoing paragraph no.20, it does not appear that courts hitherto have committed any error or mistake in declining specific performance of agreement of sale.

32. It does not appear to be a case wherein the plaintiffs can be said to have made out a case entitling them to specific performance of agreement of sale and it may not be said that refusal to exercise discretion in favour of the plaintiffs is improper and erroneous. Second appeal thus stands dismissed.

33. At this stage, learned counsel Mr. Bhandari seeks indulgence to continue the interim relief which is operating till today, for a further period of eight (8) weeks.

34. As such, the interim relief as operating, to continue for a period of eight (8) weeks and shall cease to operate thereafter without reference to the court. Civil Application no. 12168 of 2015 stands disposed of accordingly.

[SUNIL P. DESHMUKH]
JUDGE

arp/