

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

BENCH AT AURANGABAD.

WRIT PETITION NO.7151 OF 2013

Mohd.Irfan S/o Abdul Razzaq
Faryani and another. ... Petitioners.

Versus

Zamiroddin S/o Nizamoddin
and others. ... Respondents.

...

Mr.P.F.Patni, advocate for the Petitioners
Mr.Quadri Taher Ali, advocate holding for
Mr.M.G.Mustafa, advocate for Respondent Nos.1,2
and 7.

...

CORAM : S.V.GANGAPURWALA, J.

Date : 18.09.2017.

PER COURT :

1. The present petitioners are the original plaintiffs. The petitioners filed suit for specific performance of contract. The Court framed the issues at Exh.35. The petitioners/plaintiffs moved an application for recast of the issues. The application is

rejected. Aggrieved thereby, the present petition.

2. Mr.Patni, learned counsel for the petitioners strenuously contends that the petitioner had pleaded the suit agreement in para 1A and 1B of the plaint. The defendants categorically and specifically admitted due execution of the agreement of sale, so also the consideration amount. In view of that issues as framed by the Court at serial Nos.1 and 2 would not arise. So also the issue with regard to the burden upon the defendant as time is essence of contract was also required to be framed. It is for the defendants to prove the terms and conditions of the agreement as stated by them.

3. Learned counsel for the Respondents states that the defendants in the Written Statement never admitted the terms and conditions of the agreement as pleaded by the plaintiffs in para 1A and 1B. In view of that issues are rightly framed. The other issues are also framed in view of the pleadings of the parties.

4. It is trite that a fact alleged by one party and denied by another gives rise to an issue. The purpose of framing the issues is to bring to the notice of the party the entire gamut of the dispute.

5. Perusal of the plaint and the Written Statement, it is manifest that the defendants have admitted the execution of the agreement as pleaded in para 1A and 1B of the plaint. In view of that the plaintiff need not prove the execution of the agreement on the part of the defendants. However, it also transpires that some of the terms pleaded by the plaintiffs as terms of agreement are denied by the defendants. Naturally, the terms will have to be proved by the plaintiffs if the plaintiffs have to succeed.

6. Issues framed by the Court at Exh.35 reads thus :

"1) Whether plaintiff prove that, defendant No.1 to 7 executed agreement of sale in respect of the

suit land property more particularly described in the plaint in para 1(a) knowing fully well terms and conditions stated therein.?

2) Whether plaintiff prove that, defendant No.1 to 4 executed agreement of sale in respect of the suit property more particularly described in para 1(b) of the plaint and thereby agreed to abide terms and conditions stated therein.?

3) Whether plaintiffs prove that, defendant Nos.1 to 7 failed and neglected to perform their part of contract stated in agreement to sale dated 13.11.2010 and 27.11.2010.

4) Whether plaintiff prove that, they were and are ready and willing to perform their part of contract, stated in agreement to sale dated 13.11.2010 and 27.11.2010.?

5) Whether time was essence of the contract.?

6) Whether plaintiffs are

entitled to the relief of specific performance of contract and other reliefs as prayed for.?

7) *What order and decree.?"*

7. Issues Nos.1 and 2 with regard to burden upon the plaintiffs to prove execution of the documents on the part of the defendants is not necessary. However, the terms and conditions are required to be proved by the plaintiffs.

8. In light of the above, I pass the following order :

a) Issue Nos.1 and 2 as framed at Exh.35 are deleted. Instead following issue be framed :

"Whether the plaintiffs prove that the defendants agreed to the terms of the agreement as pleaded by him and detailed in the suit agreement of sale and further failed to abide by said terms."

b) The rest of the issues and issue framed under the impugned order are maintained.

c) The Writ Petition accordingly stands disposed of. No costs.

(S.V.GANGAPURWALA, J.)

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