

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

SECOND APPEAL NO.548/2017

Ambadas S/o Govindram Mahalle
..Vs..
Suresh S/o Vitthalrao Ulhe

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri J.J. Chandurkar, Advocate for the appellant.

CORAM : S.C. GUPTE, J.

DATE : 27.9.2017.

1. Heard learned counsel for the appellant.
2. The second appeal challenges an order passed by the District Court at Amravati in a regular civil appeal. The respondent to the second appeal was the original plaintiff in a suit for specific performance. By a decree passed by the trial Court, it refused to grant specific performance and instead ordered refund of the part payment made by the respondent to the appellant. The District Court in appeal reversed the decree of the trial Court and granted specific performance by directing execution and registration of a sale-deed in respect of the suit property by the appellant. The impugned order of the District Court is assailed on the ground that the conclusions arrived at by the District Court are perverse. The only instance of perversity brought to the notice of the Court is the reference to the notice dated 5th May, 2001 at Exh.42. It is submitted that there is no such

notice on record from the plaintiff to the defendant. This notice has relevance in the context of the plaintiff's readiness and willingness to perform his part of the contract. This reference is incorrect. It obviously appears to be a typographical error. The other document referred to in this behalf is the plaintiff's notice dated 6th December, 2001 at Exh.40. According to the District Court, this notice clearly showed the readiness and willingness on the part of the plaintiff to complete his part of the contract. The Court held, besides, that the plaintiff had not only shown his readiness and willingness through a written communication but also had purchased stamp paper of Rs.56,000/- for execution of the sale-deed and scribed the contents of the sale-deed on it and also remained present in the office of the Sub-Registrar of Assurances along with the balance consideration to be paid to the defendant. On the basis of this and other circumstances referred to in the impugned order, the District Court came to the conclusion that there was readiness and willingness on the part of the plaintiff to complete his part of the contract. This is clearly a possible conclusion, which is supported by the material on record.

3. Learned counsel for the appellant submits that the plaintiff's notice of 6th December, 2001 (Exh. 40) and even his appearance before the office of the Sub-Registrar with balance consideration (on 5th May, 2001) are much after the defendant called upon the

plaintiff to complete the transaction. Learned counsel submits that the defendant called upon the plaintiff to complete the transaction by a notice dated 29th January, 2001 (Exh. 39). Whether the defendant's notice on 29th January, 2001 makes the time essence of the contract and the plaintiff's failure to respond to this notice are matters of trial. It is an admitted position that the defendant did not, at any time before 6th December, 2001, terminate the suit contract for sale. In the premises, the conclusions arrived at by the District Court in appeal cannot be faulted as impossible or as conclusions that no reasonable person properly instructed in law could have ever arrived at.

4. There is no merit, accordingly, in the second appeal. It does not raise any substantial question of law for the determination of this Court. The appeal is, accordingly, **dismissed**. No costs.

JUDGE