

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

Second Appeal No.390 of 2015
(Shri Bhaskarrao s/o Urkundaji Waghmare v. Shri Narayanrao s/o
Ganpatrao Maywade)

Office Notes, Memoranda of Coram,

appearances, Court's orders or directions **Court's or Judge's orders**

and Registrar's order

Shri N.B. Bargat, Advocate for Appellant.

Shri Sunil Manohar, Senior Advocate, assisted by Shri N.A. Gaikwad, Advocate for Respondent.

Coram : R.K. Deshpande, J.

Dated : 24th January, 2017

The Trial Court passed a decree for specific performance of contract, which was conditional of obtaining no objection certificate from the Nagpur Improvement Trust. The lower Appellate Court has confirmed the said decree by concurring with the findings recorded by the Trial Court. Hence, the original defendant is before this Court in this second appeal.

Shri Bargat, the learned counsel appearing for the appellant/defendant, has relied upon the decision of the Apex Court in the case of *Rajender Kumar v. Kuldeep Singh and others*, reported in *AIR 2014 SC 1155*, for the proposition that the Court

has to balance the equity in terms of Section 20 of the Specific Relief Act. 1963, and submits that the Court should not have passed a decree for specific performance of contract particularly when the agreement was dated 2-10-1986, and the decree was passed on 30-11-1992.

Undisputedly, the appeal was preferred by the original plaintiff, which was allowed by the lower Appellate Court. The plaintiff in categorical terms admitted in his evidence that he was ready and willing to perform his part of contract if no objection certificate is granted by the Nagpur Improvement Trust. This is recorded in para 19 of the judgment delivered by the Trial Court. Undisputedly, the lease in respect of the suit property has also been renewed. At this stage, Shri Bargat, the learned counsel for the appellant/defendant, submits that the no objection certificate is not required by the Nagpur Improvement Trust. The balance consideration was deposited in the Court below.

Thus, no substantial question of law arises for consideration in this appeal. The second appeal is dismissed.

Judge.

Lanjewar