

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

Second Appeal No.24 of 2016

(Shri Laxman s/o Bapurao Shahane v. Shri Hansraj s/o Sonabaji Bombale  
(Dead), through LR's. Shri Bhimrao s/o Hansaraj Bombale and others)

---

|                                                                                                         |                           |
|---------------------------------------------------------------------------------------------------------|---------------------------|
| Office Notes, Memoranda of Coram,<br>appearances, Court's orders or directions<br>and Registrar's order | Court's or Judge's orders |
|---------------------------------------------------------------------------------------------------------|---------------------------|

---

Shri Anand S. Joshi, Advocate for Appellant.  
Shri V.M. Gedam, Advocate for Respondents.

**Coram : R.K. Deshpande, J.**

**Date : 14<sup>th</sup> February, 2017**

The Trial Court passed a decree for refund of earnest money of Rs.50,000/- along with interest at the rate of 18% per annum in Special Civil Suit No.387 of 1996 for specific performance of contract. The amount was required to be deposited within a period of two months from the date of passing of the decree. The plaintiff preferred Regular Civil Appeal No.311 of 2012, which is allowed by the lower Appellate Court by its judgment and order dated 27-7-2015. The decree for refund of earnest money has been set aside and the decree for specific performance of contract has been passed. The plaintiff is directed to deposit the balance amount of consideration within a period of two months from the date of the order to get the sale-deed executed through the Court, if such occasion arises. The original defendant is before this Court through the legal representatives in

this second appeal.

The Trial Court has dealt with all the issues, which arose in the suit. The issues framed and the answers given to the same, are reproduced below :

| <u>Sr.Nos.</u> | <u>Issues</u>                                                                                                                                                         | <u>Findings</u> |
|----------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|
| 1.             | Whether plaintiff prove that defendant executed an agreement of sale of suit property on 08.02.1993 for total consideration of Rs.2,14,950/-?                         | Proved.         |
| 2.             | Whether plaintiff proved that he has paid Rs.50,000/- to defendant towards agreement for sale?                                                                        | Proved.         |
| 3.             | Whether defendant prove that time was the essence of contract and plaintiff has committed breach of the agreement and defendant has cancelled the agreement for sale? | Not proved.     |
| 4.             | Whether plaintiff proved that he was and is ready and willing to perform his part of the contract and defendant has failed to execute the sale deed?                  | Proved.         |

|    |                                           |                     |
|----|-------------------------------------------|---------------------|
| 5. | Whether plaintiff is entitled for relief? | As per final order. |
| 6. | What order & decree?                      | As per final order. |

It is only on the exercise of discretionary power conferred upon the Court under Section 20 of the Specific Relief Act, the relief of the refund of earnest money was passed, instead of a decree for specific performance of contract.

The lower Appellate Court holds that the Trial Court ought to have granted a decree for specific performance of contract having once recorded the findings on all other issues in favour of the plaintiff. It holds that this was not a case where the Court could have exercised the discretion to refuse the specific performance of contract.

The undisputed factual position is that the agreement between the parties was entered into on 8-2-1993, marked as Exhibit 44, for sale of the property for a total consideration of Rs.2,14,950/- and the earnest money of Rs.50,000/- was paid. The balance consideration of Rs.1,94,950/- was required to be paid by the end of December 1993. As per the terms of the agreement, an amount of Rs.30,000/- was required to be paid on 8-4-1993. It is not in dispute that such amount was paid to the

defendant on 15-3-1993.

The agreement also contains an endorsement at the bottom of the backside of the page that the time to execute the sale-deed is extended up to 31-12-1994. The defendant is coming before the Court with a specific case that this endorsement was fraudulently inserted by the plaintiff behind the back of the defendant in the space above his signature. The defendant neither did enter the witness-box nor examined any witness. Though the findings of the Trial Court are against the defendant on all the issues, no cross-objection was raised in the appeal filed by the plaintiff, as required by Order XLI, Rule 22 of the Code of Civil Procedure. The defendant also did not deposit the amount of refund of consideration directed to be deposited by the Trial Court and he waited till the decision of the lower Appellate Court, and before this Court, a statement is made that the defendant is prepared to deposit the entire amount along with interest.

In the background of the aforesaid undisputed factual position, the question is, should this Court consider the case of the appellant/defendant, in the absence of any evidence being led and the compliance of the decree passed by the Trial Court is made, to remand the matter back to the lower Appellate Court to consider the finding recorded by the Trial Court in view of

Order XLI, Rule 33 of the Code of Civil Procedure. The plaintiff has deposited the balance amount of consideration in the Trial Court for getting the sale-deed executed. I do not find that any substantial question of law arises for consideration in this second appeal.

The second appeal is dismissed.

Judge.

Lanjewar