

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

SECOND APPEAL NO.543 OF 2017

Smt. Sushila w/o Deodhar Madekar and anr

..vs..

Haribhau Namdeorao Pate

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

Court's or Judge's Order

Shri S.L. Kotwal, Counsel for the appellants.

Shri N.S. Deshpande, Counsel for the respondent.

CORAM : V.M. DESHPANDE, J.

DATED : DECEMBER 8, 2017.

1. Heard learned counsel Shri S.L. Kotwal for the appellants and learned counsel Shri N.S. Deshpande for the respondent.

2. The present second appeal is **ADMITTED** on the following substantial questions of law:

(i) Whether from the covenant in Exhibit 36 could it be said that time was essence of contract in respect of payment of consideration?

(ii) Whether the Lower Appellate Court was right in not accepting the case of the defendants that defendants agreed to sell property for meting out

medical expenses incurred in the light of admission given by the plaintiff himself?

(iii) Whether the Lower Appellate Court was right in granting decree for specific performance of contract?

3. Learned counsel Shri N.S. Deshpande waives notice for the respondent.

Civil Application (CAS) No.1066 of 2017

1. Heard learned counsel Shri S.L. Kotwal for the applicants/appellants and learned counsel Shri N.S. Deshpande for the non-applicant/respondent.

2. The present second appeal is by the original defendants.

3. The second appeal is admitted on the substantial questions of law.

4. A suit for specific performance of contract filed against the appellants was partly decreed by the Trial Court. The Trial Court refused to grant decree of specific performance of contract. However, granted decree of refund of earnest amount. The Lower Appellate Court reversed the decree and granted decree of specific performance.

5. It is not in dispute that the non-applicant/respondent has filed execution proceeding.

6. The property in question is a residential house of the applicants/appellants.

7. In that view of the matter, there shall be Stay to judgment and decree dated 2.5.2017 passed by learned District Judge-12, Nagpur in RCA No.188 of 2015 on a condition that the applicants/appellants shall deposit amount of earnest money i.e. Rs.1,10,000/- before the Trial Court within a period of six weeks from today.

8. The civil application is allowed and disposed of.

JUDGE

!! BRW !!

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