

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

Second Appeal No. 472/2016

Champabai w/o Kamalnarayan Jaiswal V/s Smt. Jayshila w/o Narsingh Naidu and
another

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

Court's or Judge's Orders.

Shri S.S.Sitani, Advocate for appellant.
Shri M.B.Naidu, Advocate for Respondents.

CORAM : A.S.CHANDURKAR, J.
DATE : July 26, 2017.

Heard.

Appellant is the original plaintiff who is aggrieved
by the dismissal for her suit for specific performance
which decree is confirmed by the Appellate Court.

It is the case of the plaintiff that on 13/08/1996,
the defendant no.1 agreed to sell the suit property to her
for a consideration of Rs. 2,10,000/-. Earnest amount of
Rs. 60,000/- was paid and sale deed was to be executed
on 30.11.1996. According to her, she issued notice on
28/11/1996 and thereafter filed suit for specific
performance.

The defendant no.1 took the stand that the plaintiff
was required to obtain the No Objection Certificate from

the defendant no.2 but no steps in that regard were taken. Time was the essence of the contract in view of the specific stipulation in the agreement.

The trial Court held the agreement to be proved, but further held that the plaintiff was not ready and willing to perform her part of the contract. It, therefore, directed defendant no.1 to refund the earnest amount with interest. The appellate Court affirmed this decree.

Shri Sitani, learned counsel for appellant submitted that plaintiff was always ready and willing to perform her part of the agreement. The defendant no.1 did not approach the Nagpur Improvement Trust to obtain permission for selling the same. Prior to 30.11.1996, the plaintiff had issued notice to defendant for having the sale deed executed. It is therefore submitted that both the Courts committed an error in holding that plaintiff was not ready and willing to perform her part of the contract.

Shri Naidu, learned counsel for respondent no.1 /defendant no1 supported the impugned judgment. According to him though the plaintiff was required to obtain the no objection certificate, the same was not

obtained by plaintiff. All necessary taxes were in fact paid by the defendant before said date. The plaintiff further did not take any steps to complete the transaction. He therefore submitted that both the Courts rightly held that the plaintiff was not ready and willing to perform her part of the contract.

Perused the impugned judgment as well as the agreement at Exhibit-48. As per recitals in the agreement, all necessary steps were to be taken by the plaintiff for completing the transaction which included obtaining the no objection certificate from the defendant No.2. It was also agreed that the defendant No.1 was to obtain no objection certificate as per Exhibit-52. Similarly, she had paid all the taxes as agreed on 22/11/1996. The contention that the defendant no.1 did not obtain permission of the Nagpur Improvement Trust can not be accepted as this condition was not incorporated in the agreement. It was first the duty of the plaintiff to obtain consent of the defendant No.2 society after which the subsequent documents / permission could have been obtained. Moreover, it was specified in the agreement that the sale deed was to be

executed by 30.11.1996. The defendant No.1 by her conduct indicated her readiness to complete the transaction, but except issuing notice the plaintiff did not take any further steps as per the agreement.

Thus I find that both the Courts on considering the evidence on record have held that the plaintiff was not ready and willing to perform her part of the contract. This finding is based on evidence available on record and same cannot be said to be perverse. Thus no substantial question of law arises. Hence, the Second Appeal is dismissed. No costs.

JUDGE