IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL (REVIEW) APPLICATION NO. 4152 OF 2008
IN FIRST APPEAL NO.620 OF 1996
WITH CA/2581/2014 IN FA/620/1996
WITH CA/9300/2015 IN FA/620/1996

1] Smt. Mathurabai w/o. Pandharinath Shelke
Age : 39 years,

2] Nitin s/o. Pandharinath Shelke
Age : 32 years,

3] Miss Yogita d/o. Pandharinath Shelke,
Age : 17 years, Minor,
represented by her guardian mother
Smt. Mathurabai w/o. Pandharinath Shelke

Petitioners No. 1 to 3 are agriculturists and residents of Shirdi, Taluka Rahata, District Ahmednagar.] Petitioners /] Original] Appellants in] First Appeal

[Petitioners No. 1 to 3 are the heirs of deceased defendant No. 3 Pandharinath Shelke]

VERSUS

1] Suresh s/o. Mohanlal Gordia,
Age : Major,

2] Manjula w/o. Suresh Gordia,
Age : Major,

Respondents No. 1 and 2 are Mumbai Inhabitants, Residing at Verma Villa, Vithalbai Patel Road, Vile-Parle (West), Mumbai – 400 056.

3] Bankatlal s/o. Balkishan Karwe,
Age : Major, R/o. Mumbai Inhabitant
R/o. Rajasthani Cooperative Housing Society Limited, Swami Vivekanand Road, Goregaon (West), Mumbai – 62.

4] Dnyaneshwar s/o. Sopanrao Shelke,
Age : 49 years,

5] Dilip s/o. Sopanrao Shelke,
Age : 31 years,

6A] Geetabai Trimbak Shelke,
Deceased through L.Rs
(6A-i to 6A-iv)

6-A-i) Trimbak Anantrao Shinde,
Age: 76 years, Occu. : Nil,
R/o. Hotel Abhishek,
Nagar-Manmad Road,
At & Post Shirdi, Tq. Rahata,
District Ahmednagar.

6-A-ii) Sanjay Trimbak Shinde,
Age 46 years, Occu. : Service,
R/o. Plot No. 106, Balaji Terrace,
Opp. Utsav Mandal Karyalaya,
Ward No. 7, Shrirampur,
Tq. Shrirampur, Dist.Ahmednagar.

6-A-iii) Rajesh Trimbak Shinde,
Age 44 years, Occu. : Service,
C/o. 101, OM Mangal Aptt.
Opp. Ashoka Buildcon
Ashoka Road, Nasik.

6-A-iv) Anjali Niranjan Pavel,
Age 42 years, Occu. : Service,
C/o. Ramrao Adik Public School,
Nipani Wadgaon, Ashoknagar,
Shrirampur, Dist. Ahmednagar

Respondents No. 4 to 6A are
residents of Shirdi, Taluka
Rahata, District Ahmednagar.

6B] Latabai w/o. Subhash Dube,
Age : 39 years, Occu. Household,
R/o. Pengiri, Taluka Sangamner,
District Ahmednagar.

6C] Smt. Sunanda w/o. Balasaheb Jadhav,] Respondents/
Age : 43 years, Occu. Household,] Original
R/o. Shirdi, Taluka Rahata,] Plaintiffs No.1 to
District Ahmednagar.] 3 and Defendants
] No.2, 4 and 1A to 1C

[Respondents No.4, 5 and 6A to 6C
are the heirs of original Defendant
No.1 Sakhubai Shelke]

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Advocate for Applicants : Shri S.D.Kulkarni,
Advocate for Respondents No.1 and 2: Shri S.S.Choudhary

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CORAM : P.R. BORA, J.

DATED : 27th AUGUST, 2018.

ORAL JUDGMENT:-

1. By filing present application, the appellants in First Appeal No. 620 of 1996 have sought review of the Judgment and Order passed by this Court in the said appeal on 14th August, 2007.

2. The present respondent Nos. 1 to 3 had filed Special Civil Suit No. 259 of 1986 (New No. 335 of 1989) for specific performance of an agreement of sale dated 27th June, 1980 against the present applicants. As is revealed from the pleadings of the parties, the agreement of sale in respect of the suit property was executed on 27th June, 1980 for the total consideration of Rs.2,92,500/- (Rs. Two Lakhs Ninety Two Thousands Five Hundreds Only). The material on record further reveals that the entire consideration was paid by the respondents to the present applicants. Since the applicants failed to execute the sale deed in respect of suit property, the suit for specific performance was filed and it was decreed by the Trial Court and the present applicants were directed to execute the sale deed in favour of present respondent Nos. 1 to 3. Aggrieved by the

Judgment and Decree so passed, legal heirs of original respondent No.3 preferred First Appeal and the same was dismissed by this Court on 14th August, 2007. The said order is sought to be reviewed by filing the present application.

3. Shri S.D.Kulkarni, learned counsel appearing for the applicants submitted that while deciding the First Appeal, this Court has failed in appreciating that by the passage of time, the value of the suit property had many times increased. In such circumstances, according to learned counsel it was unjust and improper to confirm the decree passed by the Trial Court and direct the present applicants to execute the sale-deed of the said property; instead, the Court must have directed the refund of amount paid by the respondents with interest or adequate damages. Learned counsel placed reliance on the Judgment of the Honourable Apex Court in the case of ***Pratap Lakshman Muchandi and others Versus Shamlal Uddavadas Wadhwa and others, [(2008) 12 Supreme Court Cases 67]***. Learned counsel, more particularly, relied upon the observations made in paragraphs Nos.14, 15 and 16 of the said Judgment.

4. The learned counsel submitted that similar facts are involved in the present case as were existing in the aforesaid case before the Hon'ble Apex Court, and as such, the law laid down by the Apex Court in the said Judgment would squarely

apply to the present case. The learned counsel submitted that alongwith Civil Application No. 2581 of 2014, the applicants have placed on record the valuation of the suit property as in the year 2014 which reveals that the value of the suit property according to the then prevailing Ready Reckoner Rates was about Rs.1,98,00,000/- (Rs. One Crore Ninety Eight Lakhs Only). The learned counsel submitted that this Court has committed an apparent error on the face of its record in ignoring aforesaid aspect and mechanically confirming the decree of specific performance as was passed by the Trial Court.

5. Shri S.S.Choudhari, learned counsel appearing for the respondent Nos. 1 and 2 opposed the submissions made on behalf of the applicants/review petitioners. Relying upon the ratio laid in the following two Judgments of the Hon'ble Apex Court – first in the case of ***Smt. Meera Bhanja Versus Smt. Nirmala Kumari Choudhury [1995 AIR (SC) 455]*** and the other in the case of ***Lily Thomas Versus Union of India and others [2000 AIR (SC) 1650],*** the learned counsel submitted that the scope of review is limited and the present is not the case, wherein, discretion shall be exercised by the Court. Learned counsel read out the discussion made by this Court while delivering the Judgment and submitted that the Court has specifically observed in its Judgment that rise in valuation of the property can not be a reason for review of the decree for specific performance. The learned counsel submitted

that the view, as has been taken by the Court, is just and proper and it cannot be said to be an error apparent on the face of record. The learned counsel submitted that, in such circumstances, there is no case made out for review of the impugned Judgment and Order.

6. In the review application, the applicants though have taken several grounds, in the argument advanced by Shri Kulkarni, learned Counsel appearing for the applicants, his entire emphasis was on the point that this Court ignored the fact that the agreement to sell was executed way back in the year 1980 and thereafter, the value of the subject property has shot up very high and in the circumstances, while deciding the First Appeal in the year 2007 i.e. after the long lapse of 27 years, this Court must have settled the equity between the parties by adequately enhancing the amount of consideration or then should have refused the decree of specific performance and instead should have directed the present applicants to refund the amount to present respondent Nos.1 to 3 by awarding the interest thereupon at the bank rates. In order to support his argument, the learned Counsel relied upon the Judgment of the Hon'ble Apex Court in the case of ***Pratap Lakshman Muchandi*** (supra). The learned Counsel readout paragraph No.16 of the Judgment which reads thus:-

> *"16. But at the same time it is also true that the agreement to sell was executed way back in the year*

> *1982. Since after 1982 much water has flown under the bridge, the value of the real estate has shot up very high, therefore, while exercising our jurisdiction under Section 20 of the Specific Relief Act, 1963 we would like to be equitable and would not allow the sale of property to be executed for a sum of Rs.1,20,000. The litigation has prolonged for almost 25 years and now at last reached at the end of the journey. Therefore, we have to settle the equity between the parties. We hold that the agreement to sell was genuine and it was executed for bona fide necessity but because of the passage of time we direct that the respondents shall pay a sum of Rs.5 lakhs in addition to Rs.1,10,000 as out of Rs.1,20,000, Rs.10,000 has already been paid as advance. On receipt of Rs.1,10,000 and Rs.5 lakhs (Rs.6,10,000) the appellants shall execute the sale deed for the property in question."*

7. In view of the observations made by the Hon'ble Apex Court as above, it was the contention of Shri Kulkarni that this Court was bound to follow the law laid down as above in the aforesaid Judgment. It was the further contention of the learned Counsel that the aforesaid is an apparent error on the face of its record committed by this Court, which warrants review of the said Judgment and order.

8. Relying upon the Judgment of Hon'ble Apex Court in the case of ***Board of Control for Cricket, India and another. Vs. Netaji Cricket Club and Others [AIR 2005 SC 592]*** it was also submitted by the learned Counsel that Courts possess sufficient powers to review the orders passed by them for sufficient reason. It is evident that the aforesaid submission was made by the learned Counsel in answer to the argument advanced by Shri S.S.Choudhari, learned Counsel appearing for the respondent

Nos.1 and 2 to the effect that the Court possesses very limited power under Order 47 Rule 1 of the Code of Civil Procedure and unless there is an error apparent on the face of record, in normal course, the Court shall not review its own order. The learned Counsel has invited my attention to the following observations made by the Hon'ble Apex Court, which read thus:-

> *".. .. .. Order 47, R.1 of the Code provides for filing an application for review. Such an application for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason. Thus, the mistake on the part of the Court which would include a mistake in the nature of the undertaking may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefor. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words 'sufficient reason' in O.47, R.1 of the Code is wide enough to include a misconception of fact or law by a Court or even an Advocate. An application for review may be necessitated by way of invoking the doctrine 'actus curiae neminem gravabit'."*

9. The learned Counsel further submitted that this Court completely lost sight of the fact that the long period of 27 years had lapsed after the date of execution of the agreement of sale and in the meanwhile, the market value of the subject property has increased many times. The learned Counsel brought to my notice the recent valuation got done by the applicants of the subject property. Value of the subject property as on 20.03.2012 as certified by the Sub-Registrar at Rahata was Rs.1,54,20,000/-. In the circumstances, according to the learned Counsel, in no

case this Court could have granted the decree of specific performance. The learned Counsel submitted that the applicants have thus made out a good case for review of the Judgment and order passed by this Court. The learned Counsel ultimately prayed for setting aside the Judgment and order passed by this Court and instead, prayed for directing refund of the consideration received to them from respondent Nos.1, 2, 3 alongwith reasonable interest thereon.

10. After having perused the Judgment passed by this Court on 14th August, 2007 as well as the Judgment passed by the Trial Court in Special Civil Suit No. 259 of 1986 (New No. 335 of 1989) on 24th April, 1995 as well as the other material on record, it does not appear to me that any case is made out by the applicants for reviewing the order passed by this Court on 14th August, 2007.

11. It is true that the applicants had executed agreement of sale in favour of respondent Nos.1 to 3 on 27th June, 1980. It is also true that the Special Civil Suit No.259 of 1986 (New No. 335 of 1989) filed by respondent Nos.1 to 3 seeking specific performance of said agreement of sale was decreed in the year 1995 and then the First Appeal filed against the said Judgment by original defendants came to be decided by this Court in the year 2007. Thus, after the date of execution of the agreement of sale, admittedly, the period of 27 years had lapsed till decision of the

First Appeal by this Court.

12. Though, it is true that relief of specific performance of agreement of sale is discretionary, ordinary rule is that specific performance should be granted. It is well settled that the discretion should not be exercised arbitrarily but on sound principles of law. Unless there are compelling circumstances, the relief of specific performance is not to be ordinarily refused. The Courts cannot wriggle a contract between the parties and deny the relief of specific performance on some minor flaws or on unequitable grounds. The question precisely posed in the instant matter is whether lapse of time can be a ground for refusing the relief of specific performance. As noted earlier, according to the applicants, the Judgment delivered by the Hon'ble Apex Court in the case of ***Pratap Lakshman Muchandi*** (supra) lays down that if the litigation has prolonged for a substantial long period, the equity between the parties has to be settled either by enhancing the amount of consideration or by refusing the decree for specific performance.

13. I have carefully gone through the Judgment in the case of ***Pratap Lakshman Muchandi*** (supra). In the said matter, the agreement of sale was executed in the year 1982 and the litigation was prolonged for almost 25 years by the time it reached to the Hon'ble Apex Court. In the said matter, the suit

property was agreed to be sold for consideration of Rs.1,20,000/- and at the time of execution of agreement of sale, the Vendee had paid only an amount of Rs.10,000/- to the Vendor by way of earnest money and perhaps that was the reason that the Hon'ble Apex Court directed the Vendee to pay a sum of Rs.5,00,000/- over and above the price agreed at the time of execution of agreement of sale.

14. The facts in the instant matter are altogether different. It is not in dispute that in the instant matter, the entire consideration of Rs.2,92,500/- was paid by respondents at the initial stage only. The material on record further reveals that respondents had also paid the amount towards the purchase of Stamps etc. As is revealing from the record, in the year 1980 itself, the payment of Rs.3,08,162-67 was remitted by respondents and the only formality which was to be completed was the execution of the sale-deed in their favour.

15. Having considered the facts as aforesaid, it does not appear to me that the same course as was adopted by the Hon'ble Apex Court in the case of ***Pratap Lakshman Muchandi*** (supra) could have been adopted in the instant matter. The Hon'ble Apex Court enhanced the amount of consideration in the aforesaid case in the peculiar facts of the said case and in doing so, the Hon'ble Apex Court cannot be said to have laid down any ratio or any

mandate of law.

16. In the case of ***S.V.R. Mudaliar*** *(dead)* ***by L.Rs. and others Vs Mrs.Rajabu F. Buhari*** *(Dead)* ***by L.Rs. And others [AIR 1995 SC 1607]*** the Trial Court had granted the decree of specific performance and the same was set aside by the High Court. In the appeal before the Hon'ble Apex Court, it was sought to be canvassed that the relief of specific performance being discretionary, the Court shall not grant it for the reason that the period of 33 years had lapsed after filing of the suit during which the price of the property has gone up enormously. The Hon'ble Apex Court rejected the contention so raised and restored the decree of specific performance granted by the Trial Court. I deem it appropriate to reproduce herein below paragraph Nos.26 and 27 of the said Judgment, which read thus:-

> *"26. Shri Parasaran contends that the relief of specific performance is said to be discretionary only in the sense that the Court may not act arbitrarily and nothing beyond this, and while exercising the discretion judicial conscience and judicial statesmanship alone are the guiding factors. That this is the legal position is sought to be sustained by referring to sub-section (1) of Section 20 of the Specific Relief Act, 1963, in which, it has been stated that the jurisdiction to decree the specific performance is discretionary, but the discretion is not arbitrary; it is sound and reasonable and is to be guided by judicial principles. As to when the Court may not exercise discretion to grant the decree for specific performance has been mentioned in sub-section (2); whereas sub-section (3) states as to when the Court may properly exercise its discretion to decree specific performance. No doubt what has been stated in these two sub-sections is not exhaustive, but is illustrative, yet*

> *the intention of the Legislature has been well reflected, both as regards the granting of the relief and non-granting of the same. Clause (c) of sub-section (2) states that if granting of specific performance would make it "inequitable", the Court may not grant the relief. It is this part of the statutory provision which is sought to be relied by the learned counsel for the respondents by contending that it would be inequitable to grant specific performance for the aforesaid two reasons.*
>
> *27. In so far as the delay in the disposal of the case and the rise in prices during interregnum, Shri Parasaran urges that the delay not having been occasioned by any act of the plaintiff, he may not be punished for the same on the principle of "actus curiae neminem gravabit" - an act of the Court shall prejudice no man. As regards the rise in prices, the submission is that it should not weigh with the Court in refusing the relief if otherwise due, as opined in S.V.Sankaralinga Nadar V. P.I.S. Ratnaswami Nadar, AIR 1952 Madras 389, which decision was cited with approval in Mir Abdul Hakeem Khan V. Abdul Mannan Khadri, AIR 1972 Andh.Pra.178. We are in agreement with this view because of the normal trend of rise in prices of properties situate especially in metropolitan city like Madras, where the property in question is situate. If merely because the prices have risen during the pendency of litigation, we were to deny the relief of specific performance, if otherwise due, this relief could hardly be granted in any case, because by the time the litigation comes to an end sufficiently long period is likely to elapse in most of the cases. This factor, therefore, should not normally weigh against the suitor in exercise of discretion by a "Court" in a case of the present nature."* **(emphasis supplied)**

17. There cannot be any dispute about the proposition that grant of decree for specific performance is discretionary as is also made out from the provisions contained in Section 20 of the Specific Relief Act and it is not necessary to grant a decree of specific relief, if it may appear to be inequitable. However, considering the facts of the present case, it does not appear to

me that it was inequitable to grant the decree of specific performance to the plaintiff i.e. Present respondent Nos.1 to 3. Admittedly, not only the entire sale consideration of Rs.2,92,500/- was paid by the respondents in the year 1980 itself but even the amount for expenses to be incurred at the time of registration i.e. towards stamp fee etc. was also remitted by the respondents. No such case is made out by the applicants that the sale-deed of the suit property could not be executed because of some lapses on the part of respondent Nos.1 to 3. On the contrary, the facts reveal that the present applicants on some or other pretext had been refusing to execute the sale-deed in favour of the respondents.

18. It is significant to note that this Court while deciding the First Appeal had framed the following specific issue:-

> *"Whether the impugned decree for specific performance of the agreement, in any manner, would be oppressive on the rights of the appellants or would give unfair advantage to plaintiff – Suresh Gordia and others for them and as such discretion used by the Trial Court needs interference by this Court ?*

By giving elaborate reasons, this Court has answered the above issue in negative.

19. In the facts and circumstances as above, the applicants cannot now claim that this Court shall review its Judgment in view of the Judgment of the Hon'ble Apex Court in the case of ***Pratap Lakshman Muchandi*** (supra). I reiterate that in the aforesaid Judgment, the Hon'ble Apex Court cannot be said to have laid

down any mandate that the decree of specific performance is to be refused if the litigation is prolonged for a long period and if the price of the suit property has increased many times in the meanwhile period. In the peculiar facts of the said case, the amount of consideration was enhanced by the Hon'ble Apex Court.

20. As held by the Hon'ble Apex Court in its recent Judgment in the case of ***Roger Shashoua and others Vs. Mukesh Sharma and others [(2017) 14, SCC 722]***:

> *"Ratio decidendi of each case is the rule deducible from the application of law to the facts and circumstances of a case and not some conclusion based upon facts which may appear to be similar. One additional or different fact can make a world of difference between conclusions in two cases even when the same principles are applied in each case to similar facts.*
>
> *What is binding is the ratio of the decision and not any finding of the fact. It is the principle found out upon a reading of a Judgment as a whole, in the light of the questions before the Court that forms the ratio and not any particular word or sentence. To determine whether a decision has "declared law" it cannot be said to be a law when a point is disposed of on concession and what is binding is the principle underlying a decision. A Judgment of the Court has to be read in the context of questions which arose for consideration in the case in which the Judgment was delivered."*

21. Moreover, as held by the Hon'ble Apex Court in the case of ***P.D'Souza Vs. Shondrilo Naidu [AIR 2004 SC 4472]:***

> "*there is no binding precedent to the effect that in all cases where there had been escalation of prices, Court should either refuse to pass a decree on specific performance of contract or direct plaintiff to a pay higher sum*".

22. In the facts and circumstances discussed above, I do not see any reason for reviewing the Order earlier passed by this Court on 14th August, 2007. The review petition being devoid of any substance deserves to be dismissed and is accordingly dismissed with costs. Pending civil applications, if any, stand disposed of.

(**P.R.BORA**)
JUDGE

SPT