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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

APPEAL FROM ORDER NO.71 OF 2016

Sudhir s/o Baburao Jagtap
Age - 48 years, Occ - Private Money Lender
R/o Pharshi Galli, Osmanabad
Taluka and District - Osmanabad

APPELLANT

VERSUS

Mahesh s/o Ramkrishna Patil
(Deshpande), Age - 39 years,
Occ- Agriculture
R/o Near Ram Mandir, Samarthanagar
Osmanabad, Taluka and District - Osmanabad

RESPONDENTS

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Mr. Raghvendra Bhise h/f Mr. N.L.Jadhav, Advocate for appellant
Mr. Sanjay A. Wakure, Advocate for the respondent

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 12th MARCH, 2018

ORAL JUDGMENT :

1. Heard learned advocates for the parties.
2. Learned advocate for the appellant vehemently submits that in spite of placing sufficient evidence on record about agreement and acting in pursuance of the same and about payment of substantial amount, the appellate court has committed an error in remitting the matter to trial court for decision afresh upon granting opportunity to the defendant to file

written statement. Learned advocate complains that as many as three witnesses have been examined and there is sufficient evidence on record about agreement and payment being made in pursuance of the same. In such a situation, according to learned advocate, remand order ought not to have been passed by the appellate court. He further submits that pursuant to the decree, the amount has been deposited in the court and registered sale deed has also been executed. In the circumstance, the court ought to have refrained from passing an order of remand.

3. On the other hand, Mr. Wakure, learned advocate appearing for the respondent contends that the judgment of the appellate court is a comprehensive judgment taking into account all relevant aspects in the matter and the reasons underlying would fully endorse and justify the order passed. He submits that the appellate court has aptly observed that the trial court had not framed proper issues for determination. The agreement is claimed to have been executed in 2006, whereas suit had been instituted in 2011. No issue in respect of readiness and willingness of plaintiff had been framed. Moreover, it is imperative to note that finding with respect to readiness and willingness had not been recorded. He submits that while the

suit had been instituted in 2011, the same got decreed in September, 2012. In the meanwhile, the default in attending to the proceedings had been due to suffering and illness by the defendant. However, it had not received its due before the trial court and the order came to be passed rendering the judgment and decree by the trial court to be a hasty judgment and decree. Learned advocate further submits that inconvenience caused to the plaintiff in the process, with imposition of costs under the order of remand has been directed to be compensated. He submits that the appellate court has also considered that rather than evidence on record, absence of written statement and defence on behalf of the defendant has weighed more while granting decree in favour of the plaintiff. The appellate court has taken into account judgments, which would govern present situation and as such, the appellate order is not liable to be meddled with.

4. Perusal of the judgment by trial court evinces that practically only a single issue had been framed in absence of written statement on behalf of the defendant as to whether suit of the plaintiff deserves to be decreed. Further, the reasons under the judgment do not refer to the requirement under the Specific Relief Act, particularly referable to section 16 (1) (c)

thereof. The appellate court has observed in paragraph No. 16 thus -

“ 16. A 'judgment' of its sustenance must contain not only findings on the points, but must also contain what evidence consists of and how plaintiff proved his case. A judgment unsupported by the reason is no judgment in the eye of law. Mere fact that, the defendants failed to file written statement, did not itself entitled the plaintiff to get a decree in his favour. The Court is under obligation to apply its mind to whatever ex-parte evidence or affidavit filed on record of the case and application of mind must be writ large on the face of record. ”

5. The appellate court has further taken into account observations of the Supreme Court in the cases of "*Ramesh Chand Ardawatiya V/s Anil Panjwani*" reported in *AIR 2003 SC 2508* as well as "*Balraj Taneja and Another V/s Sunil Madan and Another*" reported in (1999) 8 SCC 396. Observations of the appellate court in the judgment show that there has been absence of proper issues and of consideration that the agreement is of 2006 and suit has been filed in 2011 and further that since plaintiff has been in possession of the land and remand for decision on merits of the case would not prejudice the plaintiff. Having regard to circumstances, a remand would sub serve the cause of justice and inconvenience caused to the plaintiff in the process has been compensated by awarding costs.

6. Looking at the facts, circumstances and the situation it

does not appear that the order impugned in appeal from order calls for any interception. Appeal from order is thus, dismissed. Record and proceedings be sent back to the trial court. Trial court to proceed with the matter expeditiously. Civil application, in view of aforesaid, stands disposed of.

[SUNIL P. DESHMUKH, J.]

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