

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.37 OF 1993

1. Parasharam Sakharam Dhumal	]	
2. Shankar Sakharam Dhumal	]	
Both R/at Ganeshwadi,	]	
Taluka and District Satara.	]	 Appellants

Versus

Shamrao Mahadeo Dhumal (<i>Since Deceased</i>)	]	[Deleted]
Through LRs.:-	]	
1. Hirabai Shamrao Dhumal	]	
2. Sharadabai Baban Sawant,	]	
3. Suman Mansing Yadav	]	
4. Kamal Uttam Tupe	]	
5. Pushpa Hanmant Gholap	]	
6. Savitra Shamrao Dhumal (<i>Since Deceased</i>)	]	
Through LRs.:-	]	
6a. Chandrakant Yashwant Gaikwad	]	
Age : 59 Years, Occ. : Army-Retired	]	
6b. Snehal Chandrakant Gaikwad	]	
Age : 23 Years, Occ.: Education	]	
6c. Supriya Chandrakant Gaikwad	]	
Age : 25 Years, Occ. : Education	]	
Respondent Nos.6a to 6c residing at	]	
Room No.5, Namrata Chawl,	]	
Behind SBI Bank, Dattawadi, Kharegaon,	]	
Kalwa (West), District Thane 400 605.	]	
7. Raju Shamrao Dhumal	]	
Minor, G.A.L. No.1 Hirabai,	]	

8. Banubai Kushaba Sawant,	]	
9. Rangubai Sakharam Dhumal	]	[<i>Abated</i>]
10. Tai w/of Hariba Kalbhor	]	[<i>Abated</i>]
11. Balutai Sakharam Dhumal	]	
12. Shakhntala Saknaram Dhumal	]	 Respondents

Mr. R.A. Thorat, Senior Counsel, a/w. Mr. Pradeep J. Thorat, for the Appellants.

Mr. Vishwanath S. Talkute for Respondent Nos.2 to 6.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 8TH JUNE, 2018.

ORAL JUDGMENT :

1. Heard Mr. Thorat, learned Senior Counsel for the Appellants, and Mr. Talkute, learned counsel for Respondent Nos.2 to 6.

2. This Second Appeal is preferred against the Judgment and Order dated 18th November 1991 passed by the 3rd Additional District Judge, Satara in Regular Civil Appeal No.38 of 1984, thereby dismissing the Appeal and confirming the Judgment and Decree passed by the Court of Civil Judge, Senior Division, Satara in Regular Civil Suit No.119 of 1976.

3. By the said Judgment and Decree, the Trial Court has dismissed the Suit for specific performance of the contract filed by the Appellant and, as stated above, the Appeal preferred against the said Judgment and Decree is also dismissed by the 1st Appellate Court, however on some different reasons.

4. Against this concurrent 'Decree', the present Second Appeal stands admitted on the following substantial questions of law, as framed in Ground Nos.1(a) to 1(c) of the Appeal Memo. Those grounds are as follows :-

“1(a). Whether in an Appeal preferred by the Appellant-Plaintiff, the lower Appellate Court was right in upsetting the findings regarding the nature of the transactions dated 20th June 1963 and 12th April 1965 ? It is submitted that, the Trial Court, while answering Issue Nos.1 and 5, has clearly given its findings that the aforesaid transactions are in the nature of sale with a condition to repurchase. The lower Appellate Court upset these findings without there being any challenge from the Respondents-Defendants and held that these transactions are out and out sale.

1(b). Whether the lower Appellate Court was right in holding that, subsequent unregistered Agreements for Re-conveyance at 'Exhibit-68' and 'Exhibit-69' cannot replace registered 'Sale-Deed' at 'Exhibit-61' and 'Exhibit-62', without assailing on the genuineness of the documents at Exhibits “68” and “69” ?

1(c). Whether the clause regarding 'Right of Re-conveyance' is necessary to be mentioned in the registered 'Sale-Deeds', since it is an independent Agreement between the parties ?”

5. Thus, the main substantial question of law, as framed, pertains to the nature of the suit transaction. As per the Trial Court, the suit transaction was of sale with a condition of re-purchase. The Trial Court, however, held that the Appellants have not filed the Suit within limitation and also not proved their readiness and willingness to perform their part of the contract. Therefore, the Trial Court rejected prayer of the Appellants for specific performance of the contract and dismissed the Suit; whereas, according to the 1st Appellate Court, the nature of the transaction was an '*out and out sale*' and as the '*Agreements of Re-purchase*' were unregistered, they cannot override the registered document of '*Sale-Deed*'. Hence, the 1st Appellate Court also dismissed the Suit and the Appeal.

6. Therefore, in order to appreciate the nature of the transaction and the issues involved in this Second Appeal, it would be necessary and useful to refer to the facts of the present case, which are not in the realm of dispute.

7. The suit property is a land bearing Gat No.878, admeasuring,

totally, 1 Acre 28 Gunthas, which is situate at Village Ganeshwadi, District Satara. It was originally owned by the Appellants' father Sakharam Vithu Dhumal. He has sold his half share from the said land on 20th June 1963 for a consideration of Rs.900/- to the father of the Respondents, namely, Shamrao Mahadev Dhumal, by way of registered 'Sale-Deed', with a condition to re-purchase the property by refunding the amount within ten years therefrom. A separate 'Agreement' also came to be executed to that effect. Thereafter, on 12th April 1965, Sakharam again sold in the same way the remaining half share of the said property to Shamrao for a consideration of Rs.1,000/- again on the condition to re-purchase the said property by refunding the said amount; though no specific period was prescribed in this transaction for refund of the amount. The possession of the entire land was also handed over to deceased Shamrao.

8. Deceased Sakharam, by issuing a notice dated 3rd April 1973, showed his readiness and willingness to re-purchase the said property by refunding the amount of Rs.900/-. The notice was duly served on Shamrao, but was not replied, nor complied with. Sakharam has, therefore, filed this Suit for re-purchase of the suit property and, in that way, for specific performance of the 'Agreement of Re-conveyance'.

9. This Suit came to be resisted by Shamrao vide his written

statement at 'Exhibit-24', which came to be adopted by the Respondents herein, after his death. It was denied that there was any such condition of re-purchase of the suit land. On the contrary, it was submitted that the transactions were of outright sale. Therefore, there is no question of specific performance of the said 'Agreements of Re-conveyance'; especially when the said Agreements of alleged re-purchase are unregistered documents and hence, they cannot prevail over the registered 'Sale-Deeds'. A contention was also raised that the transactions were hit by the provisions of Bombay Prevention of Fragmentation and Consolidation of Holdings Act. It was then denied that, Sakharam and, after his death, the Appellants were ever ready and willing to perform their part of the contract. It was also contended that the Suit was not within the limitation.

10. On these respective pleadings of the parties, the Trial Court framed necessary issues. In support of their case, Appellants' examined themselves and led the evidence of two contesting witnesses to the said 'Agreements of Re-conveyance' and proved the 'Sale-Deeds' and 'Agreements' on record. On behalf of the Respondents, Nilawati, the wife of deceased Shamrao, entered into the witness box and deposed that, she does not know anything about the 'Re-conveyance Deed' of the suit property. Naturally, her evidence was not of much help.

11. On appreciation of this evidence on record, the Trial Court came to the conclusion that both the transactions were in the nature of sale with a condition to re-purchase. However, the Trial Court found that the Appellants have failed to prove that they were ready and willing to perform their part of the contract, considering that time was the essence of the contract, it being a contract for re-sale or re-conveyance of immovable property. The Trial Court also found that, as regards the first transaction, the Suit was not within limitation and though the Suit regarding second transaction was within limitation; the Trial Court held that the Appellants have failed to prove their willingness to perform the contract by tendering or offering the consideration amount for this transaction also. Accordingly, the Trial Court dismissed the Suit on both the counts. As regards the contention that the 'Sale-Deeds' were hit by the provisions of Bombay Prevention of Fragmentation and Consolidation of Holdings Act, both, the Trial Court and the first Appellate Court negatived the said contention.

12. When this Judgment and Order of the Trial Court was challenged before the 1st Appellate Court, the 1st Appellate Court accepted, as proved, execution of the 'Sale-Deeds' and also the 'Agreements of Re-conveyance', but held that the transactions were in the nature of an out and out sale and the 'Agreements of Re-conveyance', which are unregistered, cannot have any legal value and they will not

make the registered transaction as invalid. The 1st Appellate Court also confirmed the finding of the Trial Court that, as regards the first transaction, the Suit is, admittedly, barred by the limitation and as regards the second transaction also, the Appellants were not prompt enough to take necessary steps for seeking specific performance of the 'Agreement of Re-conveyance'. The Appellate Court also confirmed the finding of fact recorded by the Trial Court that, the Appellants have failed to prove the readiness and willingness to perform their part of the contract. The 1st Appellate Court, however, held that, this question does not arise for its consideration, since it has already come to the conclusion that the unregistered 'Agreements of Re-conveyance' cannot replace the registered 'Sale-Deeds'. On this sole ground, the 1st Appellate Court dismissed the Appeal.

13. In this case, the evidence of the Appellants and the two contesting witnesses, namely, Dnyanu Patil for the first transaction and Hanmant Salunkhe for the second transaction, clearly goes to prove not only the execution of the first 'Sale-Deed' dated 20th June 1963 (Exhibit-61), as also the 'Agreement of Re-conveyance' executed on the same day vide 'Exhibit-69', but it also proves the second 'Sale-Deed' dated 12th April 1965 vide Exhibit-62 and its 'Agreement of Re-conveyance' vide 'Exhibit-68'. The execution of these documents; especially 'Agreements of Re-conveyance', even if disputed by the Respondents, the evidence of

the attesting witnesses is rightly relied upon by learned Trial Court and the 1st Appellate Court to hold the execution thereof as proved.

14. While challenging this finding of the Appellate Court, the submission of learned Senior Counsel for the Appellants is that, this finding is totally against the settled position of law and hence, it has to be set aside. In support of his submission, learned Senior Counsel for the Appellants has relied upon the Judgment of this Court in the case of *Sham Pundalik Dhumatkar and Anr. Vs. Pushpa Mohanlal Talreja (Smt.) and Ors., 2017 (3) Bom.C.R. 248*, wherein exactly the similar contention was raised for consideration and while deciding the same, in paragraph No.14 of its Judgment, this Court was, after considering the provisions of Section 49 of the Registration Act, pleased to hold that, there is no substance in the said contention. It was held that, in view of the Proviso to Section 49 of the Registration Act, which reads as follows, the Suit for specific performance based on unregistered 'Agreement' is also maintainable.

***“49. Effect of Non-Registration of Documents
Required to be Registered :-***

No document required by Section 17 [or by any provision of the Transfer of Property Act, 1882] to be registered shall

- (a)
- (b)
- (c)

[Provided that an unregistered document affecting immovable property and required by this Act, or the Transfer of Property Act, 1882, to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877, or as evidence of any collateral transaction not required to be effected by registered instrument.]”

15. Here in the case, the Agreements of Re-conveyance stand on independent footing and there is no question of the said Agreements replacing or substituting the registered Sale-Deeds. The transaction of sale was complete on execution of the 'Sale-Deed', but, on the same date, the 'Agreement of Re-conveyance' was executed, stipulating for re-purchase of the property on repayment of the entire consideration amount within the prescribed period. As held in this Judgment, the Suit for specific performance of an unregistered 'Agreement of Sale' is definitely maintainable. Therefore, the very foundation on the basis of which the 1st Appellate Court has held the transaction in the case to be of an out and out sale, only on the count that unregistered 'Agreement of Re-conveyance' cannot substitute the registered 'Sale-Deed, that foundation having no basis in the legal dictum, the said finding of the 1st Appellate Court has to be set aside.

16. The submission of learned Senior Counsel for the Appellants is that, if that finding of the 1st Appellate Court is set aside, then, it will

follow that the Appellants are entitled to get specific performance of the 'Agreements', in view of the 'Agreements of Re-conveyance'. According to learned counsel for the Respondents, however, there are two further hurdles to be crossed by the Appellants, namely, the Appellants will have to prove that the Suit filed on the basis of such 'Agreements of Re-conveyance' was within limitation and the Appellants were always ready and willing to perform their part of the contract.

17. It is urged that, on both these points, the Trial Court and the Appellate Court has held against the Appellants. However, the submission of learned Senior Counsel for the Appellants is that, the finding arrived at by the Trial Court in respect of the specific performance of the first 'Agreement', being barred by limitation, is not correct. In support of his submission, learned Senior Counsel for the Appellants relied upon the 'Demand Notice' and recitals in the 'Agreement'. It is submitted that, as per the first 'Agreement' dated 20th June 1963 (Exhibit-69), re-conveyance was to be made within a period of ten years. The period of ten years was expiring on 20th June 1973. Prior to the expiry of that period, the Appellants had issued the notice on 3rd April 1973, calling upon the Respondents to execute the 'Sale-Deed' by accepting the amount of consideration. The said notice was received by the Respondents on 7th April 1973. Respondents did not comply with the same within fifteen days, which period expired on 22nd

April 1973 and hence, the Suit filed on 17th April 1976 is within the period of three years, as prescribed under Article 54 of the Limitation Act. To substantiate this submission, learned Senior Counsel for the Appellants has relied upon the Judgment of the Hon'ble Apex Court in the case of *Babu Ram alias Durga Prasad Vs. Indra Pal Singh (Dead) by LRs.*, (1998) 6 SCC 358.

18. Per contra, according to learned counsel for the Respondents, this finding of the Trial Court that the Suit for specific performance as regards the first 'Agreement of Re-conveyance' was not within limitation, was not at all challenged before the 1st Appellate Court and, therefore, the said ground is not available in the Second Appeal. To support this submission, learned counsel for the Respondents has taken this Court through all the grounds mentioned in the Appeal Memo of the First Appeal to show that the finding as regards the issue of limitation was not at all challenged and, therefore, according to learned counsel for the Respondents, if such ground is not taken in the First Appeal, then, it cannot be available in the Second Appeal.

19. To support this submission, learned counsel for the Respondents has relied upon various Judgments of the Hon'ble Apex Court; firstly, in the case of *Manoj Madhukar Gadge and Ors. Vs. Dattatraya Manohar Tekade*, 2018 (3) ALL MR 681; secondly, in the

case of *Balwant Vithal Kadam Vs. Sunil Baburao Kadam*, AIR 2018 SC 49, and, lastly, in the case of *Dr. Mahesh Chand Sharma Vs. Smt. Raj Kumar Sharma and Ors.*, AIR 1996 SC 869.

20. In the first Judgment, it was held that, it is not for the Appellate Court itself to find out what could be the points for determination and then proceed to give decision on merits. It was held that, if such grounds are not taken in the First Appeal, then, in the Second Appeal, the same cannot be advanced. It was further held, in paragraph No.12, that, mere raising of various grounds in the Memo of Appeal is not sufficient. Such grounds ought to be urged and argued before the Court, whose decision has been impugned. If certain grounds, though raised in the Memo of Appeal, are not pressed, then, it is not obligatory on the Court deciding the proceedings to deal with the same. In paragraph No.15 of the said Judgment, in the facts of the said case, it was held that, the Trial Court has not framed issue relating to limitation. Appellants, however, did not chose to challenge the findings on merits, as recorded by the Trial Court. Thus, if the question of limitation was not tried by the Trial Court and the same was not urged before the 1st Appellate Court, then, the Appellants cannot be permitted to urge this ground for the first time in the Second Appeal; especially when the same is a mixed question of fact and law.

21. In the second Judgment of the Apex Court in the case of *Balwant Vithal Kadam (Supra)* also, the similar legal position was upheld and it was held that, the Appellant cannot be permitted to raise the plea, which he has not raised before the First Appellate Court.

22. In the third Judgment of *Dr. Mahesh Chand Sharma (Supra)* also, in paragraph No.32, it was held by the Apex Court that, if the decision on the issue of limitation was not contested by the parties before the Division Bench in an Appeal, then, the finding of the learned Single Judge was not open to be re-agitated in the Second Appeal.

23. Here in the case, therefore, according to learned counsel for the Respondents, as regards the issue of limitation, if the finding of the Trial Court thereon was not challenged by the Appellants before the 1st Appellate Court, then, this Court cannot entertain the said challenge and would not be justified in interfering with the finding arrived at by the Trial Court.

24. In my considered opinion, in the present case, this Court need not enter into the question as to whether the ground not taken in First Appeal can be available in Second Appeal, as even the cursory perusal of the Judgment of the 1st Appellate Court goes to show that the Appellate Court has also considered the point of limitation, even if it was

not raised in the Appeal Memo, and had arrived at the same conclusion, as recorded by the Trial Court. Moreover, this Court need not enter into the aspect as to whether the Suit is within the limitation, as prescribed under Section 54 of the Limitation Act, because even if the point of limitation is kept aside, the Suit of the Appellants for specific performance has been dismissed by the Trial Court and the 1st Appellate Court has also confirmed the said finding on the count that the Appellants have failed to prove their readiness and willingness to perform their part of the contract. Even accepting the argument of learned Senior Counsel for the Appellants, it is held that the Suit in respect of the first transaction is also within limitation, in that case also, unless and until the readiness and willingness on the part of the Appellants to perform their part of the contract is proved on record, the Appellants cannot become entitled to get the specific performance of the 'Agreement'.

25. According to learned Senior Counsel for the Appellants, when Appellants are seeking specific performance of the 'Agreement' before expiry of the stipulated period of ten years, then, it has to be held that, they were all along ready and willing to perform their part of the contract. It is submitted that, by issuing the notice dated 3rd April 1973, the Appellants had also offered to tender the consideration amount and there is no law providing that the consideration amount has to be

deposited or paid in the Court. Conversely, the provisions of the Specific Relief Act do not expect the Plaintiff or the Appellant to deposit the said amount in the Court and, therefore, neither the Trial Court, nor the Appellate Court were right in holding that the Appellants have failed to establish their readiness and willingness to perform their part of the contract.

26. However, this contention also, in my considered opinion, cannot be accepted for the simple reason that, as held by both the Courts below, this being an 'Agreement of Re-conveyance', the 'time' was and has to be held as the 'essence' of the contract. The legal position on this aspect as regards the simplicitor 'Agreement of Sale' and the 'Agreement of Re-conveyance' is totally different. In case of simplicitor 'Agreement of Sale', it may be true that, the time may not be an essence of contract as regards the immovable property, but, in case of 'Agreement of Re-conveyance', time is the essence of the contract. This legal position is very well spelt out in the various Judgments of the Hon'ble Apex Court, as relied upon by learned counsel for the Respondents, viz. in the cases of *Gauri Shankar Prasad and Ors. Vs. Brahma Nand Singh*, (2008) 8 SCC 287; *Raj Kishore (Dead) by LRs. Vs. Prem Singh and Ors.*, AIR 2011 SC 382; *Smt. Bismillah Begum (Dead), by LRs. Vs. Rahmatullah Khan (Dead), by LRs.*, AIR 1998 SC 970; and *Hasam Nurani Malak Vs. Mohansingh and Anr.*, AIR 1974 Bom. 136, wherein the Hon'ble Apex

Court has, after relying upon its earlier Judgment in the case of *Chunchum Jha Vs. Ebadat Ali*, AIR 1954 SC 345, held that, “in contracts relating to re-conveyance of the property, 'time' is always the 'essence' of the contract”. It was further held that, in case of 'Agreement of Re-purchase', the condition of re-purchase must be construed strictly against the original vendor and stipulations with regard to the time of performance of the Agreement must be strictly complied with, as the 'time' must be treated as being the 'essence' of the 'Agreement' in case of an 'Agreement of Re-conveyance'.

27. It is significant to note that, in this Judgment of *Gauri Shankar Prasad Vs. Brahma Nand Singh (Supra)*, it was found that, the period of limitation has expired on 5th February 1992 and the Suit was filed on 23rd May 1992. Despite that, it was held that, as it was an 'Agreement of Re-conveyance' and there was specific stipulation for re-conveyance within a period of three years, which was, admittedly, not complied by the Plaintiff-Appellant, the High Court has rightly arrived in holding that the Plaintiff cannot be entitled to get specific performance of the 'Agreement'.

28. In the Judgment of *Raj Kishor (Dead) by LRs. Vs. Prem Singh and Ors. (Supra)* also, in paragraph No.19, it was held that,

“In a case where the parties have entered into the transaction of sale and also executed 'Agreement of Re-conveyance' of the property sold, time stipulated for re-conveyance is the essence of the contract. If the original vendor fails to act punctually according to the terms of the contract, the right to re-purchase will be lost and cannot be specifically enforced.”

29. In the said case, it was further held that,

“As the Plaintiff has failed to prove that he has tendered the amount to the purchaser within the time stipulated for 'Agreement of Re-conveyance', he has lost his 'Right of Re-conveyance' and he cannot be saved from forfeiture”.

30. In the Judgment of *Smt. Bismillah Begum (Dead), by LRs. Vs. Rahmatullah Khan (Dead), by LRs. (Supra)* also, it was held that, in such 'Agreement of Re-conveyance', the 'time' is the 'essence' of the contract and the common law stipulations as to contract cannot be made applicable to such 'Agreements of Re-conveyance'.

31. In the Judgment of this Court in the case of *Hasam Nurani Malak Vs. Mohansingh and Anr. (Supra)*, the Division Bench was pleased to reproduce the observations of the Privy Council in the case of *Jamshed Vs. Bruiorii, AIR 1915 PC 83*, and held that,

“There is distinction between a “contract of sale of immovable property” and a “contract of re-sale or re-conveyance of immovable property”. An Agreement to re-convey property, after the vendor transferred it by sale to the vendee, is essentially in the nature of, according to the strict requirements of 'Agreement of Re-conveyance' and hence, it has to be performed within the stipulated period.”

32. Here in the case, both, the Trial Court and the Appellate Court also have come to the conclusion that, Appellants had never been prompt and diligent in observing the time stipulated for the performance of the 'Agreements of Re-conveyance'. As observed by the Trial Court, even after the notice issued was not replied, the Appellants have not filed the Suit immediately, but they have filed the Suit three years thereafter and at no time, they have made any efforts to offer or tender the amount of consideration to the Respondents. It is categorically recorded by the Trial Court that, the Appellants kept mum for near about three years, after the notice. Appellants did nothing, nor have they tendered the consideration amount, which was agreed under the 'Agreement' or have deposited the amount as per the 'Agreement' in the Court at the time of presentation of the Suit. They have also not deposited the consideration amount till the date of decision to show their willingness to perform their part of the contract and in such circumstances, it becomes very difficult to accept that the Appellants were ready and willing to perform their part of the contract. On the

contrary, it appears from the very conduct of the Appellants that, they were never ready or they are not ready to perform their part of contract. Mere issuance of notice cannot be sufficient to show the willingness on the part of the Appellants. At-least they should have presented the Suit immediately after the notice and considering that it is an 'Agreement of Re-conveyance', in which repayment of consideration amount within the stipulated period of ten years was the essence of the contract, they should have deposited the consideration amount in the Court to show their willingness, but they did nothing.

33. The 1st Appellate Court has also, in paragraph No.13 of its Judgment, taken a concurrent view by holding that, it has been rightly found by the lower Court that,

“The Appellants had not been active within ten years, as stipulated, from the date of the first 'Agreement', nor they were very much active to repay the amount at the earliest possible time, after the execution of the second 'Agreement'. Appellants were not even ready to keep themselves prepared during some reasonable period after issuance of the notice. They remained inactive. They had neither tendered the amount, nor they had deposited the same in the Court and they have filed the Suit in the year 1976, three years after the issuance of the notice. They cannot be absolved of their duty to be in action, if period of about three years has been elapsed after issuance of the notice. It, therefore, can easily be gathered that the Trial Court

has rightly found that the Appellants have not kept themselves in action towards the completion of the so called re-conveyance of the property. They were not prompt enough to be in time to take steps to make the compliance and, therefore, even if it is presumed that the 'Agreement of Re-conveyance' of property has taken place, Appellants obviously are found not to have been ready and willing to perform their part of the contract."

34. It was further held that,

"Looking to the circumstances and the facts of the present case, it has emerged out that the Appellants cannot be said to have been vigilant and prompt enough to keep themselves in action for getting the compliance done in time. It cannot, therefore, be accepted that the Appellants are ready and willing to perform their part of the transaction/contract."

35. This finding of the fact arrived at by the Trial Court and also confirmed by the 1st Appellate Court, cannot be disturbed by this Court in the Second Appeal. The scope of the Second Appeal is limited, only to consider any substantial question of law and not to act as a "third chamber of fact finding". Even otherwise also, even the cursory glance to the facts of the present case goes to show that the Agreements were executed way back in the years 1963 and 1965. The stipulated period for the first 'Agreement' was ten years and for the second 'Agreement', the notice was issued in the year 1973, but no steps were taken after the

issuance of the notice for three years. There is nothing on record to show that the amount was ready with the Appellants or they had offered to pay the same to the Respondents. Therefore, the evidence on record totally negatives the readiness and willingness on the part of the Appellants to perform their part of the contract. Hence, on this count, no interference is warranted in the impugned Judgment and Order of the Appellate Court, which has confirmed the finding of the Trial Court on this aspect.

36. The net result is that, the Second Appeal holds no merits; hence, stands dismissed.

37. At this stage, learned Senior Counsel for the Appellants seeks stay to the Judgment and Order of this Court for a period of twelve weeks. I do not find any reason to stay the same, considering that the transactions are of the year 1963 and 1965 and the Suit is pending since 1976. Even this Second Appeal is pending from 1993; hence, the prayer for stay is rejected.

[DR. SHALINI PHANSALKAR-JOSHI, J.]