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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION***

SECOND APPEAL NO. 295 OF 2014

Mr. Kashiram Buvaji Patil (since deceased)
through his heirs and legal representatives. ... Appellants.

V/s.

Mr. Baban Govind Khade (since deceased)
through heirs and legal representatives. ... Respondents.

Mr. R.A. Thorat, Senior Advocate a/w. Aditi Naikare i/b. Pradeep J.
Thorat for the Appellants.

CORAM : N.M. Jamdar, J.

DATE : 30 January, 2018.

Oral Order :-

The Appellants – Plaintiffs, being aggrieved by the dismissal of the suit and appeal filed before the learned Civil Judge, Khalapur and the learned District Judge, Raigad have filed this Second Appeal.

2. The suit was filed by the Appellants – Plaintiffs for

specific performance of an agreement dated 14 June 1974. According to the Appellants – Plaintiffs, the Respondents – Defendants executed an agreement for sale on 14 June 1974 and on the same day, an amount of Rs.4,000/- was given to the Respondents. One of the condition was regarding a permission under the tenancy authorities. It appears that the application made to the tenancy authorities was rejected on 22 April 1977. Thereafter, the suit was filed.

3. The learned Senior Advocate for the Appellants contended that both the Courts are in error in holding that the suit was barred by limitation. It was contended that the suit was not barred by law of limitation and that reliance placed by both the Courts on Article 54 of the Limitation Act, is entirely misplaced. As regard this submission, both the Courts, considering the fact that one of the essential requirements seeking specific performance of an agreement being readiness and willingness of the Plaintiff, framed an issue regarding the same. Therefore, even assuming the contentions of the Appellants – Plaintiffs that the suit was within limitation is accepted, the question still remains of the readiness and willingness on the part of the Appellants – Plaintiffs. The agreement was stated to be executed on 14 June 1974. The tenancy authorities rejected the application on 22 April 1977. The suit was filed on 24 August 2007 i.e. almost after lapse of 25 years. Though the

Appellants – Plaintiffs have sought to contend in the Courts below that the Appellants have repeatedly contacted the Respondents to execute the sale deed, not a single written communication was issued by the Appellants in the span of almost 25 years. The Court cannot be oblivious of the fact that the prices of lands has undergone substantial change in last 25 years. In view of the silence on the part of the Appellants for 25 years, it will have to be held that the factum being ready and willing is against the Appellants. The Court, while exercising equity jurisdiction under the Act will have to take note of the conduct of the Appellants. Though, as contended by the learned Counsel for the Appellants, the Appellants may have paid the amount in the year 1974 but thereafter, the silence of 25 years is unexplained.

4. It was then contended that both the Courts have non-suited the Appellants – Plaintiffs on the aspect of damages as well which the Court is entitled to grant under Section 22 of the Act. It was contended that these damages have been refused on the ground of limitation which is erroneous. The amount is stated to have been paid in the year 1974. Even for grant of damages, considering the equity jurisdiction of the Court under the Act, it is not automatic. Considering the fact that the Appellants are not ready and willing to perform their part of the contract and that there was no written communication till the suit was filed, it cannot be stated that the

Appellants are entitled to any damages. Nothing is shown how the finding of fact that appellants are not in possession of the property, is perverse.

5. In these circumstances, there is no error in the view taken by both the Courts. There is no perversity or illegality in the judicial discretion vested in the Courts under the Act of 1963. No substantial question of law arises. The Second Appeal is dismissed.

(N.M. Jamdar, J.)