

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

**APPEAL FROM ORDER NO. 485 OF 2017
WITH
CIVIL APPLICATION NO. 613 OF 2017
IN
APPEAL FROM ORDER NO. 485 OF 2017**

Smt. Babita Narayan Korake & Ors.

.....Appellants

v/s.

Shri. Jaivantrao Tulshiram Bhandare

.....Respondent

Mr. Ajay S. Joshi for the appellants.

Mr. S.R. Nargolkar i/b. Mr. Omkar V. Amberkar for the respondent.

Mr. Jayant T. Bhandare – Respondent is present.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 13th MARCH, 2018.**

P.C. :-

. With consent of the parties, taken up for final hearing at the stage of admission.

2. The appellants herein who were the defendants in Special Civil Suit No.35 of 1997 have challenged the judgment and order dated 15th November, 2016 whereby the learned District Judge-2, Pandharpur has set aside the judgment and decree passed by the trial court and remanded the matter with direction to frame an additional

issues as stated in paragraph 14 of the impugned order and to decide the matter afresh after giving an opportunity to both the sides to lead the evidence.

3. The respondent/plaintiff had filed a suit for specific performance. Upon considering the pleadings of the respective parties, the learned Judge had framed the issues based on which both parties had adduced evidence. After appreciating the evidence on record, the learned Judge by judgment dated 15th November, 2016 rejected the prayer for specific performance and directed the appellant/defendant to pay to the respondent/plaintiff an amount of Rs.50,000/- with interest at 18% per annum from the date of the agreement till final realization.

4. The respondent/plaintiff challenged the said judgment and decree before the District Court, Solapur. The appellant/defendant had also filed cross objection. By the impugned judgment dated 15th November, 2016, the learned District Judge-2, Pandharpur allowed the appeal as well as the cross objection. The learned District Judge

held that there were no pleadings as regards readiness and willingness to perform the part of the contract by the plaintiff. No issue in this regard was framed. The learned District Judge has further held that two other issues regarding hardship as well as equity were required to be framed. The learned Judge set aside the judgment and decree, and remanded the matter with directions to frame the additional issues which are as under :-

“ A) Whether plaintiff proves that he was always ready and willing to perform his part of contract ?

B) Whether performance of contract would involve some hardship on the defendant which she could not foresee, and its non-performance would involve no such hardship to the plaintiff ?

C) Whether the contract in question is inequitable to enforce specific performance ? ”

5. The learned District Judge directed the trial court to decide the matter afresh by giving full opportunity to both sides to lead evidence in the matter. Mr. Ajay S. Joshi, learned counsel for the appellant has submitted that the learned Judge was not right in setting aside and quashing the judgment and decree for a *denovo* trial.

6. Mr. S.R. Nargolkar, learned counsel for the respondent concedes that the entire judgment could not have been set-aside and the matter could not have been remanded in its entirety. Having taken instructions from the respondent who is present before the Court, he concedes that the impugned judgment to that extent needs to be modified.

7. Hence, with consent of the parties, appeal from order is allowed. Clauses 1 and 2 of the operative part of the impugned judgment and order dated 15th November, 2016 in Regular Civil Appeal No. 93 of 2012 are set aside. The learned trial Judge is directed to frame additional issues which are detailed in paragraph 14 of the impugned judgment. The learned trial Judge shall allow the parties to adduce additional evidence and proceed to try the aforesaid three issues and thereafter, return evidence to the appellate court together with findings thereupon and the reasons thereof within a period of four months from the date of uploading of this order. The learned District Judge, Pandharpur thereafter, shall proceed to determine the appeal and cross objections on its own

merits in accordance with Rule 26 of Order XLI of Code of Civil Procedure. Parties are directed to appear before the trial court on 10th April, 2018 at 11:00 a.m.

8. Civil Application stands disposed of in view of disposal of the appeal.

(SMT. ANUJA PRABHUDESSAI, J.)