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

**SECOND APPEAL NO.706 OF 2017
WITH
CIVIL APPLICATION NO.1415 OF 2017
IN
SECOND APPEAL NO.706 OF 2017**

Rajesh Dayaldas Narwani	]	
age: 53 years, Indian Inhabitant	]	
Occupation : Business	]	<u>Appellant</u>
Shop No.12, Vijay Apartment	]	Original
Old Agra Road, Opp. Teen Petrol Pump	]	Plaintiff.
Thane (W) 400 602	]	

V/s.

Kanayalal D. Bablani	]	
age: adult, Indian inhabitant	]	
Occupation : Business	]	<u>Respondent</u>
Address Apna Ghar, 3 rd Floor	]	Original
Behind Praksh Auto Shanti Nagar	]	Defendant.
Ulhasnagar 421 003.	]	

Mr. Rajiv Narula a/s Ms. Shweta H. Doshie, i/by
Jhangiani Narulla & Associates, for the Appellant.

Mr. Sheroo Kanuga, Senior Advocate, for respondent

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J

CLOSED FOR ORDER ON : 10th JULY, 2018.

JUDGMENT PRONOUNCED ON : 18th JULY 2018

JUDGMENT :

1] Heard learned counsel for the appellant and learned Senior Counsel for the respondent.

2] Admit.

3] With the consent of both the learned counsels, this Second Appeal is taken up for final hearing at the stage of admission.

4] This Second Appeal takes an exception to the judgment and decree dated 5.1.2017, passed by District Judge-4, Thane, thereby dismissing Regular Civil Appeal No.84 of 2015, which was preferred against the judgment and decree dated 17.10.2014, passed by III Joint Civil Judge, Thane in Special Civil Suit No.264 of 2007.

5] The said suit was filed by the present appellant for specific performance of the agreement dated 6.10.1997. In pursuance of said agreement, the appellant was put in possession of the suit premises as tenant, on paying the Security Deposit of Rs.2,00,000/-. As per clause No.16 of the said agreement, the appellant was given an option to purchase the said property for total consideration of Rs.8 lacs in which this amount of Rs.2,00,000/- paid as Security Deposit was to be adjusted. This option was to be exercised by the appellant during the subsistence of the tenancy.

6] Accordingly, the appellant has issued a notice dated 10.12.2003 to the respondent showing his readiness and willingness to purchase the suit property. The said notice, however, returned as “unclaimed” and therefore, he was constrained to file the suit before the trial Court for specific performance of the said agreement.

7] This suit came to be resisted by the respondent contending *inter-alia* that the appellant was never ready and willing to perform his part of the contract and therefore, there is no question of granting specific performance of the said agreement. Further, it was submitted that the appellant was put in possession of the suit premises merely as a licensee and not as tenant. The appellant, has, however, obtained an *exparte* decree by filing Special Civil Suit No.108 of 2002 declaring himself to be the tenant in respect of the suit premises. It was submitted that the appellant has also committed default in payment of the licence fee/compensation. Therefore, the question of confirmation of the appellant's status as tenant by respondent does not arise at all. It was denied that appellant had paid an amount of Rs.3,75,000/- towards society charges and he is entitled, as claimed by him, for adjustment of the said amount in the total consideration of Rs.8,00,000/-. According to respondent, the suit agreement has already expired. It is no more subsisting and hence the appellant is not entitled to get relief of specific performance. It

was also denied that notice dated 10.12.2003 was served on the respondent and he has refused to accept the same. It was, therefore, requested that the suit be dismissed and counter claim of respondent for possession of the suit premises be allowed as respondent requires the suit premises for his bonafide occupation and the appellant has left the possession thereof.

8] In support of their respective claims, the appellant and respondent examined themselves. The relevant agreement was proved on record at Exh.116.

9] On appreciation of the evidence on record, the trial Court was pleased to hold the execution of the agreement to be proved and also the status of the appellant as tenant in view of the exparte decree passed in Special Civil Suit No.108 of 2002. Therefore, the counter claim of respondent for possession of the suit premises came to be dismissed. As regards appellant's suit for specific performance, the trial Court found that it was barred by limitation and the appellant has also failed to prove his readiness and willingness to perform his part of contract. The trial Court, therefore, dismissed the suit filed by the appellant also.

10] When appellant challenged this judgment and decree of the trial Court before the District Court, the Appellate Court concurred with the findings of fact as recorded by the the trial Court

and dismissed the appeal. As regards the trial Court's order of dismissal of the Counter Claim of respondent, as respondent has not challenged the same, in appeal, it was not disturbed.

11] While challenging this concurrent finding of the fact as recorded by the Courts below, the submission of learned counsel for appellant is that both the Courts below have committed an error in holding that the suit is barred by limitation, especially when no such plea was raised by respondent in his written statement. Hence, the issue of limitation being mixed question of fact and law, unless it's foundation is laid in the pleadings, it should not have been decided by the Courts below.

12] Moreover, it is submitted that the finding arrived at on this issue of limitation by both the Courts below, is not correct. Admittedly no specific date was fixed for performance of the contract and therefore, Second Part of Article 54 of the Limitation Act comes into play. Unless there is specific date on which respondent has refused to perform his part of the contract, the period of limitation cannot commence. Here in the case, it is submitted that the notice issued by the appellant is returned as "unclaimed", and therefore, there was no specific refusal on the part of respondent to perform his part of the contract. As such the period of limitation has not yet commenced. Therefore, both the Courts have committed an error in

holding that the suit is barred by limitation.

13] It is submitted that even as regards the issue of appellant's readiness and willingness to perform his part of contract, both the Courts have recorded the finding in negative, only on the count that the suit is filed beyond limitation. Thus, according to learned counsel for the appellant, in the Second Appeal, in the findings of the Courts below on both these issues, an interference is warranted.

14] Per contra, learned counsel for respondent has supported the judgment and decree of both the Courts below by pointing out that agreement is of the year 1997 and for a period of 10 years thereafter the appellant has not claimed specific performance thereof, even though his status as tenant in the suit premises was challenged by the respondent. Therefore, he was fully knowing that there is refusal on the part of the respondent to concede for specific performance. Despite that as the suit is filed in the year 2007, that too, 4 years after the refusal of the notice, the suit was hopelessly barred by limitation. Moreover, there was total inaction on the part of the appellant. He has not led any evidence to prove his readiness and willingness to perform his part of the agreement. Both the Courts below, have therefore, rightly held that the appellant is not entitled to the discretionary relief of specific performance of the agreement. It is

submitted that due to inordinate delay of 10 years in seeking such relief, the prices of the suit property have escalated exponentially and it is going to cause more hardship and loss to the respondent, if such decree of specific performance is granted by this Court in the year 2018, which is more than 20 years from the date of the agreement. Hence, according to learned counsel for respondent, this Second Appeal deserves the fate of dismissal.

15] Thus, three substantial questions of law which arise for determination in the present appeal are :-

1. Whether both the Courts have committed an error in holding that the suit is barred by limitation?
2. Whether both the Courts below have committed an error in holding that the appellant has failed to prove his readiness and willingness to perform his part of the contract?
3. If yes, whether this Court should exercise it's discretion of granting the specific performance of the contract when both the Courts below have refused the same?

16] Indisputably, the agreement between the parties was executed on 6.10.1997, according to which the appellant was inducted in possession of the suit premises as tenant, on the Security Deposit

of Rs.2,00,000/-. Clause No.16 of the said agreement is relevant which reads thus :-

“At any time, through the period of tenancy is in subsistence, the tenant shall have an option to purchase the said shop by allowing the owner to appropriate the said deposit amount of Rs.2,00,000/-(Rs. Two lakhs only) and making further payment of Rs.6,00,000/-(Rs. Six lakhs only), that is total consideration of Rs. 8,00,000/-(Rupees Eight lakhs only), that choice the tenant shall have to intimate the owner in writing. And on receipt of final payment of Rs.6,00,000/- (Rs. Six laksh only), the owner states that he shall sign and execute the sale agreement and shall hand over all the original title documents along with share certificate and shall transfer all rights, title and interest of the said shop in favour of tenant and tenant shall be called as purchaser on payment of the said final money consideration of Rs.6,00,000/- (Rs. Six laksh only), made by tenant to owner. Owner also states that they/he shall from time to time and at all times shall execute and sign all necessary applications, forms, letter, voucher and documents in connection with the said premises in Shop No.12, of Vijay Apartment, situated at Old Agra Road Thane (West) and shall inform society and other concern authorities to transfer the said shop in favour of the tenant”.

17] Clause No.16 of the agreement, thus clearly confers on the appellant, who was inducted as tenant in the suit shop, an option to

purchase the said shop on payment of balance consideration of Rs.6,00,000/- after adjustment of deposit of Rs. 2,00,000/-. This option was to be exercised during the subsistence of tenancy and by giving intimation to the respondent/owner in writing.

18] In view of the judgment and decree passed in earlier Suit No.108 of 2002, the status of the appellant in the suit premises as a tenant stands confirmed. As on today also, respondent has not terminated the tenancy of the appellant. Even if the said judgment and decree is exparte, as it is not challenged by the respondent, it has to be held that as on the date of filing of this suit, there was subsistence of tenancy between the appellant and respondent. Thus, it is proved that during the subsistence of the said tenancy, on 10.12.2003 appellant has intimated to respondent his willingness for purchasing the suit property by paying remaining amount of consideration.

19] According to appellant, he has already deposited an amount of Rs.3,25,000/- in the month of March, 2013 when the Recovery Officer of the Registrar, Co-operative Societies, visited the suit property with notice to attach it, in pursuance of the proceeding, filed by the society against respondent. He has deposited the said amount in order to avoid disobedience. Further, he has also paid an amount of Rs.50,000/- to the society on behalf of respondent towards

the maintenance charges. Thus, out of total consideration of Rs.8,00,000/-, he has made payment of Rs.2,00,000/- as deposit, Rs.3,25,000/- with Registrar of Co-operative Societies and Rs.50,000/- towards maintenance charges, thus, totally he has paid an amount of Rs.5,75,000/- when he has exercised his option of purchase, by issuing notice to respondent on 10.12.2003. Hence, he is entitled for specific performance of the agreement.

20] It is thus, the case of the appellant that the first cause of action to file the present suit has arose when the respondent refused to accept the notice dated 10.12.2003, sent by him demanding the execution of the sale deed. Thereafter, it again arose on 30.11.2006, when the decree was passed in R.C.S. No.108 of 2002, in favour of the appellant, declaring him as tenant. It again arose on 11.3.2006 when the Recovery Officer came to the suit premises in execution of the order passed by the Registrar Co-operative Societies. Hence, as the suit is filed on 12.4.2007, within 3 years from the last cause of action, according to appellant, it is within limitation.

21] Now admittedly, in this case no specific date was fixed for the performance of the contract and choice was given to the appellant to exercise his option of purchase at any time during the subsistence of the tenancy. In view, thereof, as rightly held by both the Courts below, the present case falls under Second Part of Article 54 of the

Limitation Act. As per the said Article, suit for specific performance of the contract is to be filed within 3 years from the date fixed for performance or if no such date is fixed, when plaintiff has notice that performance is refused.

22] Here in the case, as no specific date was fixed for performance of the contract, the period of limitation can be said to have commenced, only when the appellant had notice that performance is refused.

23] According to appellant himself, as stated by him, in paragraph No.14 of the plaint, for the first time the cause of action arose when the notice dated 10.12.2003 sent by him to respondent was “refused” by the respondent. Admittedly, if according to his own case, on the date of refusal of the notice by the respondent, the cause of action arose, then no fault can be found in the judgment and decree of both the Courts below, if they held that as the suit is filed on 14.7.2007, that is four years after the refusal of the notice dated 10.12.2003, it is barred by limitation.

24] The trial Court has gone a step further and also considered that even if not on 10.12.2003, when the intimation was given to respondent and the endorsement thereon shows that the notice was “refused” or “unclaimed”, and even if it is accepted that the appellant has waited for 15 days thereafter, even then the

appellant should have filed the suit within three years from from 25.12.2003. The Appellant, has, however, not done so. After lapse of more than 3 years from the refusal of his notice, as the suit is filed, therefore, it is barred by limitation.

25] The submission of learned counsel for the appellant is, however, to the effect that merely from the refusal of the notice, the refusal on the part of the respondent to perform his part of the agreement cannot be inferred. It is submitted that respondent cannot be deemed to have the knowledge about the contents of the notice and there was thus, no conscious refusal of the performance of the agreement.

26] It is submitted by learned counsel for the appellant that the refusal has to be express and not implied, as wrongly held by the trial Court. To substantiate this submission, learned counsel for the appellant has placed reliance on the judgment of the Apex Court, in the case of **Harcharan Singh -v- Smt. Shivrani and others**¹. This judgment pertains to the notice of demand of arrears of rent issued by the landlord to the tenant for terminating his tenancy on his failure to pay the arrears of rent within the statutory period. It was argued that as the notice was tendered to the appellant therein, but he had declined to accept it, hence there was service by refusal. However, on

1 (1981) 2 SCC 535

behalf of the tenant, it was submitted that even if he has refused to accept the notice, no knowledge could be attributed to him of the contents of the registered envelope; therefore, tenant was not guilty of willful default on the expiry of one month of service of notice. This High Court had taken the view that, “*when service of notice by refusal had been effected, tenant must be deemed to have knowledge about the contents of the notice*”. The said view was challenged before the Three Judge Bench of the Apex Court. In that decision, after considering the provisions of Section 27 of the General Clauses Act and Section 114 of the Evidence Act, it was held that there was due service effected on the tenant by refusal. The majority view expressed in paragraph No.7 of the said judgment, is as follows :-

“7. In such circumstances, we are clearly of the view, that the High Court was right in coming to the conclusion that the appellant must be imputed with the knowledge of the contents of the notice which he refused to accept. It is impossible to accept the contention that when factually there was refusal to accept the notice on the part of the appellant he could not be visited with the knowledge of the contents of the registered notice because, in our view, the presumption raised under Section 27 of the General Clauses Act as well as under Section 114 of the Indian Evidence Act is one of proper or effective service, which must mean service of everything, that is contained in the notice. It is impossible to countenance the suggestion that

before knowledge of the contents of the notice could be imputed, the sealed envelope must be opened and read by the addressee or when the addressee happens to be an illiterate person, the contents should be read over to him by the postman or someone else. Such things do not occur when the addressee is determined to decline to accept the sealed envelope. It would, therefore, be reasonable to hold that when service is effected by refusal of a postal communication the addressee must be imputed, with the knowledge of the contents thereof and in our view, this follows upon the presumptions that are raised under Section 27 of the General Clauses Act, 1897 and Section 114 of the Indian Evidence Act”. [emphasis supplied]

27] It may be true that the learned third Judge of the said Bench differed with the majority view and held that, “*it is not possible to accept the submission that mere refusal would permit a presumption to be raised that not only the service was legal, but the refusal was the conscious act flowing from the knowledge of the contents of the letter*”. However, considering the majority view referred above, the dissenting view of learned Third Judge cannot prevail. Therefore, this judgment cannot be of any help to the appellant in this respect.

28] Conversely, in view of the majority opinion, it has to be held that in this case the refusal on the part of respondent to accept

the notice necessarily implies that he has knowledge of the contents of the notice and he has refused to accede to the demand made in the said notice by the appellant for specific performance of the contract. Therefore, on the receipt of such intimation about respondent's refusal to accept the notice, the period of limitation has commenced. The appellant has himself also understood the refusal of notice by respondent as "*refusal for specific performance*" and accordingly stated in the plaint, in paragraph No.14 that on the refusal of notice by respondent, the cause of action arose for the first time.

29] The next submission of learned counsel for appellant is that there has to be the specific date of the refusal from which the limitation can be taken to have commenced. According to him, there was no specific date of refusal in this case, as what is inferred is only the implied refusal and not the express refusal. To substantiate this submission, learned counsel for appellant has relied upon the judgment of the Apex Court, in the case of **Ahmadsahab Abdul Mulla (2) (dead) -vs- Bibijan and other²** wherein it has been held that

“The expression “date fixed for performance” is a crystallized notion. This is clear from the fact that the second part “time from which period begins to run”, refers to a case where no such date is fixed. To put it

2 (2009) 5 SCC 462

differently, when date is fixed, it means that there is a definite date fixed for doing a particular act. Even in the second part the stress is on, “when the plaintiff has notice that performance is refused”. Here again, there is a definite point of time, when the plaintiff notices the refusal. In that sense both the parts refer to definite dates. So, there is no question of finding out an intention from other circumstances”.

30] However, in my considered opinion, this judgment is also of no help to the appellant as here in the case appellant himself has admitted that the cause of action first arose when respondent refused to accept the notice dated 10.12.2003. There is specific date of refusal of notice when the intimation thereof was received by the appellant. The trial Court has, in this respect even given concession of 15 days to the appellant and thereafter also it found that the suit is not within the limitation.

31] Learned counsel for appellant, has then relied upon the judgment of Andhra Pradesh High Court, in the case of **Kalikiri Ramanujulamma -vs- Katakam Ramaiah Chetty and ors³** to submit that “mere evasion does not indicate either consent or refusal, but it is only evading the issue or in other words deferring the matter or postponing the issue. There is no categorical assertion or denial in

the act of escaping from the situation and displays non committal attitude or version". Therefore, according to him, here in the case non acceptance of the notice by the respondent can, at the most means "evasion", but cannot be tantamount to, "refusal" . However, this submission also cannot be accepted for the simple reason that the appellant himself has stated in the plaint that the cause of action first arose on the refusal of notice. Therefore, the appellant was fully aware that it was "refusal" of the specific performance and hence there was no question of any "evasion". As a matter of fact, in the light of the observations made in paragraph 7 of the above said judgment of the Apex Court in the case of **Harcharan Singh -vs-Smt. Shivrani and others (supra)**, the refusal of notice also amounts to refusal of the demand made therein and hence it is not mere evasion, but refusal as such.

32] Learned counsel for the appellant has then, placed reliance on the judgment of the Madhya Pradesh High Court, in the case of **Hajarilal -vs- Phoolchand**⁴. However, the issue involved in said case was totally different and it pertained to the specific date for performance of the contract. In the absence of such specific date for performance fixed in the agreement, it was held that the suit cannot be said to be barred by limitation. Here in the case, it is true that no

4 AIR 1957 MP 177

specific date was fixed for performance of the contract, but that is the reason why the case is considered under Second Part of Article 54 of the Limitation Act, that is from the date of refusal, the period of limitation is considered to have been commenced, by both the Courts below.

33] Then reliance is placed by the learned counsel for the appellant on the judgment of the Jammu and Kashmir High Court, in the case of **Kharku and others -vs- Rasil Singh and ors⁵**; wherein question for consideration was, if there is no date fixed for performance of the contract and there was no demand for performance or refusal to perform and there was no notice or knowledge that contract was repudiated, whether it can be held that the suit is barred by limitation? In that context it was held that it is not possible to hold on the basis of mere delay in bringing the suit, that the claim is barred by limitation.

34] Here in the case it is not on account of delay in bringing of the suit, the suit is held to be barred by limitation, but it is on account of limitation of three years expiring from the date when the appellant got the knowledge that respondent has refused to perform his part of contract, by refusal of the notice. Therefore, this judgment is also not of any help to the appellant.

5 AIR 1954 J & K 33 [Vol. 41 G.N. 17]

35] The last submission advanced by learned counsel for the appellant is that no specific plea was raised in the written statement by the respondent that the suit was barred by limitation. It is submitted that since the issue of limitation is mixed question of fact and law, there should have been specific pleading in the written statement. In the absence thereof, the suit cannot be dismissed as being barred by limitation. To support this submission, learned counsel for the appellant has placed reliance on the judgment of the Madras High Court, in the case of **Tamil Nadu Small Industries Development Corporation Ltd -vs- P. Kalvathy Sukumar**⁶. The facts of the said judgment, however, reveal that, in that case, the trial Court had decreed the specific performance of the contract. The Appellate Court has upheld the said decree. Only in the Second Appeal, the contention was raised that the suit is barred by limitation. Hence, it was held that, as the question of limitation is not a pure question of law, but it is a mixed question of law and fact, there has to be specific pleading and as such it cannot be allowed to be raised in the Second Appeal.

36] Herein in the case, the trial Court has framed the issue and from the record it appears that it was the most contested issue

6 2015(2) L.W.438

before the trial Court. Even in the First Appeal also, this issue was pressed and argued at length. Therefore, it is not a case that for the first time in the Second Appeal, this issue of limitation is being raised. Thus, if both the parties have proceeded with the trial, knowing fully that the issue of limitation is framed and that issue is decided by both the Courts below on the basis of the evidence adduced before it, then there is hardly any substance in the contention that there was no specific plea of limitation raised in the written statement of respondent.

37] Moreover, as per Section 3 of the Limitation Act, it is for the Court to decide whether the suit is within limitation or otherwise. Even in the absence of such pleading in the written statement, if the trial Court has framed the issue and when both the trial Court and appellate Court, had on the basis of the evidence adduced before it and in the light of the submissions advanced by the learned counsels for both the parties, decided the same, in the Second Appeal, this contention cannot be accepted.

38] Thus, as regards the issue of limitation, in my considered opinion, both the trial Court and Appellate Court, have rightly held that the suit is not filed within three years from the date of refusal of the notice. Hence, as per the cause of action stated in the plaint itself, the suit is barred by limitation.

39] Now coming to the second question regarding readiness and willingness on the part of the appellant to perform his part of the contract. In this respect also, in my considered opinion, the finding of both the Courts below is unassailable.

40] Section 16(3) of the Specific Relief Act 1863, mandates that plaintiff's readiness and willingness to perform his part of the contract must be averred and proved. Here in the case the entire plaint is silent about the appellant's readiness and willingness to perform his part of contract. In the absence of such pleading, which is always crucial for the suit for specific performance of the contract, on this sole ground itself, the suit becomes liable for dismissal, as held by the Apex Court in the number of its pronouncements, including the recent one in the case of **Padmakumari & Ors -vs- Dasayyan and ors**⁷.

41] Even from the conduct of the appellant, such readiness cannot be inferred. It is pertinent to note that in the year 2002, itself when he had filed earlier suit for declaration of tenancy, he was aware that respondent is not even ready to accept him as tenant. However, at that time he has not filed the suit for specific performance of the contract, but only sought declaration of his being the tenant. Thereafter also, from 2002 till the year 2007, appellant

7 2015(8) SCC 695

has not exercised his option of purchasing the suit property. Even after issuance of notice in the year 2003, for four years, he remained inactive and silent without exercising such option by filing the suit though according to his own averment in the plaint, he had knowledge that respondent has refused to perform his part of the contract. There is also evidence to show that in the year 2002 itself he has given a notice in the local newspaper namely "Thane Vaibhav". Respondent has given reply to the said notice and raised objection to the status of the appellant. Despite that, the appellant has not filed suit immediately. This delay and latches on the part of appellant in filing the suit for specific performance, even after the knowledge that respondent was not ready to perform his part of the contract, makes it necessary to infer that the appellant was never ready and willing to perform his part of the contract.

42] In the above context learned counsel for respondent has placed reliance on the judgment of the Calcutta High Court in the case of **Manick Lal Seal And anr -vs- K. P. Chowdhury**⁸ wherein it has been held that if the demand is made by the plaintiff for specific performance of the agreement and defendant does not give any reply, but keeps silent for an indefinite period, naturally the only inference that can be drawn would be that the defendant was unwilling to do

8 AIR 1976 Cal 115

that act or refused to comply with the demand. Having knowledge of such refusal, if the plaintiff kept silent and after years together files a suit for specific performance of the agreement, then the ends of justice would be justified in refusing the claim in the form of specific performance of the contract of using its discretion so as not to disturb the circumstances created by delay on the part of the plaintiff and to deprive the defendant of the benefit which he has acquired in the mean time due to such delay.

43] In the present case, at the time when the respondent denied the appellant's claim for tenancy, it has to be held that the appellant has notice that respondent has refused to perform his part of the contract, but instead of filing the suit for specific performance, the appellant has approached the Court for getting declaration of his tenancy. This conduct shows that he has thereby waived not to avail the right which was given to him under the agreement, thereafter also, appellant had ample opportunity to start the action for specific performance of the agreement. He has, however, avoided to do so. It is evident, therefore, from his conduct that he has never been ready and willing to perform his part of the contract. As stated above, there is also no clear averment about his always being ready and willing to perform his part of the contract.

44] In such situation, the question of allowing such relief by

this Court in the Second Appeal does not arise at all, that too after lapse of 20 years from the date of agreement. It would not only put the respondent in disadvantageous position, but legally also it cannot be permissible on the part of this Court, in the Second Appeal to substitute its discretion in favour of the appellant, who does not deserve it.

45] Therefore, on all the counts the appellant having failed, the Second Appeal holds no merit. Hence stands dismissed.

46] In view of dismissal of Appeal, Civil Application No.1415 of 2017 becomes infructuous and the same is disposed off accordingly.

47] At this stage learned counsel for the appellant seeks continuation of the order of ad-interim relief granted by this Court. Learned counsel for the respondent opposes the same.

48] However, considering that this Court has already dismissed the Second Appeal, which is against the concurrent finding of fact recorded by the trial Court and the Appellate Court, this Court does not find any reason to extend the order of ad-interim relief. Hence the request made by learned counsel for appellant stands rejected.

[DR.SHALINI PHANSALKAR-JOSHI, J.]