

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

**SECOND APPEAL (ST.) NO. 27198 OF 2018
WITH
CIVIL APPLICATION NO. 1492 OF 2018
IN
SECOND APPEAL (ST.) NO. 27198 OF 2018**

Shobha Vitthal JogdandAppellant

V/s.

Pradeep Sahadev ChaurasiaRespondent

Mr. Ajaykumar B. Rai for the appellant.

None for the respondent.

**CORAM: SMT. ANUJA PRABHUDESSAI, J.
DATED: 27TH NOVEMBER, 2018.**

P.C.:

. The appellant herein has challenged the judgment dated 02/07/2018 whereby the learned District Judge-6, Thane had directed the defendant to repay the amount of Rs.4,00,000/- to the respondent/plaintiff alongwith interest at the rate of 9% p.a. from the date of the filing of the suit.

2. Heard Mr. Ajaykumar Rai, learned counsel for the appellant. I have perused the records and considered the submissions advanced by

the learned counsels for the respective parties.

3. The dispute in the suit was in respect of the Shop/Gala no.7 situated at Vassoli Ward, Mastan Nagar, Lokmanya Tilak Path, Opp. Nakhawa High School, Thane (E). The plaintiff claimed that the appellant/defendant had agreed to sell the said shop/gala for Rs.6,00,000/-. They entered into a Memorandum of Understanding in respect of sale of the said shop. The plaintiff paid total consideration of Rs.4,00,000/- and the balance amount of Rs.2,00,000/- was to be paid to the defendant at the time of execution of the sale deed and receipt of possession. The grievance of the plaintiff was that the defendant avoided executing the sale deed and refused to refund the money. The plaintiff, therefore, filed the suit for specific performance or in the alternative to refund the part consideration of Rs.4,00,000/-.

4. The defendants denied having executed any agreement / MoU in respect of the shop/gala or having received Rs.4,00,000/- from the plaintiff. The defendant claimed that he had allowed the plaintiff to run the Pan-Beedi Shop on payment of Rs.6,00,000/-. The plaintiff had paid Rs.10,000/- but had failed to pay the balance amount of Rs.5,90,000/-.

5. The learned Judge did not rely upon the MoU for want of registration as well as the relief of declaration that the said MoUs are binding on the defendant. The learned Trial Judge held that the plaintiff had not examined independent witnesses to prove payment of Rs.4,00,000/- and declined to grant relief of refund of earnest money. The Appellate Court upon appreciating the evidence held that the plaintiff had proved the transaction as well as payment of Rs.4,00,000/-. The First Appellate Court, in terms of Section 20 of Specific Relief Act, 1963 however refused to exercise the discretion in favour of the plaintiff and ordered refund of money. The defendant has challenged this order in this Second Appeal filed under section 100 of Civil Procedure Code.

6. The First Appellate Court whilst allowing the appeal has observed that the respondent/plaintiff has placed on record Memorandum of Understanding at Exhibit 17 and 18 and receipt at Exhibit 19 and that the said documents clearly indicate that the respondent/plaintiff had paid total sum of Rs.4,00,000/-. The appellant had acknowledged the receipt of said Rs.4,00,000/- by issuing separate receipts.

7. These findings of facts are based on evidence on record and are

neither perverse nor illegal. The appeal does not involve substantial question of law and is accordingly dismissed.

8. Civil Application No.1492 of 2018 stands disposed of in view of dismissal of the Appeal.

(SMT. ANUJA PRABHUDESSAI, J.)