

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

Civil Application (CAS) 299 of 2018 in Second Appeal Stamp No. 2495 of 2018

Wasudeo s/o Balkrushna Wankhede V/s Rajkumar s/o Pralhadrao Awasare and another

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri S.A. Banik, Counsel for Applicant/Appellant.
Shri P.N. Kothari, Counsel for Non-Applicant No.1 & 2.

CORAM : A.S.CHANDURKAR, J.
DATE : 29/06/2018.

Perused the contents of the Civil Application.

Considering the reasons mentioned therein, the delay
in filing the Second Appeal stands condoned.

Civil Application is allowed and disposed of.

Second Appeal Stamp No. 2495 of 2018

The appellant is the original defendant who is aggrieved by the decree for specific performance passed by the trial Court and affirmed by the appellate Court. On 17/04/2007, the parties entered into an agreement for sale of plot No. 78, at a consideration of Rs. 5,00,000/- (Rs. Five Lakh only). Amount of Rs. 3,00,000/- (Rs. Three Lakh only) was given as earnest amount and the balance amount was to be paid within a period of three months. As per the agreement, the defendant was required to obtain No Objection Certificate of the Co-operative Society and the plaintiff was required to pay development charges to the Nagpur Improvement Trust. On 15/05/2008, the plaintiff issued a notice to the defendant calling upon him to supply necessary

documents for execution of sale-deed. Thereafter on 25/06/2008, the defendant issued a notice to the plaintiff in which it was stated that the sale deed could be executed on 14/07/2008. On 2/07/2008, the plaintiff in turn issued a notice stating that they would remain present on 14/07/2008 for having the sale-deed executed and that the defendants should obtain all relevant documents. However, on 11/07/2008 the defendant extended the date to 21/07/2008. Hence, on 16/07/2008 the plaintiff informed the defendant to first collect all necessary documents after which the sale-deed could be got executed. The suit for specific performance was ultimately filed on 12/08/2008.

The defendant took the stand that the plaintiff was never ready and willing to perform his part of the agreement, though the defendant was ready to execute the sale-deed. It was pleaded that unless the matter was regularized by the Nagpur Improvement Trust, it would not be possible to execute the sale-deed. On that count, dismissal of suit was sought.

The trial Court recorded a finding that the plaintiff was ready and willing to perform his part of the agreement and that the breach was committed by the defendant. The suit came to be decreed. The appellate Court confirmed that decree.

It is submitted by the learned Counsel for the appellant that despite various steps taken by the defendant the plaintiff delayed the matter and avoided to have the sale deed executed. The plaintiff insisted that the defendant should obtain the regularization from the Nagpur Improvement Trust when in fact this was to be done by the plaintiff. He referred to the agreement in question in that regard. He further submitted that though the plaintiff was called upon to remain present on 21/07/2008 for having the sale-deed executed, the plaintiff remained absent. The plaintiff was not ready and willing to

complete the contract and the balance amount was deposited belatedly before the trial Court. Hence, these aspects give rise to substantial question of law.

The learned Counsel for the respondent supported the impugned judgment. According to him, as per the agreement the plaintiff was only required to pay the development charges. But the necessary permission was to be obtained by defendants as they were the owners of the suit property. He submitted that various notices were issued to indicate the plaintiff's readiness and willingness and both the Courts therefore rightly held in favour of the plaintiff. It was urged that the trial Court on 03/11/2008 directed the plaintiff to deposit the balance amount of Rs. 2,00,000/- within a period of two weeks. Cheque dated 15/11/2008 was accordingly deposited. It is thus submitted that considering the aforesaid findings there is no case made out to interfere.

I have heard the learned Counsel for the parties at length and I have perused the documents filed on record. The agreement between the parties is not in dispute. As per this agreement, No Objection Certificate of the Cooperative Society and the permission from the Nagpur Improvement Trust was to be obtained. The plaintiff was to bear development charges. The defendant being the owner of the plot in question, it was incumbent upon the defendant to obtain that permission from the Nagpur Improvement Trust. The notices indicate readiness on the part of the plaintiff and the amount of Rs. 2,00,000/- was offered subject to the defendants producing the necessary permission. Though No Objection Certificate was obtained, appropriate steps for getting the regularization from the Nagpur Improvement Trust were not taken by the defendants. The plaintiff had called upon the defendants to remain present on 21/07/2008 to have the sale-

deed executed. Prior thereto on 14/07/2007, the plaintiff had remained present for said purpose. The suit has been filed shortly thereafter and the balance consideration as directed by the Court has also been deposited.

In the aforesaid backdrop, the findings by both the Courts that the plaintiff was ready and willing to perform his part of agreement is based on evidence on record. The appreciation of the evidence does not appear to be perverse. The Second Appeal does not give rise to any substantial question of law. The same is, therefore, **dismissed** with no order as to costs.

JUDGE