

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

Second Appeal No.274 of 2017

Shri Ambadas s/o Maroti Thakre
V/s
Smt. Sunita w/o Chandrashekhar Nagpure

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Shri N.R. Bhisikar, Counsel for the Appellant/Applicant.
Shri R.M. Tahaliyani, Counsel for the Respondent.

CORAM: A.S. CHANDURKAR, J.

DATE: 13-06-2018

The learned Counsel for the parties having
heard on the following substantial question of law:

*“In the light of the law laid down in Adcon
Electronics Pvt. Ltd., V/s Daulat and another 2001 (4)
Mh.L.J.469, whether in the absence of the prayer for
possession in the suit for specific performance, a decree
for possession could have been passed in favour of the
plaintiff?”*

The appellant is the defendant in the suit
for specific performance of agreement dated

26/03/2004 filed by the respondent herein. The trial Court dismissed the said suit while the appellant Court by allowing the appeal filed by the original plaintiff passed a decree for specific performance. By order dated 12/02/2018, it was held that the agreement on Exhibit-57 had been duly proved was in fact the agreement of sale. The substantial question of law as framed arises in the light of provisions of Section-22 of the Specific Relief Act,1963.

The learned Counsel for the appellant by placing reliance on the decision in the case of ***Adcon Electronics Pvt. Ltd. V/s Daulat and another reported in 2001 (4) Mh.L.J. 469*** urged that in absence of a prayer for possession, no relief of possession could have been granted in the suit for specific performance. He submitted that prayer clause-(i) in the plaint does not specifically seek the relief of possession and hence the decree passed by the appellate Court is contrary to the law. The learned Counsel also placed reliance in the case of ***Excel Dealcomm Private Limited Vs Asset Reconstruction***

Company (India) Limited and others reported in (2015) 8 SCC 219 in that context.

The learned Counsel for respondent submitted that prayer clause-(i) in the plaint is specific and the relief of possession has been sought therein. As such the appellate Court rightly directed the appellant to deliver possession of the suit property.

I have heard the learned Counsel for the parties at length. Prayer clause-(i) in the plaint reads as under :-

To grant a decree of specific performance of contract for the suit field land described in paragraph No.1 of the plaint, directing to execute the sale deed for suit field by taking the remaining sale consideration of Rs. 20,750/- directing to execute the sale deed for suit field by taking the remaining sale consideration of Rs. 20,750/- from the plaintiff by the defendant and if the defendant fails to execute the registration sale deed of the suit field land then this Hon'ble Court be pleased to execute registration of sale deed of the suit field land by the Court in favour of the plaintiff by permitting to deposit Rs. 20,750/ remaining consideration

of sale deed before the Court and to give the possession of the suit field land to the plaintiff.

From the aforesaid prayer it can be seen that the plaintiff has specifically prayed that the defendant be directed to accept the balance consideration and execute the sale-deed in his favour. On failure to do so, it is prayed that the Court be pleased to execute the sale deed by permitting the plaintiff to deposit the balance consideration and thereafter give possession of the suit field to the plaintiff.

In *Adcon Electronic Pvt. Ltd., (Supra)* there was no relief seeking delivery of possession of the suit property prayed in the plaint. In that context, it was observed that unless the relief of possession was specifically prayed for such relief could not be granted by the Court in a suit for specific performance. In the light of the relief sought in prayer clause-(i) it cannot be said that there was no relief of possession sought. The contention raised on behalf of the appellant is based on the bifurcation of the prayer clause which is not permissible. The prayer clause would have to be read in its entirety. In that view of the matter the ratio of

the aforesaid decision does not support the case of the appellant. Similarly, the decision in *Excel Dealcomm Pvt. Ltd.*, (*supra*) is also distinguishable.

In view of aforesaid, the substantial question of law framed is answered by holding that there being a prayer for possession made by the plaintiff, the appellate Court was legally correct in decreeing the suit and directing delivery of possession.

In view of this, the Second Appeal is dismissed.

No costs.

JUDGE

RKN