

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

SECOND APPEAL NO.289/2018

Smt. Sunanda Subhashrao Mule and others V/s Rajesh Dulichand Bijore

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

Court's or Judge's orders.

Shri A.M. Sudame, Advocate for appellants.
Shri R.D. Bhuibhar, Advocate for respondent.

CORAM: A.S. CHANDURKAR, J.

DATE: 26-06-2018

The original defendant in the suit for specific performance filed by the respondent herein has challenged the decree for specific performance passed by the trial Court and confirmed by the appellate Court.

The defendant no.1 on behalf of herself and other minor dependent's entered into an agreement on 25.4.2000 to sell their house property to the plaintiff for the consideration of Rs. 6,50,000/-. Earnest amount of Rs. 2,00,000/- was paid on the same date and the sale deed was to be executed by 25.8.2000. As, the defendant Nos. 3 to 7 were minors, the defendant no.1 was required to obtain the permission of the District Court for selling the suit property. According to the plaintiff, despite obtaining such permission the defendant no.1 did not supply the necessary documents to the plaintiff for completing the transaction. Though

the plaintiff was called upon to remain present on 2.12.2002 for execution of sale deed, the defendant no.1 did not remain present on that date. Hence, after issuing notice the plaintiff filed suit for specific performance.

In the written statement though the execution of the agreement was admitted it was denied that the plaintiff was ready and willing to perform his part of the agreement. It was pleaded that notices were issued to the plaintiff to execute the sale deed but he did not remain present and hence he was not entitled for the decree of specific performance.

The parties led evidence after which the trial Court held that the plaintiff was ready and willing to perform his part of the agreement. It further held that despite obtaining necessary permission from the District Court the defendant did not execute the sale deed. The suit was accordingly decreed. The appellate Court confirmed that decree.

Shri A.M. Sudame, learned Counsel for the appellants submitted that before the appellate Court the defendants had filed an application below Exhibit No.43 seeking permission to lead additional evidence under provision of Order XLI Rule 27 of the Code of Civil Procedure, 1908. This application was rejected without assigning proper reasons and the same caused prejudice to the case of the appellants. It was submitted that the reason for

non-production of those documents before the trial Court was assigned and therefore that application ought to have been allowed. It was then urged that both the Courts erred in holding that the plaintiff was ready and willing to perform his part of the agreement. Though the plaintiff was called upon to execute the sale deed on 02/12/2002 he did not turn up which indicated that he was not ready to perform his part of the agreement. It was also submitted that the plaintiff did not have the sufficient funds for having the sale-deed executed. According to the learned Counsel, these aspects gave rise to substantial questions of law in the appeal.

Shri R.D. Bhuibhar, the learned Counsel for the respondent supported the impugned judgment submitted that the appellate Court rightly rejected the application below Exhibit No.43 on the ground that the requirements of Order XLI Rule 27 of the Code as prescribed were not fulfilled. In that regard he placed reliance on the decision in *Union of India V/s. Ibrahim Uddin and another* reported in *(2012) (8) SCC 148*. By placing those documents on record the appellants sought to fill lacuna and the same was not permissible. As regards readiness and willingness of the plaintiff, it was submitted that pursuant to the notice issued on 28/11/2002 at Exhibit No.38 by the defendant No.1, the plaintiff was present on 02/12/2002 for having the sale deed executed.

Affidavit in that regard was executed and placed on record at Exhibit No.48. In the deposition it was admitted that necessary documents were never supplied by the defendants for completing the transaction. Hence, the findings recorded was based on evidence available on record and the decree was rightly passed.

I have heard the learned Counsel for the parties at length and I have perused the evidence led by them. As regards the application for leading additional evidence the only ground mentioned in para-2 of Exhibit No.43 is that though necessary pleadings were made in the written statement, on account of inadvertent mistake on the part of the Counsel the said documents could not be brought on record. These grounds have been found not to construe substantial cause as held in *Union of India (supra)* and especially para-40 thereof. Though it was urged that the appellate Court had not given appropriate reasons in para-12 of the judgment, considering the law as laid down no fault can be found with the rejection of the said application.

As regards the readiness and willingness of the plaintiff it has come in the evidence of the plaintiff that pursuant to the notice issued by the defendants at Exhibit No.38 he was present on 02/12/2002 for having the sale deed executed. His presence was proved through his affidavit at Exhibit 48. The defendant No.1 in her cross-examination admitted that she had not furnished

necessary documents as well as the copy of the order granting permission to sell the suit property to the plaintiff. It is thus evident that the defendant no.1 could not prove her presence on 02/12/2002 before the Sub-Registrar and she had also not supplied the requisite documents to the plaintiff. The plaintiff had parted with an amount of Rs. 2 Lakhs as earnest amount and the balance consideration now stands deposited. The suit has been filed shortly after issuing notice to the defendants. The finding with regard to readiness and willingness of the plaintiff is based on evidence available on record. Appreciation of that evidence cannot be said to be perverse.

In that view of the matter, I do not find that the appeal gives rise to any substantial question of law. The Second Appeal is **dismissed** with no order as to costs.

JUDGE