

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

61 SECOND APPEAL NO.691 OF 2017

GOKARNA ATMARAM GADE
VERSUS
GANGUBAI VISHWANATH GHOLAVE

...
Advocate for Appellant : Mr. Bagul Rahul B & D.G. Nagode
Advocate for Respondent : Mrs. R. R. Mane
...

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 01-07-2019.

PER COURT :

1. Present appeal has been filed by the original defendant challenging the Judgment and decree passed in Regular Civil Appeal No.37 of 2016 by learned District Judge -1, Bhoom dated 16-08-2017. The said appeal was allowed and the Judgment and decree passed by learned Jt. Civil Judge, Junior Division, Washi in Regular Civil Suit No.496 of 2013 dated 03-05-2016 was quashed and set aside. The suit filed by the present respondent against the present appellant came to be decreed. The suit was for specific performance of the contract.

2. It will not be out of place to mention here that, the learned Trial Court had rejected the relief for specific performance of the contract and had only directed the defendant to refund the earnest amount of Rs.1,00,000/- to the plaintiff together with interest. As aforesaid the said

Judgment and decree was set aside in the appeal and then the relief of specific performance has been granted. This decree is challenged in the present second appeal.

3. Now by letter dated 14-06-2019 the appellant intends to withdraw the second appeal. When the second appeal was filed and it was entertained on 01-11-2017, this Court has recorded that, "the appellant volunteered that along with interest, as directed by learned trial Court, principal amount of Rs.1,00,000/- would be deposited in this Court within a period of four weeks from that day." Accordingly it appears that, amount of Rs.1,00,000/- was deposited by the appellant on 28-04-2017 and amount of Rs.32,270/- was deposited on 20-01-2018.

4. The appellant himself is present before this Court. In fact when only the letter was shown on the earlier occasion, it was directed that, he himself should remain present taking into consideration the fact that some change was noticed in the signature on the letter. Now the appellant himself is present and he is producing a photocopy of his Aadhar card, therefore the identity is established. He reiterates that, he has no intention to continue with the proceeding. Under such circumstance, the second appeal is disposed of as not prosecuted. Since the amount that was deposited by him was voluntary and as a

fact that the consequence of the non prosecution of second appeal would be the revival of the Judgment and decree of the regular civil appeal, the said amount which he has deposited in this Court deserves to be returned to him. Hence, following order.

ORDER

- 1) Second Appeal is hereby disposed of as aforesaid.
- 2) Amount deposited by the appellant in this Court be refunded to him.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.