

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 196 OF 2018
ALONGWITH

CIVIL APPLICATION NO. 506 OF 2018
(FOR STAY)

Vithal Dondiram Hagavane

.....Appellant

V/s.

Murlidhar Shivaji Jadhav

....Respondent

* * * *

Mr. K.K. Jadhav i/by. Mr. Ashok S. Dhemare, Advocate for
the appellant.

Advocate for the respondent.

CORAM : SANDEEP K. SHINDE, J.

Wednesday, 14th March, 2019.

P.C. :

1. Heard learned Counsel for the appellant.
2. This Appeal is preferred by the defendant in the suit for specific performance instituted by the respondent herein being Regular Civil Suit No. 302 of 2013. The suit was decreed and the defendant was directed to execute the sale-

deed in the name of the plaintiff after receiving an amount of Rs.10,000/-. This decree was challenged in Regular Civil Appeal No. 318 of 2016. The learned Appellate Court dismissed the Appeal vide judgment and order dated 9th June, 2017. It is against the decree in Regular Civil Appeal No. 318 of 2016 passed by the District Judge-III, Kolhapur, the defendant has preferred this Appeal.

3. The suit agreement was executed by the appellant on 4th February, 2004 for the total consideration of Rs.60,000/-; out of which Rs.50,000/- were paid on the execution of it and the balance Rs.10,000/- were payable at the time of executing the sale-deed. The possession of the subject land was handed over to the plaintiff. This fact is not in dispute. The plaintiff after receiving the possession of the subject land constructed house thereon which is also assessed to the property taxes. Be that as it may, it is the plaintiff's case that, though he was ready and willing to pay the balance consideration against the execution of the sale-deed, his request was neglected by the defendant every time and therefore he had issued a notice to the defendant and

called upon him to execute the sale-deed. The evidence on record shows that the defendant avoided to accept the notice and therefore the second notice was issued on 14th November, 2012. The said notice was duly served, however, the defendant neglected to reply the said notice.

3. It appears from the proceedings that the defendant did not file the written statement within the permissible period which resulted into "No W.S." order. The defendant had filed an application to set aside the "No W.S." order, however, he did not pursue it and therefore the learned trial Judge rejected the said application. The "No. W.S." order was passed on 7th August, 2013 and it has attained finality in absence of challenge. The plaintiff had adduced the oral evidence in November, 2013 and opportunity was afforded to the defendant to adduce his evidence. The learned Appellate Court has observed in the judgment that, the defendant was present in the Court throughout the suit proceedings but he neither filed the written statement nor stepped into the witness box nor cross-examined the plaintiff witnesses. Thus, taking into

account the conduct of the defendant, the Courts below have correctly exercised their jurisdiction under Section 20 of the Specific Reliefs Act.

4. That even otherwise, the Courts below have recorded the findings of facts that, in terms of the suit contract, the defendant was required to execute the sale-deed and the said contract does not contemplate the period within which it was to be executed. The Courts below have thus rendered the finding that the suit was within limitation.

5. Thus, taking into consideration the facts of the case and the manner in which the suit has been contested by the defendant, I do not see any reason to interfere with the concurrent findings recorded by the Courts below. Such finding is consistent with the evidence on record. The plaintiff has establish, his readines and willingness to perform the contract. Besides, ninety percent of agreed consideration was paid to the defendant upon execution of the suit agreement.

6. The Appeal does not give rise to any substantial question of law. The Appeal is dismissed.

7. With dismissal of Appeal, Civil Application No. 506 of 2018 does not survive. The same is accordingly disposed of.

(SANDEEP K. SHINDE, J)