

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY AND ORIGINAL CIVIL JURISDICTION
COMMERCIAL SUIT NO.469 OF 2017**

Rohit S Kandhari & Anr	..Plaintiffs
Vs.	
Kamla Landmare Infra & Ors	..Defendants

Mr. Sandeep Jalan for Plaintiff
Mr. P. B. Joshi for Defendants

CORAM : K.R.SHRIRAM, J.
DATE : 15th MARCH, 2019

P.C.:

1 Admittedly the writ of summons has been served sometime in September 2017. There is also an order of Prothonotary and Senior Master stating that defendants are duly served on 19th September 2017. No written statement is filed.

2 As per the order of the Apex Court in *SCG Contracts India Pvt Ltd. Vs. K. C. Chamankar Infrastructure Pvt Ltd.*¹ time cannot be extended to file the written statement beyond 120 days. Therefore, defendants have forfeited their right to file the written statement.

3 This is a case seeking a direction to defendants to specifically perform the agreement dated 30th September 2016, by executing the conveyance /sale deed before the registrar in favour of plaintiffs, failing

1 2019 SCC Online SC 226

which the Prothonotary and Senior Master be directed to admit the execution of sale deed/conveyance in respect of the suit premises.

4 It is averred in the plaint that plaintiffs had agreed to purchase an apartment of 1166 sq.ft. for a sum of Rs.4,59,20,000/- pursuant to agreement dated 30th September 2016, copy whereof is annexed at Exhibit B to the plaint. Even stamp duty of Rs.22,96,000/- has been paid and registration charges of Rs.31,140/- has been paid as per the receipt dated 30th September 2016.

5 As entire consideration has been paid, plaintiff has also been put in possession of the said apartment, which is Unit No.505, 5th floor, B Wing, 36, Turner Road, CTS No.F/887 and Plot No.36B TPS III, Bandra (West) Mumbai 400050.

6 Subsequently, defendants have not been going ahead for executing the agreement before the registrar.

7 Considering the averments made in the plaint, I see no reason why any oral evidence is required to be led in the matter. Suit stands decreed in terms of prayer clause (a). If within two weeks, defendants do not go forward to specifically perform the agreement dated 30th September 2016 by effecting the execution of the conveyance / sale deed before the registrar, prayer clause (b) gets triggered. Prayer clauses (a) and (b) read

as under:

“(a) that the Defendant no.1 and/or defendant nos.2 to 5 be ordered and directed to specifically perform the Agreement dated 30th September 2016 being Ex.B to the plaint and admit execute the conveyance/sale deed before the registrar in favour of the plaintiffs.

(b) that in the event that the defendants refuses to execute the conveyance/agreement/sale deed in favour of the plaitiff, the Prothonotary & Sr. Master, High Court, Bombay be directed to admit execution of the sale deed/conveyance deed in respect of the suit Unit.”

8 Suit stand decreed accordingly with costs of Rs.1,00,000/- against defendants. Decree be drawn up in terms of the above order. Suit stand disposed.

9 Refund of court fees, if any, with accordance with rules.

(K.R. SHRIRAM, J.)