

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

SECOND APPEAL NO.139 OF 2019

(Nagpur Beghar Mitra Gruha Nirman Sahakari Sanstha, Nagpur ..vs.. Arun Vasudeorao Tarte and another)

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

Court's or Judge's orders

Shri B.C. Pal, Counsel for the appellant.

CORAM : ROHIT B. DEO, J.

DATED : 20-03-2019

Respondent 1, who shall be referred to as the plaintiff, instituted Special Civil Suit 277/2014 for recovery of Rs.5,50,000/- in which the appellant is impleaded as defendant 2 and respondent 2 is impleaded as defendant 1. By the judgment and decree dated 03-2-2018, the suit is partly decreed and defendants 1 and 2 are directed to refund the part consideration amount of Rs.5,00,000/- to the plaintiff with interest at the rate of 9% per annum from the date of suit till realisation. Being aggrieved, defendants preferred Regular Civil Appeal 270/2018 which is dismissed by judgment and decree dated 16-11-2018. Defendant 1 has preferred this appeal under Section 100 of the Code of Civil Procedure.

2. The case of the plaintiff is that defendant 2-society was desirous of alienating the suit property which is plot 46 situated in Khasra 86/2 of Mouza-Manewada. Offers were invited from prospective purchasers by the

society. The plaintiff responded and the negotiations culminated in agreement dated 14-3-2013. The consideration agreed was Rs.11,55,600/- and the plaintiff paid part consideration of Rs.5,00,000/- and agreed to pay the balance consideration within one and half months. The layout in which the plot is situated is unauthorised. The competent authority initiated the process of regularization of the unauthorised layout under the Maharashtra Gunthewari Developments (Regularization, Upgradation and Control) Act, 2001 ("Act" for short). In the absence of regularization, the plaintiff and defendant 2-Society were precluded from giving effect to the suit agreement. The regularization scheme contemplated that the plot holder shall apply for regularization in the prescribed form by paying the requisite fees to the competent authority-Nagpur Improvement Trust. Defendant 2-Society did not apply for regularization of the suit plot. *Au contraire*, one Abhay Gawali preferred application for regularization of the suit plot claiming to be in lawful possession on the basis of possession receipt dated 14-2-2000. The plaintiff confronted defendant 2-Society which assured that the issue will be sorted out and there was, therefore, no occasion for the plaintiff to make the payment of the balance consideration. The plaintiff waited for a reasonable period and then issued notice dated 21-8-2013 asking the society to attend the office of the Sub-Registrar to execute the sale-deed, and keep available the

relevant documents. The plaintiff attended the office of the Sub-Registrar. Defendant 2 did not turn up. The plaintiff, accordingly, instituted the suit for recovery of the part consideration paid with interest and damages.

The stand of the defendants is that the plaintiff failed to perform his part of the contract and the defendants were, therefore, entitled to forfeit the amount received as part consideration.

3. On appreciation of evidence on record, the trial Court recorded a finding that the plaintiff was well justified in not making the payment of the balance consideration. The trial Court notes that when the suit agreement dated 14-3-2013 was executed, an application preferred by Abhay Gawali for regularization of the suit plot was pending with the competent authority. The trial Court considered the provisions of the Act and noted that the plaintiff could not have applied for regularization of the suit plot since he was neither the owner nor in lawful possession. The trial Court held, *inter alia* relying on the decision of the Hon'ble Apex Court in **Satish Batra v. Sudhir Rawal** reported in (2013)1 SCC 345 that the forfeiture of the entire part consideration is neither permissible nor justified. In essence what is held by the trial Court is that the plaintiff was not at fault and could not be blamed for not making the payment of balance consideration.

The appellate Court noted that the plaintiff was not a member of defendant 2-Society and therefore,

could not have applied for regularization of the suit plot. The appellate Court further noted that it was only from information received from the competent authority that the plaintiff came to know that defendant 2-Society has delivered the possession of the suit plot to Abhay Gawali vide possession receipt dated 14-2-2000. The appellate Court further notes that there is no evidence on record to show that defendant 2-Society made any application for regularization of the suit plot. On re-appreciation of evidence on record the appellate Court agreed with the findings of fact recorded by the trial Court.

4. Having heard Shri B.C. Pal, learned Counsel for the appellant-defendant 2-society, this Court finds that no question of law much less a substantial question of law is involved in this appeal. Shri B.C. Pal, learned Counsel strenuously submitted that the findings recorded by the Courts below are contrary to the evidence on record. This Court is not inclined to re-appreciate the evidence on record and to disturb the concurrent findings recorded by the Courts below, which even otherwise are consistent with the evidence on record.

5. The appeal is without substance and is dismissed with no order as to costs.

JUDGE