

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

SECOND APPEAL 345 OF 2019

Jenabai w/o Sheikh Mohmmad (Dead) through
LR's Abeda Begum w/o Sheikh and others.

Vs.

Shishir s/o Shankarrao Diwte

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

Court's or Judge's orders.

Shri N.M. Kolhe, counsel for the appellants.

CORAM: ROHIT B. DEO, J.

DATE: 28.08.2019.

Heard.

2. The appellants are the original defendants who suffered decree for specific performance of contract.
3. The appeal preferred by the defendants is dismissed.
4. Both the Courts below have concurrently held that the plaintiff was ever ready and willing to perform his part of the contract. The defence was that the transaction was the loan transaction, which is disbelieved by the Courts below.
5. Shri N.M. Kolhe, learned counsel would submit that two substantial questions of law are involved.
6. Shri N.M. Kolhe, learned counsel submits that the first

substantial question of law is that the suit agreement was not a concluded contract. Submission is noted only for rejection. Firstly, it was not the case of the defendants in the Courts below that the suit agreement was not a concluded contract. The case of the defendants, which is disbelieved, is that the transaction was a loan transaction. Even otherwise, from the evidence which culled out in the judgments impugned, it is more than apparent that the agreement was a concluded contract. It is further not in dispute that the plaintiff enclosed undated cheque for the entire balance consideration of Rs.59,90,000/- alongwith notice dated 12.4.2006 which was issued prior to the institution of the suit.

7. The other question which is involved, according to the learned counsel, is that defendant 1 was not only owner of the suit property. Concededly, the suit agreement bears the signatures of all the defendants who are defendant 1 - lady and her two sons. That apart, there is no whisper in the written statement that the suit agreement is not enforceable since some co-owners are not parties thereto.

8. No question of law arises in this appeal, much less substantial question of law, and the appeal is therefore dismissed.

JUDGE