

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

SECOND APPEAL NO.313/2019

Dilip S/o. Ramraoji Bodkhe
..VS..
Omprakash Kanhaiyalalji Laddha

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

Court's or Judge's orders

Smt S. P. Kshirsagar, Advocate for the appellant
Shri B. N. Mohata, Advocate for the respondent

CORAM : V. M. DESHPANDE, J.
DATED : 08/08/2019

Heard Shri S. P. Kshirsagar, the learned counsel for the appellant and Shri Bhushan Mohata, the learned counsel for the respondent.

2] Exh. 26 is an agreement dated 23/01/2009 executed by the appellant in favour of the respondent whereby he agreed to sell his residential house for total consideration of Rs.8,21,000/-. He received Rs.2,05,000/- out of the said agreed consideration.

3] Both the Courts below have decreed the suit for specific performance of contract filed by the respondent-Omprakash Kanhaiyalalji Laddha.

4] Admittedly, at Chandur Railway, the house in question is the only house of the appellant and he is residing there. The learned Judge of the Courts below on

the question of hardship found that the appellant is having house in his agricultural land at Village Baggi. Village Baggi is about 10 K.M. Therefore, the Courts below have granted decree of specific performance of contract by exercising discretion in favour of the plaintiff.

5] Admittedly, the plaintiff is not resident of Chandur Railway and he is resident of Sonora. In my view, the appeal is required to be admitted on following substantial question of law.

1] Whether both the Courts below in a given set of facts has properly exercised discretion in favour of the plaintiff and granted decree for specific performance of contract ?

Call record and proceedings. Shri B. N. Mohata, waives notice for respondent.

CIVIL APPLICATION NO. 609/2019

This is an application for stay.

2] Heard learned counsel for the applicant as well as non-applicant.

3] Today this Court has admitted the present second appeal since it involves substantial question of law.

4] The decree of specific performance of contract is granted in favour of the non-applicant. The house property for which the decree is granted is the residential house of the present applicant. In that view of the matter, I allow this application in terms of prayer clause (1).

5] Civil Application No.646/2019 to be considered at the time of final hearing of second appeal.

JUDGE

Namrata