

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

Civil Application No.863 of 2019
in
Second Appeal St. No.15290 of 2019
(Gopalrao Janardan Dahake .vs. Sahadeo Sampatrao Kande)

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

Court's or Judge's orders.

Mr. J.J. Chandurkar, Advocate for Applicant/Appellant.
Mr. M.A. Kadu, Advocate for Respondent.

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CORAM : Manish Pitale, J.
DATED : October 07, 2019.

This is an application seeking condonation of delay of 50 days in filing the accompanying appeal. The sole respondent appeared on caveat.

2. Heard learned counsel for the rival parties.
3. For the reasons stated in the application, the same is allowed and the delay is condoned.

Second Appeal St.No.15290 of 2019.

By this appeal, the appellant (original defendant) has challenged concurrent judgments and orders passed by the two Courts below whereby the suit for specific performance filed by the respondent (original plaintiff) has been decreed.

2. The respondent had filed the suit for specific

performance in the context of agreement dated 31.12.2007 entered into between the parties whereby the suit property was agreed to be sold for a consideration of Rs.60/- per square feet and it was recorded that the amount of Rs.1,32,500/- was paid towards earnest money to the respondent.

3. The two Courts below found that the aforesaid agreement to sell styled as *Isarchitthi* was proved and further that the agreed amount of consideration and payment of earnest money was also proved. It was concurrently found that the respondent was ready and willing to perform his part of the contract and that it was in fact the appellant who had committed the breach of the said agreement. The theory propounded by the appellant that the agreement was nothing but a document executed in pursuance of a money lending transaction was disbelieved by the two Courts below. On this basis, it was found that the respondent was entitled to a decree of specific performance. It is not disputed that the respondent has already deposited the balance amount of consideration in the Court below in pursuance of the decree passed in his favour.

4. The learned counsel for the appellant could not demonstrate any error in the findings rendered by the two Courts below as regards the existence of the agreement and the fact that the respondent was always ready and willing to perform his part of the contract. The findings rendered by the two Courts below cannot be said to be perverse.

5. In this situation, the learned counsel for the appellant submitted that the agreed consideration amount was far too low than the actual rate at which the property could have been sold or purchased. On the last occasion of listing, this aspect submitted on behalf of the appellant was recorded and the learned counsel for the appellant had sought to rely upon ready reckoner to contend that the amount agreed between the parties in the said agreement was far too low. But the ready reckoner even if looked into, would indicate that the going rate at the relevant time was about Rs.67/- per square feet and that the agreed rate between the parties was Rs.60/- per square feet. It is further brought to the notice of this Court by the learned counsel for the respondent that the appellant himself had purchased the suit property at the rate of about Rs.57/- per square feet. Therefore, there does not appear to be any substance in the contention sought to be raised on behalf of the appellant to the effect that increase in the amount of consideration payable to be appellant may be considered.

6. In view of the above, no substantial question of law arises in the present appeal and accordingly it is dismissed.

JUDGE