

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

CIVIL APPLICATION 1302 OF 2018

IN

SECOND APPEAL 246 OF 2018

(Smt. Latabai wd/o. Prabhakar Tumram & ors..vs.. Chatrapal s/o. Sahadeo Ghutke)

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

Court's or Judge's orders.

Shri. P.A. Markandeywar, counsel for applicants.
None for non-applicants.

CORAM: ROHIT B. DEO, J.

DATE: 12th MARCH, 2019.

CIVIL APPLICATION 1302 OF 2019

Heard.

2 Since the Second Appeal is admitted, it would be necessary to stay the effect and operation of the judgment in Regular Civil Appeal 52 of 2015.

3 However, the appellant is directed to deposit the amount of earnest of Rs.60,000/- in this Court within three months since the trial Court while refusing specific performance, directed the appellant – original defendant to refund the earnest amount.

4 Civil Application is disposed of in the aforestated terms.

SECOND APPEAL 246 OF 2018

Heard Shri P.A. Markandeywar, the learned counsel
for appellant. None appeared on behalf of the respondent.

2 **Admit** on the following substantial question of law:

(i) Whether the plaintiff alienee has discharged the burden to plead and prove that Prabhakar Tumram entered into the agreement of sale for legal necessity?

(ii) Whether the burden to plead and prove that Karta has entered into the suit transaction for legal necessity or the benefit of the family or estate was on the plaintiff – alienee?

(iii) Whether the appellate Court erred in granting specific performance and reversing the finding recorded by the trial Court that the agreement for sale was not for legal necessity?

JUDGE