

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

Second Appeal No.157 of 2018

(Sau. Dwarka w/o Ramrao Khade .vs. Hardas Warluji Gudadhe)

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

Court's or Judge's orders.

Mr. P.V. Kaore, Advocate for Appellant.
 Mr. A.V. Khare, Advocate for Respondent.

CORAM : Manish Pitale, J.

DATED : September 16, 2019.

The appellant in this case has challenged concurrent judgments and orders passed by the two Courts below whereby suit for specific performance filed by her against the respondent was dismissed and the respondent was directed to refund earnest amount of Rs.1,25,000/- with interest @ 9% P.A. to the appellant.

2. The main reason why the Courts below refused to grant decree of specific performance in faovur of the appellant was that it was found on the basis of appreciation of the material on record that the appellant had failed to prove her readiness and willingness to perform her part of the contract.

3. The agreement in question in the present case was dated 21.01.2004 and it was specifically stipulated in the agreement that the sale deed was to be executed on or before 30.06.2004. There was also a clause in the said agreement that the respondent (vendor) would repay the entire loan amount on the suit

property before execution of the sale deed.

4. The appellant issued notice on 09.01.2007 to the respondent calling upon the respondent to execute sale deed in terms of the aforesaid agreement and thereafter on 25.01.2007 the appellant filed the said suit for specific performance. The two Courts below have concurrently found that the loan in question had been repaid by the respondent in March, 2004 itself. It is pertinent that there were two agreements executed by the respondent in favour of the husband of the appellant also, which contained a stipulation as regards the date before which sale deed was to be executed. It was a matter of record that sale deeds in pursuance of the said two agreements were indeed executed in favour of the husband of the appellant after bank loan had been repaid in respect of such properties by the respondent and that this fact was within the knowledge of the appellant herein. Apart from this, the Courts below have found that the appellant did not take any step before 30.06.2004 or immediately thereafter calling upon the respondent to execute sale deed in pursuance of the aforesaid agreement dated 21.01.2004 and she also did not call upon the respondent to inform her as to whether the loan in respect of the suit property had been indeed repaid. It was for the first time on 09.01.2007 that the appellant issued notice to the respondent seeking execution of sale deed and thereafter on 25.01.2007 filed the suit in the present case. On this basis, it was found that there was absence of material to show readiness and willingness on the

part of the appellant to perform her part of the contract and, therefore, the Courts below refused to exercise discretion in favour of the appellant and only a direction for refund of earnest amount with interest was granted.

5. In view of the above, this Court finds that no substantial question of law arises in the present appeal and, therefore, it is dismissed.

JUDGE

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