

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

SECOND APPEAL NO.206/2019

Niranjan s/o Ganpatrao Bobhate .vs. Naimullakhan Amanullakhan

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

Court's or Judge's orders.

Mr. R. R. Dawda, Advocate for appellant.

CORAM : V. M. DESHPANDE, J.

DATED : JUNE 18, 2019

Heard Mr. Dawda, learned counsel for the appellant/original defendant. His submission is that the Court below committed grave error in granting interest at the rate of 9% p.a. in favour of the respondent while passing the decree in his favour for refund of the earnest amount.

An agreement (Exh.-95) was executed in between the appellant and the respondent whereby appellant agreed to execute the sale deed in favour of the respondent in respect of plot nos.22 and 31. The agreement is dated 26.04.2004. The total consideration, that was fixed under the said agreement, was Rs.5,50,000/- and the appellant received Rs.1,00,000/- towards the earnest amount. The respondent, in response to the notice dated 02.07.2005 given by the present appellant, gave a reply notice dated 13.07.2005, whereby he pointed out to the appellant that he is not interested in getting the sale deed executed in his favour for the reason that the suit plots cannot be properly identified. He, therefore, pleaded in the said notice that the appellant shall refund the earnest amount of Rs.1,00,000/-

with interest. The appellant did not act upon the said notice. Consequently, the respondent was required to file a suit for recovery of the earnest amount.

Before the Court below, it was the case of the appellant that he was always ready to perform his part of contract namely; he was ready to execute the sale deed, which can also be seen, according to the submission of the learned counsel for the appellant, from the notice dated 28.04.2005 and 22.07.2005. Therefore, according to the learned counsel for the appellant, refund of earnest amount is not proper and the award of interest at the rate of 9% is a premium in favour of the respondent for committing the breach of contract.

Mr. Dawda, learned counsel for the appellant fairly submits that the agreement (Exh.-95) is conspicuously silent, which empowers vendors to forfeit the earnest amount in any eventuality.

The earnest amount was paid for execution of the sale deed in favour of the respondent. No doubt true that though the appellant was entitled to receive the entire sale consideration, at the same time, he cannot be permitted to withhold the amount of earnest without execution of the sale deed in favour of the respondent, especially in absence of clause of forfeiture.

Both the Courts below, on appreciation of the evidence, found that the boundaries in the agreement were not properly mentioned. Therefore, in my view both the Courts below were right in recording a finding that the

plaintiff was right in not paying the balance amount to get the sale deed executed in his favour.

The observation made by the learned Judge of the trial Court shows that the respondent-plaintiff requested the present appellant/defendant to correct boundaries of the suit plots and get the area measured before 01.03.2005. Admittedly, prior to cancellation of his agreement, no steps were taken by the appellant. Therefore, no fault could be attributed to the respondent for not paying the balance consideration and getting the sale deed executed in his favour.

Admittedly, the appellant was paid Rs.1,00,000/- on 26.04.2004 and, therefore, it is crystal clear that he has reaped the benefit of the said amount. The Court below was right in directing the appellant to refund the earnest amount with interest. In the present case, no substantial question of law is involved in the present second appeal. The appeal is, therefore, dismissed. No order as to costs.

JUDGE