

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

32 WRIT PETITION NO.2390 OF 2020

MOHD SAJID MOHD DAWOOD
VERSUS
ALKABAI KANTILAL MUTHIYAN

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Advocate for Petitioner : Mr. Kasliwal Ajit D.
Advocate for Respondent : Mr. Patni Pramod F.

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CORAM: ROHIT BABAN DEO, J.

Date: FEBRUARY 10th 2020

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PER COURT :-

1 The petitioner is the plaintiff in special Civil Suit No.182/2017 which is brought for decree of specific performance of the agreement dated 21.8.2014.

2 The issues framed by the Trial Court read thus:-

Issues

- 1) *Does plaintiff prove that he was and is ready and willing to perform part of his contract ?*
- 2) *Does plaintiff prove that defendant has refused to execute sale deed in his favour and demanded extra amount from him ?*
- 3) *Does defendant prove that time was essence of contract ?*
- 4) *Does defendant prove that plaintiff has not performed part of his contract so agreement has become void and non-executable (Deleted as per order passed below Exh.33)*
- 4) *Is plaintiff entitled for relief of specific performance of contract ?*
- 5) *What order and Decree ?*

3 At the stage of final arguments, the petitioner preferred an application for framing additional issue. The issue which the

petitioner – plaintiff requested the trial Court to frame reads thus:-

“ Whether the contract of the plaintiff stands terminated or is terminated by the defendant ? ”

4 An issue arises when a material preposition of fact or law is affirmed by one party and denied by the other. In case at hand, perusal of the plaint would reveal that it is the case of the plaintiff himself that he was informed by the defendant of the cancellation of the suit agreement. In any event, whether the suit agreement was validly canceled would be an issue covered by the issues already framed. It is obvious that when the trial Court considers the issue as regards the entitlement to specific performance, the question of termination of the suit agreement and the justifiability of the termination will be considered and adjudicated.

5 I do not see any error in the order impugned, much less an error warranting interference in writ jurisdiction.

6 The Trial Court is requested to expedite the disposal of the suit and in any event dispose of the suit within 90 days.

7 The writ petition is dismissed.

(ROHIT BABAN DEO, J)