

THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

SECOND APPEAL NO. 12/2020

Sau. Pramila w/o Chandrabhanji Thosar
...Versus...
Virendra s/o Rameshrao Lande

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

Court's or Judge's orders

Shri Parag Anil Kadu, Counsel for appellant

CORAM : AVINASH G. GHAROTE, J.
DATE : 14/01/2020

1. Heard Shri Kadu, learned counsel for the appellant. By the present appeal, the concurrent findings rendered by the both the Courts below regarding the readiness and willingness of the plaintiff to perform his part of the contract are challenged.

2. The appellant/original defendant is the owner of plot No.14/A admeasuring 1162.5 sq. ft. situated at Mouza Navsari, Nandgaon-peth, District : Amravati along with a house constructed there upon consisting of three rooms. It is an admitted position between the parties that on 07.02.2011, the defendant, owner of the property executed an agreement of sale in favour of the plaintiff/respondent agreeing to sell the same for the total consideration of Rs. 14,00,000/-. It is

further an admitted position that on the date of the agreement, a part consideration of Rs. 3,50,000/- stood paid to the appellant/defendant and the balance was agreed to be paid on or before 07.05.2011 on which date the sale-deed was agreed to be executed. On 01.05.2011, the period for execution of sale-deed was extended upto 30.05.2011. On 25.05.2011, a further part consideration of Rs.60,000/- was paid to the defendant. On 30.05.2011, the plaintiff remained present in the office of the Sub-Registrar, however, in absence of the defendant, the sale-deed could not be executed and registered.

3. The learned Trial Court, upon consideration the admitted position as to the execution of the agreement dated 07.02.2011 and the terms and conditions as contained therein and so also the evidence as led before it and the documents, rendered a finding that the plaintiff was ready and willing to perform his part of contract and by judgment dated 09.04.2014 decreed the suit with cost.

4. On an appeal by the original defendant the Appellate Court by the judgment dated 27.09.2019 concurred with the Trial Court by rendering a finding that in view of the admitted position regarding the execution of the agreement of sell and its terms and conditions and the subsequent acts on the part of the plaintiff of remaining present in the office of the Sub Registrar on 30.05.2011, found, that it was not necessary for the plaintiff/purchaser,

to demonstrate a confirmed scheme for availability of the balance consideration and from the conduct of the plaintiff as evinced on record, accepted the plea of readiness and willingness on the part of the plaintiff and dismissed the appeal.

5. Mr. Kadu, learned counsel for the appellant submits that there is nothing on record to show that the plaintiff had money available with him to pay the balance consideration. He further submits that the documents at Exhs.32 and 37 dated respectively 23.03.2011 and 25.05.2011 which were the loan sanction order from Diwan Housing Finance were not legally proved. He further submitted that the account statement at Exh. 43 of the account of the plaintiff also suffered from absence of admissibility on account of the certificate under the Bankers Book of Evidence Act or the one under Section 65-B of the Evidence Act, not being available on record. He, therefore, submits the findings as rendered by the Courts below as to existence of readiness and willingness on behalf of the plaintiff/respondent, cannot be sustained in law.

6. The agreement dated 07.02.2011, its terms and conditions, the payment of part consideration of Rs. 3,50,000/- are all admitted by the appellant/defendant. Though, the date for execution and registration of sale-deed by payment of balance consideration was fixed as 07.05.2011, the extension of the same at the request of the

defendant on 01.05.2011 is supported from the evidence of P.W.3 and P.W.4, who categorically state on oath to that effect. The testimony of P.W.3 and P.W.4 further supports the payment of further part consideration of Rs.60,000/- to the defendant on 25.05.2011.

7. The contention that Exh.32 dated 23.03.2011 and Exh.37 dated 25.05.2011 the loan sanction orders issued by Diwan Housing Finance have not been proved, clearly is fallacious for the reason that the loan sanction orders are in the faovur of the plaintiff who has tendered them in evidence and were exhibited without any objection in that regard at that time. Moreover, the plaintiff being the recipient of Exh.32 and 37, which are admittedly brought into existence at his request and instance, the contention that he was not entitled to prove the same, is clearly without any merits. The documents at Exhs.32 and 37 further demonstrate that the loan of Rs.7,50,000/- was duly sanctioned for purchase of the property and it has further come in the evidence that a demand draft for the said amount, favouring the defendant was duly prepared on 30.05.2011.

8. The further contention that Exh.43 the statement of account of the plaintiff was not admissible in evidence also does not stand to reason as the plaintiff himself was the account-holder. That apart the entries as made therein do not appear to have been disputed as there is nothing brought on record in that regard on part of the defendant, during the

course of cross examination, apart from which it is not demonstrated that any objection was raised during its exhibition before the Trial Court.

9. It is a settled position of law that to demonstrate readiness and willingness, it is not necessary for the plaintiff to place on record a concluded scheme for financing the transaction or have ready money in the pocket. The requirement of the pleading and its proof, has been held to be satisfied by both the Courts below and nothing has been pointed out by the learned counsel for the appellant to take a contrary view.

10. The conduct of the appellant further demonstrates the readiness and willingness. It has come on record that the extended date for the execution and registration of the sale-deed was 30.05.2011. The plaintiff on that day, was present in the office of the concerned Sub Registrar. He had also prepared the demand draft of Rs. 7,50,000/- and brought the cash of Rs. 2,40,000/-, which is supported by the testimony of P.W.3 and P.W.4. Not only this, the stamp duty and the registration charges were also paid by the plaintiff, on the draft sale-deed which is demonstrated by Exhs. 51 to 57 which is also supported by the testimony of P.W.2. It has also come on record that before cancellation of stamp duty, the plaintiff, had on 30.06.2011 issued a notice to the defendant, which however was refused to be accepted by the defendant. This clearly demonstrates the readiness and willingness of

the plaintiff. The findings as arrived by the Courts below, therefore, cannot be faulted with. No other plea was advanced apart from the above. In light of the discussion above, no substantial question of law arises. The Second Appeal therefore, is without any merits and is accordingly dismissed with no order as to costs.

JUDGE

Jayashree