IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 191 OF 2022
WITH
INTERIM APPLICATION NO. 3363 OF 2021

Shri Rajendra Ramlal Dube ..Appellant

v/s.

Smt. Saroj Kirti Bafna ..Respondent

Mr. Sanjeev P. Kadam a/w. Mr. Akhilesh Singh, Ms. Varsha Thorat i/b. Legal Brains for the Appellant.
Mr. Mr. Sanjiv Sawant a/w. Mr. Abhishek Matkar, Mr. Malhar Bageshwar i/b. Abhishek P. Deshmukh for the Respondent.

CORAM : ANUJA PRABHUDESSAI, J.
DATED : 10th MARCH, 2022.

P.C.

1. The Appellant herein has challenged the judgment and order dated 4.5.2019, whereby the learned District Judge, Palghar, has dismissed the Appeal No.103 of 2015, and thereby confirmed the judgment and decree of the Trial court dismissing the Special Civil Suit No. 49 of 2008, filed by the Appellant herein.

2. The Respondent was the Plaintiff, and the Appellant was the Defendant in the Suit (hereinafter referred to as the Plaintiff and

Defendant respectively). The Plaintiff had filed a suit for specific performance alleging that the Defendant had entered into an Agreement for Sale dated 11.06.2006 in respect of sale of property viz Plot No.2, from Survey No.77/B-4 and 76/D-3 admeasuring 845.24 sq. meters at the rate of Rs.2,00,000/- per guntha. The Plaintiff claims that she has paid sum of Rs.2,75,000/- as on the date of the execution of the Agreement and the balance amount was to be paid at the time of execution of the sale deed. The Plaintiff claims that she had paid substantial amount towards sale consideration after execution of the Agreement. The total amount paid by the Plaintiff was Rs.8,55,000/-. The Defendant did not come forward to execute the sale deed. Hence the Plaintiff initially published a public notice and thereafter issued legal notice calling upon the Defendant to execute the sale deed. The Defendant having failed to execute the sale deed, the Plaintiff filed a suit for specific performance with other consequential reliefs.

3. The Defendant denied having entered into an Agreement for Sale and or having agreed to sell the suit property to the Plaintiff. The Defendant therefore claimed that he is not liable to execute

any sale deed in favour of the Plaintiff. The Defendant further claimed that the Plaintiff had herself not shown readiness and willingness to perform her part of the contract and had in fact canceled the Agreement for Sale. The Defendant claimed that the Plaintiff had filed a suit for specific performance in view of escalation in price of land.

4. The trial Court, upon considering the evidence on record has held that the Plaintiff has proved execution of the Agreement for Sale dated 11.6.2006. The trial Court has further observed that under the said agreement, the Defendant had agreed to sell the suit property for sale consideration at the rate of Rs.2,00,000/- per guntha. The Plaintiff was ready and willing to perform her part of the contract, but the Sale Deed could not be executed in view of the inaction on the part of the Defendant. Based on these findings the trial Court decreed the Suit.

5. Being aggrieved by this judgment, the Defendant preferred an Appeal before the learned District Judge. The District Judge has confirmed the findings recorded by the Trial Court and

dismissed the Appeal. Being aggrieved by these two concurrent judgments, the Defendant has preferred this Second Appeal.

6. Shri Kadam, learned Counsel for the Appellant submits that the Agreement for Sale is not a registered agreement and this fact casts a doubt on the genuineness of the document. He further submits that the Agreement does not specify any date on which the Sale Deed was to be executed. He contends that the Plaintiff has admitted that since the date of the execution there has been tremendous escalation in the price of the land. He submits that the relief is of discretionary nature, and escalation of price would not justify exercise of discretion in favour of the Plaintiff. In support of his contention, he has relied upon the decision of the Supreme Court in ***Shengagam & Ors. vs. K.K.Rathinavel, Civil Apeal 150 of 2022.***

7. Shri Sawant, learned Counsel for the Plaintiff submits that by notice dated 28.4.2008, the Plaintiff had called upon the Defendant to execute the sale deed. The defendant has raised inconsistent pleas in reply dated 27.06.2008 and 29.08.2008. He

submits that the agreement for sale was executed in the year 2006. The Plaintiff has paid substantial consideration to the Defendant till October 2006. Since the Defendant did not come forward to execute the Sale Deed, the Plaintiff issued a legal notice calling upon the Defendant to conclude the sale transaction. He submits that the evidence on record clearly proves that the Plaintiff was always ready and willing to perform her part of the contract and sale deed could not be executed only because of the conduct of the Defendant. Under the circumstances, he submits that the escalation of price cannot be a ground for rejecting relief of specific performance.

8. I have perused the records and considered the submissions advanced by the learned Counsel for the respective parties.

9. The case of the Plaintiff is that the Defendant had entered into an agreement dated 11.6.2006 (Exh.73), whereby he had agreed to sell the suit property at the rate of Rs.2,00,000/- per guntha. The evidence of the Plaintiff vis-a-vis the agreement at Exhibit-73 reveals that at the time of execution of the Agreement

for sale, the Plaintiff had paid to the Defendant sum of Rs.2,50,000/- by cheque and Rs.25,000/- by cash. Thus, on the date of execution of the agreement the Plaintiff had paid to the Defendant total amount of Rs.2,75,000/- towards part consideration.

10. The Plaintiff has averred that subsequent to the execution of the said Agreement, she had paid to the Defendant total Rs.5,80,000/- i.e. Rs.5,55,000/- by cheque and Rs.25,000/- by cash. The Plaintiff claims that the Defendant had received total amount of Rs.8,55,000/- towards sale consideration. The Plaintiff has deposed that she was ready to pay the sale consideration of Rs.8,83,000/-. She had prepared a draft of Deed of Conveyance and forwarded the same to the Defendant along with copy of the cheque for an amount of Rs.8,83,000/- and called upon the Defendant to execute the Sale Deed. Evidence on record reveals that the Defendant has refused to execute the sale deed initially on the ground that the Agreement for Sale was canceled. The reply dated 27.06.2008 does not dispute execution of the agreement but raises a plea of cancellation of agreement. The subsequent

reply dated 29.08.2008, wherein the Defendant has denied execution of agreement and questioned genuineness of the Agreement is contrary to the stand taken in the previous reply. Moreover, there is no specific denial of the fact that the Defendant had received from the Plaintiff cheque payment of Rs.2,50,000/- . All these facts conclusively prove that the Defendant had in fact entered into an agreement and agreed to sell the property, but had failed to conclude the sale transaction though the Plaintiff was ready and willing to perform her part of the contract.

11. The next question is whether escalation in the price of land would by itself dis-entitle the Plaintiff for relief of specific performance. In this regard it would be relevant to refer to the judgment of the Apex Court in Shenbagam & Ors. (supra) wherein the Apex Court has reiterated that the remedy of specific performance is an equitable remedy. It is held that the Court while granting decree of specific performance exercises its discretionary jurisdiction. Section 20 of the Specific Relief Act confers discretion on the Court. The Apex Court referred to the decision in ***Nirmala Anand v. Advent Corporation (P) Ltd. & Ors.***

2013 (8) SCC 131, wherein a Three Judge Bench of the Honourable Apex Court had observed thus:

> *"While balancing the equities, one of the considerations to be kept in view is as to who is the defaulting party. It is also to be borne in mind whether a party is trying to take undue advantage over the other as also the hardship that may be caused to the defendant by directing specific performance. There may be other circumstances on which parties may not have any control. The totality of the circumstances is required to be seen."*

12. The Apex Court after considering the said decision and the previous decisions has observed thus :

> " True enough, generally speaking, time is not of the ess*ence in an agreement for the sale of immovable property. In deciding whether to grant the remedy of specific performance, specifically in suits relating to sale of immovable property, the courts must be cognizant of the conduct of the parties, the escalation of the price of the suit property, and whether one party will unfairly benefit from the decree. The remedy provided must not cause injustice to a party, specifically when they are not at fault. In the present case, three decades have passed since the agreement*

to sale was entered into between the parties. The price of the suit property would undoubtedly have escalated. Given the blemished conduct of the respondent-plaintiff in indicating his willingness to perform the contract, we decline in any event to grant the remedy of specific performance of the contract. However, we order a refund of the consideration together with interest at 6% per annum."

13. It is true that prior to 2018 amendment, the remedy for specific performance was discretionary relief. There cannot be a straight jacket formula in exercise of the discretion and the same would depend on the facts and circumstances of each case. As it has been held by the Apex Court in Nirmala Anand (supra) the Plaintiff cannot be denied the relief of specific performance only on the ground of increase of price of the property during pendency of the litigation. Much would depend on the conduct of the parties.

14. In the instant case, the evidence on record indicates that the Agreement was executed in the year 2006 and the Plaintiff had paid substantial amount towards sale consideration. Within a

period of one year, the Plaintiff had called upon the Defendant to execute the Sale Deed and had even forwarded copy of the cheque along with copy of the draft Conveyance Deed and informed the Defendant that the cheque for the balance sale consideration was kept ready. The Defendants having failed to execute the sale deed, the Plaintiff filed a suit in the year 2008 i.e. within a period of two years from the date of execution of the agreement. The price of the land, as suggested by the Defendant, escalated in the year 2008. The escalation of price during pendency of the suit cannot be a ground to reject the relief of specific performance, since the Plaintiff was not a defaulting party and it was only due to the conduct of the Defendant that the Plaintiff was compelled to file a suit for specific performance. Hence, the Defendant cannot be allowed to take undue advantage of his own conduct. Failure to exercise discretion will cause undue hardship to the Plaintiff who has paid the substantial amount and who had been ready and willing to perform her part of contract.

15. In view of the above facts and circumstances, in my considered view, the judgment of the trial Court does not suffer

from any illegality or perversity. The findings are based on evidence on record. No substantial question of law is involved. Hence, Appeal is dismissed. Interim Application stands dismissed in view of dismissal of the Appeal.

PRASANNA P SALGAONKAR Digitally signed by PRASANNA P SALGAONKAR Date: 2022.03.16 11:39:34 +0530

(ANUJA PRABHUDESSAI, J.)