

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

SECOND APPEAL NO.169 OF 2017

Mr. Rajendra Tathamal Bhandari ...Appellant
vs.

M/s. Pragati Developers,
Promoters And Builders
(thr. Mr. Girish Gangadhar Valse) ...Respondent

....

Mr.Akshay P. Shinde, for the Appellant.
Mr.Jaydeep Deo, for the Respondent.

....

CORAM : NITIN W. SAMBRE, J.

DATED : 15th NOVEMBER, 2022

P.C.:

1. This appeal is by the original defendant. Based on undisputed agreement of sale Exhibit-54 dated 7th August, 2006 Civil Suit No.640 of 2014 was taken out by the respondent for specific relief which was decreed by the Court of Small Causes, and Civil Judge Senior Division, Pune vide judgment and decree dated 22nd July, 2014.

2. The appellant/defendant feeling aggrieved, preferred Civil Appeal No.640 of 2014 which was also dismissed on 20th November, 2015. As such, this second appeal.

3. Both these judgments are assailed by the appellant/defendant on the following questions of law:

- (a) Whether in view of Clause 8 of the agreement of sale Exhibit-54, time was essence of contract and whether the respondent has failed to adhere time limit?
- (b) Whether the claim in the suit is in tune with the requirement under Order 6 Rule 3 of CPC read with Section 16(c) of the Specific Relief Act as the plaint lacks appropriate/necessary pleadings?

4. The aforesaid submissions are sought to be substantiated from the pleadings in the plaint, the rival evidence of the party so also the recital in Exhibit-54 i.e. agreement of sale. The counsel for the appellant has drawn support from the judgment of Apex Court in the matter of **Padmakari and Ors. Vs. Dasayyan And Ors.**¹ so as to substantiate the question of law No.2 i.e. the non-compliance of the provisions of Order 6, Rule 3 of the CPC read with Section 16(c) of the Specific Relief Act. He has specially relied on the observation in para 19 to 23 of the aforesaid judgment.

5. While opposing aforesaid prayer, Mr.Deo, learned counsel appearing for respondent/plaintiff would urge that appeal lacks any substantial question of law as both the Courts have concurrently held against the appellant. He would draw support from the recitals in Exhibit-54 so as to substantiate his claim that time was not essence of the contract as the appellant/defendant has failed to satisfy the very ingredients of the said agreement

1 (2015) 8 SCC 695

by discharging his obligation. In addition he would draw support from pleadings so also the admission given by the appellant in cross-examination so as to claim that time was not essence of the contract. He would further urge that there are sufficient pleadings in the plaint so as to infer satisfaction of the ingredients under Order 6 Rule 3 read with Section 16(c) of the Specific Relief Act. According to Mr.Deo, the respondent has tried to settle the matter with the appellant and the respondent has volunteered to pay total amount Rs.15 lakhs after adjusting amount of Rs.6 lakhs of consideration. He would invite my attention to the fact that an amount of Rs.1 lakh was paid on the date of the execution of the Exhibit-54 agreement so also deposited balance amount of consideration in the trial Court. As such, he would urge that the appeal is liable to be dismissed.

6. I have appreciated the said submissions.

7. With the assistance, I have perused recitals in agreement of sale Exhibit-54. The execution of the said document is admitted by the both the parties as is apparent from the evidence brought on record. The total consideration agreed was Rs.6 lakhs, out of which, the appellant acknowledges receipt of an amount of Rs.1 lakh. The recital further speaks of the payment of Rs.5 lakhs as balance consideration. Clause 8 of the agreement specifically

provides that the agreement shall be valid for the period of 180 days and agreement of sale shall be automatically cancelled if the sale deed is not executed. The other recitals in the said agreement particularly Clause 10(b) cast a responsibility on the respondent to get the land released from the clutches of provisions of Urban Land Ceiling Act. While getting release order from the competent authority under the ULC Act, the corresponding obligation on the appellant was of providing necessary units.

8. Admittedly, both the parties have not taken recourse to steps under the provisions of ULC Act. Rather the units which were to be made available by the appellant so as get sanction to a scheme for getting land release from the ULC authority is also not furnished.

9. Similarly, the clause in regard to payment of consideration is concerned, it does not say that the amount of Rs.5 lakhs i.e. balance consideration is to be paid within a period of 180 days as has been agreed in Clause 8 of the agreement. The Clause 11 of the agreement further provides that the appellant to carry out the measurement and the expenses of the said measurement was to be paid by the respondent/plaintiff. From the evidence of appellant, it cannot be inferred that the appellant has applied for

the measurement of the suit property and has raised a memo thereby asking the respondent to pay the measurement cost. As such, what can be inferred is the corresponding obligations on the appellant were equally not discharged by him. Apart from above, the measurement, the release of the land from the ULC authority, no outer limit of time is fixed for securing compliances of said obligations. As such, the cumulative effect of the recitals which are employed in the agreement Exhibit-54 does not prompt this Court to form an opinion that the time was essence of the contract. Both the Courts below have as such were justified in inferring that time was not essence of contract.

10. As such, the contention put forth by the counsel for the appellant that time was not essence cannot be accepted.

11. As regards the absence of necessary of pleadings particularly having regard to the provisions of Order 6 Rule 3 of CPC read with Section 16(c) of the Specif Relief Act is concerned, the fact remains that the appellant has acknowledged the receipt of the notice from the respondent/plaintiff as regards the specific performance of the contract. The plaint in categorical terms speaks of the readiness and willingness of the respondent to perform and discharge his part of the obligation under the agreement.

12. The fact that the ULC Act was repealed on 29th November, 2007, primarily prompt this Court to believe that the obligation on the part of the appellant to provide units so also on the part of the respondent/plaintiff to get the land released from the clutches of ULC Act is not required to be complied with by either of the parties, particularly, when it is admitted position on record that the appellant claims that possession of the suit property was never taken over by the ULC authority. In the aforesaid background, what can be appreciated is the appellant in the cross-examination of the respondent was unable to establish that on the date of the claim put forth by the respondent for specific performance, he was incapacitated financially or otherwise to discharge his burden so as to perform his part of the contract by paying balance consideration. The perusal of the pleadings in the plaint, the evidence on record primarily prompt this Court to form an opinion that the respondent has specifically pleaded about his readiness and willingness and rightly so established the same. The respondent has already deposited the balance consideration in the Courts of below after the suit was decreed. May be such fact will be of hardly any consequences pursuant to the provisions of Section 16(c) of the Specific Relief Act. However, This court is required to be sensitive to the fact the respondent

has also voluntarily agreed to offer higher compensation to the appellant and the parties have tried to negotiate a settlement which has failed. Be that, as it may. The statement made by the respondent/plaintiff that in addition to the amount of agreed consideration of Rs.6 lakhs, the respondent is willing to deposit amount of Rs.9 lakhs in the Trial Court towards the compensation/damages, is also accepted as an undertaking to this Court

13. Pursuant to the aforesaid statement made by the respondent, he is at liberty to deposit additional amount of Rs.9 lakhs within a period of six weeks from today in the Court below.

14. As a sequel of above, the support drawn by the counsel for the appellant from the judgment of Apex Court in the **Padmakari** (supra) will be of hardly any assistance particularly when the respondent has also established readiness and willingness to perform his part of the contract.

15. That being so, the present second appeal which sans involvement of any question of law and preferred against the concurrent findings is liable to be dismissed and stands dismissed accordingly.

16. At this stage, the counsel for the appellant submits that the execution of the decree be stayed for a period of four weeks

which opposed by Mr.Deo, counsel for the respondent.

17. However, having regard to the fact that decree is not executed for last about six years, the interim protection is extended as prayed.

18. Pending application also stands disposed of.

(NITIN W. SAMBRE, J.)