

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

SECOND APPEAL NO. 113/2022

Uddhavrao S/o Marotraoji Mankar (Patil) through P.O.A. Sonal Mankar

Vs.

Vijay Kumar S/o Manikchand Lulla (HUF) and others

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

Court's or Judge's orders

Shri Abhijeet Khare, Advocate for appellant
Shri V.B. Bhise, Advocate for respondent Nos.1 & 2
Shri D.P. Dapurkar, Advocate for respondent Nos.3(i) to 3(iii)

CORAM : SMT. M.S. JAWALKAR, J.

DATE : 14/11/2022

Heard both the Counsel at length.

2. By judgment and decree passed in Special Civil Suit No. 121/2002, the suit for specific performance of contract was dismissed and amount was directed to be refunded. The said judgment and decree is reversed in Regular Civil Appeal No. 139/2015 and suit came to be decreed and relief of specific performance was granted.

3. After hearing both the parties, I am of the considered opinion that matter needs to be **admitted** on following substantial question of law :

“(i). Whether the judgment and decree of the learned First Appellate Court can be sustained in view of the decision of the Hon’ble Supreme Court of India as regards writing a judgment of reversal reported in 2001(III) Mh.L.J. p-786, Santosh Hazare Vs. Purushottam Tiwari ?

(ii) Whether the learned Appellate Court rightly appreciated that plaintiff was ready and willing to perform his part of contract ?

(iii) Whether the findings of learned Trial Court could have been disturbed by the learned First Appellate Court especially in view of the admitted position on record that the plaintiffs have not even pleaded let alone proved as to why they did not either take any steps for getting the sale deed executed or make any payment towards balance consideration of Rs.11,39,250/- between the period from 20/02/2001 to 14/09/2002? (The plaintiffs have also neither pleaded nor proved that sufficient money available with them for the entire duration, nor did they deposit any money in the court during the trial)”

4. Counsel for respondent Nos.1, 2 respondent Nos. 3(i) to (iii) waives service of notice.
5. Hearing of the appeal is expedited.

CIVIL APPLICATION (CAS) NO. 350/2022

The learned Counsel for the appellant deposited decretal amount without interest.

2. The learned Counsel undertakes to deposit the interest amount within four weeks from today.
3. In view of that, the present application is allowed in terms of prayer Clause – (i).
4. The application is disposed of.