

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Civil Revision Application No. 45 of 2022

[Shri Pramod S/o Laxmannarayanji Lakhotiya ..vs.. Shri Waman S/o Bhagwanji Jadhao]

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

Court's or Judge's orders

Mr. Mayank Dastane, Advocate for the applicant

CORAM : ROHIT B. DEO, J.

DATED : 2-5-2022

The applicant is the defendant in Special Civil Suit 88/2020 which is brought by the respondent – plaintiff for specific performance and, in the alternate, for refund of earnest money and damages for compensation. The defendant preferred an application under Order VII Rule 11(a) of the Code of Civil Procedure (Code) for rejection of plaint on the premise that even if the averments in the plaint are taken at face value, no inference of complete and concluded contract can be drawn. The defendant contended that there is no fixation of sale consideration nor does the plaint disclose privity of contract or the terms and conditions which will have to be proved to succeed in the suit for specific performance.

2. The application under Order VII Rule 11(a) of the Code is rejected by order dated 21-9-2021 on the

premise that there are sufficient averments in the plaint to *prima facie* hold that there was complete and concluded contract, albeit oral contract, and that there is no ambiguity as such qua the terms and conditions settled, if the plaint averments are to be taken at face value.

3. Learned counsel for the defendant is relying on the decision of the Supreme Court in ***Abdul Khader Rowther Vs. P K. Sara Bai and others (1989) 4 SCC 313.*** The Supreme Court was considering a challenge to the final judgment in appeal rendered by the High Court whereby the judgment and decree of the trial Court of specific performance of contract was set aside. The Supreme Court considered the submission that the suit plaint did not confirm to the requirements prescribed in Forms 47 and 48 of the First Schedule in the Code and that the plaint did not contain the requisite pleadings necessary to obtain a decree for specific performance.

4. The reliance placed by the learned counsel on the decision *supra* is clearly misconceived. I am not required to delve deeper in the averments in the suit plaint at the stage of considering the application under Order VII

Rule 11 of the Code. *Prima facie* the pleadings do make out a case of concluded contract, as is discernible from the transcripts of the telephonic conversations reproduced in the plaint, the averment that earnest amount was paid in presence of the witnesses named in the plaint and the averment that the plaintiff was present at the office of Sub-Registrar of Documents for registration of the earnest note.

5. Be that as it may, the well entrenched position of law is that the plaint cannot be rejected in piecemeal. While the Court may reject the plaint qua a particular defendant is one view, the rejection of the plaint cannot be qua a particular relief. The plaint will have to be rejected qua the relief in entirety or not at all. The learned counsel, Mr. Dastane may indeed have an arguable case as regards the nature, extent and quality of the pleadings in so far as the relief of specific performance is concerned. But then, whether the contract was complete may not be of any relevance to the issue of damages and refund of the money allegedly paid. If there was no concluded contract, the relief of specific performance will be ultimately rejected.

6. I am more than satisfied that on a holistic reading of plaint, cause of action is demonstrated. Whether the transcript of the telephonic conversation which is recorded and the factum of payment of the earnest amount is proved, would be within the domain of the trial Court after the parties adduce evidence. At this stage, the plaint averments will have to be accepted as a whole. Having done so, I see no reason to interfere in revisional jurisdiction.

7. The revision is dismissed.

JUDGE

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