

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

SECOND APPEAL NO. 366 OF 2004

Shyam Bajirao Nerkar,
aged about 50 years, Occ. Service,
R/o Gandhi Ward, Pusad,
District – Yavatmal

}

.. Petitioner

Versus

Krishnarao Kherajmal Batra
(Deceased) Through LRs.

- i) Mrs. Amaranibai wd/o Krushnram Batra-
A Widow, aged 65 years,
- ii) Dr. Anil Krushnram Batra, aged 49 years.
A Son
both residents at B 304, Gajanan Estate in
front of Bharat petrol pump Kaulkhed
Akola, Ta, & Dist. Akola
- iii) Dr. Sunil Krushnam Batra, aged 42 years,
a son R/o 27 Hammaod Way Cardiff
South Glamaorgaon CF 23 9BB U.K.
- iv) Mrs. Anita w/o Sushil Zambani aged 51
years, a married daughter, R/o Shankar
Nagar Pusad Dist Yavatmal.
- v) Mrs. Sangita Charbhuj Mattani, aged 47
years, a Married daughter, R/o Manohar
Chowk at post Tq & Dist Gondiya
- vi) Mrs. Hitisha w/o Chandan Mamtani, aged
45 years a married daughter R/o Block
No.236, 7 Pancham Estate Society Dixit
Nagar Nari Road, Nagpur-26.

}

.. Respondents

Mr. G. M. Kubde, Advocate for appellant
Mr. A. M. Tirukh, Advocate for respondents.

CORAM : MANISH PITALE, J.

DATED : 07/04/2022

ORAL JUDGMENT

This appeal was admitted by order dated 10/08/2004, on the following substantial question of law :-

“Whether on a concurrent finding of fact that the agreement Ex.2 is not for sale of the house and possibly executed in suspicious circumstances, a decree for refund of the alleged consideration could be passed ?”

(2) In the present case, the respondents had filed a suit for specific performance of contract, claiming that the parties have entered into an agreement concerning sale of house belonging to the appellant. The total consideration was agreed at Rs.1,00,000/-, of which Rs.40,000/- was already paid to the appellant as earnest money.

(3) It was contended that the respondent was always ready and willing to perform his part of contract and since the appellant failed to abide by his responsibility under the said agreement. The respondent was constrained to file the suit for specific performance of contract.

(4) The trial Court framed various issues in the light of the pleadings of the parties and evidence was led by the rival parties in support their respective stands.

(5) The trial Court found that the respondent was able to prove that the parties had entered into the aforesaid agreement wherein the agreed consideration was Rs.1,00,000/-, of which Rs.40,000/- had been paid as earnest money to the appellant. Despite finding that the agreement was indeed executed, the trial Court refused to exercise discretion for granting a decree of specific performance in favour of the respondent. Instead, in the facts and circumstances of the case, the trial Court directed the appellant to refund the earnest amount of Rs.40,000/-.

(6) The appellant filed appeal against the said judgment and order of the trial Court while the respondent i.e. original plaintiff did not challenge the said judgment and order. Consequently, the only question for consideration before the appellate Court was, as to whether the trial Court was justified in directing refund of earnest money. The appellant contended that the transaction between the parties was a money lending transaction and that the trial Court had

erred in holding that the amount in question could be refunded as earnest money. The appellate Court did not agree with the contentions raised by the appellant and the appeal was dismissed.

(7) The present Second Appeal was admitted on the above quoted substantial question of law.

(8) Heard learned counsel for the rival parties, it was vehemently contended on behalf of the appellant that the material on record indicated that the agreement in question was more in the nature of a money lending transaction and that therefore, the Courts below erred in directing the appellants to refund the amount of Rs.40,000/-, when it could not be treated as earnest amount paid by the respondent to the appellant.

(9) In order to examine the aforesaid contention, this Court perused the judgments and orders passed by the Courts below. The trial Court on appreciating the material on record found as a matter of fact that the appellant i.e. original defendant admitted that he himself had purchased the stamp paper, which was signed by him and he even admitted that above his signature he had mentioned in his

own handwriting that he had received amount of Rs.40,000/- towards *Isar* i.e. earnest amount. In the face of such material on record and the crucial admissions given by the appellant, this Court is of the opinion that the finding of fact rendered by the trial Court was correctly confirmed by the appellate Court by dismissing the appeal. No case is made out by the appellant for holding that the direction for refund of earnest money could not have been granted by the Courts below.

(10) Accordingly, the question of law is answered against the appellant and in favour of the respondent. It is found that the appeal is liable to be dismissed.

(11) At this stage the learned counsel for the appellant sought to rely upon the certain subsequent developments. It was claimed that when the respondent (original plaintiff) died, one of his legal heir had entered into a compromise with the appellant, in pursuance of which certain amount was allegedly paid to such legal heir. It was then submitted that the other legal heirs raised dispute about the same and that the matter was left at that. It was submitted that since the appellant had paid certain amount to one of the legal heirs of the respondent, this aspect ought to be taken into

consideration by this Court.

(12) This Court of the opinion that when the decree passed by the trial Court has been confirmed by the appellate Court and this Court is not convinced that interference is warranted, any such subsequent development can certainly be brought to the notice of the competent Court in the execution proceedings by the rival parties.

(13) Accordingly, the appeal is dismissed and the decree passed by the Courts below is confirmed.

[MANISH PITALE J.]

KOLHE/P.A.