

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

SECOND APPEAL NO.234 OF 2022

Sanjay s/o Nilkanthrao Gudadhe,
Aged about 53 Yrs., Occ. Business,
R/o c/o Ashtvinayak Electrical, 12,
Kalyan Nagar, Jaitala, Hingana Road,
Nagpur, Tah. & Dist. Nagpur – 441110.

..... **APPELLANT**
(Orig. Deft.)
[ON R.A.]

// VERSUS //

Dr. Pradeep s/o Babulalji Jain,
Aged about 64 Yrs, Occ. Medical Practitioner,
R/o Plot No.8, NIT Jalvihar Colony,
Near Priyadarshani Boys Hostel, Hingana
Road, Nagpur, Tah. & Dist. Nagpur – 441110.

Address stated in Caveat application is as under:-
Dr. Pradeep s/o Babulalji Jain,
R/o Plot No.380, Flat No.201, Crosswind,
Near Maharashtra Aadhayan School,
Gandhinagar, Shankar Nagar, Nagpur – 440010.

.... **RESPONDENT**
(Orig. Plff.)
[ON R.A.]

Mr. S. G. Malode, Advocate for appellant.
Mr. H. N. Bhondge, Advocate for respondent.

CORAM : AVINASH G. GHAROTE, J.
DATED : 15/09/2022

ORAL JUDGMENT :

1. Heard Mr. Malode, learned counsel for the appellant and Mr. Bhondge, learned counsel for the respondent/Caveator.

2. Having heard the learned counsel for the parties, in my

considered opinion, the following substantial question of law arises:

(i) Whether the document dated 2.12.1997 which is a sale receipt at Exh.32, can be styled as an agreement of sale, considering that, it is written upon a stamp paper dated 12.10.1996 and the date is not counter signed by the defendant-owner?

(ii) Whether the matter needs to be remanded back to the learned trial Court, in view of the nature of the judgment of the learned trial Court?

3. Admit on the above substantial question of law. Mr. Bhondge, learned counsel waives service of notice for respondent, on merits.

4. Heard the learned counsel for the parties, for final disposal of the appeal.

5. Mr. Malode, learned counsel for the appellant submits, that the judgment and decree of the learned trial Court dated 16.8.2011, has been passed without a written statement, on the ground that in spite of having engaged a lawyer, the counsel had filed a Pursis at Exh.18 on 6.6.2005, indicating his inability to file a written statement on account of which, the counsel expressed his inability to proceed with the matter further. He submits relying upon the provisions of paragraph 660(4) of the Civil Manual, that in such a case it was necessary for the learned

counsel to issue a notice to the appellant, indicating his inability to appear for the defendant and asking him to engage another counsel which was not done, as a result of which, the appellant/original defendant came to be unrepresented consequent to the Pursis dated 6.6.2005, as a result of which, the judgment and decree dated 16.8.2011, came to be passed in the absence of the defendant/appellant. It is further contended that even otherwise, on the merits of the matter, the learned trial Court could not have passed the decree for specific performance by merely blindly accepting the evidence of PW-1 and PW-2 without itself being satisfied regarding the legality and validity of the sale receipt dated 2.12.1997. He submits that, even the request for remand made to the learned Appellate Court in appeal, for lack of opportunity has been turned down, only on the ground, that the plaintiff/respondent was found to be in possession of the original title deed at Exh.39 and the learned Appellate Court does not discuss anything in its judgment, regarding the claim for remand. It is his contention that matter is required to be decided on merits and there cannot be a decree in default. He therefore submits, that this is a fit case for remand, as considering the nature of the document which is sought to be enforced, several disputed questions of fact arise, which were necessary to be determined by the Courts below, which has not been so done.

6. Mr. Bhondge, learned counsel for the respondent vehemently opposes the contention and submits that though the appellant/defendant had been served and had appeared through counsel, he did not bother to attend the office of the counsel, as a result of which, the counsel was constrained to file a Pursis dated 6.6.2005 and consequent thereto ceasing to represent the defendant. He further submits, that though the Pursis is filed on 6.6.2005, the judgment of the learned trial Court is dated 16.8.2011, which is a substantial period of nearly about more than six years, during which entire period the appellant/defendant did not bother to contact his counsel or appear in the Court and contest the matter. He therefore submits, that the appellant/defendant, is himself to be blamed for the decree passed by the learned trial Court, is in his absence. He further supports the judgment of the learned Appellate Court which refuses the remand of the matter on the above ground. On merits, it is contended, that though the document dated 2.12.1997, is styled as a sale receipt, in sum and substance, it is actually an agreement of sale, specific performance of which was permissible and the execution of the agreement having been proved by the examination of the attesting witness PW-2, whose testimony remained uncontroverted due to failure of cross-examination, the learned trial Court as well as the Appellate Court were justified in relying upon his testimony to grant specific performance.

7. Though, it is correct, that the defendant/appellant had been duly served and had been represented through his counsel before the learned trial Court, it is equally true, that the defendant/appellant, did not contact his counsel, as a result of which, the Pursis came to be filed by the counsel on 6.6.2005. Even thereafter, till the passing of the judgment dated 16.8.2011, the defendant, does not appear to have bothered to contact his counsel which is a period of more than six years, on account of which, the learned Appellate Court was justified in holding that a remand ought not to be permitted on the said ground.

8. However, what is material to note, is that the learned trial Court, while passing the impugned judgment dated 16.8.2011, merely accepted the story of the plaintiff/respondent, without applying his mind, to the position as availing on record, as is apparent from the perusal of paras 5 to 10 of the judgment of the trial Court which runs into one single page. The entire reasoning is contained in para 10 which indicates that without considering the merits or demerits of the claim for specific performance, a decree has been granted merely in default as the entire judgment, does not even whisper anything, about the legality and validity of the sale receipt Exh.32, specifically considering the fact that it was written on a stamp paper dated 12.10.1996, as against which, the sale receipt was said to have been executed on 2.12.1997. That apart,

the insertion of the dates on the document, were by hand, which do not appear to have been countersigned by the defendant/owner. Though, the sale receipt indicates that the entire consideration was paid and the plaintiff/respondent was placed in the possession, no date for the execution of the sale deed appears to have been fixed, which is something of an anomaly considering the nature of the transaction. There are yet other infirmities in the said document at Exh.32, which the learned trial Court, ought to have considered and applied its mind, for the purpose of determining whether the exercise of discretion under Section 20 of the Specific Relief Act (herein referred to as "the SR Act") ought to have been exercised in favour of the plaintiff. This unfortunately, has not been done as is reflected from the perusal of the impugned judgment of the trial Court dated 16.8.2011.

9. The Hon'ble Apex Court in ***Balraj Taneja and another Vs. Sunil Madan and another, 1999 (8) SCC 396***, while considering what a "judgment" as defined in Section 2 (9) of CPC means, has held as under:

"42. "Judgment" as defined in Section 2(9) of the Code of Civil Procedure means the statement given by the Judge of the grounds for a decree or order. What a judgment should contain is indicated in Order 20 Rule 4 (2) which says that a judgment "shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision."

It should be a self-contained document from which it should appear as to what were the facts of the case and what was the controversy which was tried to be settled by the court and in what manner. The process of reasoning by which the court came to the ultimate conclusion and decreed the suit should be reflected clearly in the judgment.

45. Learned counsel for Respondent 1 contended that the provisions of Order 20 Rule 4(2) would apply only to contested cases as it is only in those cases that "the points for determination" as mentioned in this rule will have to be indicated, and not in a case in which the written statement has not been filed by the defendants and the facts set out in the plaint are deemed to have been admitted. We do not agree. Whether it is a case which is contested by the defendants by filing a written statement, or a case which proceeds ex parte and is ultimately decided as an ex parte case, or is a case in which the written statement is not filed and the case is decided under Order 8 Rule 10, the court has to write a judgment which must be in conformity with the provisions of the Code or at least set out the reasoning by which the controversy is resolved.

46. An attempt was made to contend that the definition of judgment as set out in Section 2(9) of the Code would not be applicable to the judgment passed by the Delhi High Court in its original jurisdiction wherein the proceedings are regulated by the provisions of the Delhi High Court Act, 1966. It is contended that the word "judgment" used in the Delhi High Court Act, 1966 would not take its colour from the definition of "judgment" contained in Section 2(9) of the Code of Civil Procedure. We do not intend to enter into this controversy, fortunately as it is not contended that the Code of

Civil Procedure does not apply, but we cannot refrain from expressing that even if it were so, the Delhi High Court is not absolved of its obligation to write a judgment as understood in common parlance. Even if the definition were not contained in Section 2(9) or the contents thereof were not indicated in Order 20 Rule 4(2) CPC, the judgment would still mean the process of reasoning by which a Judge decides a case in favour of one party and against the other. In judicial proceedings, there cannot be arbitrary orders. A Judge cannot merely say "Suit decreed" or "Suit dismissed". The whole process of reasoning has to be set out for deciding the case one way or the other. This infirmity in the present judgment is glaring and for that reason also the judgment cannot be sustained."

10. It is thus apparent, that the learned trial Court, while considering a suit for specific performance and the exercise of discretion under Section 20 of the SR Act, has to apply its mind which application is reflected from the reasons spelt out for the exercise of discretion and does not act merely on the default of the defendant to appear and defend. Had it been so, the provisions of Section 20 of the SR Act, would not have been enacted by the legislature. Since the judgment of the learned trial Court, is devoid of any reasons whatsoever indicating the exercise of discretion under Section 20 of the SR Act, nor does it, even discuss the nature of the agreement, the nature of the evidence led thereto, and is devoid of any reasons whatsoever, the same cannot be sustained in law.

11. The learned Appellate Court in its judgment dated 5.3.2022, has also not gone into the finer niceties of the exercise of discretion under Section 20 of the SR Act, but has concentrated, on the issue whether Exh.32 the agreement, which has been exhibited in absence of any objection being raised, by virtue of Section 35 of the Maharashtra Stamp Act, could be read in evidence or not and the issue of limitation under Article 54, without going into the *nitty-gritty* of the document at Exh. 32 as discussed above. Nor does it consider that the judgment of the learned trial Court is purely a judgment in default sans any reasons for granting specific performance at all, considering which, in my opinion, this is a fit case for remand. I am not dilating on question no. (i) as any discussion on the question, would prejudice the trial as I am remanding the matter to the learned trial Court for a fresh trial. The impugned judgments are therefore quashed and set aside and the matter is remanded back to the learned trial Court for decision afresh according to law.

12. Question no.(i) is not answered as any answer to the same would prejudice the trial as the matter is being remanded back.

13. The Second Appeal is allowed in above term. No costs.