

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

SECOND APPEAL NO. 375/2022

Yogita W/o Suraj Talreja through POA. Holder Asandas Bhagwandas Budhawani
Vs.
Savita Pandurang Varankar and others

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

Court's or Judge's orders

Ms. Divya Joshi, Advocate with Dr. R.S. Sirpurkar, Advocate for appellant

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

DATE : 19/10/2022

Regular Civil Suit No. 12/2013 filed by the plaintiff came to be partly allowed. The suit was proceeded *ex parte*. It was directed to the defendants by the learned Civil Judge, Junior Division to pay Rs. 2,00,000/- to the plaintiff within three months. The said order came to be challenged by the plaintiff in appeal as relief of specific performance was not granted. After issuance of notices, the respondents have appeared in the appeal and opposed the appeal. Ground is also raised that the learned Trial Court though recorded finding that the plaintiff failed to place on on record any documentary evidence about the payment of Rs.1,50,000/- to the father of defendant Nos. 2 to 4, Pandurang, in view of the fact that there was no rebuttal of the oral evidence, the Trial

Court has concluded that there was payment of Rs.2,00,000/- to the deceased Pandurang Warankar. This finding is upset by the Appellate Court and ordered refund of earnest money in the sum of Rs.50,000/- instead of Rs. 2,00,000/-.

2. I do not see any illegality or error in the order passed by the learned Appellate Court as well as the Trial Court for refusing relief of specific performance. The relief of specific performance was denied by the learned Trial Court as there were certain conditions to be fulfilled. Secondly, learned Trial Court granted relief of refund. However, he failed to appreciate this fact that there is nothing on record to support that amount of Rs.1,50,000/- was paid, time to time to the deceased Pandurang. It is in the affidavit of father of the plaintiff who is a power of attorney of plaintiff that he is having knowledge of the transaction. However there is nothing on record or in the affidavit that how and in what mode the amount of Rs.1,50,000/- paid and on which dates. It is claimed that the said details of receipt of amount by the Pandurang are mentioned in the diary of Pandurang which ought not to have accepted by the Trial Court. The learned Appellate Court rightly appreciated this fact and directed to refund the amount of Rs.50,000/- to the plaintiff. From the judgment of the Appellate Court it appears that the said grounds were raised by the Counsel for the

respondent about non substantiation of payment of Rs.1,50,000/-. As such, there is no illegality found in the order nor any substantial question of law is involved in the matter. Hence, appeal stands dismissed.

(SMT. M.S. JAWALKAR, J.)