

Pooja K.

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 399 OF 2021
WITH
CIVIL APPLICATION NO. 10411 OF 2021
IN
SECOND APPEAL NO. 399 OF 2021

Kailash Namdeo Tote	... Appellant
<i>Versus</i>	
Kanak Resorts Pvt Ltd.	
Thr its Managing Director	... Respondent

...

Mr. V.M. Chate – Advocate for Appellant
Mr. A.A. Puranik – Advocate for sole Respondent

....

CORAM : GAURI GODSE, J.

DATE : 1st February, 2023

PER COURT :

1. Heard.

2. The Second Appeal is admitted on the following substantial questions of law :
 - a. Whether there could have been a decree for specific performance in favour of the plaintiff without there being a specific findings with respect to the right of plaintiff to seek specific performance of a contract not executed in favour of plaintiff ?

- b. Whether the agreement relied by the plaintiff executed by an individual person could have been enforced in favour of the plaintiff ?
- 3. Mr. A.A. Puranik - learned counsel appearing on behalf of sole respondent waives service.
- 4. Call for record and proceedings.
- 5. Printing is dispensed with.
- 6. The appellant to file private paper book containing judgments of both the courts, first appeal memo, pleadings, notes of evidence and exhibited documents, within a period of one year from today.

CIVIL APPLICATION NO. 10411 OF 2021

7. This Civil Application is filed for stay to the execution, operation and implementation of the judgment and decree passed by the Ad-hoc district Judge-2, Aurangabad in Regular Civil Appeal No.363 of 2012 and judgment and decree passed by Civil Judge Senior Division, Aurangabad in Special Civil Suit No.224 of 2008. The Second Appeal is admitted hence, it is necessary to grant stay to the

execution, operation and implementation to the impugned judgment and decree.

8. During the pendency of the appeal there will be interim stay in terms of prayer clause 'B' which reads as under :

“B) Pending hearing and final disposal of this second appeal, the execution, operation and implementation of the judgment and decree dated 03.02.2018 passed by the Ad-hoc District Judge – 2, Aurangabad in Regular Civil Appeal No.363 of 2012 and judgment and decree 30.04.2012 in the Special Civil Suit No.224 of 2008 passed by Civil Judge, Senior Division, Aurangabad may kindly be stayed.”

9. The Civil Application is disposed of in above terms.

**[GAURI GODSE]
JUDGE**