

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**SECOND APPEAL NO.547 OF 2022
WITH CA/11637/2022 IN SA/547/2022**

Hanmant Pandharinath Pabitwar ... Appellant

Versus

Bhimrao Balwantrao Shirsagar & Anr. ... Respondents

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Mr. Amit A. Mukhedkar, Advocate for the Appellant

Mrs. S. G. Chincholkar, Advocate for Respondent Nos.1 and 2

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CORAM : S. G. CHAPALGAONKAR, J.

DATE : 10.08.2023

FINAL ORDER :

1. The appellant is the original plaintiff in Regular Civil Suit No.318/2011 instituted before the Civil Judge, Junior Division, Nanded. The contention of the plaintiff is that, under registered sale deed dated 06/04/2011, he alienated the suit plot in favour of the defendants for total consideration of Rs.1,00,000/-. The agreed consideration was paid to him in a phased manner. Initially, the amount of Rs.30,000/- was paid in cash before execution of the sale deed. The balance of consideration amount was to be paid through a cheque of Rs.20,000/- dated 15/04/2011 and Rs.50,000/- in cash to be paid by 30/01/2012.
2. The plaintiff contends that, the cheque dated 15/04/2011 handed over to the plaintiff at the time of sale deed was presented for

clearance. However, it returned back with endorsement insufficient fund. According to the plaintiff, the dishonor of cheque is the violation of condition in the sale deed and consequently, the sale deed is liable to be cancelled. The defendants caused their appearance in the suit contending that as per the agreement, the balance amount of consideration was to be paid by 30/01/2012. They deposited such balance consideration amount in the court before the given date in the sale deed. According to the defendants, the suit was filed premature and therefore, it was not maintainable. The trial court so also appellate court considered the rival pleadings and evidence on record and recorded the finding that the plaintiff failed to prove the breach of contract and consequential relief as claimed.

3. Mr. Mukhedkar, learned Advocate appearing for the appellant submits that the trial court has recorded the specific finding against issue no.2, holding that the sale deed was liable to be cancelled if the cheque delivered by the defendants is not encashed or balance of amount of Rs.50,000/- not paid by the defendants. He would submit that the cheque handed over to the plaintiff was dishonored on presentation to the bank. The plaintiff, before institution of suit, issued a legal notice and called upon the defendants to pay the amount. However, he failed to do so. Thereafter, the present suit is instituted. According to him, once the trial court had recorded the findings that there is non compliance of specific stipulation in the sale deed, the relief of cancellation of the sale deed ought to have been granted. He would submit that the courts have erroneously observed that the suit is not maintainable.

4. Ms. Chincholkar, learned Advocate appearing for the respondents / defendants supports the judgment passed by the Courts below. She would submit that concurrent finding of fact is recorded by both the Courts below that there is no violation of the condition in the sale deed. She points out that the defendants have deposited the amount in the Court before 30/01/2012 which was the date fixed for the payment of balance consideration. As such, no case is made out for interference in the second appeal.
5. Having considered the submissions advanced by the learned Advocate appearing for the respective parties and the perusal of the sale deed dated 06/04/2011, it is evident that, the consideration for the suit plot was fixed to Rs.1,00,000/- and Rs.30,000 was paid in advance before the execution of the sale deed. The consideration of Rs.20,000/- was paid vide cheque No.001800 dated 15/04/2011 and balance of consideration of Rs.50,000/- was to be paid by 30/01/2012. Further the stipulation in the sale deed reads as under:

“आणि सदरी तारखे पर्यंत दिलेला चेक व नगदी रुपये मला लिहून घेणार यांच्याकडून न मिळाल्यास सदरील रजिस्ट्री विक्रीखत हे कायद्याने रद्द करण्यात येईल.”

6. The aforesaid stipulation in the sale deed clearly mandates that if the consideration amount is not realized by 30/01/2012, then the registered sale deed shall be liable for cancellation. Admittedly, the defendants had deposited the consideration amount in the Court before 30/01/2012. The amounts of Rs.20,000/- was deposited on 20/10/2011, Rs.25,000/- on 17/11/2011, Rs.10,000/- on 16/12/2011 and Rs.1,5000/- in the Court. As such, the total Rs.70,000/- has been deposited by the defendants in the

Court before 30/01/2012. In view of this factual background, the Courts below have taken concurrent view that the plaintiff failed to prove breach of contract giving right in his favour to seek cancellation of the sale deed. No perversity has been pointed out in the approach of the Courts below. The interpretation of the documents adopted by the Courts below cannot be faulted. In that view of the matter, no substantial questions of law arises for consideration in the appeal. Hence, the appeal is dismissed.

7. In view of dismissal of appeal, civil applications, if any, are also disposed of.

[S. G. CHAPALGAONKAR]
JUDGE

Sameer