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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 613 OF 2022
WITH
CIVIL APPLICATION NO. 12969 OF 2022

Naimabee Vajiroddin Maniyar and others ... Appellants

Versus

Mainoddin Abdul Razzak Maniyar ... Respondent

...

Mr. R.N. Dhorde h/f. Mr. V.R. Dhorde – Advocate for Appellants
M/s. Lex Aquila through Advocate Ms. Madhaveshwari Mhase –
Advocate for Respondent

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CORAM : GAURI GODSE, J.
DATE : 03rd March, 2023

PER COURT :

1. Heard.
2. Second Appeal is admitted on the following substantial questions of law :
 - i. Whether the findings recorded by both the Courts on the point of readiness and willingness to perform the contract on the part of the plaintiff is on proper appreciation of evidence, as the defendants has produced on record notice dated 3rd March, 2028, at exhibit 93, thereby, terminating the contract and returning the earnest amount as the contract was not performed during the agreement of contract for sale ?

- ii. Whether the findings by both the Courts on the point of readiness and willingness of the plaintiff to perform his part of contract is consistent with the evidence on record with respect to want of factual findings with respect to service of notice dated 09th May, 2008, issued by the plaintiff for execution of the agreement ?
 - iii. Whether the Trial Court ought to have framed an issue as to whether there was valid termination of contract by the defendants and whether a declaration for cancellation of the termination was necessary in the facts of the case ?
 - iv. Whether the first appellate Court erred in not recording any findings on the point no. 1 framed by the first appellate Court with respect to valid termination of the contract ?
- 3. Learned Advocate Ms. Mhase waives service for respondent no.1.
 - 4. Issue notice to the rest of the respondents. In addition to court notice, the appellant shall serve the rest of the respondents by private service and file service affidavit.
 - 5. Call for record and proceedings.
 - 6. Printing is dispensed with.
 - 7. 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.

8. Hamdust is granted for service as well as record and proceedings.

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9. This application is for stay to the execution and operation of the impugned decree. The impugned decree is for directing the appellants to execute sale deed in favour of the respondent.
10. In view of the peculiar facts of the case and to avoid multiplicity of proceedings, the appellants shall not create third party interest in respect of suit property during the pendency of the Second Appeal.
11. Subject to the appellants not creating any third interest in the suit property, there will be interim stay in terms of prayer clause 'b', which reads thus :

"b. Pending hearing and final disposal of the present Second Appeal to grant stay to the impugned judgment and decree passed by the learned District Judge, Nilanga dated 06.05.2022 in RCA No. 06/2017 confirming the judgment and decree dated 10.10.2012 passed by the 2nd Joint, Civil Judge, Senior Division,

Latur in Special Civil Suit No. 109/2008 and for that purpose issue necessary orders.”

12. Civil Application is disposed of in above terms.

[GAURI GODSE, J.]