

Dusane

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO.259 OF 2023
WITH
INTERIM APPLICATION NO.3406 OF 2023**

Bajirao Baburao Kalbhor (deceased) ...Appellants
(deceased) thru' his heirs
Smt. Shakuntala Bajirao Kalbhor &
Ors.

V/s.

Rafique Dhondubhai Golandaj ...Respondent

Mr. N.V. Vechalekar i/by N.V. Vechalekar & Co. for
Appellant/Applicant.

**CORAM: MADHAV J. JAMDAR, J.
DATE: 11th APRIL 2023**

P.C.:

1. Heard Mr. Vechalekar, learned Counsel appearing for the Appellants. He submitted that the following substantial questions of law are involved in this Second Appeal.

(1) Whether there is no privity of contract between the Appellants and the Respondent and therefore the suit cannot be decreed against the Appellants ?

(2) Whether the suit is bad for non-joinder of necessary parties?

2. The factual position on record show that late Bajirao Baburao Kalbhor i.e. father of the Appellants had executed an agreement dated 21st October 2008 (Exhibit 36) agreeing to allot two shops on rental basis to the Respondent and the consideration of Rs.11.00 Lakhs was agreed to be paid. It is also agreed that in new construction, new shops will be handed over to the Respondent and the said amount of Rs.11.00 Lakhs would be adjusted while handing over new shops.

3. However in the meanwhile the said shops were demolished by Pimpri-Chinchwad Municipal Corporation. Due to the frustration of the contract, father of the Appellant issued two cheques of Rs.5.00 Lakhs and Rs.6.00 Lakhs respectively bearing Exhibits 37 and 39 in favour of the Respondent and the said cheques were dishonoured.

4. In the proceedings under Section 138 of the Negotiable Instruments Act, 1881 filed against father of the Appellants, joint pursis dated 6th October 2012 was filed at Exhibit 60 and another pursis dated 15th March 2013 was filed at Exhibit 61. By the said pursis, father of the Appellants agreed that the entire amount of cheques would be paid by December, 2012 and by further pursis agreed to pay the same by 15th March 2013. The father of the Appellant did not comply with the said compromise,

which was submitted to the learned Court and the father of the Appellant Bajirao Kalbhor passed away on 18th February 2014. Therefore, the Respondent i.e. the Plaintiff filed Special Summary Suit No. 87 of 2014. The said suit was filed against the Appellant i.e. legal heirs and representatives of Bajirao Kalbhor.

5. The learned Trial Court dismissed the suit *inter alia* on the ground that the concept of pious obligations has become outdated. The learned Appellate Court after considering the entire evidence on record including an agreement dated 21st October 2008 at Exhibit 36, cheques issued by father of the Appellant, which are at Exhibits 37 and 39 and the compromise pursis at Exhibits 60 and 61 filed before the Court where proceedings filed under the Negotiable Instruments Act, 1881 were pending came to the conclusion that the Respondent is entitled for said amount of Rs.11.00 Lakhs and therefore set aside the decree passed by the learned Trial Court and passed money decree directing payment of Rs.11.00 Lacs.

6. Mr. Vechalekar, learned Counsel appearing for the Appellant failed to point out any perversity and illegality in the findings recorded by the learned First Appellate Court. It is his contention that there is no privity of contract between father of the Appellants and the Respondent, however, he fairly admitted

that the Appellants are in possession of the bungalow, which is belonging to the father.

7. Apart from above, it is an admitted position that the Appellants are in possession of the bungalow, which was belonging to their father and therefore there is no substance in the contentions raised by Mr. Vechalekar that his children are not under an obligation to comply with the obligations of his father.

8. The learned First Appellate Court after considering the entire evidence on record has recorded finding that the Appellants are liable to pay said amount of Rs.11.00 Lakhs. Therefore, there is no illegality in the impugned order.

9. As far as second substantial question of law regarding non-joinder of necessary parties is concerned, it is the submission of Mr. Vechalekar, learned Counsel appearing for the Appellant that the father has executed will in favour of one Mr. Rajesh Pungaliya. Mr. Vechalekar, learned Counsel appearing for the Appellant states that the validity of said will is subject matter of separate suit between said Mr. Rajesh Pungaliya and the present Appellant. Thus as the dispute regarding said will is pending, the said aspect is not relevant.

10. As there is no substance in the substantial questions raised, the Second Appeal is dismissed, however, with no order as to costs.

11. In view of dismissal of the Second Appeal, nothing survives in the Interim Application and the same is also dismissed.

(MADHAV J. JAMDAR, J.)

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