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

**SECOND APPEAL NO. 517 OF 2022
WITH
INTERIM APPLICATION NO. 10504 OF 2022**

Shri. Dadaso Hariba Rode ...Appellant
Versus
Shri. Vinayak Tukaram Chavan & Ors. ...Respondents

**WITH
SECOND APPEAL NO.962 OF 2022
WITH
INTERIM APPLICATION NO. 428 OF 2023
WITH
SECOND APPEAL NO.874 OF 2022**

Pandurang Maruti Chavan ...Appellant
Versus
Vinayak Tukaram Chavan & Ors. ...Respondents

**WITH
INTERIM APPLICATION NO.19901 OF 2022
IN
SECOND APPEAL NO.517 OF 2022**

Shri. Vinayak Tukaram Chavan ...Applicant

In the matter between

Shri. Dadaso Hariba Rode ...Applicant
Versus
Shri. Vinayak Tukaram Chavan & Ors. ...Respondents

Mr. Sandesh D. Patil, i/b. Ms. Divya A. Pawar, for the Appellant in

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SA/517/2022 and Applicant in IA/10504/2022.

Mr. Nagesh Chavan, for the Appellant in SA/962/2022, SA/874/2022 and Applicant in IA/428/2023 & Respondent No.7 in SA/517/2022.

Mr. Sukumar Ghanavat, for the Applicant in IA/19901/2022 in SA/517/2022 & Respondent No.1 in SA/517/2022, SA/962/2022 & SA/874/2022.

CORAM : MADHAV J. JAMDAR, J.

DATED : 17th APRIL 2023

P.C. :

1. Heard the learned counsel appearing for the respective parties.

2. Learned counsel appearing for the Appellants submitted that the following substantial questions of law are involved in these Second Appeals:-

A) Whether the learned Lower Appellate Court was right in applying Section 20 of the Specific Relief Act, 1963 (as amended in 2018) to the present case?

B) Whether Section 20 of the Specific Relief Act, 1963 (as amended in 2018) has got retrospective effect and whether it could be applied to transactions which took place prior to implementation of the amended Section 20 of the

Specific Relief Act, 1963?

3. Mr. Sandesh Patil, Ms. Divya Pawar and Mr. Nagesh Chavan, learned counsel appearing for the Appellants in respective Second Appeals submitted that the learned First Appellate Court erroneously applied the provisions of amended Section 20 of the Specific Relief Act to the present case. They submitted that the transaction which is the subject matter of the present proceedings is dated 27th December 1996 and therefore, 2018 amendment of the Specific Relief Act will not apply to the present proceedings. They relied on the decision of Supreme Court in the matter of **Smt. Katta Sujatha Reddy & Anr vs. Siddamsetty Infra Projects Private Limited & Ors.**¹

4. On the other hand, it is the submission of Mr. Sukumar Ghanavat, learned counsel appearing for the Respondent i.e. original Plaintiff that the 2018 amendment is applicable and therefore, supported the judgment passed by the learned First Appellate Court.

5. As the narrow controversy is involved in these Second Appeals, with the consent of the parties the Second Appeals are

¹ (2023) 1 SCC 355

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taken up immediately for hearing and final disposal.

6. Before considering the rival contention, it is necessary to set out relevant discussion in paragraph 32 of the judgment of the learned First Appellate Court, which reads as under:-

“32] It is to be noted that the learned trial court while dismissing the plea of the plaintiff for specific performance of the contract relied upon section 20 of the Specific Relief Act and exercised discretion in favour of the defendants. It is to be further noted that **the impugned judgment is delivered prior to the Specific Relief (Amendment) Act 2018. Previously, the unamended provision granted the courts the discretion to not grant specific performance, on the basis of judicially developed exceptions, even where it would be lawful to do so. Now, such judicially created exceptions have been excluded. Further, specific exceptions enumerated under subsection (2) against the grant of specific performance have been omitted. Because of the amendment, the relief of specific performance has ceased to be a discretionary relief.....**”

7. Thus, it is clear that the learned First Appellate Court has specifically observed that in view of 2018 amendment of the Specific Relief Act, discretion not to grant specific performance

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is not available to the Court. The learned First Appellate Court has proceeded with the case by assuming that 2018 amendment is applicable to the present case. However, the law laid down by the Supreme Court in the decision of **Katta Sujatha Reddy & Anr.** (supra) very clearly specifies that 2018 amendment to the Specific Relief Act is prospective and cannot apply to those transactions that took place prior to its coming into force.

8. In the said case, Supreme Court was considering the issue whether amended Section 10 of the Specific Relief Act is prospective or retrospective in operation. The Supreme Court discussed the said aspect from the point of view of 2018 amendments of the Specific Relief Act. The Supreme Court also considered judgment of Supreme Court in **Shyam Sunder vs. Ram Kumar**² regarding retrospective and prospective operation of the amended provisions. The relevant discussion of the Supreme Court is to be found in paragraphs 43, 47, 48, 53, 54, 56 to 59. The same are reproduced hereinbelow for ready reference:-

43. At the outset, we may notice that this question

² 2001 8 SCC 24

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assumes great significance as application of the 2018 Amendment Act to the present set of circumstances would determine whether specific performance ought to be applied mandatorily or the aforesaid decision is a discretion of the Court to examine whether equity demands such application instead of granting damages if any.

47. The High Court, in the impugned order, has taken a different approach in categorising the Specific Relief Act, 1963 as procedural and holding that the 2018 amendment is also a procedural provision which requires to be given retrospective effect. The High Court places reliance on an old case of *Radheshyam Kamila v. Kiran Bala Dasi*, wherein the High Court, while relying upon the commentary of *Pollock & Mulla on Indian Contract Act and Specific Relief Act (4th Edn.)* specifically observed that “specific relief, as a form of judicial 3 AIR 1971 Cal 341 process, belongs to the law of procedure”. In this context, the Court came to a conclusion that such procedural amendment ought to be given retrospective effect.

48. We do not subscribe to the aforesaid reasoning provided by the High Court for the simple reason that after the 2018 amendment, specific

performance, which stood as a discretionary remedy, is not (*sic* now) codified as an enforceable right which is not dependent anymore on equitable principles expounded by judges, rather it is founded on satisfaction of the requisite ingredients as provided under the Specific Relief Act. For determination of whether a substituted law is procedural or substantive, reference to the nature of the parent enactment may not be material. Instead, it is the nature of the amendments which determine whether they are in the realm of procedural or substantive law.

53. Under the pre-amended Specific Relief Act, one of the major considerations for grant of specific performance was the adequacy of damages under Section 14(1)(a). However, this consideration has now been completely done away with, in order to provide better compensation to the aggrieved party in the form of specific performance.

54. Having come to the conclusion that the 2018 amendment was not a mere procedural enactment, rather it had substantive principles built into its working, this Court cannot hold that such amendments would apply retrospectively.

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56. From the aforesaid decision in *Shyam Sunder case*, it is clear that when a substantive law is brought about by amendment, there is no assumption that the same ought to be given retrospective effect. Rather, there is a requirement for the legislature to expressly clarify whether the aforesaid amendments ought to be retrospective or not.

57. In the light of the aforesaid discussion, it is clear that ordinarily, the effect of amendment by substitution would be that the earlier provisions would be repealed, and amended provisions would be enacted in place of the earlier provisions from the date of inception of that enactment. However, if the substituted provisions contain any substantive provisions which create new rights, obligations, or take away any vested rights, then such substitution cannot automatically be assumed to have come into force retrospectively. In such cases, the legislature has to expressly provide as to whether such substitution is to be construed retrospectively or not.

58. In the case at hand, the amendment act contemplates that the said substituted provisions would come into force on such date as the Central

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Government may appoint, by notification in the Official Gazette, or different dates may be appointed for different provisions of the Act. It may be noted that 01.10.2018 was the appointed date on which the amended provisions would come into effect.

59. In view of the above discussion, **we do not have any hesitation in holding that the 2018 amendment to the Specific Relief Act is prospective and cannot apply to those transactions that took place prior to its coming into force.”**

(Emphasis added)

9. The Supreme Court has thus held that the 2018 Amendment Act is prospective and cannot be applied retrospectively to those transactions which took place prior to its coming into force.

10. Therefore, assumption of the learned First Appellate Court that, 2018 amendment of the Specific Relief Act is applicable to the present case is erroneous. The learned counsel appearing for the Appellants are right in contending that the impugned judgment and decree of the learned First Appellate Court suffers from grave illegality, as the 2018 amendment of the Specific Relief Act is applied by the learned First Appellate

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Court to the facts of the present case. In the present case, the transaction which is the subject matter of present proceedings is of the year 1996. Therefore, 2018 amendment of the Specific Relief Act is not applicable to the present case.

11. In view of the above legal position, all the Second Appeals deserve to be allowed by setting aside the judgment and decree dated 6th April 2022 passed in Regular Civil Appeal No.72 of 2018 by learned Ad-hoc District Judge-2, Sangli and said Regular Civil Appeal No.72 of 2018 including cross objections filed therein are restored to the file of District Court, Sangli.

12. It is clarified that the said judgment and decree of the learned First Appellate Court is set aside only on the above question of law regarding applicability of the 2018 amendment of the Specific Relief Act to the facts of the present case. Therefore, it is clarified that this Court has not considered the merits of the matter. All the contentions on merits of all the parties are expressly kept open.

13. As the said Regular Civil Appeal No.72 of 2018 along with cross-objections are restored to the file of District Court, Sangli, all the parties to appear before the concerned District Court,

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Sangli on 7th August 2023 at 11.00 a.m for fixing the schedule of hearing of Regular Civil Appeal No.72 of 2018.

14. Parties are at liberty to apply to the learned First Appellate Court for expeditious disposal of the said Regular Civil Appeal No.72 of 2018.

15. The Second Appeals are disposed of in above terms with no order as to costs.

16. In view of disposal of the Second Appeals, nothing survives in the Interim Applications and the same are also disposed of.

[MADHAV J. JAMDAR, J.]