

Nikita

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

**SECOND APPEAL NO.717 OF 2023
WITH
INTERIM APPLICATION NO.17982 OF 2023
IN
SECOND APPEAL NO.717 OF 2023**

Kumar Kallappa Awalekar ... Appellant

V/s.

Mukesh Tarachand Zanwar and Ors. ... Respondents

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Mr. Surel S. Shah a/w Saakshat Relekar i/b Mr. Ishaan
Kapse for the Appellant-Applicant.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 21, 2023

PC.:

1. The appellant is challenging decree passed by the Trial Court granting specific performance of agreement. The respondent No.1 is original plaintiff who filed Special Civil Suit No.64 of 2010 seeking specific performance of agreement to sale dated 4th January 2010. Having considering agreed consideration of Rs.12,26,465/- out of which Rs.2,00,001/- was paid as earnest amount. Trial Court's judgment and decree dated 27th November 2013 decreed the suit and directed defendants to execute sale deed by accepting balance consideration within three months.

2. The appellant filed appeal before the District Court on 30th August 2018. On perusal of the record, it appears that the appellants appeared before the Executing Court and filed an application under Section 47 on 20th October 2015. Said

application was rejected on 6th February 2017. Moreover, Superintendent of the Trial Court executed the sale deed in favour of respondent No.1 on 5th September 2015. According to learned advocate for the appellant, respondent No.1's name was recorded in revenue record. The appellant in 2016 challenged the order of recording name of Respondent No.1 in mutation by way of complaint No. SR No.31 of 2016 which was rejected on 14th march 2016. Aforesaid facts indicates that the appellants had knowledge of passing of decree atleast on 20th October 2015 and, therefore, ought to have filed the appeal within reasonable period thereafter. However, the appeal appears to have been filed on 30th August 2018. Therefore, rejection of application for condonation of delay, the order of rejection of condonation of delay does not suffer from legal infirmity.

3. The view adopted by the Appellate Court refusing to condone the delay cannot be termed as perverse. Hence, the second appeal stands dismissed. No costs.

4. In view of dismissal of second appeal, the interim application stands disposed of as infructuous.

5. Since, this Court in Writ Petition No.11745 of 2018, continued ad-interim relief on 17th October 2018. The said ad-interim relief was inforce during the pendency of the decision of application for condonation of delay, the said relief is continue for period six weeks.

(AMIT BORKAR, J.)