



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH AT NAGPUR**

SECOND APPEAL NO. 165 OF 2023

Ramdas S/o. Mangalchand Dhoke,
Aged about 60 years, Occu.: Agriculturist,
R/o. Chhaoni, Nagpur.

... Appellant

.. Versus ..

Ashokkumar S/o. Peshumal Pamnani,
Aged-__ years, Occu.: Business,
R/o. Sindhu Colony, Jaripatka, Nagpur.

...Respondent

Shri S.P.Kshirsagar, Advocate for appellant.
Shri M.G.Bhangde, Senior Advocate assisted by Shri
R.M.Bhangde, Advocate for respondent.

CORAM : SMT. M.S. JAWALKAR, J.

DATED : 23/08/2023

ORAL JUDGMENT

The present Second Appeal is filed by the original plaintiff being aggrieved by the judgment and decree dated 09/04/2022 passed in R.C.A No. 226/2016 by the learned District Judge - 14, Nagpur, thereby reversing the judgment of learned Trial Court, allowed the appeal of the original defendant.

2. The facts of the present case can be summarized as under:-

The parties are referred by their original nomenclature. The defendant is the owner of agricultural field survey no. 13, admeasuring total area 6 H 87 R. The plaintiff and the defendant entered into an agreement of sale in respect of 2H.02R. land (approximately 5 acres) for total consideration of Rs. 21,25,000/- on 17/03/2005. On the same day, the plaintiff paid part earnest amount of Rs. 5,00,000/-. It was agreed between the parties that further amount of Rs. 5,00,000/- would be paid by the plaintiff to the defendant within a period of two months from the execution of agreement and the defendant shall also get the land measured and also produce 'K' Prat. It was also agreed by the defendant to convert the land from Class-II to Class-I rights. It was also decided to execute the sale deed within a period of four months from the date of execution of agreement. It was also agreed that if due to certain unavoidable circumstances, the sale deed is not executed, the time shall be extended by mutual consent. It is the contention of the plaintiff that thereafter, he again paid Rs. 50,000/- in cash on 12/05/2005, Rs. 50,000/- in cash on 13/05/2005 and Rs. 1,00,000/- in cash on

14/05/2005. Thus, he paid Rs. 2,00,000/- in the month of May, 2005. The plaintiff issued notice to the defendant on 12/05/2005 and called upon the details which were required to be performed by the defendant about measurement and conversion of land. The said letter was duly received by the defendant and the defendant gave reply on 16/07/2005 along with the copy of notice dated 11/06/2005. It was the contention of the plaintiff that he did not receive the notice dated 11/06/2005. Finally, it was replied by the plaintiff vide notice dated 16/07/2005 and informed the defendant that he is ready and willing to perform his part of contract and also ready to pay the balance consideration amount. Despite of receiving the second notice, the defendant did not reply to it. As such, the plaintiff filed a suit for specific performance of contract on the basis of agreement for sale dated 17/03/2005. In the alternate, the plaintiff prayed for refund of earnest amount as well as amount of Rs. 2,00,000/- along with interest @ 12% per annum which was paid to the defendant.

3. As against this, the pleading of the defendant was that there was no dispute with agreement which was executed on 17/03/2005. It is also not disputed that the defendant received

amount of Rs. 5,00,000/- as an earnest money. It is the contention of the defendant that in spite of repeated request, the plaintiff failed to pay an amount of Rs. 5,00,000/- within a period of two months from the date of agreement upto 17/05/2005. So finally on 11/06/2005, the defendant issued notice to the plaintiff and called upon him to make payment and informed him that, due to non-payment of Rs. 5,00,000/- within two months from the date of agreement or before 16/05/2005, the agreement of sale dated 17/03/2005 is hereby cancelled and the earnest money paid by the plaintiff is forfeited. It was also informed by the defendant that, he has already converted the land from Class-II to Class-I rights by order dated 29/06/2005 and he was ready and willing and already has performed his part of contract by making conversion of said land. The defendant denied that the plaintiff has paid Rs. 2,00,000/- additionally in the month of May, 2005. Due to which, the defendant again replied to the plaintiff on 16/07/2005 informing that he did not receive any money in the month of May, 2005. It was contended by the defendant that the plaintiff himself committed breach of contract by not paying an amount of Rs. 5,00,000/- on or before 16/05/2005 and due to which, the agreement for sale is cancelled.

4. The learned Trial Court framed issues on the point of readiness and willingness of the plaintiff and concluded that the plaintiff was ready and willing to perform his part of contract and the defendant failed to prove that there was any breach of terms in agreement by the plaintiff. The Slp. Civil Suit No. 386/2008 was decreed and specific performance of contract was granted. Thereafter, the defendant filed Reg. Civil Appeal No. 226/2016, by which, the learned Appellate Court allowed the appeal, and judgment and decree passed by learned Civil Judge, Senior Division, Nagpur was set aside. The defendant was directed to pay Rs. 7,00,000/- along with interest @ 6% p.a. from the date of suit till its realization. Being aggrieved by the said judgment, the present appeal is filed.

5. The learned counsel for the appellant relied on following authorities/citations:-

- 1) *Ramesh Chandra Chandiok and anr. V/s. Chuni Lal Sabharwal (dead) by his LRs. and ors. [AIR 1971 SC 1238]***
- 2) *Beemaneni Maha Lakshmi V/s. Gangumalla Appa RAO (since dead) by LRs. [(2019) 6 SCC 233]***

3) *R. Lakshmikantham V/s. Devaraji [(2019) 8 SCC 62]*

4) *Ramathal V/s. Maruthathal and ors. [(2018) 18 SCC 303]*

5) *K. Prakash V/s. B.R. Sampath Kumar [(2015) 1 SCC 597]*

6) *Malluru Mallappa (D) thr. LRs. V/s. Kuruvathappa and ors. [AIR 2020 SC 925]*

7) *Syed Dastagir V/s. T.R. Gopalakrishna Setty [(1999) 6 SCC 337]*

8) *Bhavyanath represented by POA Holder V/s. K.V.Balan (dead) thr. LRs. [(2020) 11 SCC 790]*

9) *Madhukar Nivrutti Jagtap and ors. V/s. Pramilabai Chandulal Parandekar (dead) thr. LRs. and ors. [(2020) 15 SCC 731]*

6. I have heard learned counsel for the parties, perused the judgment and considered citations placed on record.

7. The learned counsel for the appellant relied on *Ramesh Chandra Chandiok and anr.* (supra). However, the facts involved in the matter before Hon'ble Apex Court are distinguishable. In the said matter, "*the condition of lease requiring R to obtain sanction of authority for transfer. R*

forfeiting earnest money and cancelling contract without applying for sanction. In view thereof, it is held A's readiness and willingness to perform his part of contract. As such, A was entitled to a decree for specific performance."

8. Here the appellant himself failed to pay amount of Rs. 5,00,000/- in terms of contract within a period of two months from the date of execution of agreement. The said term was not dependent on obtaining sanction by the defendant.

9. Similar is the case of ***Beemaneni Maha Lakshmi*** (supra). The learned counsel for the appellant also relied on ***R. Lakshmikantham*** (supra), however, the judgment is not relevant in the present set of facts as in the said matter before the Hon'ble Apex Court, the question involved was that "*merely from delay in filing of suit after accrual of cause of action, it cannot be inferred against plaintiff that he was not ready and willing to perform his part of contract, if suit was filed within limitation*". There is no such question is involved. In fact, the plaintiff himself failed to pay the amount as per terms mentioned in the contract. It is vehemently argued by the learned counsel for the appellant that he has paid amount of Rs. 2,00,000/- in pursuance to agreement

and shown his readiness and willingness to perform his part of contract. The same amount was accepted by the defendant. In view thereof, the learned Appellate Court ought to have maintain the judgment and decree passed by the learned Trial Court.

10. As against this, the learned counsel for the respondent drawn my attention to the terms of the contract/ agreement which is reproduced by the learned Appellate Court in his judgment. As per the agreement, the plaintiff supposed to pay amount of Rs. 5,01,000/- within a period of two months from the date of agreement. The plaintiff admitted this fact in his cross-examination that, as per the agreement to sell dated 17/03/2005, he agreed to pay amount of Rs. 5,01,000/- within a period of two months from the date of agreement. He also admitted that, it was also agreed that the defendant has to convert the land from Class-II to Class-I and also measured the land before execution of sale-deed. He has admitted that he has not paid amount of Rs. 5,01,000/- within a period of two months from the date of agreement as agreed by him.

11. This clear admission given by the plaintiff is sufficient to hold that there was breach of terms of contract by the plaintiff himself. The learned Trial Court mixed two events

and not appreciated sequence in the agreement. To conclude breach on the part of the plaintiff, it is necessary to note down certain dates. The agreement came to be executed on 17/03/2005 (Exh. 25). As per the said agreement, the defendant received amount of Rs. 5,00,000/-. It was agreed that, within two months, the plaintiff will pay amount of Rs. 5,01,000/-. It was agreed between the parties that the defendant will convert the said land from Class-II to Class-I by applying before Sub-Divbisional Officer, Nagpur before sale deed. It was agreed between the parties that the sale deed will be executed within four months from the date of execution of agreement that means it had to be executed on or before 16/07/2005. From the documents (Exh. 78 and 79), it is observed by learned Appellate Court that the documents (Exh. 78 and 79) would precisely demonstrate that, the conversion of land had already taken place on 29/06/2005 i.e. within four months from the stipulated time limit. Similarly, Patwari map and 7/12 extract were also already prepared. It is argued by learned counsel for the appellant that, on payment of Rs. 2,00,000/- to the defendant, he had shown his readiness and willingness and the defendant has received the same. As such, we cannot take any objection on readiness and willingness.

12. In my considered opinion, the amount as alleged was paid in the month of May, 2005. However, total amount was not paid by 16/05/2005. The notice was issued by the defendant on 11/06/2005 which was returned by the plaintiff. The said notice was again sent with reply notice dated 16/07/2005. However, the plaintiff has not replied to the same.

13. On perusal of agreement, one thing is clear that the payment of Rs. 5,01,000/- was to be paid within two months from the execution of agreement, which admittedly, the plaintiff has not paid. As such, there is no evidence on record to show that the appellant/plaintiff was ready and willing to perform his part of contract. It was agreed that, the payment of Rs. 5,01,000/- will be made within a period of two months by the plaintiff. Therefore, only payment of Rs. 2,00,000/- will not entitle to the plaintiff to claim that he was ready and willing to perform his part of contract. The admission given by the plaintiff and from the evidence, it is well established that, the plaintiff was not in a position to pay the amount of Rs. 5,01,000/- as agreed between the parties before expiry of period i.e. within two months from 17/03/2005. The learned Trial Court appears to be confused itself

in holding that, making payment of Rs. 5,01,000/- was dependent on the conversion of land from Class-II to Class-I. In fact, the payment of Rs. 5,01,000/- is independent term is complied with by the plaintiff whereas the defendant has to comply with the condition of getting the land converted and to get measured before execution of sale deed. The compliance of payment of Rs. 5,01,000/- is coming first in sequence whereas the measurement and conversion is ought to have in time limit for execution of sale deed. If this fact is admitted, there is no substantial question of law which can be raised by the plaintiff. The learned Appellate Court rightly appreciated the facts on record and there is no perversity as such in the findings recorded by the learned Appellate Court. Accordingly, the appeal stands dismissed.

[SMT. M.S. JAWALKAR, J.]

B.T.Khapekar