



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

SECOND APPEAL NO. 407/2022

Dhnyanoba S/o Bablaji Kale
Vs.
Chhedanlal S/o Tejram Katore

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Shri H.V. Thakur, Advocate for appellant
Shri V.V. Bhangde, Advocate for respondent

CORAM : SMT. M.S. JAWALKAR, J.
DATE : 04/10/2023

Heard both the parties at length.

2. After hearing the parties, following substantial question of law would arise for consideration. However, by consent the matter is adjourned for hearing at the stage of admission on following substantial questions of law :

“(i) Whether the First Appellate Court has erred in law in reversing the judgment and decree of the Trial court and in dismissing the appellant’s suit seeking specific performance of the agreement to sell dated

10/10/2005, by refusing to exercise the discretion under Section 20 of the Specific Relief Act, 1963 ?

(ii) Whether the First Appellate Court has erred in law in substituting its own views upon reappreciation of the pleadings as well as the oral and documentary evidence on record and by reversing the specific findings of the Trial Court on the aspect of time being not an essence of the contract and that the appellant/plaintiff was ready and willing to perform his part of contract and that there was failure on the part of the defendant to perform his obligations under the contract, without the Appellate Court even considering whether the view taken by the Trial Court was valid and a possible view supported by evidence on record ?

(iii) Whether the First Appellate Court has erred in law in disregarding the provisions of Sections 51 to 55 of the Indian Contract Act and in reversing the judgment and decree passed by the Trial Court granting specific performance of the agreement especially when the defendant had never terminated the agreement dated 10/10/2005 by treating the time as an essence of the contract and had instead

conveyed his readiness to execute the sale deed in response to plaintiff's legal notice ?”

3. Stand over to 30/10/2023 at 2:30 p.m.

CIVIL APPLICATION (CAS) NO. 1157/2022

Present application is filed for grant of stay to the execution of impugned judgment. As appeal is listed for final hearing at the stage of admission, the application is allowed.

2. There shall be stay to the execution of impugned judgment, subject to deposit of balance amount with this Court, which is around Rs.2,65,000/-, within a period of four weeks, if not deposited earlier.

3. The respondents are restrained from creating any third party interest in the suit property.

4. After deposit of the amount, it shall be invested in any Nationalized Bank.

(SMT. M.S. JAWALKAR, J.)