



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**SECOND APPEAL NO.561 OF 2023
WITH
CIVIL APPLICATION NO.14335 OF 2023**

Anita Kailas Saini,
Age : 28 years, Occu.: Business,
R/o.: Plot No.22, Suresh Nagar,
Anurag State Bank Colony,
Mahabal, Jalgaon, District : Jalgaon

.... **APPELLANT**
(Ori. Defendant)

VERSUS

Vijay Supdusing Patil,
Age : 48 years, Occu.: Service,
R/o.: Plot No.13/1, Gut No. 182,
Sachin Colony, Indevdevaji Nagar,
Pimprala, Jalgaon, Tal.: Jalgaon,
District : Jalgaon.

.... **RESPONDENT**
(Orig. Plaintiff)

.....
Mr. Sanket S. Kulkarni, Advocate for the Appellant
Mr. A. I. Deshmukh, Advocate for the Respondent

....

CORAM : SANDIPKUMAR C. MORE, J.

DATED : 11/07/2024.

ORDER :

1. Heard rival submissions at admission stage.
2. The appellant i.e. original defendant in Regular Civil Suit No. 51 of 2016, has challenged the judgment and order dated

12/07/2023 passed by the learned District Judge-4, Jalgaon i.e. the learned first appellate court in Regular Civil Appeal No.216 of 2021. Under the impugned judgment and order the learned first appellate court has reversed the judgment and order dated 25/10/201 in the aforesaid civil suit and partly allowed the said suit.

3. Brief facts are as under :

The present respondent / plaintiff had initially filed RCS No.51 of 2016 for recovery of amount of Rs.7,87,262/- from the present appellant / defendant in the court of Joint Civil Judge (Senior Division), Jalgaon i.e. the learned trial court. On 25/10/2021, the said suit was dismissed. However, the learned first appellate court vide judgment and order dated 12/07/2023 in Regular Civil Appeal No.216 of 2021, has partially decreed the suit of the respondent / plaintiff by directing the appellant / defendant to refund an amount of Rs.4,50,000/- alongwith interest @ 6% p.a. from the date of advancement till its realization. It was contended by the respondent / plaintiff that the appellant had executed an agreement to sell dated 21/09/2015 in his favour for sale of the suit house i.e. Plot No.9, from Survey No.563/4B at village Mehrun, Taluka and District : Jalgaon. It was claimed by the

respondent / plaintiff that the total consideration of Rs.31,51,000/- was fixed as price of the suit house under the agreement to sell and an amount of Rs.6,50,000/- was paid as an earnest money. Thereafter, for raising the balance amount from financial institute, the respondent / plaintiff had to take insurance policy by paying premium of Rs.1,37,262/-. However, due to some reason, the agreement to sell could not be converted in to sale deed and therefore the respondent / plaintiff was constrained to file the suit for recovery of amount of Rs.7,87,262/- inclusive of earnest amount plus insurance premium amount. Though the learned trial court dismissed the suit of the respondent / plaintiff, but the learned first appellate court partially decreed the suit as mentioned above and hence this second appeal.

4. The learned counsel for the appellant / defendant vehemently submits that the learned trial court had in fact by considering each and every aspect of the case, dismissed the suit, but the learned first appellate court erroneously decreed the same partially. He pointed out that the agreement to sell dated 21/09/2015 which is the base of the present dispute, is not admissible evidence for want of its registration and therefore, this matter involves a substantial question of law as to how the

appellate court erroneously relied on the non-admissible document to hold that amount of Rs.4,50,000/- was due from the present appellant / defendant towards the transaction mentioned in the said agreement. He strongly supported the judgment of the trial court. The learned counsel for the appellant / defendant relied on following citation.

Veena Hasmukh Jain and others vs. State of Maharashtra and others, reported in AIR 1999 SC 807.

5. On the other hand, the learned counsel for the respondent / plaintiff pointed out that the question of admissibility of the document is not at all existing in this matter since the appellant / defendant has clearly admitted its contents. According to him, even if it is found that the agreement to sell is not admissible in law for want of registration but since no specific performance of said contract is claimed by the respondent / plaintiff, its contents being admitted by the other side, can be looked into for collateral purpose i.e. the money transaction between the parties. He pointed out that that the learned appellate court has rightly considered the transaction between the parties and also deducted an amount of Rs.2,00,000/- from the amount of earnest money

and granted decree in favour of respondent / plaintiff only in respect of the balance amount. As such, he prayed for dismissal of the appeal at admission stage itself.

6. Admittedly, the learned trial court has dismissed the suit filed by the respondent / plaintiff, wherein an amount of earnest money of Rs.6,50,000/- and the amount of insurance premium of Rs.1,37,262/- is included. From perusal of the judgment of the learned trial court, it appears that the learned trial court has dismissed the suit merely because there was no evidence on record to prove that the respondent / plaintiff was ready and willing to perform his part of contract as he did not issue any notice to the appellant / defendant to execute a registered sale deed as per the terms and conditions of the agreement. However, the learned trial court has dismissed the claim of the respondent / plaintiff merely because he could not establish that the total amount claimed, was due from the defendant/ appellant towards the transaction in dispute by ignoring the recitals of said agreement and the account extracts. Further, it is significant to note that though the learned counsel for the appellant / defendant relied on the judgment of Hon'ble Apex Court in the case of ***Veena Hasmukh Jain and others*** (supra) on the point of admissibility of agreement to sell in

dispute for want of registration, but it is settled that such inadmissible document can be used for collateral purpose. It is extremely important to note that the respondent / plaintiff had not filed the suit for specific performance on the basis of terms and conditions of the disputed agreement to sell. Had such suit was filed by the plaintiff, then admissibility of the disputed agreement would have come into question. However, this is only a suit for recovery for the amount paid by the respondent / plaintiff as an earnest money for the said transaction alongwith certain amount he had to pay for insurance premium to raise the balance amount by way of loan.

7. It is important to note that from the judgment of the learned first appellate court it is clearly evident that the appellant / defendant vide written statement and documentary evidence, had admitted the fact of execution of agreement in dispute. She also admitted the recital of the agreement which is also accepted by the learned trial court. The recital of the agreement to sell indicates that total amount of Rs.6,50,000/- was paid by the respondent / plaintiff towards earnest amount for the said transaction. The appellant / defendant has also admitted about receipt of cheque of Rs.50,000/- of IDBI Bank and three cheques of Rs.1,00,000/-

each as per the agreement to sell. She has also admitted that remaining consideration of Rs.25,00,000/- was to be paid by cheque or in cash at the time of sale deed. Thus, in view of the admission on the part of the appellant / defendant and considering the contents of the agreement admitted by her, it is evident that the appellant / defendant had accepted an amount of Rs.6,50,000/- as an earnest money towards transaction mentioned in the agreement. Further, the learned first appellate court on the basis of evidence on record, has come to the conclusion that an amount of Rs.2,00,000/- was refunded by the appellant / defendant to the respondent / plaintiff and there was no evidence about refund of remaining amount from the total amount of Rs.6,50,000/-. Thus, by considering this aspect it has been observed by the learned first appellate court that the respondent / plaintiff is entitled only for refund of amount of Rs.4,50,000/- alongwith interest. Thus, the observation of the learned first appellate court is based on the evidence on record and that the contents of disputed agreement to sell being admitted by the appellant / defendant. Therefore, no substantial question of law as raised by the learned counsel for the appellant / defendant is involved in this matter and therefore, the second appeal along

with pending Civil Application No.14335 of 2023 stand dismissed at admission stage.

(SANDIPKUMAR C. MORE, J.)

VS Maind/-