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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 183 OF 2023
WITH
INTERIM APPLICATION NO. 2042 OF 2023**

Smt. Rukmini Pandurang Gosavi and Anr.... Appellants/Applicants
Vs.

Smt. Shantabai Dattatray Patil ... Respondents
and Others

Mr. Ajay Joshi for the Appellants.

Mr. Surel S. Shah, Senior Advocate a/w. Mr. Rahul Kasbekar for
Respondent No.1.

Mr. Girish Godbole, Senior Advocate i/b. Mr. Shivraj Patne, Mr.
Pradeep Salgar for Respondent No. 2.

CORAM : GAURI GODSE, J.

DATE : 18th DECEMBER 2024

ORDER :

1. Heard learned counsel for the parties. The second appeal is admitted on the following substantial questions of law formulated in ground (A) and (B) and (D) of the second appeal memo and (AA) of the additional grounds :

(A) Whether both the courts committed flagrant error of law by granting specific performance of such obligation, so far property described in 1B is concerned, which is not enforceable in view of provisions of section 43A r/w. 32 to 32R & 63 to 65 of BT & AL Act, 1947 ?

(B) Can civil court grant a decree of specific performance to execute sale deed, qua suit property para 1B is concerned, neither has been sought for by the plaintiff in pursuance of agreement for sale nor it is agreed by the parties as such or provided in agreement ?

(D) Whether the decree passed by the trial court or finding of ready and willingness is based upon in admissible evidence on the point of requirement of section 16(c) of Specific Relief Act 1963, in view of admitted fact that the plaintiff has not entered into witness box and her power of attorney holder has miserably failed to adduce evidence point of 'personal acquittance of transaction between defendant no. 1 and plaintiff ?

(AA) Whether the learned Judge of both the courts committed

serious error while recording the perverse finding on statutory compliance of Section 16(c) of Specific Relief Act, 1963, in view of fact neither there is specific pleading and evidence to show that the plaintiff has discharged his obligation, as created by agreement for sale dated 23rd June 2009, by depositing amount of loan availed by the defendant no. 1 from Sumitra Gramin Bigar Sheti Sahakari Pathsanstha Akluj ?

2. Learned Advocate for the respondent nos. 1 and 2 waives notice
3. Call for record and proceedings.
4. Printing is dispensed with.
5. Learned Advocate for the appellants shall file private paper book within one year from today.

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6. Heard learned counsel for the parties. The second appeal is admitted on the question of law as framed in the order.
7. The impugned decree is for specific performance. Hence, during the pendency of the second appeal the impugned decree shall remain

stayed. In the facts and circumstances of the case to avoid any multiplicity of proceedings the parties to the second appeals shall not create any third party rights in respect of the suit property or part with possession in favour respect of any third party.

8. Interim application is allowed in the aforesaid terms.

[GAURI GODSE, J.]