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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 607 OF 2024
WITH
INTERIM APPLICATION NO. 13316 OF 2024
IN
SECOND APPEAL NO. 607 OF 2024**

Sunanda Sidram Mahagaonkar and Ors ... Appellants/Applicants
vs.

Mehrunnisa Arif Shaikh ... Respondent

Mr. Ashok Tajane for Appellant.

Mr. Milind Deshpande for Respondent.

CORAM : GAURI GODSE, J.

DATED : 4th OCTOBER 2024

ORDER:

SECOND APPEAL NO. 607 OF 2024.

1. Heard learned counsel for the parties. Second Appeal is admitted on the following substantial questions of law:

I) Whether the findings recorded by the First Appellate Court on the readiness and willingness of the plaintiff to perform the part of the contract would amount to incorrect appreciation of pleadings and evidence on record?

II) Whether the reasons recorded by the First Appellate

Court on the readiness and willingness on the part of the plaintiff to perform the part of the contract while reversing findings recorded by the Trial Court would amount to giving reasons not raised by the plaintiff or not being part of the terms and conditions of the contract?

III) In the absence of any specific pleadings on the part of the plaintiff that she was ready and willing to pay the balance amount withing six months as agreed in the suit agreement and a specific pleading supporting the evidence that the amount for payment towards balance consideration was ready, whether the plaintiff was entitled to a decree for specific performance?

IV) Whether the issue regarding readiness and willingness could be held in favour of the plaintiff?

V) Whether the findings recorded by the First Appellate Court on readiness and willingness on the part of the plaintiff is according to the legal principles settled by the Hon'ble Apex Court in the case of *Mehboob-ur-Rehman V/s. Ahsanul Ghani*¹?

2. Mr. Deshpande waives notice on behalf of sole respondent.

1 (2019) 19 SCC 415

3. Call for records and proceedings.
4. Printing is dispensed with.
5. Learned advocate for the appellants shall file private paper-book within a period of one year from today.

INTERIM APPLICATION NO. 13316 OF 2024

6. This application is for seeking stay to the execution and operation of the impugned decree for specific performance.
7. Mr. Deshpande waives notice on behalf of sole respondent.
8. Since, the second appeal challenging the decree for specific performance is admitted, the execution of the decree will have to be stayed during the pendency of the second appeal.
9. However, appellants shall not create any third party interest during the pendency of the second appeal. Hence, during the pendency of the second appeal here will be interim stay in terms of prayer clause (a).
10. During the pendency of the second appeal the appellants shall not create any third party interest or part with the possession of the suit property.
11. Interim application is allowed in the aforesaid terms.

(GAURI GODSE, J.)