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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 182 OF 2022
WITH
INTERIM APPLICATION NO. 1295 OF 2022
IN
SECOND APPEAL NO. 182 OF 2022**

Rajaram Shankarrao Dharvat	... Appellant/Applicant
vs.	
Bhimrao Laxman Kamble (Deceased Thr. Lrs) Smt. Sharabai Bhimrao Kamble and Ors	... Respondents

Mr. Atul Damle, Senior Counsel a/w. Mr. Prashant P. Kulkarni, for
Appellant/Applicant.

CORAM : GAURI GODSE, J.

DATED : 11th NOVEMBER 2024

ORDER:

1. Heard learned senior counsel for the appellant. This appeal is preferred by the original plaintiff to challenge the concurrent judgments and decrees dismissing the suit for specific performance. The suit was filed for the specific performance of three agreements.
2. Learned senior counsel for the appellant submitted that as per

the terms and conditions of the agreement, the total consideration amount agreed was Rs.18,65,580/- out of which, according to the plaintiff, an amount of Rs.11,59,500/- was paid by way of part payment. He further submits that the balance consideration was to be paid at the time of execution of the sale deed.

3. Learned senior counsel for the appellant further submits that as per the terms and conditions of the first agreement, the obligation was on defendants nos. 1 and 2 to obtain the necessary permission from the competent authority. He submits that for the expenses towards obtaining permission, the plaintiff paid a further amount to defendant no.1. Learned senior counsel relies upon the terms and conditions of the first agreement, which, according to him, indicates that the balance consideration was to be paid at the time of execution of the sale deed after defendant no.1 obtained necessary permission from the competent authority. Learned senior counsel relies upon a third document, i.e. Exhibit-88, which records defendant no.1's obligation to obtain necessary permission. He submits that, admittedly, no such permission was taken by defendant no.1. Hence, according to the plaintiff, there was no occasion for the plaintiff to make payment of the balance consideration amount. He submits that after the permission was

obtained, the plaintiff was required to pay the balance consideration amount at the time of execution of the sale deed. Thus, he submits that both courts erred in refusing to grant specific performance because the plaintiff could not prove his readiness and willingness to perform his contract. Learned senior counsel submits that the second appeal would require consideration on the point of readiness and willingness based on the terms and conditions of the three agreements, which raises substantial questions of law.

4. I have considered the submissions made on behalf of the appellant. I have perused the judgments, pleadings and the three suit agreements. A perusal of the first agreement clearly indicates that as per the terms and conditions agreed between the parties, a period of six months was agreed to pay the balance consideration amount. The plaintiff had also agreed to make payment for expenses to obtain permission from the competent authority. The first agreement records that after obtaining the necessary permission, a sale deed would be executed, and on the execution of the sale deed, possession would be handed over to the plaintiff.

5. The terms and conditions of the other two agreements nowhere record that the time of six months as provided in the first agreement was extended. In fact, the terms and conditions of

the other two agreements also record payment towards expenses for defendant no.1 to obtain the necessary permission.

6. On behalf of the appellant, it was also argued that defendant no.1 had filed a counterclaim seeking protection of his possession over the suit property, and the counterclaim was dismissed. Learned senior counsel also submitted that defendant no. 1 does not challenge the rejection of the counterclaim. However, the rejection of the counterclaim of defendant no. 1 is of no assistance to the appellant to support his claim for specific performance. The plaintiff has prayed for specific performance of the contract and handing over possession of the suit property. Both the courts concurrently held that the plaintiff is neither entitled to a decree for specific performance nor entitled to claim possession of the suit property. Suit agreements are executed by defendant no. 1. Hence, mere rejection of the counterclaim of defendant no. 2 would not create any right in favour of the plaintiff to claim specific performance or possession of the suit property.

7. Both the courts concurrently held that the plaintiff failed to prove the payment of part consideration amount of Rs. 11,59,500/- as claimed by him. Both the courts have accepted payment of Rs. 1,70,000/- by the plaintiff towards the part consideration amount.

When the first suit agreement clearly records a time period of six months for making payment of balance consideration, no fault can be found in the findings recorded by both the courts on the point of readiness and willingness of the plaintiff to perform his part of the contract.

8. The rival contentions of the parties regarding payment of balance consideration are exhaustively considered by both the courts, and payment of Rs. 1,70,000/- is accepted. Both the courts referred to the terms and conditions of the contract regarding payment of the balance consideration amount. Both courts, therefore, refused to grant the discretionary relief of specific performance to the plaintiff on the ground that the plaintiff failed to prove his readiness and willingness to perform his part of the contract, i.e. payment of consideration amount as recorded in the suit agreements. There is no illegality or perversity in the reasons recorded by both the courts in disbelieving the plaintiff's case on his readiness and willingness to perform his part of the contract, i.e. payment of the balance consideration amount.

9. In view of concurrent findings recorded by both courts, the second appeal would not require consideration on the grounds raised on behalf of the appellant.

10. The second appeal does not raise any substantial question of law. Hence, the second appeal is dismissed. In view of the dismissal of the second appeal, civil application is disposed of as infructuous.

(GAURI GODSE, J.)