

Iresh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**SECOND APPEAL NO. 695 OF 2023
WITH
INTERIM APPLICATION NO. 17873 OF 2023
IN
SECOND APPEAL NO. 695 OF 2023**

Yasin Mirasaheb Beg

.....Appellant

Vs.

Abdullatif Mahamadhanif Shaikh

.....Respondent

Ms. Anjali Shiledar Baxi h/f Mr. Milind Deshpande advocate for the appellant

IRESH
MASHAL

CORAM : GAURI GODSE, J.

DATE : 18th NOVEMBER 2024

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ORDER:

1. This second appeal is preferred by the original defendant to challenge the concurrent judgments and decrees cancelling the registered agreement for sale executed in favour of the appellant. By the impugned decree, the suit for cancellation of the registered agreement for sale in favour of the appellant is cancelled and the appellant is held entitled to receive the amount of Rs. 2,00,000/- paid by the appellant by way of an earnest money alongwith interest at 9%

per annum. The first Appellate Court has confirmed the said decree.

2. Learned counsel for the appellant submitted that since the plaintiff's name was not entered in the property card, the appellant was unable to obtain financial assistance for payment of balance consideration amount. She submits that apart from the payment of Rs. 2,00,000/-, appellant had paid further amount as requested by the plaintiff. She therefore submits that no fault could be found with the appellant for non payment of the balance consideration amount. She submits that the appellant was put in possession pursuant to the agreement for sale. Hence, the suit agreement could not have been cancelled for non-compliance on the part of the appellant regarding balance payment. She thus submits that the second appeal would raise substantial questions of law on the point of subsistence of agreement and protection of appellant's possession as he was put in possession pursuant to the registered agreement executed in his favour.

3. I have perused the impugned judgments. Both the Courts have concurrently held that the defendant was a willful defaulter and he failed to perform his part of the contract by making payment of balance

consideration amount. It is not in dispute that six months time was provided in the agreement for payment of balance consideration amount. The ground raised on behalf of the appellant regarding non availability of the financial assistance for want of property card in the name of plaintiff is concerned; admittedly, the terms and conditions of the suit agreement did not provide for any such obligation on the part of the plaintiff to provide property card. Admittedly, appellant did not make any attempt to get the contract specifically performed in his favour. Thus for non payment of balance consideration amount within the time stipulated of six months as per the terms and conditions of the agreement, both the Courts held that appellant was not entitled to seek protection in view of Section 53A of The Transfer of Property Act, 1882 Act ('TP Act'). It is a well established principle of law that a party being in possession pursuant to agreement for sale in his favour would be entitled to protection of his possession under Section 53A of the TP Act provided he performs his part of contract and is ready and willing to perform his part of contract.

4. In the present case, it is not even the case of the appellant that he attempted to get the contract specifically performed in his favour. The appellant has not done any act in furtherance of the contract.

Once it is not in dispute that six months time was provided for payment of balance consideration amount and execution of the sale deed, the reasons recorded by both the Courts cannot be faulted.

5. I do not find any illegality or perversity in the reasons recorded by both the Courts. In view of the concurrent findings of facts on non-compliance of the terms and conditions of the contract, the grounds raised on behalf of the appellant would not require any consideration by this Court. The second appeal does not raise any substantial question of law. Hence, the second appeal is dismissed.

6. In view of dismissal of the second appeal, Interim Application No. 17873 of 2023 is disposed of as infructuous.

[GAURI GODSE, J.]