

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**Second Appeal No.72 of 2024
With
Interim Application No.970 of 2024
In
Second Appeal No.72 of 2024**

Suresh Wamanrao Bansode ... **Appellant**
v/s.
Sunil Namdev Patil ... **Respondents**

Mr Premanand Keru Terane a/w Rahul Ram Pandit , for the appellant.

CORAM : SANDEEP V. MARNE, J.

DATE : 29 January 2024

P.C. :

The challenge in the present appeal is to the judgment and decree dated 18 October 2023 passed by the District Court, Islampur dismissing the Regular Civil Appeal No.104/2018 passed by the Civil Judge, Senior Division, Islampur in Special Civil Suit No.16/2015.

2. I have heard Mr Pandit, the learned counsel appearing for the appellant. After having considered the submissions canvassed by Mr Pandit, it is seen that the suit was instituted by the plaintiff for specific performance of the agreement dated 3 January 2014. Under the agreement, the plaintiff agreed to purchase the suit property for

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total consideration of Rs.16,87,500/- and paid Rs.10,00,000/- as earnest money. As per the covenant of agreement, the said transaction was to be completed after commencement of Gunthewari transactions and also after grant of permission for non-agricultural use of the suit property. It is Mr Pandit's contention that agreement specifically provided that sale deed was to be executed within 30 days of grant of permission for non-agricultural use of the land. It is an admitted position that the permission for non-agricultural use of the land was issued on 12 September 2014. It is Mr Pandit's case that within 30 days from 12 September 2014, plaintiff did not issue any intimation to the defendant for execution of the sale deed. Time being essence of the contract, upon expiry of period of 30 days, the contract would not be specifically performed.

3. In my view, the covenant of the Agreement executed between the parties would indicate that time was never treated as essence of the contract. The vendor did not specify any outer limit within which the entire sale transaction was to be completed. Usually, outer time limit for completion of sale transaction is specified in the agreement with a view to ensure that the vendor is freed from his obligation in the event of purchaser's failure to complete the sale transaction within the stipulated time. In the present case, however, no outer limit was specified for procurement of permission for non-

agricultural use of the land. The Agreement was contingent on two conditions; (i) commencement of Gunthewari transactions and (ii) conversion of land for non-agriculture use. No outer limit was specified for happening of both the contingencies. This would mean that if the restriction of Gunthewari transaction was not to be relaxed for considerable period of time, the Agreement was still to remain in force. Similarly, regardless of time required for conversion of land for non-agricultural use, the defendants were under obligation to convey the suit property in favour of plaintiff. Thus, the intention of the parties was not to specify any specific time frame for completion of the sale transaction. No doubt, period of 30 days is prescribed in the agreement of execution of sale transaction after conversion of land for non-agricultural use. However, this period of 30 days cannot be treated as the one which makes time as the essence of the contract.

4. Even if time is treated to be essence of the contract, in the present case it appears that sale transaction was to be executed within 30 days of conversion of land to non-agricultural use. The stipulation in the Agreement does not provide for contingency of issuance of N.A. permission but it provides for stipulation of conversion of the land for non-agricultural use. Finding of the trial Court would indicate that though N.A. permission was issued on 12 September 2014, the land was not to be immediately put to non-agricultural use

as the permission was conditional and required plaintiffs to make certain payments. The Trial Court has observed that said payments were made by the plaintiffs by April 2015. If the plaintiffs were not to make those payments, the N.A. permission dated 12 September 2014 would have apparently lapsed. In that view of the matter, it is difficult to hold that the land got converted to N.A. use on 12 September 2014 itself.

5. It has come in evidence that plaintiffs issued notice dated 9 January 2015 to the defendants giving intimation of issuance of N.A. permission. Since the process of actual conversion of land to N.A. continued upto April 2015, it cannot be said that plaintiffs faulted on the obligation to complete the said transaction as per the time limit provided in the agreement.

6. In my view, therefore, no serious error can be traced in the concurrent findings recorded by the trial Court and the first Appellate Court. No substantial question of law is involved in the appeal. The appeal is accordingly rejected.

7. In view of disposal of appeal, nothing survives in the pending interim application. The same is disposed of accordingly.

SANDEEP V. MARNE, J.