

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

**SECOND APPEAL NO.805 OF 2019
WITH
CIVIL APPLICATION NO.1618 OF 2019
IN
SECOND APPEAL NO.805 OF 2019**

Dilip Sohanlal Baradiya & Ors.Appellants/Applicants
V/S
Mohanlal Surajmal BhandariRespondent

Mr. Amol Wagh i/b Mr. Sagar Kasar *for the Appellant/Applicant.*
Mr. N.R. Bubna *for Respondent No.1.*

**CORAM: SANDEEP V. MARNE, J.
DATE : 15 MARCH 2024.**

P.C.:

1 By this Appeal, the Appellants challenge decree dated 15 April 2019 passed by the District Judge-2, Malegaon in Regular Civil Appeal No.115 of 2015. The First Appellate Court has reversed the decree dated 12 August 2015 passed by the Trial Court in Special Civil Suit No.105 of 2011. The Trial Court had only partly allowed the suit of the Plaintiff by directing the Defendants/Appellants to refund the earnest amount of Rs.2,00,000/- with interest. The First Appellate Court has allowed the suit in entirety and has directed the Defendants/Appellants to specifically perform the agreement for sale dated 26 April 2010.

2 I have heard Mr. Wagh, the learned counsel appearing for the Appellants and Mr. Bubna, the learned counsel appearing for the Respondent/ original Plaintiff.

3 It appears that the original Plaintiff was a tenant in respect of the old structure. He agreed to give possession of the tenanted structures only for the purpose of reconstruction of the building. For the purpose of conversion of his tenancy rights into ownership rights, he agreed to pay costs of Rs.9,000/- per square feet to the landlord. Out of agreed amount, Plaintiff paid amount of Rs.2,00,000/- to the landlord and accordingly agreement for sale dated 26 April 2010 came to be executed between the parties. As per the agreement, the balance amount was to be paid in a phased manner on completion by plinth, construction of slab, erection of shutter and grant of possession. The Trial Court proceeded to refuse the relief of specific performance by holding that the Plaintiff did not establish readiness and willingness to make slab-wise payment. In my view the Trial Court had committed an error in holding so. Admittedly, Defendants did not give any notice to the Plaintiff about completion of particular stage of construction nor demanded slab-wise payment from the Plaintiff. Therefore there was no reason for the Plaintiff to voluntarily make any payment to the Defendants. In my view therefore the finding recorded by the Trial Court about non-establishment of readiness and willingness on the part of the Plaintiff was totally erroneous. The First Appellate Court has recorded a finding of fact that till November 2010 the construction of building was yet to be completed. In that view of the matter

the First Appellate Court has rightly held that the Plaintiff was ready and willing to perform his part of the contract. No substantial question of law is involved in the Appeal. The Second Appeal is accordingly rejected.

4 This appears to be a classic case where the landlord actually wants to defeat the right of the tenants by obtaining possession of the tenanted premises by promising him a newly constructed unit and thereafter resiling from the promise.

5 After the order is pronounced, the learned counsel appearing for the Appellants would request for continuation of statement made by Mr. Bubna and recorded by this Court in order dated 11 December 2019 for non-execution of the decree. Mr. Bubna, the learned counsel would submit that the said statement was not continued and does not operate as of date. Be that as it may, considering the findings of the First Appellate Court, I am of the view that the execution of the decree need not be stayed. The request for continuation of the statement is accordingly rejected.

6 In view of the disposal of the Second Appeal, nothing would survive in the Civil Application and the same is accordingly disposed of.

(SANDEEP V. MARNE, J.)