

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL (STAMP) NO.22726 OF 2022
WITH
IA NO.20238/2022 IN SA(ST)/22726/2022
WITH
IA/20239/2022 IN SA(ST)/22726/2022

Abdul Mohammed Khalil Chaudhary & anr. ... Appellants.
Versus
Smt. Neerabai Ratan Patil & anr. ... Respondents

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Mr. Vzair Kazi, a/w. Ms. Dhanashree Hublikar i/b. YMK Legal for
Applicant & Org. Appellants.
Mr. Mandar Limaye, for Respondent Nos.1 & 2.

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CORAM : SANDEEP V. MARNE, J.

DATED : 06 FEBRUARY 2024.

P.C. :

By this Appeal the Appellant challenges Judgment and decree dated 20 March 2019 passed by the Ad-hoc District Judge-3, Thane in Regular Civil Appeal No.49 of 2017 thereby reversing the Judgment and decree dated 15 February 2012 passed by the Trial Court in Special Civil Suit No.10 of 2010.

2. The suit of the Appellants / Plaintiffs was for specific performance of the agreement for sale dated 27 April 2004. It appears that at

the time of execution of the agreement for sale, Plaintiffs paid part consideration of Rs.9 Lakh to the Defendants and the parties agreed that the balance amount was to be paid within a period of 06 months within which period, permission under the provisions of Urban Land Ceiling Act (**ULC Act**) was to be obtained. It is the case of the Plaintiffs that the Defendant was under obligation to obtain ULC permission. Defendant on the other hand pleaded to the contrary. It appears that neither ULC permission was obtained nor the balance amount of consideration was paid within 06 months as agreed in the agreement. The Defendant thereafter issued a notice on 17 April 2006 calling upon the Plaintiffs to pay the balance amount of consideration. It is Plaintiffs' case that they made payment of Rs.2,20,000/- in cash after 17 April 2006 and that the such an act on the part of Plaintiffs amounted extension of time for performance of the agreement. Defendant denies that any such payment was made by Plaintiff after 17 April 2006. The Defendant served another notice dated 22 May 2006 and terminated agreement for sale dated 27 April 2004. Thereafter some correspondence took place between the parties and the Plaintiffs finally filed Special Civil Suit No.10 of 2010 before the Trial Court on 01 January 2010.

3. I have heard Mr. Kazi, the learned counsel appearing for Appellant and Mr. Limaye, the learned counsel appearing for Respondents.

4. It is seen that the Defendants first served Notice dated 17 April 2006 on the Plaintiffs for payment of balance amount of consideration. There is dispute between the parties about payment of Rs.2,20,000/- being made by the Plaintiffs to the Defendants after 17 April 2006. The Trial Court held in favour of Plaintiffs that such a payment was indeed made whereas the First

Appellate Court has reverse said finding. In my view, it is not necessary to go into the issue of payment of Rs.2,20,000/- allegedly made by Plaintiffs for the purpose of deciding the issue of limitation. Admittedly on 22 May 2006 Defendants terminated agreement for sale and forfeited earnest amount. Thus, Defendants refused to perform the contract and knowledge thereof was acquired by the Plaintiffs on 22 May 2006. Under Article 54 of the Limitation Act, Plaintiffs were required to file suit within a period of 3 years from the date of refusal of Defendants to perform the contract. However the Plaintiffs filed suit only on 01 January 2010 which was clearly barred by limitation. This aspect has rightly been appreciated by First Appellate Court.

5. In my view, therefore since the suit was clearly barred by limitation, there was no necessity either on the part of Trial Court or the First Appellate Court to go into the issue of readiness or willingness of Plaintiffs to perform their part of contract. Also no serious error can be traced in the Order of the First Appellate Court about findings recorded on other issues. By the time suit was filed, period of 6 years had already elapsed resulting in substantial increase in price of properties. No substantial question of law is involved in the Appeal. Appeal is accordingly rejected. It appears that in pursuance of the decree of the Trial Court, the Appellants have deposited balance amount of consideration in the Trial Court. The Appellant would be at liberty to withdraw the said amount alongwith accrued interest. Since the Appeal is disposed of, nothing survives in the interim applications those are also disposed of.

SANDEEP V. MARNE, J.

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