

Iresh

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

**SECOND APPEAL NO. 90 OF 2024
WITH
INTERIM APPLICATION NO. 11357 OF 2024
IN
SECOND APPEAL NO. 90 OF 2024**

Nanasaheb Pandurang Kothavale and OrsAppellants

Vs.

Ramesh Uttam Mane and anrRespondents

IRESH
MASHAL

**WITH
SECOND APPEAL NO. 238 OF 2024
WITH
INTERIM APPLICATION NO. 7945 OF 2024
IN
SECOND APPEAL NO. 238 OF 2024**

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Nanasaheb Pandurang Kothavale and OrsAppellants

Vs.

Shankar Dada Mane and anrRespondents

Mr. Anilkumar Patil a/w Ms. Zeel Jain a/w Mr. Rahul Arote for the
appellants

Mr. Chetan R. Nagane for respondent nos. 1 and 2

CORAM : GAURI GODSE, J.

DATE : 5th SEPTEMBER 2024

ORDER:

1. Heard learned counsel for the parties. The second appeals are admitted on the following substantial questions of law:

I. Whether the plaintiff was entitled for specific performance of the contract in the absence of any prayer for declaration of subsistence of the contract?

II. Whether in view of the defendants' notice intimating the repudiation of the contract and return of the earnest amount, plaintiff would be entitled for specific performance without challenging the repudiation?

III. Whether both the Courts erred in not recording a specific finding on subsistence of the contract before granting the specific performance?

IV. Whether in view of legal principles settled by the Apex Court in the case of **I. S. Sikandar (Dead) by LRs Vs. K. Subramani and Others¹**, the plaintiff was entitled for specific performance of the contract?

¹ (2013) 15 Supreme Court Cases 27

2. Mr. Chetan Nagane waives service for the respondents.
3. Call for record and proceedings. Printing is dispensed with.
4. Learned advocate for the appellant shall file private paper-book within a period of one year.

INTERIM APPLICATION NO. 11357 OF 2024 AND INTERIM APPLICATION NO. 7945 OF 2024:

5. These applications are for seeking stay to the execution and operation of the impugned Judgment and Decree granting specific performance. Second appeals are admitted on the questions of law as framed in the order admitting second appeals. Since the decree is for specific performance of the contract and handing over possession, execution and operation of the decree is required to be stayed during the pendency of the second appeals.
6. Hence, during the pendency of the second appeals, there will be interim stay in terms of prayer clause (b) in both applications.
7. During the pendency of the second appeals, appellants shall not create any third party interest or part with possession of the suit property.

8. Applications are allowed in above terms.

[GAURI GODSE, J.]