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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 432 OF 2024**

Sunil Maruti Waghmare ... Appellant
vs.
Maharaj Devji Waghmare ... Respondent
Ms. Shakuntala Shetty a/w. Sushama D. Satpute, for Appellant.

**CORAM : GAURI GODSE, J.
DATED : 22nd JULY 2024**

ORDER:

1. Learned counsel for the appellant seeks leave to amend the cause title of the Second Appeal to correct the defendant's name as per the record. Leave is granted. Amendment to be carried out within six weeks.
2. This appeal is preferred by the original plaintiff to challenge the concurrent judgments and decrees dismissing his suit for specific performance.
3. Learned counsel for the appellant submitted that the suit agreement was a registered document. Hence, the Courts ought to have granted specific performance of the agreement by accepting

the terms and conditions of the agreement to be valid and proper. She submits that the respondent had accepted the entire consideration payment as per the document, and hence, the respondent was under obligation to execute the sale deed. She submits that though the agreement stipulated two months time for execution of the sale deed, the parties had agreed to extend the time. But the defendant refused to execute the sale deed; hence, the plaintiff filed the suit for specific performance. She, therefore, submits that the Second Appeal would require consideration by this Court on the point of the appellant's entitlement to seek specific performance of the suit agreement.

4. I have considered the submissions made by the learned counsel for the appellant. Both the Courts have concurrently held that the plaintiff failed to prove that the defendant had agreed to sell the suit property. The defendant denied that he agreed to sell the suit property at any time. He also denied receipt of any consideration amount. There is no proof of payment of the consideration amount on the date of execution of the suit agreement as claimed by the plaintiff. The suit agreement is dated 3rd May 1999, and the suit was filed on 8th December 2014. Admittedly, the suit agreement stipulates two months' time for the execution of the

sale deed. The trial court considered the plaintiff's admission in his cross-examination that in October 1999, the defendant had clearly denied obtaining the necessary sanction and executing the sale deed. Hence, considering the two months period stipulated in the agreement and the oral evidence on record, the trial court held that the suit was clearly time barred.

5. In the appeal preferred by the plaintiff, the findings recorded by the trial court are confirmed by re-examining the documents and evidence on record. Both the courts have held that the appellant has failed to prove the nature of the suit agreement as the document for agreement to sell as pleaded by the plaintiff. The First Appellate Court re-examined the point of the suit being barred by limitation, and confirmed the findings recorded by the Trial Court.

6. I do not find any illegality or perversity in the reasons recorded by both courts, holding that the suit is barred by limitation. The cause of action as pleaded by the plaintiff has arisen on 16th September 2014 on the plaintiff issuing notice to the defendant, is disbelieved by both the courts. The First Appellate Court has confirmed the findings of the trial court and further held that the suit based on the agreement of sale of 1999 is barred in view of Article 54 of the limitation. The admission by the plaintiff in cross-

examination regarding the defendant's denial in October 1999 to obtain sanction and execute the sale deed is held to be a notice of refusal of performance for reckoning the time for seeking specific performance.

7. In view of the concurrent findings of facts holding that the suit is barred by limitation, the arguments made on behalf of the plaintiff do not require any consideration by this Court. The Second Appeal does not raise any substantial question of law. Hence, the Second Appeal is dismissed.

(GAURI GODSE, J.)