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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 499 OF 2024
WITH
INTERIM APPLICATION NO. 11312 OF 2024
IN
SECOND APPEAL NO. 499 OF 2024**

Vishnu Namdev Phadtare ... Appellant/Applicant

VS.

Dattu Ramchandra Phadtare ... Respondent

Ms. Vishakha Shelar i/b. Mr. Suryajeet Chavan, for Appellant.

CORAM : GAURI GODSE, J.

DATED : 27th AUGUST 2024

ORDER:

1. Heard learned counsel for the appellant. Second Appeal is admitted on the following substantial questions of law:

I) Whether the plaintiff would be entitled to specific performance of the contract, when except for payment of the balance consideration amount at the time of execution of the sale deed, there was no obligation on the part of the plaintiff to be performed as per the terms of the contract?

II) Whether in the absence of any counter claim there could have been a decree passed directing the plaintiff to hand over the possession of the suit property to defendants on receiving earnest money?

III) Whether the findings recorded by both the courts to refuse the specific performance are perverse as the terms and conditions of the suit agreement are not properly appreciated?

IV) Admittedly when the plaintiff is put in possession of the suit property pursuant to the agreement for sale, whether the plaintiff would be entitled to protect his possession in view of Section 53A of the Transfer of Property Act, 1882?

2. In addition to Court notice, learned advocate for the appellant to serve the respondent, by private notice and file affidavit of service.
3. Call for records and proceedings.
4. Printing is dispensed with.
5. The learned advocate for the appellants shall file private paper-book within a period of one year from today.

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6. Rule on interim relief in terms of prayer clause (a) is made returnable on 26th November 2024.

7. In addition to Court notice, learned advocate for the applicant to serve the respondent, by private notice and file affidavit of service, before the next date.

8. Till next date there will be ad-interim stay in terms of prayer clause(a).

(GAURI GODSE, J.)