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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 357 OF 2023
WITH
INTERIM APPLICATION NO. 15596 OF 2024
WITH
INTERIM APPLICATION NO. 7800 OF 2023

Jawahar Mishra … Appellant

Vs.

Rajendra Laxman Bansode and Another … Respondents

Mr. Jawahar Mishra -party in person – Appellant.
Mr. Sanjay S. Mehta a/w. Mr. Sanjay G. Ranjane, Mr. Amar Rite and Ms. Nagnika Gaikwad for Respondent Nos. 1 and 2.

CORAM : GAURI GODSE, J.

DATE : 9th DECEMBER 2024

ORDER :

Interim Application No. 15596 of 2024

1. Office has neither placed the hard copy of the application on record nor shared the soft copy on the drive. The appellant who appears in person has tendered the original application which is taken on record.

2. This application is for bringing on record names of heirs and legal representatives of deceased respondent no. 1. One of the heir of respondent no. 1 is already on record in a different capacity as respondent no. 2.

RAJESHWARI RAMESH PILLAI
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Date: 2024.12.12 10:25:55 +0200

3. Hence, the application is allowed and the appellant is permitted to show respondent no. 1 as deceased through heirs and legal representatives.

4. Amendment to be carried out within two weeks.

Second Appeal No. 357 of 2023

5. Heard the appellant in person and the learned counsel for the respondents. The second appeal is preferred to challenge the concurrent judgments and decrees granting specific performance in favour of the plaintiffs.

6. The appellant submits that as per the agreement for sale he was supposed to supply documents, which according to him were already supplied at the time of execution of the agreement. He further submits that the plaintiffs were not ready and willing to perform their part of the contract by making payment of the entire consideration amount. He submits that the plaintiffs loan through SBI Bank was disapproved and thereafter the plaintiffs approached ICICI Bank. He submits that ICICI Bank had approved loan only for an amount of Rs. 24,70,790/-. However, the plaintiffs were under obligation to make payment of the balance consideration of Rs,34,49,000/-.The appellant therefore submits that the second

appeal would require consideration on the ground that the plaintiffs were not ready and willing to perform their part of the contract.

7. Learned counsel for the respondents pointed out the findings recorded by the First Appellate Court. He submits that admittedly the defendant had obtained education loan, which he was under obligation to clear and deposit the title document. He submits that the defendant cleared the loan on 3rd July 2009 and immediately on 8th July 2009 issued the termination notice without giving any opportunity to the plaintiffs to make payment of the balance consideration amount. He submits that the loan was already sanctioned and the cheque for an amount of Rs. 24,70,790/- was kept ready in the name of the defendant. He submits that only because the defendant failed to supply title documents by clearing loan amount, the sale deed could not be executed. He therefore submits that the second appeal would not require any consideration by this court.

8. I have perused both the judgments. It is not in dispute that there was ten days period provided for the defendant to supply title document as per the suit agreement dated 6th April 2009. It is further not in dispute that the defendant cleared the loan only on 3rd July 2009 and immediately issued a termination notice. The First

Appellate Court after examining the record held in paragraph 17 that the cheque for an amount of Rs. 24,70,790/- was kept ready by ICICI Bank. The First Appellate Court therefore confirmed the findings recorded by the trial court that the plaintiffs were ready and willing to perform the contract, however, only for want of “No dues certificate” from the defendant the balance payment through the loan obtained by the plaintiffs was not released.

9. It is admitted that at the time of execution of the agreement an amount of Rs.51,000/- was received by the defendant. It is further admitted that an amount of Rs. 4,00,000/- was paid by way of two different cheques for an amount of Rs. 2,00,000/- each which was also encashed by the defendant. In view of the aforesaid findings of facts recorded by both the courts, the second appeal would not require any consideration by this court.

10. The second appeal does not raise any substantial question of law. Hence, second appeal is dismissed.

11. In view of the dismissal of the second appeal, interim applications are disposed of as infructuous.

[GAURI GODSE, J.]