



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH : NAGPUR.**

**SECOND APPEAL NO. 93 OF 2020**

**APPELLANT** : Sunil S/o. Daulatrao Awchat, Aged  
about 56 years, Occ. : Cultivator, R/o.  
Bela, Tah. : Umrer, Distt. : Nagpur.

**//VERSUS//**

**RESPONDENT** : Smt. Surekha Suresh Pochalwar C/o.  
Seema Pochalwar, Vanu Associates  
Second Floor, Crescent Heights,  
Crescent Cunningham Road, Near RBI  
Quarters, Bengaluru – 560056  
(Karnataka)

Amendment carried out as  
per Order dt.

\*\*\*\*\*

Mr. S.S. Sohoni, Advocate h/f. Mr. S.V. Sohoni, Advocate for the  
Appellant.  
Mr. C.S. Kaptan, Senior Advocate a/b. Mr. N.H. Shams,  
Advocate for the Respondent.

\*\*\*\*\*

**CORAM : G. A. SANAP, J.**  
**DATED : 9<sup>th</sup> FEBRUARY, 2024.**

**ORAL JUDGMENT**

. **Admit.** Heard finally with the consent of learned  
advocates for the parties.

02] In this second appeal, challenge is to the judgment and  
decree dated 9<sup>th</sup> February, 2016, passed by learned District Judge-  
6, Nagpur, whereby the learned Judge dismissed the appeal filed by

the appellant and confirmed the judgment and decree passed by learned Trial Judge, whereby the decree for specific performance of the contract was refused and the decree for refund of earnest money with interest was allowed.

03] In this second appeal, the notice was issued to the respondent on the following substantial question of law:

*“Whether the learned courts below have misconstrued the oral and documentary evidence on record while rejecting the claim of specific performance of Agreement dated 10/11/2004 ?”*

04] The facts leading to this substantial question of law are as follows:

It is the case of the appellant that the respondent had agreed to sell her land described in the plaint to him for a total consideration of Rs.10,00,000/-. The respondent executed an agreement for sale on 10<sup>th</sup> November, 2004. As agreed, the appellant paid Rs.2,00,000/- to the respondent on the date of the execution of the agreement. As per the agreement, the amount of Rs.3,00,000/- was to be paid on or before 28<sup>th</sup> February, 2005. The remaining consideration of Rs.5,00,000/- was to be paid on or before the

execution of the sale deed, i.e. 30<sup>th</sup> June, 2005. The appellant contended that throughout, he has been ready and willing to perform his part of contract. Later on, it was transpired that the land was falling under a water benefit zone; therefore, the permission of the Competent Authority was required. Similarly, the permission of the Collector was required. The appellant insisted the respondent to obtain the permission. One permission was obtained. The appellant contended that the respondent failed to perform her part of contract. After notice, he filed the suit.

05] The respondent opposed the claim. According to the respondent, there was a breach of contract by the appellant, inasmuch as the appellant did not pay Rs.3,00,000/- as agreed on or before 28<sup>th</sup> February, 2005. The respondent further contended that, on account of this breach by the appellant, the contract was cancelled. The respondent specifically contended that the appellant had not been ready and willing to perform his part of contract and, therefore, he was not entitled to get the decree as prayed for.

06] The parties adduced the evidence before the Trial Court. Learned Judge of the Trial Court, on consideration of the evidence,

found that the plaintiff was not ready and willing to perform his part of contract. Learned Judge of the Trial Court recorded a finding that there was a breach of contract by the plaintiff, inasmuch as he failed to pay Rs.3,00,000/- on or before 28<sup>th</sup> February, 2005, as agreed. The appellant filed the appeal before the District Court, Nagpur. Learned Judge, on consideration of the evidence, found that the evidence was not sufficient to prove that the appellant was ready and willing to perform his part of contract. Learned Judge ultimately dismissed the appeal.

07] I have heard Mr. S.S. Sohoni, learned advocate holding for Mr. S.V. Sohoni for the appellant and Mr. C.S. Kaptan, learned Senior Advocate assisted by Mr. N.H. Shams for the respondent. Perused the record and proceedings. At the time of the notice, the above substantial question of law was framed.

08] Learned advocate for the appellant submitted that the courts below have misconstrued the oral and documentary evidence and rejected the decree for specific performance of contract. Learned advocate submitted that time was not the essence of contract. Learned advocate further submitted that the alleged breach of

contract was condoned by the subsequent conduct of the defendant by making an application for permission to give finality to the sale transaction. Learned advocate submitted that the evidence adduced by the appellant is sufficient to accept his case that he has been ready and willing to perform his part of contract. Learned advocate submitted that, therefore, the decree for specific performance is required to be granted.

09] Learned Senior Advocate for the respondent submitted that the courts below have made a threadbare analysis of the evidence adduced by the parties and have concurrently held that the appellant has failed to prove that he has been ready and willing to perform his part of contract. Learned Senior Advocate pointed out that on or before 28<sup>th</sup> February, 2005, the appellant failed to discharge his obligation under the contract by making a payment of Rs.3,00,000/-. Learned Senior Advocate pointed out that a case sought to be made out by the appellant that in the month of February, 2005, he along with PW-2, went to the house of the respondent to pay the balance amount of Rs.3,00,000/- cannot be accepted in the teeth of the other evidence. Learned Senior

Advocate pointed out that the respondent was in dire need of money for the marriage of her daughter, which was scheduled to be held on 20<sup>th</sup> March, 2005. Learned Senior Advocate submitted that, in fact, in this appeal, the substantial question of law does not arise at all.

10] In order to appreciate the rival submissions, I have gone through the record and proceedings. It is undisputed that the sale deed was to be executed on or before 30<sup>th</sup> June, 2005. As per the agreement, the appellant was under an obligation to pay Rs.3,00,000/- to the respondent on or before 28<sup>th</sup> February, 2005. It is undisputed that this amount was not paid as agreed in the agreement for sale. The contention of the appellant that he, along with PW-2, went to pay Rs.3,00,000/- in the month of February, 2005 has been rejected by both the courts below. The courts below, as can be seen from the reasons recorded, took into consideration the evidence as well as the attending circumstances. The Appellate Court has recorded a finding that, in fact, the appellant has failed to establish that during the subsistence of the agreement, he was having money to pay to the respondent as agreed. The respondent, by notice dated 24<sup>th</sup> June, 2005, Exh. 47, categorically stated that there

was a breach of contract by the appellant, and on that count, the contract was terminated. It is the contention of the appellant that the conduct of the respondent suggests that she had condoned the alleged breach of contract. It is pointed out that she had applied for permission for sale of the land from the Competent Authority and the permission was granted. It is to be noted that the document purporting to be a permission for sale was not admitted in evidence.

11] Be that as it may, the fact remains that there was a failure on the part of the appellant to discharge his obligation initially by making a payment of Rs.3,00,000/- on or before 28<sup>th</sup> February, 2005. The appellant has failed to prove that he had sufficient money at his disposal to pay to the respondent and give finality to the transaction as agreed. It needs to be stated at this stage that the relief of specific performance of contract is a discretionary and equitable relief. It is a fundamental rule of equity that one who seeks equity must do equity. A party who is guilty of committing breach of contract, in my view, would not be entitled to get discretionary relief. The Appellate Court, on the basis of the evidence, has recorded a finding that the failure of the appellant to discharge his

obligation would disentitle him to get relief for specific performance of contract in view of the provisions of Section 16(c) of the Specific Relief Act, 1963. It needs to be stated that the provisions of Section 16 of the Specific Relief Act are mandatory. Before granting specific performance, the requirements of this section has to be established. The appellant has miserably failed to establish the same.

12] On going through the record and proceedings, I am of the view that the courts below have properly appreciated the evidence on record. The courts below have not committed any error or mistake in appreciating the evidence. The findings have been recorded on the bedrock of legally admissible evidence. There is no perversity in the concurrent findings of fact. Therefore, I answer the question in the negative. As a result thereof, the appeal fails. The appeal is, accordingly, **dismissed**.

(G. A. SANAP, J.)

Vijay