



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

SECOND APPEAL NO. 172 OF 2024

Umrao Shyamraoji Nawale ..VS.. Sukhdeo S/o Ramrao Gedam

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. P. R. Agrawal, Advocate with Ms. Aastha Sharma, Advocate for
appellant.

Mr. P. S. Patil, Advocate for respondent.

CORAM : SANJAY A. DESHMUKH, J.

DATED : 02nd SEPTEMBER, 2024

1. This second appeal is preferred against the Judgment and Decree passed by learned District Judge-1, Mangrulpir, District Washim in Regular Civil Appeal No.53/2016 dated 05.04.2023, which was preferred against the Judgment and Decree passed by the learned 2nd Joint Civil Judge, Junior Division, Karanja, District Washim in Regular Civil Suit No.33/2012, dated 20.08.2016.

2. The appellant is the original defendant and the respondent is the original plaintiff. The appellant is the owner and in possession of field Gat No.93, admeasuring 1.57 HR, situated at Mouza Hinganwadi, Tq. Karanja Lad, District Washim. The respondent entered into an agreement with the appellant for purchase of the said property for total consideration of Rs.4,10,000/-. It was agreed that the appellant was required to clear the charge of the bank upon the said property before execution of the sale-deed. As per the condition, the respondent paid Rs.75,000/- on 07.02.2008 as earnest money and the sale-deed was agreed to execute on 30.05.2008.

Accordingly, the respondent is present in the office of Sub-Registrar for execution but the appellant did not execute the sale-deed. Therefore, the respondent on 02.06.2008 issued notice to the appellant for execution of sale-deed. The appellant replied the said notice on 09.06.2008. He failed to execute the sale-deed. Hence, the respondent filed a suit for specific performance of the contract against the appellant.

3. The appellant filed written statement and denied the claim of the respondent. It is contended that the time was the essence of the contract. He was ready and willing to perform his part of contract. He was present in the office of Sub-Registrar on 30.05.2008 for execution of the sale-deed, but the respondent failed to perform his part of the contract and he failed to pay remaining amount of consideration and prayed to dismiss the suit.

4. The parties have adduced evidence. On appreciation of the oral as well as documentary evidence, the learned trial Court decreed the suit filed by the respondent. The appellant challenged the said judgment and decree by filing an appeal. The learned first appellate Court on re-appreciation of the evidence and hearing the parties, dismissed the appeal filed by appellant. Being aggrieved, the appellant filed this second appeal.

5. Heard learned Advocate Mr. P. R. Agrawal for the appellant and learned Advocate Mr. P. S. Patil for respondent.

6. Learned Advocate for the appellant submitted that learned trial Court as well as learned first appellate Court have failed to

appreciate the evidence properly and as such came to a wrong conclusion that the time was not the essence of the contract. He further submitted that while addressing the issue of time being the essence of the contract, the obligation cast on the parties may not assume great importance. Learned Advocate for the appellant submitted that the discretionary relief has been granted in favour of the respondent, who has been proved to be guilty of delay and latches. It is lastly prayed to allow the appeal by setting aside the impugned judgment and decree passed by first appellate Court as well as trial Court.

7. Learned Advocate for the respondent submitted that the entire evidence has been properly appreciated by learned trial Court as well as learned first appellate Court and recorded concurrent findings of fact. He further submitted that the appellant was under an obligation to clear the title of the land in question by repaying the loan amount of Rs.50,000/- and without discharging this initial obligation, the appellant was not justified in contending that time was essence of the contract. Learned Advocate for the respondent submitted that there was no error on the part of the learned trial Court as well as learned first appellate Court. He further submitted that no substantial question of law arises in this appeal and lastly prayed to dismiss the appeal.

8. Perused the record and proceeding. The learned trial Court as well as first appellate Court have recorded a concurrent finding of fact on all the issues in favour of the respondent/purchaser. It is undisputed that the appellant was under an obligation to repay the loan amount of Rs.50,000/-

and clear the title. This was a condition precedent for execution of sale-deed. The agreement to sell was registered. The respondent had paid Rs.75,000/- as earnest money to the appellant on the date of execution of the agreement. The evidence on record is sufficient to prove that before 30.05.2008, which is the date for execution of sale-deed, the appellant did not fulfill his responsibility to pay loan amount. On the basis of evidence, the learned trial Court as well as learned first appellate Court have recorded a concurrent finding that the respondent/plaintiff has proved readiness and willingness to perform his part of the contract. The learned trial Court and learned first appellate Court have also recorded a finding that the contention of the appellant that time was the essence of the contract, cannot be considered in isolation and more particularly, ignoring paramount condition of the agreement to sell.

9. Considering the above facts, I am satisfied that the learned trial Court as well as learned first appellate Court have appreciated the evidence properly. There is no perversity as to the findings of fact recorded by the learned trial Court as well as learned first appellate Court. Therefore, no substantial question of law arises in this appeal. The appeal deserves to be dismissed. Hence, the following order :

The Second Appeal is **dismissed**. No order as to costs.

(SANJAY A. DESHMUKH, J.)