



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

SECOND APPEAL NO. 29 OF 2024

UMRAO SHYAMRAOJI NAWALE

VERSUS

AMAR S/o SUKHDEORAO GEDAM

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. P. R. Agrawal, Advocate for the appellant.
Mr. Pravin S. Patil, Advocate for the respondent (thru. VC)

CORAM : G. A. SANAP, J.

DATE : FEBRUARY 15, 2024.

1. Heard Mr. P.R. Agrawal, learned advocate for the appellant and Mr. Pravin S. Patil, learned advocate for the sole respondent. Perused the record and proceedings.

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. 91, admeasuring 1.78 HR, situated at Mouza – Hinganwadi, Tq. Karanja Lad, Dist. Washim. The respondent entered into an agreement with the appellant for purchase of the said property for total consideration of Rs.2,50,000/-. As per the conditions of the agreement, the appellant was required to clear the charge of the bank upon the said property before execution of the sale deed. As agreed, the respondent paid the earnest money of Rs.75,000/- on 07.02.2008. The sale deed was agreed to be executed on

30.05.2008. Accordingly, the respondent along with his son went to the place of the appellant to get the sale deed executed. The appellant did not execute the sale deed. Therefore, 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 the 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. He failed to pay the remaining amount of consideration.

4. The parties have adduced evidence. On appreciation of the oral as well as documentary evidence, the trial Court decreed the suit filed by the respondent. The appellant challenged said judgment and decree by filing an appeal. The Appellate Court on re-appreciation of the evidence and hearing the parties, dismissed the appeal. Being aggrieved by dismissal of the appeal, the appellant is before this Court in Second Appeal.

5. Learned advocate for the appellant submitted that the Courts below have failed to properly appreciate the evidence and as such came to a wrong conclusion that the

time was not the essence of the contract. Learned advocate 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 submitted that failure to properly consider the oral and documentary evidence has resulted in perversity. Learned advocate submitted that the discretionary relief has been granted in favour of the respondent, who has been proved to be guilty of delay and latches.

6. Learned advocate for the respondent submitted that the entire evidence has been properly appreciated and the Courts below have recorded concurrent findings of fact. Learned advocate submitted that the Courts below have recorded concurrent findings of fact 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/-. Learned advocate submitted that without discharging this initial obligation, the appellant was not justified in contending that time was essence of the contract. Learned advocate submitted that there was no error on the part of the Courts below. In short, he submitted that no substantial question of law arises in this appeal.

7. I have gone through the record and proceeding. The Courts below have recorded a concurrent finding of fact on all the issues in favour of the purchaser/respondent. 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 of sale was registered. On the date of execution of the agreement, the respondent had paid Rs.75,000/- as earnest money. The evidence on record is sufficient to prove that before 30.05.2008, which is the date for execution of sale deed, the respondent had mortgaged his house property and made the provision of money to complete this transaction. On the basis of the evidence, the Courts below have recorded a concurrent finding that the respondent/plaintiff has proved readiness and willingness to perform his part of the contract. The Courts below have recorded a finding that there was breach on the part of the appellant in taking the sale transaction to its logical conclusion. The Courts below have 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 conditions of the agreement.

8. On going through the record, I am satisfied that the Courts below have properly appreciated the evidence. There is no perversity as to the findings of fact recorded by the Courts below. As such, no substantial question of law arises in this appeal. Accordingly, the Second Appeal is dismissed. No order as to costs.

9. Pending civil applications, if any, shall also stand disposed of.

JUDGE

Diwale