

D/L.20.  
September 11, 2025.  
MNS.

RVW 199 of 2025  
+  
CAN 1 of 2025  
in  
SAT No. 100 of 2025

Ajit Kumar Ghosh  
Vs.  
Smt. Kamala Dasgupta and others

Mr. Bhaskar Ghosh, Ld. Sr. Adv.,  
Ms. Tina Biswas

... for the review applicant.

1. Learned senior counsel appearing for the review applicant submits that there was a patent error on the face of the order dated May 21, 2025 whereby SAT No. 100 of 2025 was dismissed under Order XLI Rule 11 of the Code of Civil Procedure.
2. The second appeal arose out of the dismissal of the appellant's suit for specific performance by both the court of first instance and the first appellate court.
3. Learned senior counsel places reliance on the judgment, which was relied on by us while dismissing the Second Appeal, that is, *Balasaheb Dayandeo Naik (dead) through LRS and others Vs. Appasaheb Dattatraya Pawar* reported at (2008) 4 Supreme Court Cases 464.

4. While explaining the proposition laid down therein, learned senior counsel places reliance on certain paragraphs thereof in particular, including paragraphs 3, 5 and 15 of the same, and contends that as per the said judgment, time could not be the essence of the contract, since there was a forfeiture clause in respect of the earnest money in the agreement.
5. Learned senior counsel also places reliance on paragraph no. 10 of the said judgment where the Supreme Court had relied on an earlier judgment in the matter of *Chand Rani Vs. Kamal Rani reported at (1993) 1 SCC 519*.
6. It is contended that the Hon'ble Apex Court, in *Balasaheb* (supra), found favour with the observation of the Constitution Bench judgment in *Chand Rani*, where it was held that it is a well-accepted principle that in the case of sale of immovable property, time is never regarded as the essence of the contract. In fact, there is a presumption against time being the essence of the contract.
7. By relying on the same, learned senior counsel argues that the very premise of the dismissal of the Second Appeal under Order XLI Rule 11 of the Code of Civil Procedure was based on a misinterpretation of *Balasaheb* (supra) and as

such, the order dated May 21, 2025 ought to be reviewed and recalled.

8. We find from paragraph no. 12 of the order under review that we had paraphrased therein the contents of paragraph no. 15 of *Balasaheb* (supra).

9. However, in the paragraph thereafter, that, is paragraph no. 13, we distinguished the proposition laid down in the said case on the ground that in the agreement-in-question in the instant case, there is a specific provision that the balance consideration was to be paid within three months from the execution of the agreement, coupled with which it was stipulated that if the balance consideration was not paid within the said period, there would be no compulsion on the original owner to sell the property to the appellant.

10. Thus, the case at hand was held to be distinguishable from *Balasaheb's* case on the grounds as indicated above.

11. If there is no compulsion on the part of the original owner to sell the property, no legal right arises within the contemplation of the Specific Relief Act, 1963, which could be said to have been infringed to entitle the plaintiff/appellant to file the suit for specific performance.

12. That apart, in paragraph no. 16 onwards of the order under review, we had proceeded further and observed that we were unable to agree with the

submissions of the appellant that part performance was undertaken since the part of the property which was the subject matter of the agreement was sold to the appellant, on the premise that the agreement itself clarified that it was segregable in two parts and the performance of one of the parts could not be deemed to mitigate the requirement of balance consideration for transfer of the rest of the property to be paid by the appellant within three months from the execution of the agreement, as stipulated in the agreement itself.

13. On such premise, we had further affirmed the concurrent findings of fact of both the courts below to the effect that the appellant had failed to prove his readiness and willingness in terms of Section 16 of the 1963 Act.

14. Thus, we had specifically dealt with *Balasaheb* (supra) and the proposition laid down therein and consciously distinguished the same in the facts and circumstances in our order which has been sought to be reviewed. Also, there were further grounds, as indicated above, for dismissal of the Second Appeal under Order XLI Rule 11 of the Code.

15. Hence, we do not find that a case of error apparent on the face of the record has been made out.

16. Accordingly, RVW 199 of 2025, along with CAN 1 of 2025 are dismissed, thereby refusing to review

the order dated May 21, 2025 passed in SAT No.  
100 of 2025 along with CAN 1 of 2025.

17. There will be no order as to costs.

(Uday Kumar, J.)

(Sabyasachi Bhattacharyya, J.)