IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 339 OF 2024

Anil Chhabildas Chaudhari,
Age : 52 years, Occu. : Business,
R/o. New Area Ward, Bhusawal … **APPELLANT**

VERSUS

Sau. Mamata Sudhakar Sananse,
Age : 42 years, Occu. : Household,
R/o. 13, Sadguru Housing Society,
National Highway No. 6,
Behind Pooja Complex, Bhusawal … **RESPONDENTS**

Shri R. N. Dhorde, Senior Advocate, along with Shri Sanjay S. Dudhane, Advocate, instructed by Shri V. R. Dhorde, Advocate for the Appellant
Shri Rajendra Deshmukh, Senior Advocate instructed by Shri Praveen B. Gamot, Advocate for Respondent.

CORAM : ROHIT W. JOSHI, J.
DATE : 05th MARCH, 2025

J U D G M E N T :

1. The present second appeal is filed against judgment and decree dated 08.08.2022 passed by the learned Civil Judge Senior Division, Bhusaval in Special Civil Suit No. 24 of 2020 and judgment and decree dated 24.11.2023 passed by the learned District Judge -3, Bhusawal in Regular Civil Appeal No. 42 of 2022. The appellant in the appeal is the original defendant against whom decree for specific performance of contract is passed in the civil suit. Simultaneously, the counter claim of the defendant seeking declaration that the agreement in question was a false and fabricated document, was also rejected. As stated above, the appeal preferred by defendant is to be dismissed by the learned Appellate Court.

2. The present respondent had filed suit for specific performance of contract with respect to Shop Block Nos. G-14, G-15, G-16 and G-19 ad-measuring 102.07 sq.mtrs. situated at Survey No. 147/01/01 in final plot No. 3-A/02 at Bhusaval. It is the case of the plaintiff that the defendant was in need of money for contesting election and in order to augment funds, he wanted to sell the suit shops immediately. According to the plaintiff, the defendant contacted one Tanaji Shantaram Patil, a property dealer, who was a friend of husband of the plaintiff. She claims that the said Tanaji Patil came with a proposal for purchase of the suit shops and accordingly, a meeting of plaintiff, her husband, Tanaji Patil and the defendant was held wherein the plaintiff agreed to purchase the suit shops for a total consideration of Rs. 60,70,000/-. The total sale consideration of Rs. 60,70,000/- came to be paid to the defendant on 19.10.2019 by online transfer under two transactions of Rs. 30,35,000/- each. The plaintiff claims that he had paid stamp duty of Rs. 3,64,200/- on the draft of the said deed, which was prepared by one Mr. B. G. Chavan, stamp vendor. The plaintiff also contends that the sale deed came to be executed by her and the defendant by putting their signatures and thumb impression. The husband of the plaintiff and broker Tanaji signed the sale deed as attesting witnesses and the sale deed was lodged for registration with the Sub-Registrar on 30.10.2019 along with registration fee of Rs. 31,400/-. The contention of the plaintiff is that despite having received the entire sale consideration and also having executed the sale deed as aforesaid, the defendant avoided to visit the office of Sub-Registrar for completing the formalities regarding registration of sale deed. The plaintiff has alleged that the defendant gave evasive replies whenever inquiries were made with respect to registration of sale deed. The plaintiff issued a letter dated 07.02.2020 calling upon the defendant to complete the formalities regarding registration of sale deed and to deliver physical possession of the suit shops. The plaintiff has stated that Sub-Registrar has also issued two communications to the defendant on 13.02.2020 and 09.06.2020, calling him to complete the registration formalities, however, the defendant did not do the needful. In the circumstances, the plaintiff filed suit for specific performance of contract. The prayer in the suit is for directions to the defendants to complete the formalities regarding registration of the sale deed executed by the defendant in favour of the plaintiff and for delivery of possession of the suit shops.

3. The defendant filed written statement and counter claim in the matter vide Exhibit 13 on 28.07.2020. The defendant has come up with a case that he was in need of money during the election period for his personal and household expenses. He claims that the broker Tanaji Patil and husband of the plaintiff had friendly relations with him and when the broker Tanaji Patil came to know about financial need of the defendant, he made an offer to the defendant to give him hand loan. He states that in such circumstances, taking unfair advantage of the fact that the defendant was busy with elections, the broker, Tanaji Patil obtained his signature and thumb impression on a blank paper. He has denied that he had entered into any agreement with plaintiff with respect to the suit shops. He claims that on receiving letter dated 07.02.2020 from the plaintiff, he realized that the plaintiff, her husband, Tanaji Patil-Broker and some unknown persons had practiced fraud on him and misused the paper bearing his signature and thumb impression to create a false document of sale deed with respect to suit shops. In the light of above pleadings, he sought a declaration that the sale deed with respect to the suit shops is a false and fabricated document and that the document is not a document of sale but a document for hand loan.

4. The respondent filed written statement opposing the counter claim. The respondent denied all adverse allegations and contended that the transaction was one of sale and not of hand loan.

5. Based on rival pleadings, the learned Trial Court framed issues. The parties led evidence in the matter. The respondent plaintiff examined her husband Sudhakar and the broker, Tanaji Patil as witnesses. The defendant-appellant examined four witnesses namely the defendant himself, his son Sandesh @Rushi Shukla and Ashlesha Devtale. The son of the defendant Dhiraj and Sandesh Shukla are examined as witnesses to the hand loan transaction and Ashlesha is examined in order to demonstrate that the suit shops were in possession of ICICI bank.

6. After recording the evidence and hearing arguments in the matter, the learned Trial Court was pleased to decree the suit with costs by directing the defendant to complete the process of registration of sale deed and to deliver possession of the suit shops to the plaintiff. Simultaneously, counter claim filed by the appellant-defendant came to be dismissed. The learned Trial Court has observed that the version of the plaintiff appeared to be reasonable and more probable since it was proved by documentary evidence i.e. transfer of money coupled with execution of the sale deed. The learned Trial Court has held that receipt of sale consideration of Rs. 60,70,000/- was not in dispute and execution of the sale deed was duly proved by the witnesses examined by the plaintiff. As regards the defence set up by the appellant, the learned Trial Court has observed that his version did not inspire confidence. The learned Trial Court has observed that the sale deed executed by the defendant was accompanied by several attachments/annexures such as tax receipts of suit shops, tax assessment extract of suit shops, Aadhar Card and PAN Card of defendant-appellant , copy of map of the building. The learned Trial Court has observed that the defendant appellant prayed to offer any plausible explanation as to how these documents were received by respondent. The learned Trial Court found the defence set up by the appellant defendant unbelievable and accordingly decreed the suit of the respondent plaintiff and dismissed counter claim filed by appellant defendant.

7. The learned Appellate Court has also confirmed the findings and has dismissed the appeal filed by the appellant-defendant. The learned First Appellate Court has also recorded similar findings after making assessment of the oral and documentary evidence on record in the backdrop of rival pleading.

8. Learned senior advocate, Mr. Dhorde has contended that the sale deed is an outcome of fraud practiced by husband of the respondent and the broker-Tanaji. He contends that the appellant was in urgent need of money and was also busy with the elections. In such circumstances, taking unfair advantages of the situation, the husband of respondent and the broker-Tanaji obtained signature and thumb impression of the appellant on a blank paper utilizing which the sale deed is prepared. He contends that the transaction was a loan transaction and not a transaction of sale and therefore, the appellant had signed a blank paper and had put his thumb impression on the same as instructed by husband of the defendant and the broker. Apart from this, a contention is raised that the suit ought to have been dismissed. Since the respondent-plaintiff did not herself enter the witness-box, although she has signed the plaint. He contends that husband of respondent-plaintiff could not have been examined as a witness in place of the plaintiff. He further admits that although there is a recital in the sale deed that possession is delivered to the respondent-plaintiff, as a matter of fact possession was never delivered which is apparent from the prayers in the plaint itself. His contention is that the very fact that possession is not delivered would conclusively establish that the transaction was one of loan and not of sale.

9. Mr. Dhorde has drawn my attention to the plaint, which is signed by the respondent plaintiff herself. The respondent plaintiff has thereafter executed a power of attorney in favour of her husband, who has entered the witness-box on her behalf. The power of attorney is dated 17.06.2021. Mr. Dhorde contends that the suit ought to have been dismissed on the ground that the plaintiff did not enter the witness-box and instead examined her husband as a witness. He contends that the power of attorney at Exhibit 39 is dated 17.06.2021, whereas the alleged sale deed is dated 19.10.2019 and the suit is filed on 06.07.2020. His contention is that the power of attorney is executed after the date of alleged sale deed and date of filing of suit and therefore, evidence of husband of the plaintiff ought to have been discarded. He has placed reliance on judgment of the Hon'ble Supreme Court in the matter of ***Mohinder Kaur Vs. Sant Paul Singh*** reported in ***(2019) 9 SCC 358*** in support of his contention. As against this learned senior counsel Mr. Rajendra Deshmukh appearing on behalf of respondent plaintiff has placed reliance upon a judgment on this Court in the matter of ***Shankar s/o Ratiram Bhure Vs. Smt. Seetadevi w/o Vishnukumar Modi*** reported in ***2006 (2) Mh.L.J. 511*** to contend that a power of attorney is a competent witness for facts which are within his personal knowledge.

10. Perusal of the pleadings in the plaint will indicate that the husband of the respondent defendant has actively participated in the matter from the stage of negotiation. He is also attesting witness to the sale deed. The pleadings in the written statement and counter claim will also demonstrate that even according to the appellant-defendant, the husband of the plaintiff-respondent was actively involved in the transaction, right from the beginning. I have perused the depositions of husband of the plaintiff. All the facts on which he has deposed are within his personal knowledge. In that view of the matter, I am of the considered opinion that the situation in the case at hand is covered by judgment of this Court in the matter of ***Shankar Bhure*** (supra). In the said case, father-in-law of the plaintiff, who had issued the rent note was examined as witness on the basis of power of attorney. Similar objection was raised that power of attorney cannot be a witness for the plaintiff. However, the objection was rejected on the ground that the power of attorney holder was deposing on the basis of his personal knowledge.

11. The judgment in the matter of ***Mohinder Kaur*** (supra) states that a power of attorney holder cannot act as a witness on behalf of his principal with respect to facts that had taken place prior to the date of execution of power of attorney when he does not have personal knowledge about facts that had taken place prior to the date of execution of power of attorney. The said judgment does not help the appellant defendant in the present case since the power of attorney holder of the respondent plaintiff in the present case is her husband who is a competent witness for the plaintiff in view of Section 120 of the Indian Evidence Act and also because undisputedly he was involved in the transaction right from its inception. The power of attorney holder husband has personal knowledge about all the facts of the case and is therefore, a competent witness.

12. It may be mentioned that the submission also deserves to be rejected in view of Section 120 of the Indian Evidence Act, which states that in any civil proceeding husband will be a competent witness for the wife.

13. The contention of the learned senior counsel for the appellant raising objection to the examination of husband of the plaintiff and further calling upon this Court to draw adverse inference against the respondent plaintiff for not entering the witness box is therefore, rejected. In the facts of the present case, the husband of the respondent plaintiff was a competent witness and since he was aware about all the facts of the case, adverse inference cannot be drawn against the plaintiff for not entering the witness-box and examining her husband and power of attorney holder on her behalf.

14. Mr. Dhorde contends that the respondent plaintiff had failed to prove the case regarding any agreement between the parties for sale of the suit shops. He contends that in the absence of any credible evidence as regards the agreement, which culminated into the execution of sale deed, decree for specific performance could not have been passed. He has drawn my attention to the finding by the learned Trial Court with respect to issue Nos. 1, 2, 3 and 6, which deal with oral agreement between the parties, payment of sale consideration, execution of sale deed as per agreement and allegation of appellant defendant that the sale consideration was in fact a hand loan.

15. The learned Trial Court has held that as per the case of respondent plaintiff since the defendant was in need of money, he wanted to sell the suit property immediately and for that purpose a meeting of plaintiff, her husband Tanaji-Broker and the defendant was held, wherein the respondent plaintiff agreed to purchase the suit property for a consideration of Rs. 60,70,000/-. The learned Trial Court has observed that till this stage the agreement that is arrived at was oral agreement. The learned Trial Court has held that this oral agreement has then culminated into the execution of sale deed. The learned Trial Court has held that the payment was also made through the bank transfer and as such the case of the plaintiff-respondent was proved by documentary evidence namely the sale deed and the bank account statement. The learned Trial Court has then referred to the oral evidence of husband of respondent plaintiff and Tanaji Patil to hold that the transaction was duly proved.

16. Mr. Dhorde, the learned senior counsel has argued that the learned Trial Court has recorded findings of fact which are not even pleaded by the respondent plaintiff in the plaint. Referring to the plaint averments, he contends that it is not even the case of the respondent plaintiff that any oral agreement was entered into between the parties with respect to the sale transaction. He therefore, contends that the findings recorded by the learned Trial Court is perverse and warrants interference at the hand of this Court in exercise jurisdiction under Section 100 of Civil Procedure Code. Drawing attention to the reasons recorded by the learned First Appellate Court, he contends that similar error is committed by the learned Appellate Court as well.

17. The case of the respondent plaintiff is based on the document of sale deed executed by the parties. Respondent plaintiff has averred about meeting that was held between the parties along with husband of respondent plaintiff and the broker in which the deal was struck. Referring to this meeting and the decision arrived at during the course of discussions and deliberations, the learned Trial Court has recorded that parties had arrived at oral agreement which is evidenced by a written document i.e. the sale deed. The findings recorded by the learned Trial Court are required to be appreciated in the context. The learned Trial Court has referred to the discussions and deliberations between the parties under which the transaction was finalized. This is referred to by the learned Trial Court as oral agreement. I do not find any error or perversity in such finding. It is obvious that before execution of any document parties will engage in discussions, deliberations and negotiations. Such discussions and deliberations are normally held verbally. Once parties arrive at consensus ad idem, the document is prepared. The contents of document are then cross checked to confirm that they reflect the bargain correctly and thereafter, the document is executed. This is a normal sequence of events in any given transaction. The sequence of events in the present case has also unfolded in the same manner. There was a meeting in which deal was finalized and accordingly sale deed was drafted and executed. Merely because the word 'oral agreement' is used by the learned Trial Court, it would not mean that the case of the respondent plaintiff is for specific performance of oral agreement. The case of the respondent plaintiff is for specific performance of contract in the sense that the respondent plaintiff seeks directions against the defendant appellant to complete formalities with respect to registration of the sale deed. I do not find any fault with the findings recorded by the learned Court in this regard.

18. The learned senior counsel Mr. Dhorde next contends that there is inconsistency in the version of the plaintiff's witness Nos. 1 and 2 with respect to the date on which inspection of property was taken by the plaintiff. He contends that whereas PW1, the husband states that he had visited the suit property on 17.10.2019 along with the broker Tanaji, the broker who is examined as PW2 states that the property was shown to the plaintiff and her husband on 18.10.2019. He further contends that there is a positive recital in the sale deed that possession of the suit property was delivered to the purchaser that is to plaintiff whereas in the plaint it is stated that possession was not delivered and a specific prayer is made for delivery of possession. He further contends that the sale deed does not refer to any talks that were allegedly held between the plaintiff and the defendant in relation to the agreement of sale or of the sale deed. This according to him are material inconsistencies, which are sufficient to falsify the case set-up by the plaintiff. He therefore, contends that the version of the plaintiff should not have been believed and the version of the defendant that the transaction was a loan transaction should have been accepted. He states that the findings recorded by the learned Courts with respect to the transaction are perverse and warrant interference in the present second appeal on that count.

19. Per contra, Mr. Rajendra Deshmukh contends that the oral talks between the parties had culminated in a written document, which is undisputedly signed by the defendant. He contends that it was agreed that possession would be handed over at the time of registration of sale deed and as such sale deed records that possession is handed over. As regards the particulars of the talks between the parties not being mentioned in the sale deed his contention is that it was not necessary to mention all those things in the sale deed. The contention of Mr. Deshmukh is that when signature of the defendant appears on the sale deed and it is his case that blank paper was misused in order to create document of sale, the burden will be squarely on the defendant to properly plead and prove his case. He contends that there will always be a presumption in favour of the plaintiff that the written document which is executed by the defendant is duly executed.

20. As regards the difference in the date on which the plaintiff visited the suit property, I find that the said inconsistency in the version of PW1, husband of plaintiff and PW2 broker is not a material inconsistency. The husband has deposed that they had visited the property for inspection on 17.10.2019, whereas the broker had stated that he had shown the property on 18.10.2019. In my considered opinion this variation of one day is not a material variation or material contradiction. The depositions of these witnesses are recorded in the year 2021 and in such circumstances difference of one day in specifying the date on which the property was visited cannot by any stretch of imagination be termed to be a material contradiction, rendering their versions unbelievable.

21. The contention of Mr. Dhorde with respect to possession also does not appeal to reasons. Normally, a purchaser takes possession of the demised property upon execution and registration of the sale deed. Therefore, in almost every sale deed, where possession is to be delivered upon execution and registration of sale deed there is a covenant stating that vendor has delivered possession to the purchaser. In the present case also such covenant is mentioned in the sale deed. Possession is actually delivered in normal transactions upon execution and registration of the sale deed. In the present case also since the sale deed was not registered possession was not delivered. The fact that the sale deed records that possession is delivered whereas in fact possession was not delivered is quite normal and hardly takes the case of the appellant any further. It must also be mentioned that at the relevant time ICICI Bank Ltd. was in possession of suit shops as tenant of appellant. Although the Branch at suit shops was shifted to other location on 09.09.2019, possession was delivered by ICICI Bank Ltd. to appellant initially on 03.12.2019 and thereafter upon carrying out necessary repairs on constructions of appellant, vacant possession was finally delivered on 03.01.2020.

22. The learned counsel for the appellant has placed reliance on judgment of the Hon'ble Supreme Court in the matter of ***Suresh Chandra Roy Vs. Sudhir Chandra Biswas*** reported in ***(2018) 17 SCC 242.*** In the case before Hon'ble Supreme Court, a suit for declaration of title and injunction against forcible dispossession and redemption of mortgage was filed with respect to written agreement dated 28.10.1970 claiming that the document reflected a loan transaction and not an outright sale as mentioned in the document. Placing reliance on order passed by revenue authority on 03.04.1975, the appellate Court and High Court recorded a finding that the vendor-mortgager was in possession of the property which suggested that the transaction was one of mortgage and not of sale. Placing reliance on the said judgment Mr. Dhorde contends that in the present case also the vendor-defendant is in possession of the suit property despite execution of the sale deed and therefore, the sale deed must he held to be a mortgage. I am afraid, the said contention cannot be accepted. In the judgment before the Hon'ble Supreme Court, the document in question was dated 28.10.1970. The revenue authority had passed order dated 03.04.1975 stating that the vendor continued to be in possession of the property. There was a time lag of five years from the date of execution of the document while by the vendor was in possession. The vendor himself filed suit for redemption of mortgage. In the case at hand, the sale deed is executed on 19.10.2019. The sale deed was presented for registration on 30.10.2019 when the defendant vendor did not turn up for completing registration formalities. The plaintiff has filed suit for specific performance of contract in such circumstances. The sale transaction in the present matter was not completed since the document of sale deed was not registered. Having regard to distinguishing features of both the cases, I am of the considered opinion that the judgment of the Hon'ble Supreme Court cannot come to assistance of the defendant-appellant in the present matter. The distinguishing feature in both the cases is that in the matter before the Hon'ble Supreme Court despite execution of the purported sale deed in the year 1970 the vendor-mortgager continued to be in possession of the property for a long period. It appears from reading of the judgment that the purchaser-mortgagee did not take steps for recovery of possession. In such circumstances the Hon'ble Supreme Court has upheld findings recorded by the Court that the document was one of mortgage and not an outright sale.

23. Similarly, the contention that details of talks with respect to finalization of delay are not mentioned in the sale deed will also not mean that such talks were never held. Different scribes/draftsman draft documents differently. Some mention all the details from the inception till the finalization of the deal i.e. the stage of parties arriving at *consensus ad idem* and then mention the agreed terms and conditions, whereas some simply mention the terms and conditions agreed upon. The fact that details of earlier negotiations and talks are not mentioned in the document is therefore, immaterial.

24. The defendant has specifically come up with a case of fraud. Pleadings in a case of fraud or misrepresentation must confirm to mandate of Order VI, Rule 4 of the Civil Procedure Code. Whereas the general rule of pleadings is that a plaintiff or defendant must mention material facts, Order VI Rule 4 of the Code of Civil Procedure makes an exception with respect to case of fraud, misrepresentation etc. The said provision states that pleading with respect to fraud misrepresentation etc. must contain the material facts with all material particulars. It is the case of defendant that he was in urgent need of money and taking unfair advantage of the haste during election time, his signature was obtained on blank paper and the same was used for preparing a false document of sale deed. The defendant has to stick to these allegations. He cannot conduct a roving inquiry in the matter with an attempt to make out a case of fraud. A case of fraud will have to be made out within the four corners of pleadings. In case where a party pleads fraud his pleadings and proof must go hand in hand. There cannot be any divergence between the pleadings and the evidence. In this regard it needs to be mentioned that it is the positive case of the defendant that the husband of the plaintiff and the broker were his friends and therefore, he relied on them while signing blank paper which was then misused to create the sale deed. This is the foundation of his case. However, in his cross examination, he has stated that he does not know the plaintiff and her husband. The pleading and evidence are therefore, self-contradictory. The statement in his deposition that he does not know the plaintiff and her husband is sufficient to demolish his case of fraud. It completely belies the case of the defendant that the husband of plaintiff and the broker were known to him and therefore, keeping faith in them , he signed blank paper which was misutilised to fabricate the sale deed.

25. It is undisputed that the defendant has signed the sale deed. He also does not dispute his thumb impression which appears on the sale deed. The defendant has signed all six pages of the sale deed. Perusal of the sale deed does not indicate that the content of the sale deed is typed in a manner so as to adjust the signatures of parties. At first five pages of the sale deed the signature at the defendant appears at the left hand side bottom of the page whereas on the last page the signature appears somewhere in the lower middle half of the page besides his photograph. Besides the signature on page no. 6 thumb impression of the defendant is appearing. The signatures and thumb impression of the plaintiff are below the signature and thumb impression of defendant. Signatures of witnesses appear thereafter. The manner in which the signatures and thumb impressions appear in the document does not create any doubt with respect to due execution. The case of the defendant in that his signature was obtained on blank paper is completely unbelievable. It must also be mentioned that the pleading in paragraphs 1, 3 and 9(b) in the written statement-cum-counter claim is regarding signature and thumb impression on a blank paper and not blank papers. However, in paragraph 9(a) it is stated that signatures were obtained on blank papers. The pleadings are clearly inconsistent. There is no plausible explanation by the defendant for the signatures that appear on all the pages of the sale deed. Apart from this, the learned Courts have rightly held that there is no explanation with respect to the photograph, Aadhar Card and PAN Card of the defendant, which are annexed with the sale deed.

26. The Hon'ble Supreme Court has in the matter of ***Grasim Industries Ltd. and Ors. Vs. Agarwal Steel*** reported in ***(2010) 1 SCC 83*** held that when a person signs a document, there is a presumption that he has read the document properly and has understood it and only then he has affixed his signature on the document. The Hon'ble Supreme Court has stated that unless such a presumption is drawn, no signature on a document can ever be accepted. It is further held that a presumption is stronger, when the signatures are of businessmen who are careful people who normally do not sign document without reading and understanding them. What applies to a businessmen should also apply to a politician like the defendant.

27. It was therefore for the defendant to plead and prove his case properly to dislodge the said presumption. However the pleadings of the respondent are insufficient to dislodge the presumption. The pleadings do not address all the adverse circumstances that appear on record.

28. It is cardinal principle of law that burden of proving fraud always lies upon a person who alleges it. Fraud is required to be pleaded properly and then proved strictly in accordance with the pleadings. Absence of proper pleadings with all particulars do not even give rise to an issue on case of fraud. If the pleadings are not clear, precise and specific, case of fraud set up by a party cannot be even be taken up for consideration. In such cases it must be held that no triable issue is made out. Reliance in this regard can be placed on judgment of the Hon'ble Supreme Court in the matter of ***Bishnudeo Narayan Vs. Seogeni Rai*** reported in ***1951 SC 280 .***

> *"... It is also to be observed that no proper particulars have been furnished. Now if there is one rule which is better established than any other, it is that in cases of fraud, undue influence and coercion, the parties pleading it must set forth full particulars and the case can only be decided on the particulars as laid. There can be no departure from them in evidence. General allegations are insufficient even to amount to an averment of fraud of which any court ought to take notice however strong the language in which they are couched may be, and the same applies to undue influence and coercion."*

29. The judgments in the matter of ***Major Gen. Darshan Singh Vs. Brij Bhushan Choudhary*** reported in ***(2024) 3 SCC 489*** and ***Zarina Siddiqui Vs. A. Ramalingam Alias R. Amarnathan*** reported in ***(2015) 1 SCC 705*** relied by the appellant, reiterate the settled legal position that a plaintiff who makes false statement in the plaint is not entitled to discretionary relief of specific performance of contract. In the case of ***Major Gen. Darshan Singh*** (supra), the issue was as to whether the vendor had entered into agreement of sale in his individual capacity or in the capacity of Karta of the Joint Hindu Family. The agreement did not refer to the vendor as Karta however, in the draft of sale deed his status was shown as Karta of the Joint Hindu Family. The plaintiff in the said case had played the said mischief. In view of the aforesaid Supreme Court has held that the plaintiff was not entitled for discretionary relief of specific performance of contract.

30. In the case of ***Zarina Siddiqui*** (supra), the defendant No. 2 held a registered power of attorney on behalf of defendant No. 1 to sell the property of the defendant No. 1. However, the defendants made a false statement that the power of attorney merely authorized the defendant No. 2 to manage the property. The defendants withheld the power of attorney with a view to mislead the Court. The defendants entered into agreements of sale and received part sale consideration and thereafter denied the agreements. The plaintiff filed a photo copy of power of attorney which indicated that the defendant No. 2 was authorized to sell the property as constituted attorney for defendant No. 1. In view of such conduct, the Hon'ble Supreme Court has strongly deprecated the conduct of the defendants.

31. The judgment rather supports the case of the respondent plaintiff. The conduct of the appellant defendant in the present case itself is questionable. The defendant was in need of money. He received sale consideration of Rs. 60,70,000/- from the plaintiff and executed the sale deed in her favour. However having received the total amount of sale consideration, he did not turn up completing formalities regarding registration of the sale deed. He avoided the plaintiff and even ignored letters issued from the office of Sub-Registrar for completing the sale transaction. He has come forward with a lame explanation that his signature was obtained on blank paper, which was misused to create the sale deed. However, as mentioned above , his signatures appear on all pages of the sale deed for which no explanation is offered in the written statement and counter claim. Likewise, there is no explanation forthcoming with respect to his identification documents and other documents relating to the suit property, which are annexed with the sale deed. It is obvious and in the absence of any explanation it has to be presumed that the defendant himself had provided said documents to the plaintiff for filing the same along with the sale deed in order to complete the formalities of registration. The defendant obtained amount of sale consideration from plaintiff on promise to sell the property. However, having received the entire sale consideration, the defendant dishonestly retracted from the transaction and is offering explanation which on the face of it is false. The conduct of the defendant appellant is deprecable.

32. Having regard to the aforesaid, I am of the considered opinion that both the learned Courts have considered to controversy involved in the matter in great detail and have arrived at just proper and correct conclusion in decreeing the suit filed by the respondent plaintiff and dismissing the counter claim filed by the appellant defendant. In the result, I find no reason to interfere with the concurrent judgments by the learned Trial Court and First Appellate Court. The second appeal is without any substance and is **dismissed** as such.

[ROHIT W. JOSHI]
JUDGE

KS_Kamble/