



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
SECOND APPEAL NO.50 OF 2025
WITH
CIVIL APPLICATION NO.1115 OF 2025**

Vishnudas S/o Bankatlal Dhoot (Deceased),
Through L. Rs.

1] Pradipkumar S/o Vishnudasji Dhoot [Deceased]
Through L.Rs.

1/1] Chetankumar S/o Pradipkumar Dhoot,
Age: 38 years, Occ: Business,
R/o. Lokhand Galli, Latur.

1/2] Ravi S/o Pradipkumar Dhoot,
Age: 34 years, Occ: Education,
R/o. Lokhand Galli, Latur.

1/3] Smt. Sheela Pradipkumar Dhoot,
Age : 57 years, Occu. Household,
R/o. Lokhand Galli, Latur.

2] Sau. Satyawati W/o Kirankumar Bharadiya,
Age : 57 years, Occu. Household
R/o. Housing Colony, Ambajogai,
District – Beed.

3] Sau. Chitrakala @ Vishnudasji
Age : 57 years, Occu. Household,
R/o. Aurad (Shahajani),
Taluka – Nilanga.7

4] Jagdish S/o Vishnudasji Dhoot,
Age : 54 years, Occu. Business,
R/o. Lokhand Galli, Latur.

5] Kamallata W/o Vishnudasji Dhoot,
Age: 85 years, Occu. Household,
R/o. Lokhand Galli, Latur.

..Appellants
(Orig. Defendants)

Versus

Rajesh Kanhaiyalal Mundada,
Age: 50 years, Occ: Business,
R/o. Moti Nagar, Latur.

..Respondent
(Orig. Plaintiff)

...
Mr. P. R. Katneshwarkar, Senior Advocate i/by. Mr. S. S. Rathi,
Advocate for the Appellants.
Mr. S. V. Dixit, Advocate for Respondent.

...
CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 05th FEBRUARY, 2025.
PRONOUNCE ON : 26th FEBRUARY, 2025.

JUDGMENT:-

1. The appellants/original defendants have filed present Second Appeal impugning judgment and decree dated 08.07.2024 passed by the Principal District Judge, Latur in Regular Civil Appeal No.173/2015, thereby upholding judgment and decree dated 31.01.2014 passed by Civil Judge, Senior Division, Latur in Special Civil Suit No.95/2007. (Hereinafter, parties are referred to by their original status for the sake of convenience and brevity).

2. The respondent/plaintiff instituted Special Civil Suit No.95/2007 seeking decree for specific performance of contract on the basis of agreement to sale dated 23.02.2004 executed by defendants in respect of suit plot being Survey No.37 situated within Municipal limits of Latur. According to plaintiff, suit land was originally owned by Jawahar Sahakari Kapus Utpadak Soot Girani Limited, Latur, which went into liquidation. The defendants alongwith two others purchased 75.25 R land out of Survey No.37 from Liquidator. Initially, purchasers jointly possessed the land. Later on, it was partitioned. The suit plot was

allotted to the share of defendants. The defendants offered plot for sell to plaintiff for total consideration of Rs.32,00,000/-. Accordingly, agreement to sale dated 23.02.2004 was executed. The plaintiff paid amount of Rs.5,00,000/- by way of earnest money at the time of execution of agreement in presence of witnesses. Although plaintiff was always ready and willing to perform his part of the contract, as per condition in the agreement, hutments present at suit site were not removed by defendants. The time was not essence of the contract.

3. The plaintiff was waiting for removal of hutments, which were ultimately removed in the year 2005. The plaintiff contacted defendants and expressed his readiness and willingness to pay balance consideration, but defendants avoided to perform their part of contract. Lastly, plaintiff issued legal notice dated 11.08.2005 to defendants, which was falsely replied by them on 22.08.2005, stating that agreement to sale has been orally canceled. Again plaintiff approached defendants with help of Mediator. At that time, defendants represented that they would like to negotiate and plaintiff shall not resort to file suit. Although several rounds of negotiation were held, nothing fruitful came out. On 08.06.2007, defendants flatly refused to execute sale deed that gave cause of action to file present suit.

4. The defendants refuted plaintiff's claim alleging that it is based on fabricated documents. They contend that property purchased from Liquidator was joint. There was no division or partition. Hence, it cannot be transferred in the manner proposed by plaintiff. It is further contended that son of defendant was in urgent need of money to satisfy private loan. Hence, transaction was to be completed before June-2004. The time was very much essence of the contract. The plaintiff was never ready and willing to perform his part of the contract. He failed to comply his obligation before 30.06.2004.

5. The Trial Court framed issues based on pleadings of the parties, recorded evidence, finally accepted case of the plaintiff and decreed suit. Aggrieved defendants filed Appeal before District Judge at Latur, who dismissed same upholding decree of Trial Court, hence, this Second Appeal.

6. Mr. Katneshwarkar, learned Senior Advocate appearing for the appellants would submit that Courts below erred in decreeing the suit of the plaintiff, which has been filed after three years from the date of execution of agreement. According to him, time was the essence of contract looking to the exigency of defendants, who was in urgent need of money. Similarly, plaintiff failed to prove his readiness and willingness to perform his part of contract in terms of Section 16 (C) of the Specific Relief Act. According to him,

aforesaid aspects of matter raises substantial questions of law in this Second Appeal. In support of his contentions he relies upon observations of Supreme Court of India in following cases:

1. ***Usha Devi and Others Vs. Ram Kumar Singh and Others*¹.**
2. ***Rajeshwari Vs. Puran Indoria*².**
3. ***B. K. Sri Harsha (Dead) by L.Rs. And Another Vs. Bharat Heavy Electricals Ltd.*³.**
4. ***His Holiness Acharya Swami Ganesh Dassji Vs. Sita Ram Thapar*⁴.**

7. Per contra, Mr. Dixit, learned Advocate appearing for the respondent submits that Courts below have elaborately considered aforesaid aspects of the matter and recorded concurrent findings of facts that plaintiff was always ready and willing to perform his part of contract, so also time was not essence of the contract in facts of the present case.

8. Having considered submissions advanced, apparently substantial questions of law are proposed for consideration on two aspects of the matter. Firstly, as to whether the time was essence of contract and secondly, as to whether plaintiff was ready and willing to perform his part of contract and complies requirement under Section 16(C) of Specific Relief Act.

¹ 2024 SCC OnLine SC 1915.

² (2005) 7 SCC 60.

³ (2008) 4 SCC 48.

⁴ (1996) 4 SCC 526.

9. On perusal of agreement to sale, following facts can be highlighted:

- (i) On 23.02.2004, agreement entered between parties as to the sell of suit property.
- (ii) The total consideration was fixed to Rs.32,00,000/-, out of which amount of Rs.5,00,000/- was parted by plaintiff towards earnest money.
- (iii) The balance of Rs.27,00,000/- was to be paid at the time of execution of sale deed.
- (iv) The sale deed was to be executed by end of June, particularly after execution of sale deed by Govindpurkar (owner of part of land).
- (v) The defendant was intending to sell the suit land to satisfy his family needs and purchase another suitable property.
- (vi) The possession was to be handed over as per measurement to be carried before execution of sale deed.

10. Plain reading of the agreement nowhere stipulates that vendor had specific exigency to complete transaction within stipulated period. Although it was generally agreed to complete transaction by end of June, the condition precedent was execution of sale deed by Govindpurkar. The agreement to sale nowhere provides specific consequences of delay in completion of transaction beyond June. Pertinently, sale deed of Govindpurkar has been

executed on 06.04.2005. Thereafter on 11.08.2005, plaintiff issued notice asking defendant to complete transaction. On 22.08.2005, defendant replied notice stating that time was essence of contract and due to non-adherence, agreement has been orally canceled.

11. The aforesaid sequence of events together, with the contents of the agreement to sale and reply notice would show that time was never essence of contract. The plaintiff has first time introduced such defence in his reply notice. From conduct of parties and covenant in agreement to sale, it is not discernible that defendant entered into agreement with specific exigency in his mind. Therefore, first contention raised on behalf of defendant/appellant that time was essence of contract cannot be countenanced. The Trial Court as well as Appellate Court concurrently held that defendant failed to prove that time was essence of contract. No perversity is discernible in findings. Hence, no substantial question of law would emerge for consideration in this Second Appeal on this aspect.

12. The second proposed substantial question of law is as to alleged non-fulfillment of mandate of Section 16(C) of the Specific Relief Act. It is trite that plaintiff has to plead and prove his readiness and willingness to perform part of contract while seeking decree of specific performance of contract. It is argued on behalf of defendant that plaintiff failed to perform his part of contract on or

before 30.06.2004. Eventually, by oral agreement as well as act of parties, such contract has been canceled. The evidence on record depicts that there is hand written insertion that sale deed shall be executed by **June of year 2004**. It is also matter of record that condition precedent for execution of sale deed was execution of sale deed by Govindpurkar in favour of plaintiff. There is no further stipulation as to within how much time after sale deed of Govindpurkar, subject transaction was to be completed. The stipulation in agreement would further show that defendant was to carry the measurement, fix the boundaries, execute sale deed and hand over possession at the time of execution of sale deed as per boundaries fixed on measurement. It is also matter of record that within short span of execution of sale deed by Govindpurkar, plaintiff issued notice dated 11.08.2005 asking defendant to execute sale deed and defendant replied that agreement has been orally canceled. If that is so, the delay in completion of transaction cannot be attributed to defendant.

13. Plaintiff has specifically pleaded that he was always ready and willing to perform his part of contract. Although it is contended on behalf of defendant that plaintiff was not having sufficient funds, on the basis of statement in cross-examination of plaintiff, plaintiff has explained that his debtors were owing him the amount of Rs.27,00,000/- and he was intending to take finance

from Shivshakit Developers. The Appellate Court observed that defendant has admitted that plaintiff's brother-in-law namely Shamsundar Gilda is contractor having big turn over. He used to take loan from Bank and private money lender. His borrowings are from Rs.25 lakhs to Rs.5 crores. Therefore, Courts below accepted financial capacity of plaintiff to arrange Rs.27,00,000/- required for completing transaction.

14. So far as willingness is concerned, plaintiff came with a case that he started pursuing defendant to execute sale deed since date of execution of sale deed by Govindpurkar, but defendant killed time and protracted transaction. On 08.06.2007, defendant refused to execute sale deed, hence suit has been filed. Apparently, suit is within period of limitation. Both the Courts have recorded findings that delay in filing suit has been caused due to tactics played by defendant and plaintiff cannot be blamed for delay. The Appellate Court relying upon judgment of Supreme Court of India in case of *P. Daivasigamani Vs. S. Sambandan*⁵ observed that mere delay in filing of suit for specific performance, without reference to the conduct of the plaintiff, cannot be a ground for refusing the said relief, when the suit was filed within the statutory time limit. Both the Courts have observed that although grant of decree of specific performance is discretionary relief, in absence of material to show that plaintiff would derive unfair

⁵ AIR 2022 SC 5009.

advantage and defendant would face undue hardship, specific performance shall not be refused. In present case, no such circumstances are brought on record, except statement that there is escalation of land prices. However, that itself cannot be ground to refuse specific performance. Since there are concurrent finding on both issue i.e. readiness and willingness of plaintiff and that time was not essence of contract, this Court would not venture into such findings. At this stage reference can be given to law espoused by Supreme Court of India in case of ***Gurdev Kaur and Ors. Vs. Kaki and Ors.***⁶, wherein in paragraph no.69, the Supreme Court observed as under:

“Now, after 1976 Amendment, the scope of Section 100 has been drastically curtailed and narrowed down. The High Courts would have jurisdiction of interfering under Section 100 C.P.C. only in a case where substantial questions of law are involved and those questions have been clearly formulated in the memorandum of appeal. At the time of admission of the second appeal, it is the bounden duty and obligation of the High Court to formulate substantial questions of law and then only the High Court is permitted to proceed with the case to decide those questions of law. The language used in the amended section specifically incorporates the words as "substantial question of law" which is indicative of the legislative intention. It must be clearly understood that the legislative intention was very clear that legislature never wanted second appeal to become "third trial on facts" or "one more dice in the gamble".”

15. In view of aforesaid exposition of law, no case is made out to cause interference in concurrent findings of facts, which are based on appreciation of evidence. No substantial question of law arises for consideration in this Second Appeal.

⁶ AIR 2006 SC 1975.

16. Consequently, Second Appeal sans merit and accordingly stands dismissed.

17. In view of dismissal of Second Appeal, nothing survives in Civil Application and same is accordingly disposed of.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/February-2025