



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 57 OF 2025
WITH
CIVIL APPLICATION NO. 1441 OF 2025
(FOR STAY)
IN
SECOND APPEAL NO. 57 OF 2025

Niranjan Dharamdas Lokhande
Since deceased through :

1. Mangal Niranjan Lokhande,
Age; 53 years, Occ. Household,
2. Meghraj Niranjan Lokhande,
Age; 32 years, Occ. Business,
3. Surekha Niranjan Lokhande,
Age; 29 years, Occ. Household,

All R/o House No. 919,
Saurabhnagar, Bhingar,
Taluka and District Ahmednagar.

...APPELLANTS
(Original Defendants)

VERSUS

Padmakar Ramesh Harba,
Age; 55 years, Occ. Business,
R/o; House No. 452, Patil Galli,
Bhingar Ahmednagar.

...RESPONDENT
(Original Plaintiff)

.....
Mr. R.S. Kasar : Learned Advocate for Appellants
Mr. A.S. Bayas h/f Mr. G.B. Chate : Learned Advocate for Respondent
.....

CORAM : S. G. CHAPALGAONKAR, J.

Date of reservation : 26.02.2025
Date of Pronouncement : 04.03.2025

JUDGMENT :

1. Appellants (LRs of Original defendant) impugns judgment and decree dated 12.07.2024 passed by Adhoc District Judge-1, Ahmednagar in Regular Civil Appeal No. 148 of 2019, thereby upholding judgment and decree dated 28.02.,2019 passed by Civil Judge, Senior Division, Ahmednagar in Regular Civil Suit No. 716 of 2012. (Hereinafter the parties are referred by their original nomenclatures in trial Court).

2. Respondent/Plaintiff instituted RCS No. 716 of 2012 seeking relief of specific performance of contract on basis of agreement to sale dated 28.05.2011 executed by defendant in respect of suit house. It is contention of plaintiff that defendant was in need of money to clear dues of many persons and also have family requirements. Defendant offered him to sale property for a consideration of Rs. 4,25,000/-. Accordingly, agreement to sale was executed. Defendant accepted amount of Rs. 4,00,000/- as an earnest money at the time of execution of agreement to sale before Public Notary and in presence of two witnesses. It was agreed that sale deed will be executed on or before 29.08.2011 and balance of consideration would be paid at the time of execution of sale deed. Plaintiff issued a public notice dated 06.06.2011 calling upon objections from general public regarding their interest in suit property and his intention to purchase the same. Later on, plaintiff noted reluctance of defendant to execute sale deed, he issued legal notice dated 14.10.2011 calling upon him to remain present in the office of Sub Registrar to execute sale deed,

however, defendant did not turn up to office of Sub Registrar, hence cause of action arose to file suit.

3. Defendant refuted plaintiff's claim contending that plaintiff is money lender. Defendants had obtained loan on interest from plaintiff. Document was executed by way of security to loan. Although entire amount along with interest is already parted with to plaintiff, he filed false suit on the basis of agreement to sale.

4. Trial Court framed issues, recorded evidence of witnesses, finally decreed suit holding that plaintiff proved execution of agreement to sale and he was always ready and willing to perform his part of contract eventually entitled for decree of specific performance of contract.

5. Aggrieved defendant filed Regular Civil Appeal bearing No. 148 of 2019 before learned Adhoc District Judge-1, Ahmednagar, which has been dismissed upholding judgment and decree of trial Court.

6. Mr. Kasar, learned Advocate appearing for appellants/defendants would submit that plaintiff is money lender. By inviting attention of this Court to the cross-examination of plaintiff he submits that plaintiff has instituted many suits for recovery of amount. Similarly, he has instituted cheque bounce cases against some persons. According to Mr. Kasar aforesaid admission of plaintiff clearly suggests his engagement in money lending business. He would further point out that loan was outstanding against defendant, charge of said loan was taken on property. Defendants were in financial duress, therefore, they had

obtained loan and executed document by way of security.

7. Mr. Bayas, learned Advocate appearing for plaintiff submits that all these contentions are considered by both Courts below and recorded concurrent findings of fact that transaction between parties was intended for sale. Defence put forth by defendant has been rejected.

8. Having considered submissions advanced and reasoning adopted by Courts below, it can be observed that defendants never disputed execution of agreement to sale dated 28.05.2011 in favour of plaintiff. There is no denial as to receipt of earnest money of RS. 4,00,000/-, out of total consideration of Rs. 4,25,000/-. In this background, defendants contend that it was money lending transaction and agreement to sale was not intended to be acted upon, it can be said that except bare words, defendant could bring on record any evidence in support of their defence. On the other hand, plaintiff entered into witness box. Evidence of Public Notary, Mr. Baldota has been recorded on the point of agreement to sale. Since defendant Niranjana Dharamdas Lokhande expired during pendency of suit, his legal representative Mr. Meghraj examined himself in support of his defence. The Courts below have rightly observed that as per Section 92 of the Indian Evidence Act oral evidence is admissible, however, it prohibits evidence against written document for purpose of addition, contradiction and verifying its terms. It is true that Proviso-II to Section 92 permits leading of evidence to show existence of any separate oral agreement between parties, which is not consistent with terms. In present case evidence to

demonstrate independent agreement between parties as is permissible under Proviso to Section 92 of Indian Evidence Act is not brought on record. Merely on basis of pending proceedings instituted by plaintiff for recovery of amount, presumption cannot be drawn that he was in the business of money lending.

9. Mr. Kasar, would further submits that Courts below have not considered question of hardship to defendant. In support of his contention he relied upon judgment in the case of **Bal Krishna and Another Vs. Bhagwan Das (Dead) and Others reported in 2008 AIR SC 1786**. He tried to demonstrate that LR's of defendant are residing in suit house and grant of decree would cause greater hardship to them. There cannot be dispute that grant of decree of specific performance is a discretion of Court, where contract would involve some hardship on defendants which they did not force, Court may decline to exercise discretion and refuse to grant decree.

10. In present case, there is nothing to hold that plaintiff would have unfair advantage and defendant would suffer unforeseen hardship. On the other hand, one can find that out of agreed consideration of Rs. 4,25,000/-, defendant had received amount of Rs. 4,00,000/- by way of earnest money. Present suit is brought within a period of one year from date of execution of document. Meanwhile, plaintiff had issued legal notice and called upon defendant to execute sale deed. Courts below have dealt with aforesaid aspect and recorded concurrent findings that issue of hardship does not advance cause of defendants. In that view of the

matter, no substantial question of law arises for consideration in this appeal. Second Appeal stands dismissed. Pending Civil Application, if any, stands disposed off.

(S. G. CHAPALGAONKAR)
JUDGE

mahajansb/