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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**SECOND APPEAL NO. 617 OF 2023
WITH
CIVIL APPLICATION NO. 6885 OF 2024**

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Sheshrao s/o. Nivruttirao Tambe,
Age 44 years, Occ. Nil,
R/o. Bundelpura, Beed, Tq. And Dist. Beed. .. Appellant

VERSEUS

Prashant s/o. Marotirao Ingole,
Age 46 years, Occ. Business & Agriculture,
R/o. Aher-Dhanora, Tq. And Dist. Beed. .. Respondent

...

Mr. V.D. Salunke, Advocate holding for Mr. M.V. Salunke, Advocate for
appellant.

Mr. M.K. Deshpande, Advocate for respondent.

CORAM : S.G. CHAPALGAONKAR, J.

DATE : 3rd JANUARY, 2025.

JUDGMENT :-

1. The appellant/original defendant takes exception to the judgment and decree dated 11.9.2023 passed by District Judge – 2, Beed in R.C.A. No. 34 of 2021 thereby upholding the judgment and decree dated 5.3.2019 passed by Civil Judge (Junior Division) Beed in Spl. Civil Suit No. 28 of 2014, thereby decreeing the suit for specific performance of contract instituted by respondent/plaintiff.

2. For the sake of convenience, parties are referred to, as per their original status.

3. Respondent/plaintiff instituted a suit seeking specific performance of contract based on agreement to sale dated 11.7.2012 in respect of the suit property i.e. Flat in Shubham Apartments situated at C.T.S. No. 1923, within the limits of Municipal Council, Beed. It was the case of plaintiff that defendant agreed to sale the said property to plaintiff for consideration of Rs. 10,37,000/-. An agreement to that effect was executed and an amount of Rs. 8,37,000/- was paid by way of earnest amount. At the time of agreement, the said flat was under construction and on completion of construction within 9 months, sale deed was to be executed on payment of balance consideration amount. Plaintiff further pleads that since construction could not be completed, defendant sought further time till 9.6.2013 and executed deed of extension dated 9.4.2013. Again, similar deed of extension was executed on 11.8.2013. Thereafter, defendant avoided to execute the sale deed. Consequently, plaintiff issued a legal notice dated 10.9.2013. Defendant failed to reply the legal notice or perform his part of the contract. Plaintiff was always ready and willing to perform his part of contract. However, defendant avoided. Hence, plaintiff instituted a suit for reliefs as claimed.

4. Defendant refuted the claim of plaintiff. He admitted execution of agreement to sale and extension deeds, however, contends that it was by way of a collateral security for payment of loan, which was borrowed by him from plaintiff. It is the case of defendant that his

mother was suffering from Cancer, as such he was in need of amount. Therefore, he approached plaintiff-money lender and received loan amount of Rs. 2 Lakhs, for which he got registered the agreement to sale. According to defendant, suit property was kept as security of loan transaction.

5. The trial court framed issues, recorded evidence of parties and finally concluded that plaintiff proved the agreement to sale as well as payment of earnest money of Rs. 8,37,000/- and hence, decreed the suit directing defendant to execute sale deed in favour of plaintiff.

6. Aggrieved defendant filed R.C.A. No. 34 of 2021 before the District Judge, Beed. Learned District judge concurred with the finding recorded by trial court and dismissed the appeal.

7. Mr. V.D. Salunke, learned advocate appearing for the appellant submits that in absence of a specific pleading as regards to readiness and willingness of contract on part of plaintiff, courts below have committed gross error in granting a decree of specific performance of contract. By inviting attention of this court to the provisions of Section 16-C of the Specific Relief Act, he would submit that the mandate under law is not complied. The pleading sought to be relied by plaintiff in this regard sans basic requirement of law. He would, therefore, urge that the substantial question of law may be framed in this regard and appeal be admitted.

8. Mr. Salunke would further submit that although plaintiff contends service of legal notice prior to filing of suit, same was never

served upon defendant and a specific plea in this regard is taken in the written statement.

9. Per contra, Mr. M.K. Deshpande, learned advocate for respondent/defendant would submit that both the courts have concurrently recorded a finding that plaintiff has proved his readiness and willingness to perform his part of contract. No substantial question of law arises for consideration in this appeal and same be dismissed.

10. Having considered submissions advanced, it can be gathered from the contents of plaint that plaintiff has specifically pleaded in para.11 and 12 that he was always ready and willing to pay balance consideration of Rs. 2 Lakhs. However, defendant failed to complete construction and execute the sale deed. In para. 12 of the plaint, plaintiff pleaded that he was consistently pursuing defendant to comply with the agreement and for that purpose, plaintiff was ready to pay Rs. 2 Lakhs at the time of execution of sale deed before the Registrar. If aforesaid contents of the plaint alongwith oral evidence of plaintiff is considered, it cannot be said that there is no compliance of requirement of Section 16-C of the Specific Relief Act. Both the courts have concurrently held that plaintiff had parted with amount of Rs. 8,37,000/- out of total consideration of Rs. 10,37,000/-. Pertinently, defendant admitted in his cross-examination about the service of legal notice. Further, on two occasions, defendant has executed documents getting extension of time for performing his part of contract, as construction was incomplete. All these circumstances are sufficient to hold that plaintiff was always ready and willing to perform his part of contract and defendant was the defaulter.

11. So far as contention of Mr. Salunke that although service of notice is pleaded in the plaint, it is neither filed on record, nor document in support of service of such notice was tendered; in response to this contention Mr. Deshpande invited attention of this Court to the observations of the first appellate court, particularly, in para No.14, wherein, it is specifically observed that defendant admitted during cross examination that he received notice of plaintiff dated 10.9.2013, however, did not reply the same.

12. In view of aforesaid admission, non-filing of evidence regarding service of notice on defendant would be of no significance. In that view of the matter, no case for interference in concurrent finding is made out. No substantial question of law arises for consideration in this second appeal. Same stands dismissed. Civil application, if any, stands disposed of.

[S.G. CHAPALGAONKAR, J]

grt/-