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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 69 OF 2025

WITH

INTERIM APPLICATION NO. 1074 OF 2025

IN

SECOND APPEAL NO. 69 OF 2025

Sanjay Sura

.....Appellant

Vs.

Mangala Goski

.....Respondent

Mr. Sudhir C. Halli i/b Ms. Ruchira Halli for the appellant

CORAM : GAURI GODSE, J.

DATE : 29th JANUARY 2025

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ORDER:

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1. Heard learned counsel for the appellant. This appeal is preferred by the defendant to challenge the judgment and decree passed by the first Appellate Court granting specific performance in favour of the plaintiff. The trial Court had refused the prayer for specific performance and had partly decreed the suit for refund of the earnest amount. In an appeal preferred by the plaintiff, the trial Court's decree is set aside and the suit for specific performance is decreed.

2. Learned counsel for the appellant submits that there were two documents executed between the parties. The first document was styled as Isaar Paavti dated 23rd October 2012. He submits that as per the initial agreement between the parties, the total consideration was agreed as Rs. 17,51,000/- and an amount of Rs. 1,11,000/- was paid towards the earnest amount. He submits that out of balance amount, Rs. 4,00,000/- was to be paid on or before 30th November 2012 and the remaining consideration of Rs. 12,51,000/- was to be paid at the time of execution of the sale deed within two months as per the Isaar Paavti. He further submits that subsequently, a registered agreement was executed on 1st December 2012 and as per the terms and conditions of the agreement, the sale deed was to be executed on or before 1st February 2013. He submits that the discrepancies in both the agreements indicate that the transaction between the parties was not for a sale transaction but it was money lending transaction and the defendant had accepted the amount by way of a hand loan.

3. Learned counsel for the appellant further submits that though the trial Court answered the issues regarding execution of the agreement and the terms and conditions of the agreement in the affirmative, no specific findings on the issues are recorded by the trial Court. He

submits that both the Courts erred in not considering the discrepancies in the terms and conditions of the two agreements which would support the plaintiff's contention that there was no intention to execute the sale deed and the transaction was only a money lending transaction and the document was a registered by way of a security. Learned counsel for the appellant further submits that the plaintiff failed to prove her readiness and willingness. He submits that though the document was produced regarding sanction of loan in favour of the plaintiff, the document was not proved which indicates that the plaintiff was not ready with the balance consideration amount. He thus, submits that the findings recorded by the first Appellate Court on the readiness and willingness of the plaintiff is not supported by any evidence. He thus submits that all these grounds would raise substantial questions of law.

4. I have perused both the judgments. Execution of both the agreements is concurrently accepted by the Courts. The grounds raised on behalf of the appellant regarding discrepancies in the consideration amount recorded in the earlier agreement i.e. Isaar Paavti and the registered document is considered by both the Courts. Both the Courts have accepted that the total consideration as agreed

between the parties was Rs. 17,51,000/- The receipt of the part consideration is not disputed by the defendant. The registered agreement is dated 1st December 2012 which provides for time for execution of the sale deed upto 1st February 2013. The suit is immediately filed on 20th April 2013.

5. The first Appellate Court has considered the terms and conditions of the agreement between the parties. The registered agreement is accepted as an agreement in continuation of the Isaar Paavti. The clauses in the registered agreement are therefore accepted as a concluded terms and conditions between the parties. The ground of readiness and willingness is accepted in favour of the plaintiff by the first Appellate Court in view of the conduct of the plaintiff regarding part payment after execution of the Isaar Paavti. The notice issued to the defendant calling upon him to execute the sale deed refers to sanction of the loan in favour of the plaintiff. In response to the suit notice, the defendant filed a reply and denied the transactions.

6. The execution of the agreement is correctly appreciated by both the Courts by examining the evidence on record. The execution of the agreements is not disputed by the defendant. The objection raised by

the defendant is by contending that the contract between the parties was a loan transaction. However, nothing is pleaded and proved by the defendant regarding the terms and conditions of the loan transaction and the terms regarding repayment of the amount, if at all the transaction was of a loan between the parties.

7. Thus, considering the conduct of the plaintiff regarding part payment and the notice calling upon the defendant to execute the sale deed on sanction of a loan to the plaintiff, the first Appellate Court has correctly accepted the readiness and willingness on the part of the plaintiff to perform her part of contract. In view of the aforesaid facts of the case, the reasons recorded by the first Appellate Court in accepting the plaintiff's readiness and willingness to perform the contract cannot be faulted. The findings recorded by the first Appellate Court are based on correct appreciation of pleadings and evidence on record.

8. Learned counsel for the appellant submits that by filing cross objection, defendant had raised objections to the findings of acceptance of execution of the agreement and the terms and conditions of the agreement. He, however, submits that the first

Appellate Court has not dealt with the cross objection.

9. The grounds raised in the cross objection are part of the reasons discussed by the first Appellate Court for recording findings on execution of the contract as well as on readiness and willingness of the plaintiff. In view of the reasons recorded by the first Appellate Court, cross objections are dismissed as it is clearly recorded in paragraph 16 and the operative order of the first Appellate Court Judgment. I do not see any substance in the arguments raised on behalf of the appellant that the cross objection were not considered by the first Appellate Court.

10. I do not see any illegality or perversity in the reasons recorded by the first Appellate Court. The second appeal does not raise any other question of law.

11. Hence, the second appeal is dismissed.

12. In view of dismissal of second appeal, Interim Application No. 1074 of 2025 is disposed of as infructuous.

[GAURI GODSE, J.]