

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

SECOND APPEAL NO.830 OF 2024

Chandraprakash Diwanchand Bhasin V/S	Appellant
Ratan Vishwanath Koyle & Ors.	Respondents

**WITH
INTERIM APPLICATION NO.10279 OF 2024
(for stay)
IN
WRIT PETITION NO.830 OF 2024**

Chandraprakash Diwanchand Bhasin V/S	Applicant
Ratan Vishwanath Koyle & Ors.	Respondents

Mr. Shailendra S. Kanetkar *for the Appellant / Applicant.*

Mr. Vishwajeet P. Sawant, Senior Advocate with Mr. Prabhakar M. Jadhav *for Respondent No.1.*

**CORAM: SANDEEP V. MARNE, J.
DATE : 9 APRIL 2025.**

P.C.:

1 This Appeal is filed challenging concurrent findings recorded by the Trial and the Appellate Courts on the issues of execution of Agreement for Sale dated 7 December 2003 by the second Respondent (Defendant No.1) in favour of the first Respondent (Plaintiff) as well as readiness and willingness on the part of the Plaintiff to perform his part of the contract. On appreciation of evidence on record, the Trial Court has decreed Plaintiff's suit for specific performance by judgment and order

dated 23 January 2024 after holding that the Agreement for Sale was indeed executed and that the Plaintiff was ready and willing to perform his part of contract. The said findings of fact have been upheld by the first Appellate Court on re-appreciation of the evidence on record.

2 I have heard Mr. Kanetkar, the learned counsel appearing for the Appellant and Mr. Sawant, the learned Senior Advocate appearing for the first Respondent.

3 It is strenuously sought to be contended by Mr. Kanetkar that the findings recorded by the Trial and the First Appellate Courts on the issue of readiness and willingness on the part of the Plaintiff to perform his part of contract are perverse. He would submit that the First Appellate Court had erroneously shut the doors on the Appellant to question readiness and willingness of the Plaintiff on the ground that the Appellant is a subsequent purchaser. In my view, even if the Appellant is permitted to challenge the findings recorded by the Trial and the First Appellate Courts on the issue of Plaintiff's readiness and willingness, I am unable to trace any element of perversity in the concurrent findings recorded by both the Courts on the said issue. In the present case, Agreement for Sale was executed in favour of the Plaintiff by the first Defendant on 7 December 2003 on payment Rs. 50,000, out of agreed of consideration of Rs.10,50,000/-. Immediately in the next month, the first Defendant clandestinely executed an Agreement with the Appellant for sale of the same bungalow for consideration of

Rs.12,00,000/- out of which an amount of Rs.8,00,000/- was apparently paid by the Appellant to the first Defendant-Vendor. Plaintiff specifically pleaded and proved that he had prepared two Demand Drafts of Rs.2,00,000/- and Rs.8,00,000/- for completion of the transaction. The said Demand Drafts were drawn on 1 March 2004. However, before the Plaintiff could handover the said Demand Drafts to the first Defendant-Vendor, he came across public notice dated 4 March 2004 issued by the Appellant claiming execution of Agreement dated 29 January 2004. On account of Appellant's entry on the scene, noticed by the Plaintiff for the first time on 4 March 2004, he apparently could not handover the two Demand Drafts prepared on 1 March 2004 to the first Defendant-Vendor. The Plaintiff was instead required to undertake correspondence with the Appellant contesting his claim of purchase of the suit property.

4 In the present case, Plaintiff's readiness to complete the transaction is fully proved on account of two Demand Drafts of Rs.2,00,000/- and Rs.8,00,000/- being kept ready by him on 1 March 2004. He had thus arranged for the necessary funds for completion of the transaction and was about to pay balance amount of consideration to the first Defendant-Vendor.

5 So far as the issue of willingness is concerned, Mr. Kantekar has contended that willingness was not proved as the Plaintiff never attempted to tender the said two demand drafts to the first Defendant-Vendor. As observed above, within three days of preparation of the said two demand drafts, Plaintiff came

across public notice issued by the Appellant on 4 March 2004 and was required to be engage in correspondence with the Appellant. This appears to be the reason why Plaintiff, though ready with the balance amount of consideration, could not tender the same to the first Defendant-Vendor. Also, once Plaintiff acquired knowledge about execution of Agreement of Assignment dated 29 January 2004 with the third party, Plaintiff was not expected to approach the Vendor for handing over the demand drafts. This is not a case where the Vendor had waited for sufficiently long time for Plaintiff to pay balance amount of consideration and then entered into a fresh transaction with the Appellant. Therefore, the act of Plaintiff not tendering the prepared demand drafts to the vendor cannot be held against him for drawing the inference of his unwillingness to perform the contract.

6 Mr. Kanetkar has sought to highlight Plaintiff's conduct in cancelling the Demand Drafts on 15 June 2004 and 19 June 2004. After learning that the vendor had already entered into a transaction with the third party by accepting Rs.8,00,000/- and that the third party (Appellant) was not willing to cancel the transaction despite service of reply, Plaintiff was not supposed to keep his money towards the demand drafts blocked indefinitely. Therefore, Plaintiff's action of applying to his Bank for cancellation of the Demand Drafts cannot be a factor for inferring absence of willingness on his part to complete the transaction.

7 Mr. Kanetkar would then rely upon registration of Agreement of Assignment dated 29 January 2004 between him and the first Defendant-Vendor on 23 May 2004. According to him, upon execution of registered Agreement of Assignment, the title in the suit property passed on to the Appellant. I am unable to agree. The sale transaction between the Appellant and the first Defendant-Vendor was for Rs.12,00,000/- and even upto belated registration of the Agreement on 23 May 2004, the Appellant had not paid the entire amount of consideration to the Vendor. The Agreement specifically records that Rs.4,00,000/- remained to be paid for completion of the transaction. This is not a case of execution of Sale Deed, where title had passed on to the purchaser upon execution and registration of the Sale Deed. What is executed between the parties is mere Agreement, which would have fructified into a transaction of sale only after full consideration was paid. It cannot be that mere registration of an Agreement of Assignment would transfer title in respect of the property in favour of the proposed purchaser. The law expounded by the Apex Court about title passing on to the purchaser despite non-receipt of entire amount of sale consideration is applicable only in case of execution and registration of a Sale Deed. That principle cannot be extended to a case where parties have executed merely an Agreement for sale. What is registered on 23 May 2004 is not an 'Assignment Deed' contemplating completion of the transaction of assignment. But parties executed merely 'Agreement of Assignment' on 29 January 2004 and which expressed mere 'agreement' between the parties to complete sale transaction upon payment of balance consideration

of Rs.4,00,000/- which was agreed to be paid by the Appellant. The said 'agreement' was registered almost 5 months later and though Appellant had sufficient time to pay the balance consideration of Rs.4,00,000 in those 5 months, he did not pay the same to the vendor. Therefore, mere act of registration of the Agreement on 23 May 2004 did not transfer title in respect of the suit property in the name of the Appellant. Also, this is not a suit for declaration of title in favour of the Appellant, who failed to file a counterclaim to that effect. Therefore, the issue of Appellant becoming owner is totally irrelevant.

8 Considering the overall conspectus of the case, in my view, both the Trial and the first Appellate Courts have conducted a factual enquiry into the aspect of execution of the Agreement by the first Defendant-Vendor in favour of the Plaintiff and readiness and willingness his part to perform his part of contract. The enquiry was thus factual in nature before both the courts. No substantial question of law is involved in the present Appeal. I do not see any point in prolonging the litigation any longer, which has ensued between the parties for the last 20 long years, especially in absence of any substantial question of law. The Appeal is accordingly **rejected**.

9 In view disposal of the Second Appeal, nothing would survive in the Interim Application for stay and the same is also accordingly **disposed of**.

10 After the order is pronounced, Mr. Kanetkar would pray for stay on execution of a decree for a period of eight weeks. The

request is opposed by Mr. Sawant. Considering the findings recorded for dismissal of the Appeal, I am not inclined to grant stay to the execution of the decree, particularly after the Second Appeal has been dismissed. The request for stay is accordingly rejected.

(SANDEEP V. MARNE, J.)

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by
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