Iresh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 13455 OF 2024
INTERIM APPLICATION NO. 13456 OF 2024
IN
SECOND APPEAL ST NO. 22199 OF 2024

Defence City Developers Pvt. Ltd. A Private Lim. Company and anr .....Applicants

Vs.

Com. Sharad Keshav Deshpande and ors .....Respondents

Mr. Onkar Gawade i/b Mr. Jaydeep Deo for the applicants

CORAM : GAURI GODSE, J.

DATE : 14th JANUARY 2025

IRESH MASHAL

Digitally signed by IRESH MASHAL
Date: 2025.01.16 15:01:32 +0530

ORDER:

INTERIM APPLICATION NO. 13455 OF 2024:

1. This application is for condonation of delay of 5 months and 10 days in filing the second appeal. I have called upon learned counsel for the appellant to point out whether the second appeal raises any substantial question of law. The second appeal arises out of concurrent judgments and decrease directing defendant nos. 1 to 3 to pay ₹12 lakhs to the plaintiff with interest at 10% per annum.

2. Learned counsel for the appellant submits that the amount was

paid to defendant nos. 1 to 3 by the plaintiff and defendant nos. 4 and 5 He, therefore submits that the plaintiff alone would not be entitled to seek recovery of the amount. He submits that the plaintiff's claim is based on an oral agreement between the parties pursuant to which the amount was paid jointly by plaintiff and defendant nos. 4 and 5. He submits that the second appeal would raise substantial question of law on the point that whether the plaintiff alone would be entitled to recover the amount that was paid to defendant nos. 1 to 3 by plaintiff and defendant nos. 4 and 5.

3. To examine the submissions made on behalf of the appellant, I have perused both the judgments. Receipt of the amount by defendant nos. 1 to 3 is not in dispute. A perusal of the reasons recorded by both the Courts indicate that the parties had agreed to enter into an agreement for purchasing plot pursuant to which the amounts were paid by plaintiff and defendant nos. 4 and 5. However, the contract between the parties was not finalised. The plaintiff therefore, filed suit for recovering the amount paid to defendant nos. 1 to 3. There is no dispute that the transaction between the parties had failed. It is not the contention of defendant nos. 1 to 3 that the agreement between the parties still subsist. In view of these facts, defendant nos. 1 to 3 would

not be entitled to retain the amount admittedly received from the plaintiff.

4. Considering these admitted facts, the impugned judgments directing refund of the amount cannot be faulted. The ground raised on behalf of the appellant regarding entitlement to recover the amount given by defendant nos. 4 and 5 is not required to be examined at the behest of the appellants who have admittedly accepted the amount.

5. In view of the concurrent finding on facts recorded by both the Courts, the second appeal would not require any consideration by this Court.

6. In view of these facts, I do not find it necessary to issue notice to the respondents in the application for condonation of delay. In the facts and circumstances of the case, the delay is condoned and application is allowed.

7. For the reasons recorded above, no question of law arises in the second appeal. Hence, the second appeal is dismissed.

8. In view of dismissal of second appeal, all other pending applications stand disposed of as infructuous.

[GAURI GODSE, J.]