IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL (ST.) NO.5333 OF 2025
WITH
INTERIM APPLICATION NO.1902 OF 2025

Shri Mahavir Furniture …Appellant
thru' Jayant Raosaheb Jirage
Versus
Rajiv Murlidhar Kolekar …Respondent

Mr. P.R. Arjunwadkar i/by Ms. Prabha U. Badadare, Advocate for Appellant.

CORAM: MADHAV J. JAMDAR, J.
DATED : 6th August 2025

JUDGMENT:

1. Heard Mr. Arjunwadkar, learned Counsel appearing for the Appellant. He submits that following substantial questions of law arises in this Second Appeal:-

(i) Whether the finding recorded by both the Courts that time is the essence of the agreement dated 10th December 2014 is proper and legal?

(ii) Whether the Courts below without passing decree of declaration that the Suit agreement is cancelled, could have directed refund of earnest money?

(iii) Whether the interpretation of the agreement dated 10th December 2014 by the learned Courts that

the contract do not forbid recession of contract is proper and legal?

2. Before considering the substantial questions of law raised by Mr. Arjunwadkar, learned Counsel, it is necessary to set out certain admitted facts, which are set out in paragraph No.25 of the Judgment of the learned Trial Court. The said paragraph-25 reads as under :

> “25) To summarise admitted facts always help to concentrate on disputed fact, hence admitted facts are -
>
> (1) Plaintiff and defendants admitted the execution of agreement dated 10/12/2014 for sale of suit property for consideration of Rs.36,51,000/- and payment of earnest amount of Rs.7,02,100/-
>
> (2) There was 'B' tenure remark on the property card of suit property.
>
> (3) Defendants taken responsibility to obtain necessary permission to execute sale deed and removal of 'B' tenure remark.
>
> (4) End of month of April 2015 is cut off date for completion of transaction.
>
> (5) The plaintiff issued notice to defendants on 03/09/2015 and defendants replied the same on 01/10/2015.
>
> (6) The plaintiff again sent letter on 08/10/2015 and it was replied by defendants on 20/10/2015.

(7) Defendants obtained permission dated 08/10/2015 for deletion of 'B' tenure and effect of the same was given in property card on 14/01/2016."

3. The factual position on record shows that by agreement dated 10th December 2014, the Plaintiff agreed to purchase suit property for consideration of Rs.36,51,000/- and earnest money of Rs.7,02,100/- was paid. Admittedly, there was B-tenure remark on the property card of the suit property and the Appellants i.e. Defendants have taken complete responsibility to obtain necessary permission to execute sale-deed and removal of B-tenure remark. By said agreement dated 10th December 2014, end of month of April 2015 has been stipulated as cut off date for completion of transaction. Thereafter as the Defendant was not in a position to complete the suit transaction by 30th April 2015 the said period was extended upto 29th June 2015. As the Defendants failed to perform their part of the agreement, the Plaintiff by notice dated 3rd September 2015 cancelled the agreement and thereafter the Plaintiff filed suit on 17th October 2015 for declaration that the said agreement dated 10th December 2014 be declared as cancelled and for refund of said amount of Rs.7,02,100/-.

4. It is the case of the Plaintiff that by supplementary agreement dated 30th April 2015, time of completion of the agreement was extended till 29th June 2015 and the same was not complied with and therefore by notice dated 3rd September 2015, the said agreement was cancelled.

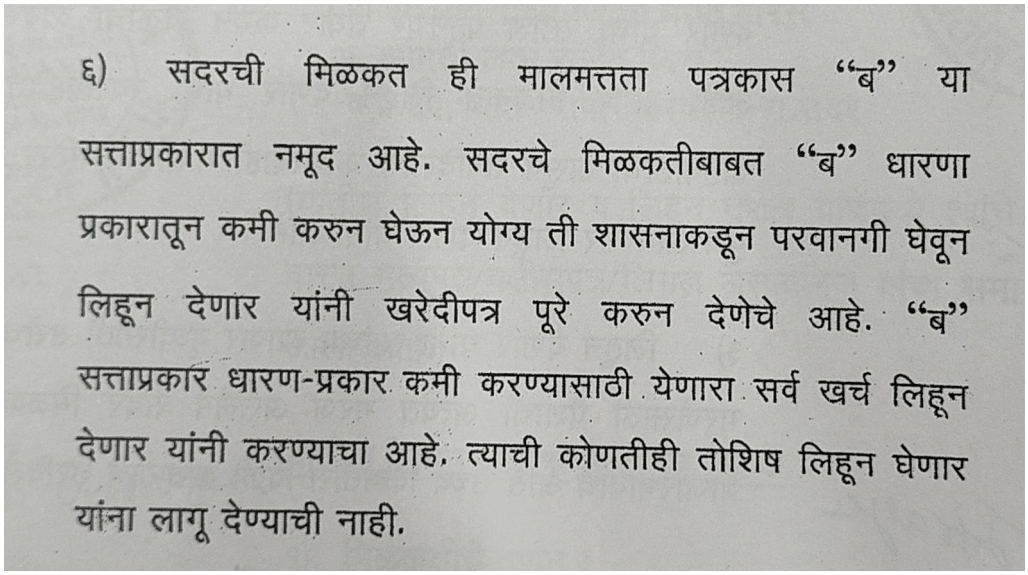
5. It is one of the submission of Mr. Arjunwadkar, learned Counsel for the Appellant that no relief has been sought by the Plaintiff with respect to the said supplementary agreement and therefore, the suit itself is not maintainable. However, by said supplementary agreement dated 30th April 2015, time which has been agreed by agreement dated 12th December 2014 has been merely extended and the same is not separate agreement. In any case, the factual position on record clearly shows that the Appellant could not comply with the terms and conditions within the time limit as agreed by agreement dated 10th December 2014 as extended by the supplementary agreement dated 30th April 2015 and therefore the Respondent has by notice dated 3rd September 2015 cancelled the suit agreement.

6. It is the submission of Mr. Arjunwadkar, learned Counsel that the time cannot be the essence of the contract as far as

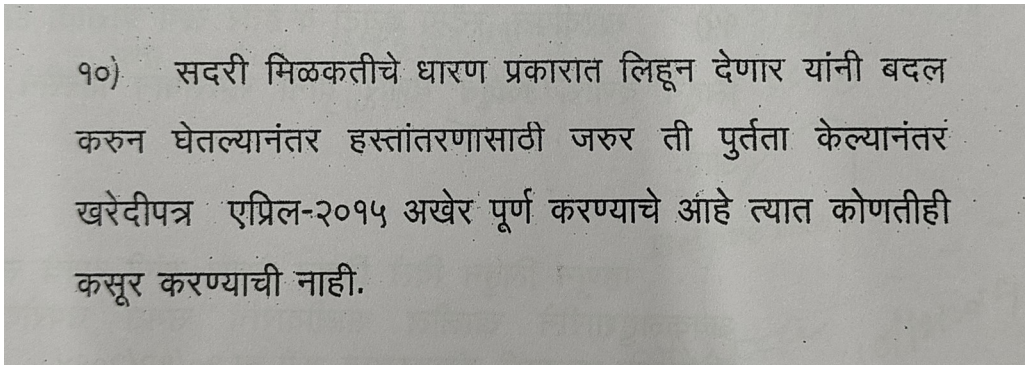
immovable property is concerned. However, generally it is correct that time cannot be the essence of the contract concerning the immovable property unless such an intention can be gathered either from the express terms of the contract or impliedly from the intention of the parties as expressed by the terms of the contract.

7. To analyse whether time is made essence of the contract, it is necessary to consider following aspects :-

i. Agreement dated 10th December 2014 *inter alia* contains following terms :-

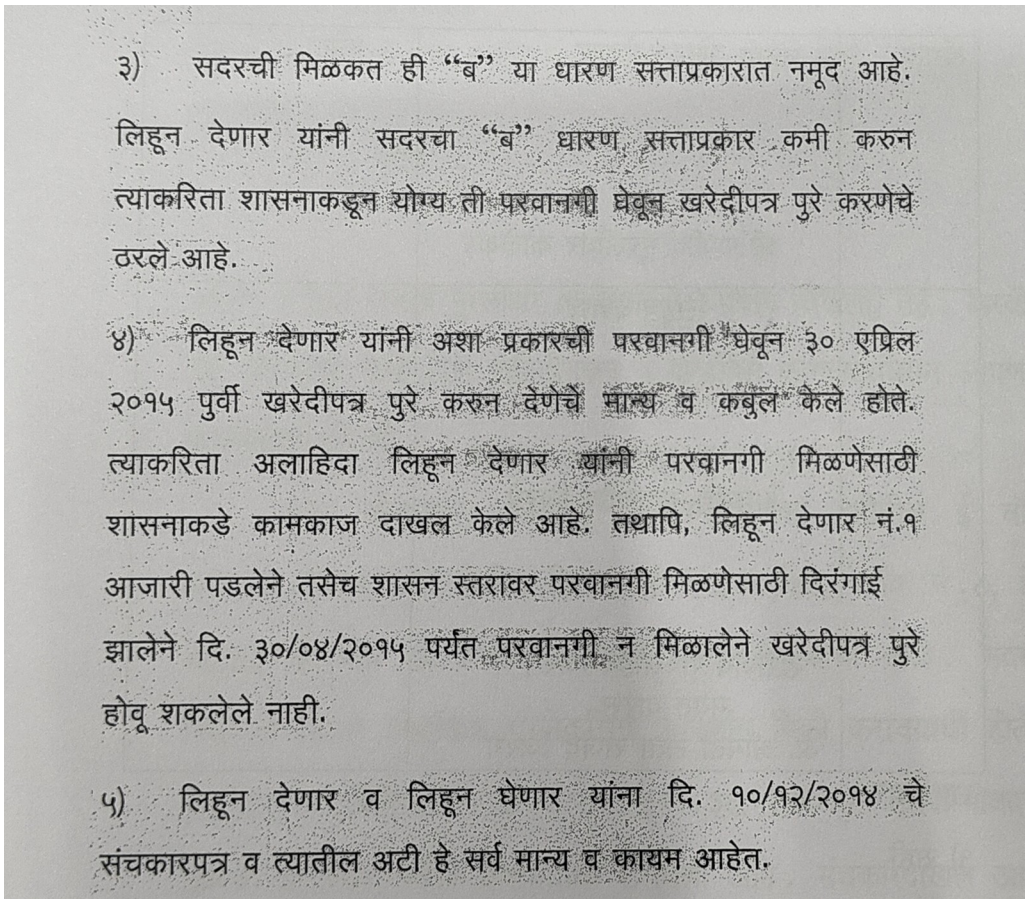


६) सदरची मिळकत ही मालमत्तता पत्रकास "ब" या सत्ताप्रकारात नमूद आहे. सदरचे मिळकतीबाबत "ब" धारणा प्रकारातून कमी करुन घेऊन योग्य ती शासनाकडून परवानगी घेवून लिहून देणार यांनी खरेदीपत्र पूरे करुन देणेचे आहे. "ब" सत्ताप्रकार धारण-प्रकार कमी करण्यासाठी येणारा सर्व खर्च लिहून देणार यांनी करण्याचा आहे. त्याची कोणतीही तोशिष लिहून घेणार यांना लागू देण्याची नाही.



१०) सदरी मिळकतीचे धारण प्रकारात लिहून देणार यांनी बदल करुन घेतल्यानंतर हस्तांतरणासाठी जरुर ती पुर्तता केल्यानंतर खरेदीपत्र एप्रिल-२०१५ अखेर पूर्ण करण्याचे आहे त्यात कोणतीही कसूर करण्याची नाही.

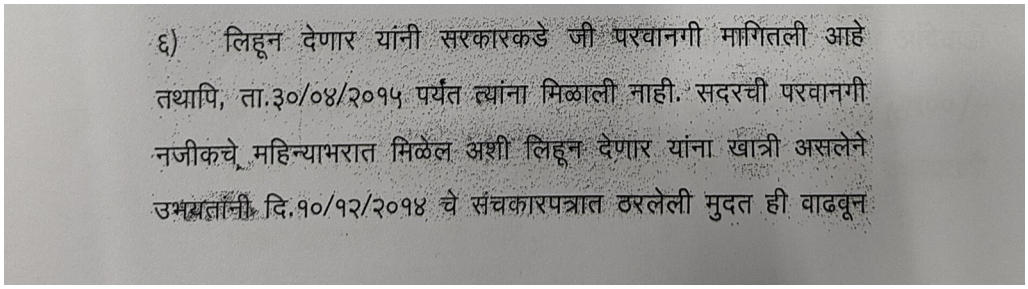
ii. Suppelementary Agreement dated 30th April 2015 *inter alia* contains following terms :-



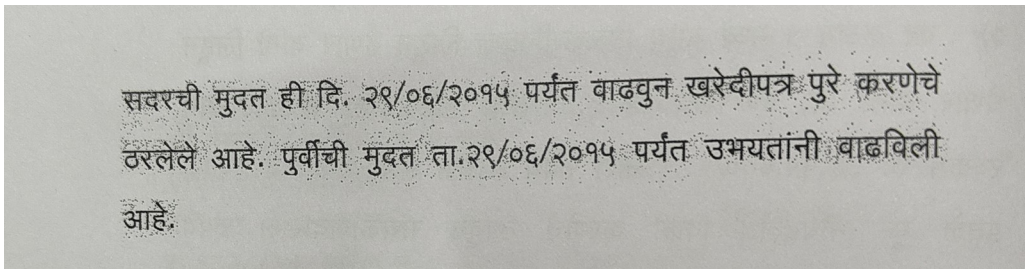
३) सदरची मिळकत ही "ब" या धारण सत्ताप्रकारात नमूद आहे. लिहून देणार यांनी सदरचा "ब" धारण सत्ताप्रकार कमी करुन त्याकरिता शासनाकडून योग्य ती परवानगी घेवून खरेदीपत्र पुरे करणेचे ठरले आहे.

४) लिहून देणार यांनी अशा प्रकारची परवानगी घेवून ३० एप्रिल २०१५ पुर्वी खरेदीपत्र पुरे करुन देणेचे मान्य व कबुल केले होते. त्याकरिता अलाहिदा लिहून देणार यांनी परवानगी मिळणेसाठी शासनाकडे कामकाज दाखल केले आहे. तथापि, लिहून देणार नं.१ आजारी पडलेने तसेच शासन स्तरावर परवानगी मिळणेसाठी दिरंगाई झालेने दि. ३०/०४/२०१५ पर्यंत परवानगी न मिळालेने खरेदीपत्र पुरे होवू शकलेले नाही.

५) लिहून देणार व लिहून घेणार यांना दि. १०/१२/२०१४ चे संचकारपत्र व त्यातील अटी हे सर्व मान्य व कायम आहेत.



६) लिहून देणार यांनी सरकारकडे जी परवानगी मागितली आहे तथापि, ता.३०/०४/२०१५ पर्यंत त्यांना मिळाली नाही. सदरची परवानगी नजीकचे महिन्याभरात मिळेल अशी लिहून देणार यांना खात्री असलेने उभयतांनी दि.१०/१२/२०१४ चे संचकारपत्रात ठरलेली मुदत ही वाढवून



सदरची मुदत ही दि. २९/०६/२०१५ पर्यंत वाढवुन खरेदीपत्र पुरे करणेचे ठरलेले आहे. पुर्वीची मुदत ता.२९/०६/२०१५ पर्यंत उभयतांनी वाढविली आहे.

iii. As the Appellants/Defendants have not obtained the permission within time limit and has not fulfilled their part of the Agreement the Respondent-Plaintiff has cancelled the suit agreement by notice dated 4th September 2015.

Thus, the above factual position clearly shows that the intention of the parties is to make time essence of the contract. Thus, the finding recorded by the Trial Court that time is the essence of the contract is in accordance with the evidence on record.

8. It is the submission of Mr. Arjunwadkar, learned Counsel that the learned Trial Court has in operative part of the Order has not granted declaration that the agreement dated 10th December

2014 is cancelled and therefore, the decree is illegal. However, same appears to be merely a clerical mistake as specific issue No.3 has been framed whether the agreement dated 10th December 2014 was legally cancelled by the Plaintiff and the same has been answered in the affirmative by the learned Trial Court.

9. As far as learned Appellate Court is concerned, the learned Appellate Court has by considering evidence on record has held that the Plaintiff has proved that the time was the essence of the contract. The Plaintiff has further proved that the Defendant has failed to perform part of his contract by not obtaining the permission for sale of the property and further held that the Plaintiff has proved that the suit agreement dated 10th December 2014 has been validly cancelled by the Plaintiff. Thus, there is no substance in any of the substantial question of law raised by Mr. Arjunwadkar, learned Counsel.

10. Accordingly, the Second Appeal is dismissed, however, with no order as to costs.

11. In view of dismissal of the Second Appeal, nothing survives in the Interim Application and the same is also disposed of.

(MADHAV J. JAMDAR, J.)