



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

MISC. CIVIL APPLICATION (REVIEW) NO.221/2023
IN
SECOND APPEAL NO.369/2022 (D)

Manohar Dayaram Kele (dead) thr. LR's and others
Vs.
Rajesh Shantilal Jain (Lalwani) and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri Akshay Joshi, Advocate a/w Khushbu Rughani, Advocate for appellants
Shri Abhay V. Bhide, Advocate for respondents

CORAM : SMT. M.S. JAWALKAR, J.
DATED : 11/02/2025

Heard learned Counsel for appellants and
learned Counsel for respondents.

2. It is contention of the appellants that while dismissing the Second Appeal, it was not considered by this Court that both the Courts below held that there was no payment made towards measurement charges of Rs.15,000/-. However, this point was raised at the time of argument in Second Appeal. It was also come on record that there is concurrent finding recorded by both the Courts below. However, it was held by both the Courts below that plaintiff was ready and willing to perform his part of contract. The relief for specific performance was granted. It has also come on record that plaintiff issued notice to the defendant to get the land measured, however, same was not replied.

3. The learned Counsel for appellants relied on ***Saradamani Kandappan and Ors. Vs. S. Rajalakshmi and Ors., 2011 CJ (SC) 1057***, in support of his contention that the principle that time is not the essence of contracts when it relates to the immovable properties is no more the principle which can be relied. In the matter referred by the petitioner, there is judicial note taken by the Madras High Court in respect of spike in property prices.

4. The learned Counsel for appellants also relied on ***Kanshi Ram Vs. Om Prakash Jawal and ors., 1996 SCC (4) 593***, in support of his contention that the court ought to have seen whether it would be just, fair and equitable to grant the decree for specific performance. It is observed by the Hon'ble Apex Court that it is true that the rise in prices of the property during the pendency of the suit may not be the sole consideration for refusing to decree the suit for specific performance. But it is equally settled law that granting decree for specific performance of a contract of immovable property is not automatic. It is one of discretion to be exercised on sound principles.

5. The learned Counsel for appellants also relied on ***Surender Kaur (D) thr. LR. Jasinderjit Singh (D) thr. LR's Vs. Bahadur Singh (D) thr. LR's, AIR 2019 SC 4194***, wherein the Hon'ble Apex Court held that the provisions have to be read along with Section 16(c) 2 of the Specific Relief Act, 1963 which clearly lays down that the specific performance of a contract

cannot be enforced in favour of a person who fails to prove that he has performed or was always ready and willing to perform the essential terms of the contract which were to be performed by him.

6. All these citations relied on by the appellants are on the merit of the matter. So far as readiness and willingness is concerned, the applicants herein are having an opportunity to raise all these points before the learned Trial Court as well as Appellate Court. Even in appeal, there is no cross-objections were filed.

7. Learned Counsel for respondents relied on ***Biswajit Sukul Vs. Deo Chand Sarda and others, 2019 (4) Mh.L.J. 34***, wherein it is held that the First Appellate Court could not examine legality and correctness of said finding in plaintiffs appeal unless challenged by defendants by filing cross-objection under Order 41 Rule 22 of the Code in appeal.

8. The learned Counsel for respondents also relied on ***Laxman Tatyaba Kankate and another Vs. Taramati Harishchandra Dhatrak 2010 (6) Mh.L.J. 295***, wherein the Hon'ble Apex Court held that it is a settled principle of law that before the First Appellate Court, the party may be able to support the decree but cannot challenge the finding without filing the cross objections.

9. In my considered opinion, all these aspects are taken into consideration while dismissing the Second Appeal. In view of the concurrent finding, the

Second Appeal is dismissed. As such, I do not see any reason to review the order passed by this Court. Accordingly, the Review Application is dismissed.

JUDGE

R.S. Sahare