IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 132 OF 2025

WITH

INTERIM APPLICATION NO. 7701 OF 2025

WITH

INTERIM APPLICATION NO. 30101 OF 2022

Pallavi Harshal Lunawat & Ors ..Appellants

Versus

Pragati Developers, Promoters and Builders …Respondents

Mr. Surel Shah, Senior Advocate, with Mr. Venkatesh Shinde for Appellants

CORAM: N. J. JAMADAR, J.

DATED : 7th JANUARY 2026

ORDER:

1. This Second Appeal is directed against a judgment and order dated 14th July 2022 passed by the learned District Judge, Pune in RCA No. 97 of 2017 whereby the said Appeal preferred by the Appellants-original Defendants against a decree for specific performance passed by the learned Judge, Court of Small Causes, Pune in SCS No. 1781 of 2007 dated 15th November 2016, came to be dismissed by affirming the said decree passed by the trial Court.

2. Late Amrutlal Navlakha, the predecessor-in-title of the Appellants/Defendants, executed an Earnest Note dated 7th August 2006 to sell and transfer a land admeasuring 5 Are out of Survey No. 28 situated at Mouje Narhe, Taluka Haveli, District Pune ("the suit property"), for a consideration of Rs.6 Lakhs, in favour of the Respondent-Plaintiff, a partnership firm. A sum of Rs. 1 Lakh was accepted by way of an earnest amount under the said Earnest Note. All the material terms of the contract were incorporated therein. It was *inter alia* agreed that the transaction of sale would be completed within a period of 180 days from the execution of the said Earnest Note.

3. The predecessor-in-title of the Defendants purportedly committed default in the performance of his part of the contract contained in the said Earnest Note. Hence a notice was addressed on behalf of the Plaintiff on 23rd March 2007 calling upon late Amrutlal Navlakha to complete the transaction and execute the instrument. Vide Reply dated 10th April 2007, late Amrutlal Navlakha refused the performance of the contract contending that the contract stood terminated due to default on the part of the Plaintiff to complete the transaction within the stipulated period. Hence, the Respondent instituted a suit for specific performance of the said contract.

4. By a judgment and decree dated 15th November 2016, the learned Judge, Court of Small Causes, was persuaded to decree the suit for specific performance holding *inter alia* that the Plaintiff proved that late Amrutlal Navlakha had agreed to sell the suit property under the Earnest Note dated 7th August 2006, accepted part consideration of Rs. 1 Lakh thereunder and refused to perform the contract. It was further held that the Plaintiff was and has been ready and willing to perform its part of the contract, and the time was not the essence of the contract.

5. Being aggrieved, the Defendants preferred an Appeal before the District Court. By the impugned judgment and decree, the learned District Judge dismissed the Appeal finding no error in the decree passed by the trial Court. The learned District Judge concurred with the view of the learned Judge, Court of Small Causes that the Plaintiff was entitled to a decree for specific performance.

6. Being further aggrieved, the Defendants have preferred this Appeal.

7. Mr. Surel Shah, the learned Senior Advocate for the Appellants, canvassed a two-pronged submission. Firstly, the time was the essence of the contract, and, secondly, the Plaintiff had not succeeded in establishing that it was and has been ready and willing to perform its part of the contract. Amplifying the submissions, Mr. Shah would urge the material on record would indicate that the Plaintiff had not taken any steps during the stipulated period of 180 days from the date of execution of the Earnest Note. Inviting attention of the Court to Clause 6 of the Earnest Note, under which the Plaintiff was authorised to issue a public notice before the execution of the Agreement for Sale and delivery of possession of the suit property, Mr. Shah would submit that the failure on the part of the Plaintiff to give such public notice militated against the claim of the Plaintiff that he was ready and willing to perform its part of the contract.

8. Laying emphasis on the Clause 8 of the Earnest Note, Mr. Shah would submit that the parties had expressly agreed that the Earnest Note would be valid for a period of 180 days only and in the event of default on the part of the Plaintiff to perform his part of the contract during the said period of 180 days, the Earnest Note would stand terminated automatically and the Defendants would not be liable to refund the earnest amount. In the face of the aforesaid stipulation, according to Mr. Shah, the Courts below were in error in passing a decree for specific performance.

9. Mr. Shah would submit, thus, the the substantial questions of law as to whether the Courts below misconstrued the Earnest Note to draw a wrong conclusion that time was not the essence of the contract, and misappreciated the evidence to arrive at an erroneous inference that the Plaintiff was ready and willing to perform its part of the contract, arise for consideration.

10. To lend support to aforesaid submission, Mr. Shah placed reliance on a judgment of the Supreme Court in the case of **Pydi Ramana Alias Ramulu Vs Davarasety Manmadha Rao,[1].** In the said case, the Supreme Court enunciated that continuous readiness and willingness is a condition precedent to grant the relief of specific performance. A long and unexplained silence on the part of the Plaintiff and filing of the suit for specific performance on the verge of limitation coming to an end deprives the Plaintiff from the equitable relief of specific performance.

11. I have carefully perused the pleadings and the evidence on record. At the outset, it is necessary to note that there can be no duality of opinion on the point that the Earnest Note dated 7th August 2006 incorporates all the essential terms of the bargain between the parties. The consideration, the time for performance of the contract, the obligations of the parties thereunder, all find mention in the Earnest Note. In this backdrop, the Courts below were justified in returning a finding that the Earnest Note was in effect a contract for sale of the suit property with all the essential terms duly incorporated therein.

12. The thrust of the submission of Mr. Shah was that, under the terms of the contract, the Defendants were not required to discharge any reciprocal promise and it was for the Plaintiff alone to discharge all the obligations. Thus, there was no impediment for the plaintiff to pay the balance consideration and get the Sale Deed executed within the

1 (2024) 7 SCC 515.

stipulated period. Consequently, the time of 180 days must have been construed as the essence of the contract.

13. I am afraid to accede to the aforesaid submissions of Mr. Shah. Under Clause 11 of the Earnest Note, the parties had expressly agreed that the Vendor would get the suit property measured; however, the expenses for measurement would be borne by the purchaser. The said Clause 11 is required to be read in conjunction with Clause 6 under which the Vendor had agreed to show the demarcated boundaries of the suit property before the execution of the instrument.

14. In the face of the aforesaid stipulations, the trial Court was well within its rights in observing that, unless the suit property was measured and the 5 Are land was demarcated out of total 6 H 11 Are land, it was not possible to execute the instrument and handover the possession of the suit property to the Plaintiff. It would be contextually relevant to note that in the pre-suit notice, which was issued after few days of the expiry of the period of 180 days, it was categorically asserted on behalf of the Plaintiff that the Vendor had not got the suit property demarcated and shown the boundaries thereof.

15. No mileage can be drawn from the fact that the Plaintiff had not published the public notice inviting objections to the transaction of sale, despite authorisation under Clause 6 of the Earnest Note. The permission to issue public notice was for the benefit of the purchasers so as to secure a valid title. Issuance of public notice was not an essential term of the contract. The Courts below were correct in holding that, issuance of public notice was optional and failure to do so did not detract materially from the willingness on the part of the Plaintiff to perform its part of the contract.

16. Indeed, the Earnest Note stipulated a period of 180 days for the completion of the transaction. However, in the face of the reciprocal promises to be performed, and the admitted position that the Defendants did not get the land measured and demarcated, and further stipulation that the Plaintiff would obtain the permission of the Competent Authority under the Urban Land (Ceiling and Regulation) Act, 1976, the time cannot be readily construed to be the essence of the contract on account of the mere stipulation of the period of 180 days.

17. A profitable reference can be made to a Constitution Bench judgment of the Supreme Court in the case of **Chand Rani (Dead) By Lrs Vs Kamal Rani (Dead) By Lrs,**[2] wherein, the Supreme Court, after analysis of the previous precedents, enunciated that in the case of sale of immovable property there is no presumption as to time being the essence of the contract. Even if it is not the essence of the contract, the Court may infer that it is to be performed in a reasonable time if the conditions are:

1. from the express terms of the contract;

2 AIR 19993 SC 1742.

2. from the nature of the property; and

3. from the surrounding circumstances, for example: the object of making the contract.

18. Applying the aforesaid principles to the facts of the case at hand, especially the stipulations in the Earnest Note, the Court does not find that from the nature of the property and the attendant circumstances an inference can be drawn that the time was the essence of the contract. In view of the reciprocal promises to be performed, and the obligations preparatory to the execution of the instrument discharged, the Courts below were justified in holding that the stipulation of the term of 180 days was not intended by the parties to be of the essence of the contract.

19. The conspectus of the aforesaid consideration is that no substantial question of law, as propounded by Mr. Shah, or otherwise, arises for consideration. The concurrent findings thus do not merit interference. Resultantly, the Appeal deserves to be dismissed.

20. The Appeal stands dismissed.

21. In view of the dismissal of the Appeal, the Interim Applications also stand disposed.

[N. J. JAMADAR, J.]