IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

SECOND APPEAL NO.380 OF 2025

APPELLANT (Ori. Defendant) :- Nilesh A/o Ashok Bhoyar aged about 44 years, Occ: Farmer, R/o Kegaon, Po. Chinchmandal Tq. Maregaon, Dist. Yavatmal

..**VERSUS**..

RESPONDENT :- Laxman Raghunath Ondhare, Aged about 45 years, Occ: Service, R/o Rangnath Nagar, Wani, Taluka Wani, District Yavatmal.

Mr. S. D. Chopde, Advocate for Appellant.

CORAM : ROHIT W. JOSHI, J.

DATE : 06.01.2025

ORAL JUDGMENT :

1) Heard.

2) This appeal takes exception to concurrent decrees for specific performance passed against the appellant. The agreement in question is dated 13.02.2017 (Exhibit 17). As per the agreed terms, the suit property was agreed to be purchased by the plaintiff for a consideration of Rs.5,50,000/-. As per the agreement, amount of

Rs.3,10,000/- was paid by the plaintiff to the defendant on the date of agreement. The sale deed was to be executed on or before 13.10.2017.

3) It is the case of the plaintiff that the defendant informed him that there was an outstanding bank loan on the suit property and that the defendant wanted to go on with the transaction only after clearing the same and therefore, execution of sale deed was deferred. Thereafter, on 18.04.2019, another agreement came to be executed between the parties, by virtue of which time for execution of sale deed was extended till 18.12.2019. Amount of Rs.1,00,000/- is shown to be paid on 18.04.2019 at the time of execution of subsequent agreement. The subsequent agreement dated 18.04.2019 is at Exhibit 20.

4) According to the plaintiff, he was present in the office of the concerned Sub-Registrar on 18.12.2019 for execution and registration of sale deed, however, the defendant did not turn up and consequently, the sale deed could not be executed. The plaintiff has issued notice dated 30.12.2019 calling upon the defendant to execute the sale deed in terms of the agreement. In this backdrop, since the sale deed was not executed, the plaintiff filed a suit for specific performance of contract, being Special Civil Suit No.9 of 2020.

5) The defendant filed his written statement. The defendant has admitted his signatures on the agreements in question which are at Exhibits 19 and 20. However, the defence of defendant no.1 is that he had obtained hand loan of Rs.50,000/- from the plaintiff and had agreed to pay interest of Rs.30,000/- on the said amount and further that in order to secure the loan amount, he had issued a bank stamp paper to the plaintiff as desired by the plaintiff. The defendant contended that he has returned the loan amount alongwith interest, but the plaintiff did not return the stamp paper to him.

6) Based on rival pleadings, issues were framed by the learned Trial Court. The parties led their evidence on the issues framed. The plaintiff examined himself and one Umesh Besekar, who is the attesting witness to the agreement of sale dated 13.02.2017 (Exhibit 19). The defendant entered the witness box and did not examine any witness other than himself.

7) Both the Courts have found that the defendant had failed to prove his case of the transaction being a money lending transaction. The Courts have also found that execution of the agreements in question and contents thereof are duly proved. On the point of readiness and willingness, also the learned Courts have recorded finding in favour of the plaintiff and accordingly a decree for specific performance of contract is granted in favour of the plaintiff.

8) Mr. Chopde, learned Advocate for the appellant/defendant, contends that the findings recorded by the learned Courts with respect to the failure on the part of the defendant to prove his defense are perverse. He further contends that the subsequent agreement dated 18.04.2019 is a forged document. He elaborates the submission by drawing attention to the agreement dated 18.04.2019 (Exhibit 20) to contend that the name of the stamp vendor, name of the person who has purchased the stamp paper and the date of sale of stamp paper is not mentioned on the stamp paper of the agreement at Exhibit 20.

9) Apart from this, Mr. Chopde also contends that the plaintiff had failed to bring evidence on record in order to demonstrate his financial capability to perform his part of contract and thus failed to prove that he was ready to perform his part of contract.

10) It must be stated that two documents have been executed by the defendant in favour of the plaintiff. The documents are dated 13.02.2017 and 18.04.2019. The signatures on both documents are not in dispute. The case of the defendant is that he had obtained loan of Rs.50,000/- from the plaintiff and had issued a blank signed stamp paper in order to secure the loan. The circumstances in which the second stamp paper, signature on which is admitted by the defendant, came in the custody of plaintiff, is not explained by the defendant.

11) Since the case of defendant is one of fraud, burden of proving the same will be squarely on the defendant. The defendant has to first plead fraud with all material particulars, as provided under Order VI Rule 4 of CPC and then has to lead cogent evidence to prove the case of fraud in accordance with the pleadings. The defendant has miserably failed to plead a proper case of fraud with all particulars as also to lead cogent evidence in order to prove the same. The findings of fact recorded by both the learned Courts that defendant has failed to prove fraud are just and proper findings based on proper appreciation of evidence.

12) Since the case of defendant is that documents are fabricated in order to cover a money lending transaction, it is necessary to examine whether case of money lending is proved by defendant. In this regard it must be stated that the defendant has failed to bring on record instances of money lending by the plaintiff, although he has come up with a case that the plaintiff was indulging in illegal money lending business. It must also be stated that the defendant has failed to establish his contention that amount of Rs.80,000/- was refunded by him to the plaintiff. All these circumstances which have emerged on record are sufficient for not taking any different view of the matter, particularly having regard to the limited scope of interference with a findings of fact in a

Second Appeal.

13) The contention of Mr. Chopde that the subsequent agreement is a forged document also cannot be accepted. The objection pertains to the purchase of stamp paper. He has stated that the name of stamp vendor, name of purchaser and date of purchase is not mentioned on the stamp paper. However, as stated above signature on this document is not disputed. This document is signed by the defendant at two places. The mode and manner in which the document is typed does not indicate any attempt to adjust the contents of the document in order to create the agreement. The photographs of plaintiff and defendant are also pasted on the agreement. There is no reason to discard due execution of the subsequent agreement dated 18.04.2019.

14) As regards the contention of the learned Advocate that the plaintiff had failed to prove his readiness and willingness, it must be stated that it is not necessary for a plaintiff in a suit for specific performance to show that he was always equipped with ready cash amount for performing his part of the contract. All that is required to be established is that the plaintiff is a man of means and was/is sufficiently equipped to make provision for the sale consideration in terms of the agreement.

15) In the present case, the total agreed sale consideration is Rs.5,50,000/- out of which a sum of Rs.4,10,000/- was already paid by the plaintiff to the defendant. Only Rs.1,40,000/- remained outstanding. The plaintiff has proved that he had been to the office of the Sub-registrar on 18.12.2019 which was the date stipulated for execution of sale deed. The defendant did not turn up for execution of the sale deed. The plaintiff promptly issued suit notice on 30.12.2019 for specific performance of contract. It will be pertinent to state that it is the case of the defendant that plaintiff is a money lender which in terms is an indication of plaintiff's sound financial condition. All these facts are sufficient to infer that the plaintiff was ready and willing to perform his part of the contract.

16) Finding of facts regarding readiness and willingness recorded by both the learned Courts in this regard are just and proper and do not warrant any interference.

17) Thus, the defendant has failed to prove his contention regarding the documents being created by practicing fraud, the real transaction being money lending transaction and that the plaintiff has failed to prove that he was ready and willing to perform his part of contract.

18) In view of the above, in the considered opinion of this Court, no substantial question of law arises for consideration. Second Appeal is, therefore, **dismissed** with no order as to costs.

(ROHIT W. JOSHI, J.)

Tanmay...