

Order (Below Exh.10)

1. Heard learned advocate for the plaintiff. The defendant and advocate remained absent. Perused application and say.
2. Following points arose for my determination and I have given my findings on each of them as under :-

<u>POINTS</u>	<u>FINDINGS</u>
1. Does the plaintiff have prima facie case ?	: ...Yes.
2. Whether plaintiff proves that the balance of convenience lies in his favour ?	: ... Yes.
3. Whether plaintiff proves that he will suffer irreparable loss if T.I. is not granted ?	: ... Yes.
4. What order ?	: ... The application allowed.

: REASONS :

AS TO POINT NO. 1 :

3. The defendant is the owner of the suit property. The description of the suit property is as under :-

Plot No.81 (Block No.131, old Sy.No.132) having area east-west 40 feet and south-north 30 feet, having total area 1200 sq.feet situated at village Omerga, Tq. Omerga, Dist. Osmanabad and having four boundaries as :-

East- Plot No.82
West- 20 feet road
South- Plot No.86
North- Plot No.80

4. On 31.01.2022 the defendant executed agreement of sale of the suit property in favour of the plaintiff. Now she has declined to perform her part of the contract. Therefore, the plaintiff constrained to file suit for specific performance of the contract. The defendant's defence is that the real transaction was of illicit loan transaction and therefore, she is not bound to perform the written contract.

5. This suit for the specific performance of contract is based upon written contract. The said written contract is admitted by the defendant. But according to her, the real transaction was of the loan transaction. These facts clearly attract Section 91 of the Indian Evidence Act. It says that if the terms of the contract has reduced in writing, the intention of the parties, the terms of the

contract must be gathered from writing itself. It also says that oral evidence about terms of contract is excluded. Due to that provision, the plaintiff is having strong case for the suit of specific performance of contract. Hence, I answer point No.1 in the affirmative.

AS TO POINT NO.2 AND 3 :-

6. As per the written contract, the defendant has received earnest amount of Rs.2,11,000/- from the plaintiff. Now she has refused to perform her part of the contract. The plaintiff has genuine fear that, to avoid the contract defendant may transfer the suit property. Therefore, to protect the interest of the plaintiff and to avoid multiplicity of the proceeding, it is necessary to restrain the defendant from transferring the suit property. The defendant has not pointed out anything by which it can be seen that she is having emergency to transfer the suit property. Under these circumstances, balance of convenience lies in favour of the plaintiff. If such protection is not granted, then there is possibility that the plaintiff will suffer irreparable loss. Hence, I answer point No.2 and 3 accordingly. With reference to point No.4, I pass following order.

ORDER

1 The application Exh.10 is allowed alongwith the costs.

2. The defendant, her agent, her servant or anybody claiming on behalf of her is hereby restrained from transferring suit property by any means whatsoever till the final disposal of the suit.

Date : 07.06.2023

(Ketankumar Telgaonkar)
Jt. Civil Judge Senior Division,
Omerga.

CERTIFICATE

I affirm that, the contents of this P.D.F. file judgment/order are same, word to word, as per the original Judgment/Order.

Name of Stenographer :	L.S.Patil
Court Name :	Jt. Civil Judge, S.D. Omerga.
Date :	07.06.2023
Order signed by the Presiding Officer on :	07.06.2023
Order uploaded on :	07.06.2023