

*Sequeira*

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION*

***SECOND APPEAL NO.245 OF 2014
Along with
CIVIL APPLICATION NO. 624 OF 2014***

Smt.Sushilabai Atmaram Jadhav .. Appellant
Vs
Shri Shivram Devram Pagare & ors. .. Respondents

Mr.Pravartak Pathak, for the Appellant & Applicant.

***Coram : N.M.Jamdar, J.
Date : 4 May 2017.***

P.C. :

Heard learned counsel for the Appellant. The Appellant has challenged the concurrent judgment and orders passed by the learned Civil Judge Junior Division, Dindori, Nashik dated 23 November 2005 and by District Judge Nashik dated 1 October 2013, by which Suit for specific performance of an agreement dated 17 August 1983 has been refused. The learned District Judge has also directed the Appellant to return the amount of Rs.6,000/- at the rate of 6 per cent from 17 August 1983.

2. I have heard the learned counsel for the Appellant.
3. As far as the relief of specific performance of contract is



concerned, both the Courts have exercised their discretion considering the aspect of readiness and willingness. Agreement is dated 17 August 1983 and the Suit has been filed on 29 December 1997 i.e. almost after period of fourteen years. It is contended by the learned counsel for the Appellant that an amount of Rs.6,000/- at the time of execution of the agreement, and further amount was paid in the year 1990. As far as the amount stated to be paid in the year 1990, both the Courts have recorded a finding that the same is not proved. It was then contended that the Respondents were under obligation to take permission from tenancy authorities which they failed to do. Even assuming this position is accepted, there is nothing on record to show that the Appellant sent any written notices to the Respondents. Both the Courts have rendered a finding that at the most it can be held that Appellant made efforts till the year 1990. Thereafter nothing is done in the next seven years. This complete inaction on the part of the Appellant has been rightly taken note by both the Courts while refusing specific performance to the Appellant holding that the Appellant was not ready and willing. This exercise of discretion cannot be said to be perverse or arbitrary. The decree as regards the orders passed by both the Courts refusing specific performance will have to be confirmed and is accordingly confirmed.

4. The learned counsel for the Appellant then confined his arguments to return of the amount with interest. As far as the other part of the order by the learned District Judge regarding the return of



the amount of Rs.6,000/- with simple interest at the rate of 6 per cent is concerned, on this limited aspect issue notice to the Respondents returnable after eight weeks i.e. 27 July 2017. Apart from usual mode of service, the Appellant is permitted to serve private notice through Registered A.D. / Speed post / Fax / e-mail and file affidavit of service before the returnable date.

(N.M.Jamdar, J.)