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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

31 SECOND APPEAL NO.320 OF 2022

**SHASHIKALA DAMODAR PATIL AND OTHERS
VERSUS
MEENAKSHI RAVINDRA SALUNKHE**

Mr.Vijay B. Patil, Advocate for the appellants.
Mr.Jitendra V. Patil, Advocate for sole respondent.

**CORAM : KISHORE C. SANT, J.
DATED : 07.12.2023**

PC :-

01. Heard learned Advocates for the parties at length. The suit was filed by the respondent herein for specific performance of agreement dated 12.02.2011, by which the defendants/present appellants accepted amount of Rs.3 lakhs and agreed to sell suit land @ Rs.850/- per sq. ft. The sale-deed was to be executed by end of 31.05.2011. The defendant was to get land cleared from all encumbrances by paying taxes etc. However, no sale-deed was executed by 31.05.2011. On 15.09.2011, the plaintiff issued a paper publication calling for objections from the stake holders intimating that he has



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entered into agreement with the defendants for sale of land. Thereafter, on 18.11.2011 the plaintiff sent notice to the defendants for execution of agreement. Said notice was refused by the defendant. On 23.11.2022 the defendant sent notice intimating that since time was an essence of contract and as the plaintiff did not come for execution of sale-deed with the amount till 31.03.2011, the agreement stands cancelled.

02. The plaintiff, therefore, filed suit for specific performance. The facts stated above are admitted and there is no dispute about the said facts. Both the Courts concurrently held that the plaintiff has proved her case and directed specific performance. The original defendants have thus approached this Court in view of the ground that when termination notice was issued and served upon the plaintiff, it was necessary for the plaintiff to seek declaration that notice dated 23.11.2011 was illegal and not binding upon the parties. It is submitted that this point was specifically agitated before both the



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Courts below, however, both the Courts have not considered this material aspect. He relied upon judgment in the case of I.S. Sikandar (D) By Lrs. Vs. K. Subramani & Ors., reported in 2013 DGLS (SC) 696 in support of his submission. The Hon'ble Apex Court in the said judgment has specifically held that when the defendant had issued a notice of termination of agreement, it was necessary for the plaintiff to pray for relief of declaration that such notice is illegal and not binding upon the parties.

03. The learned Advocate for the appellant Mr. Patil further pointed out that the judgment was specifically brought to the notice of the Appellate Court. The Appellate Court, however, has come to a conclusion that notice dated 23.11.2011 is unilateral and therefore no such relief was required and in view of the judgment, the learned Advocate submits that it was necessary for both the Courts to specifically deal with this aspect based upon judgment in the case of I.S. Sikandar (Supra). The learned Advocate for the appellant also relied upon



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judgment in the case of Mohinder Kaur Vs. Sant Paul Singh reported in 2019 (9) SCC 358, wherein the Hon'ble Apex Court has considered the judgment in the case of I.S. Sikandar (Supra). In the said judgment it is further stated that it was necessary for the plaintiff to prove the contents.

04. The learned Advocate for the respondent vehemently opposes admission of the appeal stating that notice dated 23.11.2011 was unilateral. Notice dated 18.11.2011 by the plaintiff was already issued to the defendant, who has refused to accept said notice and same needs to be considered as served upon the defendants. He further pointed out deposition of the defendants, who accepted that during the period till issuance of notice dated 18.11.2011 they had communication over mobile phone and submitted that the time was extended in such conversation. On this submission, this Court specifically considered that in view of judgment of I.S. Sikandar (Supra), it was necessary for the Courts below to deal



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with the aspect as to whether it was necessary to seek relief of declaration that notice by the defendant dated 23.11.2011 was not binding. The learned Advocate for the respondent relied upon judgment in the case of **RSA No.2943 of 2017 - Brahm Dutt Vs. Sarabjit Singh**, decided by High Court of Punjab and Haryana, wherein it is held that the defendant could not have unilaterally cancelled the agreement in question. Unilateral cancellation of agreement to sell by one party is not permissible in law except where the agreement is determinable in terms of Section 14 of Specific Relief Act. such cancellation cannot be raised as a defence in a suit for specific performance. This Court finds that said judgment has only persuasive value.

05. When the learned Advocate for the appellants has relied upon judgment of Hon'ble Supreme Court, this Court finds that it is having binding effect on this Court. This Court in view of above discussion finds that following substantial questions of law are involved in



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the matter :-

(i) Whether it was necessary in the present case to seek relief of declaration that notice dated 23.11.2011 is bad in law and not binding upon plaintiff?

(ii) Whether the learned Appellate Court has rightly appreciated judgment in the case of I.S. Sikandar (D) By Lrs. Vs. K. Subramani & Ors., reported in 2013 DGLS (SC) 696.

06. Admit.

07. The parties are at liberty to move this Court for expeditious hearing.

[KISHORE C. SANT, J.]