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

**CIVIL APPLICATION NO. 12145 OF 2017
IN
SECOND APPEAL (ST) NO.31286 OF 2017**

Dr. Yashwantrao s/o Bhaskarrao
Deshmukh ..APPLICANT

VERSUS

Raghunath s/o Kisan Saindane ..RESPONDENT

Mr K.C. Sant, Advocate for applicant;

CORAM : NITIN W. SAMBRE, J.

DATE : 22nd SEPTEMBER, 2017

ORAL ORDER :

Issue notice to the respondent, returnable on 6th November, 2017. In addition to Court process, respondent be served through Speed Post A.D/R.P.A.D.

2. So far as the claim of appellant - original defendant is concerned, the appellant-applicant is original defendant, who claimed to have agreed to sell 5 *Bigha* land out of Gat No.21/1

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for consideration of Rs.51,000/- per *Bigha* vide agreement dated 18th February, 1998 (Exhibit-18).

3. It is further claimed that the plaintiff alleged that present applicant-defendant has acknowledged payment of further consideration on 9th March, 1998, 16th April, 1998 and 18th May, 1998. According to the applicant, part amount of Rs.90,000/- was acknowledged to have been repaid to the respondent-plaintiff by present applicant - defendant. He submits that the said fact can be inferred from the evidence of the plaintiff - respondent.

4. In the aforesaid backdrop, according to him, the *exparte* decree passed in the suit/appeal is required to be reconsidered. He would urge that pursuant to the order passed by the appellant Court, already sale deed is executed through the Court proceedings and the matter is now scheduled for handing over the possession.

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5. So as to show his *bonafides*, learned Counsel for the applicant, upon instructions, makes statement that the appellant shall deposit the amount of Rs.1,00,000/- (Rs. One lac only) in this Court by returnable date.

6. Considered the aforesaid submissions in the light of judgments delivered by both the Courts below. In special Civil Suit No. 2 of 2001, which was for specific performance of contract, the trial Court partly decreed the suit by dismissing the claim for specific performance, however, has recorded finding that the respondent-plaintiff will be entitled for recovery of Rs.61,000/- with interest @6% per annum. While doing so, in paragraph-14 in clear terms, it is established that present applicant-defendant has refunded Rs.90,000/-.

7. Since specific performance was refused, respondent preferred appeal being Regular Civil Appeal No. 31 of 2012, which is allowed in toto, by

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learned appellate Court, by directing the respondent to deposit the amount of Rs.1,90,000/- with direction to the appellant to execute decree in favour of the respondent-plaintiff, upon obtaining permission from the competent authority. It was also directed to the respondent-plaintiff to serve copy of the decree on the present appellant by Registered Post A.D.

8. In the aforesaid backdrop, what could be inferred is, issue of readiness and willingness of execution of part of agreement on behalf of the respondent is not in clear terms discussed and decided by the learned Courts below.

9. The appellant-defendant claims that for his occupation, he was required to shift at Nashik and therefore, he remained absent out of such place. As such, notice was not served on him and it is only through one of his relative/friend in the village, he came to know about the orders.

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10. In view thereof, it is directed that in case, possession is not handed over to the respondent-plaintiff, there shall be stay to the possession. Apart from above, the respondent shall also maintain the *status-quo* in relation to the mutation and restrained from creating third party interest in relation to the suit property.

(**NITIN W. SAMBRE, J.**)

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