

Niti

IN THE HIGH COURT OF BOMBAY AT GOA

**CIVIL APPLICATION NO.14 OF 2024
IN
SECOND APPEAL NO.48 OF 2023**

WILFRED N. DSA AND ANR. APPLICANTS

Versus

ROSA LILA MARTINS AND ANR. RESPONDENTS

Mr C.A. Coutinho, Advocate for the Applicants.

Mr Ryan Menezes and Mr Nigel Fernandes, Advocates for the Respondents.

CORAM: M. S. SONAK, J.

DATE : 2nd FEBRUARY 2024

P.C. :

- 1.** Heard Mr Coutinho for the applicants and Mr Ryan Menezes for the respondents.
- 2.** This is a Civil Application seeking a stay on the execution of the impugned judgment and decree dated 23.04.2021. The decree, *inter alia*, directs cancellation of the Sale Deed dated 03.10.2012 favouring the applicants.
- 3.** By a separate order dated 25.01.2024, the Second Appeal has already been admitted. This order is relevant for considering this civil

application and, therefore, the same is transcribed below for convenience of reference:

“P.C. :

1. Heard Mr C.A. Coutinho for the appellants and Mr Ryan Menezes for the respondents.
2. This appeal is admitted on the following substantial questions of law:
 - A. When the claim is of non-receipt of consideration by the vendor, whether he is only entitled to recovery of money?
 - B. Whether the findings of the trial court and the appellate court that Sarita Fernandes, sister of the vendor no.1, who admitted having received the entire consideration amount and supported the case of receipt with receipts is perverse.
3. Mr Coutinho relied on the decision of the Hon'ble Supreme Court in the *Dahiben V/s. Arvindbhai Kalyanji Bhanusali (Gajra) dead through legal representatives and Ors.*¹ to contend that a duly executed Sale Deed cannot be set aside on the alleged ground that the consideration referred to therein was not actually paid to the vendor. He submits that the Hon'ble Supreme Court, in this case, has held that the unpaid vendor can only sue for the consideration/price stated in the Sale Deed.
4. Mr Ryan Menezes states that the decision in *Dahiben* (*supra*) is distinguishable. He further submits that this was a case where the appellant misused the Power

¹ (2020) 7 SCC 366

of Attorney and sold the property to his own wife in breach of specific instructions not to sell the property to any party. Mr Menezes states that this is a case of breach of Sections 214 and 215 of the Indian Contract Act, 1872.

5. Arguable issues are raised. Hence, the appeal is admitted on the above substantial questions of law.

6. Mr Coutinho states that the Sale Deed amount of ₹11,36,000/- (Rupees Eleven Lakhs Thirty-Six Thousand only) is already deposited in this Court without prejudice to rights and contentions that this amount was actually paid to DW3. The impugned decree has cancelled the Sale Deed. Mr Coutinho states that a Civil Application seeking a stay of the impugned decree of cancellation of the Sale Deed will be filed in the course of the week. Accordingly, if such an application is filed, place it for consideration on 02.02.2024.

7. At this stage, Mr Ryan Menezes urges that substantial question (C) arises in this appeal, and the same should also be framed. He states that this question was, in fact, framed in the memo of appeal, and the same reads as follows:

C. When the plaintiffs had issued a power of attorney in favour of Defendant no.2 granting powers to sell and transfer the suit plot, whether the power of attorney holder was liable to communicate with the principals (the plaintiffs) at the time of executing the deed of sale in terms of Section 214 and 215 of the Contract Act, as held by the Hon'ble First Appellate Court.

8. Accordingly, even the above substantial question of law is framed.

4. There is a dispute whether the amount of ₹11,36,000/- Rupees Eleven Lakhs Thirty Six Thousand only) was at all paid to the vendors of this Sale Deed at the time of its execution. However, this amount has already been deposited by the applicants before this Court as noted in paragraph 6 of the above order.

5. The Sale Deed of which cancellation is ordered was executed on 03.10.2012. If any interim relief is to be granted to the applicant, it is only appropriate that further amounts be deposited by the applicants because today, we are in the year 2024.

6. Accordingly, it would be appropriate to direct the applicants to deposit a further amount of ₹13,64,000/- (Rupees Thirteen Lakhs Sixty Four Thousand only) in this Court within two months from today so that a total amount of ₹25,00,000/- (Rupees Twenty Five Lakhs only) stands deposited in this Court should this Court be inclined to interfere with the impugned decree or hold that the consideration amount is indeed payable to the vendors.

7. Further, during the pendency of this appeal, the applicants will have to be restrained from selling, transferring, alienating or creating any third party rights in the plot which is subject matter of the Sale Deed dated 03.10.2012.

8. Subject to the above contentions, the execution of the impugned decree dated 30.01.2019 in Regular Civil Suit No.307/2012/C is stayed.

9. Civil Application No.14/2024 is disposed of. A copy of this order should be placed in the main Second Appeal No.48/2023.

M. S. SONAK,J.

NITI K
HALDANKAR

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