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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 175 OF 2003

1. Mohammad Umar Shaikh Ahmad
(Dead) through Legal
Representatives :-

1a. Maimuna Shaikh Umar
Age 73 years, Occupation :
Household

1b. Yakub Shaikh Umar
(since deceased through LRs)

1b(i) Abdul Qadir Yakub Shaikh
Aged : 40 years

1b(ii) Shagufta Praveen Yakub Shaikh
Age : 36 years

1b(iii) Yasmin Shaikh
Age : 33 years

1b(iv) Mudir Yakub Shaikh
Age : 34 years

1b(v) Ishtiyaq Yakub Shaikh
Age : 29 years

1b(vi) Tanvir Yaskub Shaikh
Age : 27 years

1b(vii) Ayaz Yakub Shaikh
Age : 24 years
No. 1b(i) to 1b(vii) residing at
Shahapura/Shastri Chowk
Limbayat at Surat, Gujarat

1b(viii) Sagira Yakub Shaikh
Age : 31 years
Shivaji Nagar at Kalvan, Dist.
Nashik

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1c. Farook Shaikh Umar
(since deceased through LRs)

1c(i) Tahasin Farookh Shaikh
Aged : 28 years

1c(ii) Ayesha Farookh Shaikh
Aged : 28 years

1c(iii) Naim Farookh Shaikh
All are residing at Rangoli Chawl
Neharu Road, Kannad,
Dist Nashik

1d. Shakeel Shaikh Umar
(since deceased through LRs)

1d(i) Mrs. Nusrat Shakil Shaikh
Aged : 46 years

1d(ii) Mr. Usama Shakil Shaikh
Aged : 25 years

1d(iii) Mr. Faizan Shakil Shaikh
Age : 23 years

1d(iv) Mr. Huzaifa Shakil Shaikh
Age : 20 years
All are r/o. Tamboli Chawl, Nehru
Road, Manmad, Dist : Nasik

1e. Salim Shaikh Umar
Age 41 years, Occupation :
Business, Appellant Nos. 1a to 1e
R/o. H. No. 995, Tamboli Chawl,
Manmad, Taluka Nandgaon
District : Nashik

1f. Mohammad Shaikh Umar
(since deceased through LRs and
heirs)

1f(i) Fehmid wd/o. Mohd. Shaikh

1f(ii) Zubair S/o. Mohd. Shaikh

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1f(iii) Zabir S/o. Mohd. Shaikh

1f(iv) Zamir S/o. Mohd. Shaikh

1f(v) Mir Ahmed S/o. Mohd. Shaikh

1f(vi) Zafer S/o. Mohd. Shaikh
All residing at Sikandar Nagar,
Nandgaon Road, Manmad,Dist.
Nashik

1f(vii) Parveen w/o. Nasir Shaikh
R/o. Mhan Baba Nagar
Chandanpuri Gate, Malegaon
Dist . Nashik

1g. Haroon Shaikh Umar
(since deceased through LRs)

1g(i) Mrs. Raisa Bee Haron Shaikh,
Wife

1g(ii) Mr. Altique Ahmed Haroon Shaikh,
Son

1g(iii) Mr. Nadeem Ahmed Haroon
Shaikh, Son

1g(iv) Mrs. Sana Parveen Haroon
Shaikh, Daughter

1g(v) Mrs. Shireen Been Haroon Shaikh,
daughter,
Nos. 1g(i) to 1g(iv) r/o. Nehru
Road, Tamboli Chawl, Manmad
Dist. Nasik
No. 1g(v) R/o.Nanawali Masjid,
Chandwad, Nasik .... Appellants

Versus

1. Haji Bhikan Bhai Vajir Bhai
Tamboli (since deceased) through
Legal Heirs -

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1a. Rabiyabi Haji Bhikan Bhai
Age : 80 years, Occupation : Houshold, R/o. Nehru Road, H. No. 904, Manmad, Taluka Nandgaon, District – Nashik

1b. Rajiabi Ramjarbhai Tamboli
Age : 64 years, Occupation : Household, R/o. Siddique Baug, Karbala Masjid, Delhi Darwaja Ahmednagar

1c. Safia Nazirbhai Tamboli
R/o. City Road, Andheri, Mumbai

1d. Rehana Hasan Tamboli
Age : 56 years, Occupation : Household

1e. Abdul Rashid Bhikan Tamboli
(since deceased through LRs)

1e(i) Shahid Rashid Tamboli
Aged : 35 years

1e(ii) Naim Rashid Tamboli
Aged : 33 years

1e(iii) Abdul Raheman Rashid Tamboli
Aged : 30 years
All are residing at Nehru Road at Taluka Nandgaon, District : Nashik.

1f. Salmabi Mad Saghir
Age : 49 years, Occupation : Household, R/o. Dhule

1g. Ayesha Raaj Mohamad
Age : 45 years, Occupation : Household, R/o. Mad, Taluka Junnar, District – Pune …. Respondents

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Mr. A. R. Shaikh for the Appellants.
Ms. Rekha Musale a/w. Mr. Yuvraj A. Tajane i/b. Mr. Ashok B. Tajane for Respondent Nos. 1b, 1c, 1e(i) to 1e(iii), 1d and 1f.

CORAM: GAURI GODSE, J.
RESERVED ON: 6th AUGUST 2026
PRONOUNCED ON: 25th NOVEMBER 2026

JUDGMENT:

BASIC FACTS:

1. This second appeal is preferred by the heirs and legal representatives of the original plaintiff to challenge the judgment and decree passed by the first appellate court. The trial court decreed the suit for specific performance in favour of the appellants; however, on appeal, the first appellate court reversed the decree and dismissed the suit for specific performance. The first appellate court has granted an alternative claim for refund of the earnest amount.

2. The second appeal was admitted on 4th March 2003 on the substantial question of law framed in paragraph 17 of the appeal memo which reads as under :

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"(a) Whether in view of the admission of the defendant himself contrary to the clause of fixing the time for performance amounts to the time was not the essence of contract.

(b) Whether fixing the date for performance would not itself ruled out the normal rule of presumption that the time is not the essence of contract.

(c) Whether the lower appellate Courts finding is perverse.

Pleadings in the Plaint

3. On 19th November 1978, the defendant executed an agreement for sale in favour of the plaintiff. The plaintiff was already occupying the suit premises as a tenant in Block No. 6 in the chawl. The defendant agreed to sell the suit block for Rs. 12,500/-. The plaintiff paid Rs. 1000/- as earnest money, and the balance was to be paid within two years, at the time of execution of the sale deed.

4. According to the plaintiff, when he approached the defendant before 19th November 1980 to offer to pay the

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balance consideration and requested to execute the sale deed, the owner avoided performing his part of the contract. The plaintiff was always ready and willing to perform his part of the contract by paying the balance consideration; however, the defendant avoided performing his part. Hence, the plaintiff filed the suit for specific performance. On filing the suit, the plaintiff deposited the balance consideration of Rs. 11,500/- in the trial court.

Pleadings in the Written Statement

5. The defendant filed his written statement and denied the suit claim. He denied execution of the agreement for sale in favour of the plaintiff. According to the defendant, the market value of the suit premises was more than Rs.75,000/-. The defendant was in need of money; therefore, the plaintiff gave a loan of Rs. 1000/-, and the defendant executed a document for the loan advanced by the plaintiff. He contended that the loan amount of Rs. 1000/- was already repaid to the plaintiff and requested that the agreement be destroyed; however, the plaintiff refused to destroy the document. The defendant contended that the suit agreement was not for sale of the suit property.

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Findings by both courts:

6. The trial court accepted the plaintiff's pleadings regarding execution of an agreement for sale and payment of Rs.1000/- as earnest money. The defendant's theory that the agreement was executed for a loan transaction was disbelieved. The trial court held that the plaintiff was ready and willing to perform his part of the contract by offering the balance payment towards the balance consideration. Hence, the plaintiff was held entitled to specific performance of the contract. The First Appellate Court accepted the execution of the agreement for sale of the suit property. However, it held that time was the essence of the contract and that the plaintiff was obligated to pay the balance consideration within two years, as agreed in the terms and conditions of the agreement. Since the plaintiff failed to pay the balance consideration within the stipulated time, the plaintiff was not entitled to specific performance. Hence, the first appellate court reversed the trial court's findings on the plaintiff's entitlement to seek specific performance and set aside the decree for specific performance, granting a decree for refund of the earnest amount.

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Submission on behalf of the Appellants :

7. Learned counsel for the appellants submitted that the two-year period mentioned in the agreement did not provide for any consequence for non-payment within that period. Hence, the two-year period for payment of the balance consideration was not an essential term of the contract. The suit agreement was valid and subsisting on the date of filing of the suit. The plaintiff's only performance was payment of the balance consideration, which he offered by issuing the suit notice. Since the defendant refused to accept the balance consideration, the plaintiff deposited the same in the trial court immediately after filing the suit. Hence, the plaintiff pleaded and proved readiness and willingness by depositing the amount in the trial court.

8. The plaintiff’s evidence in support of readiness and willingness was not challenged by the defendant in cross-examination. The defendant, however, raised a defence that no agreement for sale was executed and that the transaction between the parties was a mortgage. Thus, once both courts disbelieved the mortgage theory, the plaintiff was entitled to specific performance of the contract. Despite depositing the

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balance consideration amount, the plaintiff also continued to pay the monthly rent, as the plaintiff was already occupying the suit premises as a monthly tenant of the defendant. The plaintiff's theory regarding approaching the defendant before expiry of the period of two years and offering to make payment towards the balance consideration amount is supported by the plaintiff's oral evidence. The defendant has neither doubted the evidence on this aspect in cross-examination nor led any independent evidence to disprove the plaintiff's theory that he offered to pay the balance consideration amount on various occasions between 18th October 1979 and 21st October 1980. The plaintiff's theory of readiness and willingness to make the balance consideration amount is also supported by depositing the amount in the trial court immediately after filing the suit.

9. Learned counsel for the appellants submitted that the first appellate court recorded no reasons for reversing the trial court's finding on the plaintiff's readiness and willingness to pay within the stipulated two-year period. Since the two-year period in the contract for payment of the balance consideration amount did not provide for any consequence, the said term in the agreement cannot be accepted as the essence of the

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contract, disentitling the plaintiff to seek specific performance. To support his submissions that the terms in the contract could not have been interpreted as the essence of the contract, learned counsel for the appellants relied on the decisions of the Apex Court in ***Gomathinayagam Pillai and Others vs. Palaniswami Nadar***[1] and ***Govind Prasad Chaturvedi vs. Hari Dutt Shastri***[2].

10. Learned counsel for the appellants relied upon oral evidence to support the plaintiff's theory of readiness and willingness. The suit notice calling upon the defendant to accept the balance consideration amount and execute the sale deed was not replied to by the defendant. Hence, the contents of the notice stood admitted, and the supporting oral evidence clearly showed the plaintiff's readiness and willingness to pay the balance consideration amount. To support his submissions on the aspect of readiness and willingness, learned counsel for the appellants relied upon the Apex Court's decision in ***Pandurang Ganpat Tanawade vs. Ganpat Bhairu Kadam and Others***[3], and this Court's decisions in ***Rosalie Roy vs.***

1 AIR 1967 SC 868
2 AIR 1977 SC 1005
3 AIR 1996 SC 463

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Balasaheb Bapurao Tupe and Another[4] and *Chandraprabha Prabhakar Ghorpade vs. Maruti alias Marutrao Shivram Patil*[5]

11. Learned counsel for the appellants therefore submits that the defendant's conduct, to the extent of raising a defence disputing the nature of the document, shows that the defendant took a false defence regarding the mortgage transaction. In these facts and circumstances, and in light of the supporting evidence, the first appellate court should have exercised its discretionary jurisdiction to grant specific performance as prayed.

12. So far as the first question of law is concerned, learned counsel for the appellants submitted that a plain reading of the payment clause in the suit agreement clearly shows that though a period of two years was provided for paying the balance consideration, no consequences were provided for non-payment. Hence, the first and second questions of law must be answered in favour of the appellants. The first appellate court has reversed the trial court's findings on readiness and willingness and the terms of the contract regarding payment without recording specific reasons for

[4] 2010(6) Mh.L.J. 164
[5] 2008 (6) Mh. L. J. 546

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reversing the trial court's findings. The first appellate court has therefore erred in failing to appreciate the evidence on record while recording its findings on the plaintiffs' entitlement to specific performance. Hence, the findings recorded by the first appellate court are perverse, as there is no reason to reverse the trial court's findings. Hence, the third question of law must also be answered in favour of the appellants.

13. The plaintiff's only obligation regarding payment of the balance consideration amount was satisfied by depositing the amount in the trial court. Hence, the second appeal be allowed, and the trial court's decree be confirmed by setting aside the first appellate court's judgment and decree.

Submissions on behalf of the Respondents:

14. Learned counsel for the respondents relied upon the pleadings in paragraph 2 of the plaint to support her submissions that time was the essence of the contract. She submitted that, according to the plaintiff, as stated in paragraph 2 of the plaint, time was the essence of the contract for payment of the balance consideration amount on or before expiry of two years from the date of the agreement. She relied

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on the last part of the payment clause in the suit agreement and, according to her, the term provided that if the amount was not paid within the two-year span, the earnest amount would not be refunded. Hence, the clause meant that the parties had provided for forfeiture of the earnest amount. In view of the terms and conditions of the contract, once the earnest amount stood forfeited, the contract could not have been specifically performed as time was the essence of the contract.

15. She submitted that, considering the date of notice and the date of filing of the suit, it was barred by the law of limitation. However, both the courts failed to consider the issue of limitation. Hence, in view of the pleadings in the plaint, the suit must be held as barred by limitation. In view of the pleadings and the evidence already on record, no further evidence is necessary to record findings on whether the suit is time-barred, as time was the essence of the contract. Learned counsel for the respondents submitted that the copy of the notice produced on record did not mention any date and the evidence is not supported by any pleadings. However, in view of the oral evidence and pleadings, the contract clearly

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provided a two-year period for completing the transaction. Hence, in view of the legal principles settled by the Apex Court in ***Desh Raj and Others vs. Rohtash Singh***[6]***,*** the terms and conditions in the contract would support the plaintiffs' theory of forfeiture if the balance amount was not paid within the stipulated time.

16. Learned counsel for the respondents relied upon the decision of this Court in ***Fakira Rambhau Shewale (since deceased) through LRs and Others vs Vasant Narayan Rane (since deceased) through LRs and Others*** [7], to support her submissions that, in view of the two-year payment clause in the contract, the plaintiff would not be entitled to specific performance. Hence, the suit agreement would not subsist after the two-year period. Learned counsel for the respondents submitted that the valuation of the suit property was much higher than the alleged consideration amount and, in view of the rise in value over time, the agreed consideration in the contract cannot be ignored. To support her submissions, learned counsel for the respondents relied upon the Apex Court's decision in ***K. S. Vidyanadam Vs Vairavan***[8].

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6 (2023) 3 SCC 714
7 2025 SCC Online 4190
8 (1997) 3 SCC 1

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17. Learned counsel for the respondents therefore submits that in view of the well-settled legal principles and the facts pleaded and proved in the present case, the plaintiff is not entitled to specific performance of the contract. The Trial Court relied on oral evidence not supported by pleadings; hence, the first appellate court rightly reversed the trial court's findings. Therefore, the findings in the impugned judgment cannot be termed as perverse. Hence, she submitted that all the questions of law be answered in favour of the respondents and the second appeal be dismissed.

Analysis and conclusions:

18. All the questions of law pertain to the interpretation of the terms in the suit agreement regarding the payment clause and the two-year period agreed upon to execute the sale deed.

19. In *Gomathinayagam Pillai*, the Apex Court held that fixing the period within which the contract is to be performed does not make the stipulation as to time the essence of the contract. It is held that intention to make time the essence of the contract may be evidenced by either express stipulations

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or by circumstances, which are sufficiently strong to displace the ordinary presumption that in a contract of sale of property stipulations as to time are not of the essence of the contract. It is further held that the plaintiff must plead and prove that he was continuously ready and willing to perform his part of the contract, and if he fails to do so, his claim for specific performance must fail. In ***Govind Prasad Chaturvedi***, the Apex Court relied on ***Gomathinayagam Pillai*** and held that fixing a period within which the contract must be performed does not make the stipulation as to time the essence of the contract. It is also held that when a contract relates to the sale of immovable property, it will normally be presumed that time is not the essence of the contract.

20. In ***Pandurang Ganpat Tanawade***, the Apex Court held that, in view of the averments in the plaint and the evidence, it was proved he was ready and willing to perform his part of the contract under the agreement for sale; hence, the first appellate court and the High Court erred in holding that he had failed to comply with the requirements of Section 16(*c*) of the Specific Relief Act and that the appellant must be held entitled to a decree for specific performance of the contract. A similar

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view is taken by this court in ***Rosalie Roy***. In ***Chandraprabha Ghorpade***, this court held that, from the language of Section 16(c), it is mandatory for the plaintiff to prove that he has performed, or has been ready and willing to perform, his part of the contract and if part of the contract involves payment of money, the plaintiff need not actually tender it to the defendant or deposit it in court, except when so directed by the court.

21. In ***K. S. Vidyanadam***, the Apex Court took note of Section 55 of the Contract Act and Article 54 of the Limitation Act, which prescribes that the period of three years is to be calculated from the date specified in the agreement for performance, or, in the absence of any such stipulation, within three years from the date the performance was refused. The Apex Court observed that it has been consistently held that, in an agreement of sale relating to immovable property, time is not of the essence unless specifically provided to that effect. It is held that not every suit for specific performance of an agreement that does not specifically provide that time is of the essence should be decreed, and that the time limits prescribed by the parties in the agreement have no significance. It is held that the court should consider all relevant circumstances,

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including the time limit specified in the agreement, and determine whether it should exercise its discretion to grant specific performance. The Apex Court considered the facts of that case where the plaintiff was sitting quiet without taking any steps to perform his part of the contract under the agreement, though the agreement specified a period of six months within which he was expected to purchase stamp papers, tender the balance amount and call upon the defendants to execute the sale deed and deliver possession of the property. In the facts of the said case, the Apex Court accepted the vendor's case that the value of the property was rising and that this must have induced the purchaser/plaintiff to wake up after two and a half years and demand specific performance.

22. In ***Desh Raj***, the Apex Court, by taking note of Section 55 of the Contract Act, which stipulates the aftermath in case of failure to perform contractual obligations at a fixed time, considered the sale agreements that clearly indicated the intention of the parties to treat time-bound performance as an essential condition and stipulated that in case the sale deed was not executed on the date of execution, the sale

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agreements were liable to be treated as cancelled, and the earnest money was to be forfeited. The Apex Court also considered the legal notice that gave a last opportunity to execute the sale deed, reiterating that time is an essential condition for performance and that the defendant provided no evidence to contradict the defence of time-bound performance and also delay in institution of the suit. In these facts, the Apex Court followed the decision in ***K. S. Vidyanadam*** and held that specific performance cannot be granted.

23. In ***Fakira Rambhau Shewale***, this Court, after considering the well-settled legal principles on the point of time being the essence of the contract, held that even where the parties expressly provide that time is the essence of the contract, such a stipulation will have to be read along with other provisions of the contract, and such other provisions may, on construction of the contract, exclude the inference that the completion of the work by a particular date was intended to be fundamental. It is also held that when the intention of the parties is clear that time would be the essence of the contract, and if there is an undue delay in instituting the suit, the relief of specific performance cannot be granted; but

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when the terms of the contract provide for reciprocal obligations and the specific performance of those terms has not been carried out, the question of time being the essence would not arise.

24. In the present case, there was no reciprocal obligation to be performed by the vendor, that is, the defendant. Although the defendant disputed the nature of the agreement, stating that it was an agreement for security towards the loan, both courts accepted it as an agreement to sell the suit property. Nothing is shown on behalf of the defendant that Rs. 1000/- was returned to the plaintiff. There is no evidence on record that the defendant issued any notice or called upon the plaintiff to destroy the agreement. The terms and conditions of the contract are simple. The consideration amount was Rs.12,500/-, and Rs.1000/- was paid on execution of the agreement towards the earnest amount, with the balance to be paid at the time of execution of the sale deed. Thus, the main controversy is the interpretation of the term regarding execution of the sale deed within two years.

25. A plain reading of the payment term shows that the balance consideration was to be paid at the time of execution

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of the sale deed, which was to be executed within two years from the date of the agreement for sale. The agreement further provides that if the sale deed is not executed within the time provided in the agreement, the vendor shall not be liable for the earnest amount. The agreement further records that if the vendor fails to appear for execution of the sale deed, the purchaser shall be entitled to get the sale executed through the court.

26. The First Appellate Court held that since the agreement provided for forfeiture of the earnest amount, if the balance consideration was not paid at the time of execution of the sale deed agreed to be executed within two years, time was of the essence of the contract; hence, the plaintiff was not entitled to specific performance. I do not find that the First Appellate Court has correctly interpreted the forfeiture clause. Apart from the forfeiture clause regarding the earnest amount, the agreement also provided that if the vendor fails to remain present for execution of the sale deed, the purchaser, that is, the plaintiff, would be entitled to get the sale deed executed through the Court. Thus, the forfeiture clause cannot be read in isolation by ignoring the other clauses. The agreement did

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not provide for automatic cancellation of the agreement if the sale deed was not executed within two years or the balance consideration was not paid. The defendant took no steps to cancel the agreement. Forfeiture of the earnest amount would mean that the purchaser would not be entitled to seek a refund of the earnest amount if the sale deed was not executed within two years. Thus, the forfeiture clause would not render the agreement unenforceable on the ground that time was the essence of the contract.

27. The trial court has correctly appreciated the evidence on record and the defendant's admission in cross-examination that time was not the essence of the contract. The trial court has also considered the notice at Exhibit 47 calling upon the defendant to accept the balance consideration amount and execute the sale deed. The defendant never replied to the notice. Thus, in light of the well-established legal principles discussed above, the trial court appreciated all the surrounding circumstances and the evidence on record and correctly interpreted the terms of the contract to mean that time was not the essence of the contract.

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28. The defendant denied the nature of the suit agreement; however, he admitted accepting Rs 1000/-. Both courts held that the suit agreement was an agreement for sale, rejecting the defendant's interpretation. The trial court correctly appreciated the pleadings, the terms of the contract, and the evidence on record and, thus, by considering the overall surrounding circumstances, rightly held that time was not the essence of the contract. The Trial Court’s view is supported by the evidence and the averments in the plaint. The plaintiff specifically pleaded that he repeatedly called upon the defendant to accept the balance consideration amount and execute the sale deed. The pleadings are supported by oral evidence and the notice at Exhibit 47. Considering the cross-examination, the plaintiff’s oral evidence is not taken. The view taken by the trial court is in accordance with the well-settled legal principles for considering whether time is the essence of the contract. Hence, I do not find substance in the respondents' argument that the trial court’s findings are not supported by the pleadings.

29. Article 54 of the Limitation Act prescribes that the three-year period is to be calculated from the date specified in the

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agreement for performance, or, in the absence of any such stipulation, within three years from the date performance was refused. In the present case, no date is specified for execution of the sale deed. The evidence on record supports the plaintiff's contention that the suit was filed within three years of the defendant's refusal to execute the sale deed. I have confirmed the trial court's findings that time is not the essence of the contract. Hence, in the absence of any stipulated time prescribing execution of the sale deed, the suit cannot be held to be barred by limitation. Therefore, I find no substance in the respondent's argument that the suit was time-barred.

30. The First Appellate Court, while reversing the Trial Court's finding, failed to appreciate the overall circumstances and relied solely on the clause for forfeiture of the earnest money. Therefore, the findings recorded by the First Appellate Court are perverse, as it reversed the Trial Court's finding while interpreting the terms of the contract and deciding whether time was the essence of the contract.

31. Hence, for the reasons recorded above, I answer all the substantial questions of law in favour of the appellants by holding that time was not the essence of the contract and the

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surrounding circumstances and the other clauses in the agreement do not rule out the presumption that time is not the essence of the contract. The trial court correctly exercised its discretion in granting specific performance. Hence, the First Appellate Court's judgment and decree deserve to be set aside, and the Trial Court's judgment and decree must be confirmed.

32. The Second Appeal is therefore allowed by passing the following order;

a) The judgment and decree dated 12th December 2002 passed by the III Additional District Judge, Malegaon, in Regular Civil Appeal No. 486 of 1989 is quashed and set aside. Regular Civil Appeal No. 486 of 1989 is dismissed.

b) The judgment and decree dated 19th October 1989 passed by the Civil Judge, Junior Division, Manmad, in Regular Civil Suit No. 456 of 1984 is confirmed.

c) There will be no order as to costs.

[GAURI GODSE, J.]

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