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(2014) 09 BOM CK 0207

In the Bombay High Court

Case No : Second Appeal Nos. 190 and 189/1988

Saraswatibai — APPELLANT

Vs

Pratibhatai — RESPONDENT

Date of Decision : 19-09-2014

Acts Referred:
Arbitration and Conciliation Act, 1996 — Section 37(5)
Limitation Act, 1963 — Section 14, 14(1)
Maharashtra Co-operative Societies Act, 1960 — Section 2(24), 3, 91, 96
Transfer of Property Act, 1882 — Section 53A

Citation : (2014) 09 BOM CK 0207

Hon'ble Judges : Z.A. Haq, J

Bench : Single Bench

Advocate : M.K. Mishra, Advocate for the Appellant; S.P. Palshikar, Advocate for the Respondent

Judgement

Z.A. Haq, J.

Second Appeal No. 190/1988

1. This appeal is filed by the original defendants challenging the judgment and decree passed by the learned Second Additional District Judge allowing the appeal filed by the respondent (original plaintiff), setting aside the judgment and decree passed by the Trial Court and granting decree for specific performance of contract of sale.

2. The original plaintiff filed Regular Civil Suit No. 53 of 1978 pleading that the original plaintiff and the original defendant - Balaji Ramaiya Manthanwar were the members of Adarsha Grih Nirman Sanstha, Wani and that the society sanctioned loan up to 5500/- to the individual member for constructing the house plot owned and possessed by the member, on the member contributing 20% of the loan amount for construction of the house. The original plaintiff contended that the original defendant had taken loan from the society under the above mentioned scheme and he was required to repay the amount of loan with

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interest thereon in 30 annual instalments which started from 1957-1958 and he was not able to pay the instalments and therefore, he decided to dispose of the plot and the house constructed thereon. The original plaintiff submitted that the defendant sought permission of the society to sell the house and on 5th April, 1962 he offered to sell all the interests in the suit plot and construction thereon to the original plaintiff. The original plaintiff stated that he accepted the offer and the amount of consideration was fixed at Rs. 8750/- out of which Rs. 5500/- were to be paid to the society and all outstanding dues were to be paid by the original plaintiff. The original defendant was to obtain sanction from the society for transfer of all the interests and the original defendant was to execute the sale deed accordingly. The original plaintiff pleaded that the original defendant had issued receipt of having received the amount and nothing remained to be paid and the original defendant had delivered the possession of the suit property to the plaintiff. The original defendant and the original plaintiff obtained necessary permission from the society for transfer. The original defendant had mortgaged the house with the Vidarbha Housing Board and, therefore, sanction of the Vidarbha Housing Board for the transfer was also obtained. The original plaintiff stated that the original defendant avoided to execute the sale deed and, therefore, the dispute under Section 91 of the Maharashtra Co-operative Societies Act, 1960 was filed before the District Deputy Registrar who admitted the dispute and referred it to his nominee. According to the original plaintiff, the cause of action for filing the dispute had arisen on 3rd August, 1967 and on 17th October, 1967 when the original defendant committed breach of the contract and the dispute was filed on or about 19th June, 1968. The original defendant had also filed dispute under Section 91 of the Maharashtra Co-operative Societies Act, 1960 before the District Deputy Registrar claiming possession of the property from the original plaintiff and for other ancillary reliefs. This dispute was also referred by the District Deputy Registrar to his nominee. The nominee of the Registrar consolidated the disputes and by the award dated 31st March, 1969 rejected the claim of the original defendant and allowed the claim of the original plaintiff and directed the original defendant to execute the sale deed of the suit property in favour of the original plaintiff. The original defendant challenged the award before the Maharashtra State Co-operative Appellate Tribunal in Appeals which were dismissed on 13th March, 1970. This order passed by the Appellate Tribunal was challenged in Special Civil Application Nos. 1397/1970 and 1398/1970 before this Court. The petitions were allowed by the judgment dated 13th August, 1975 and this Court held that the nominee of the Registrar and the Appellate Tribunal had no jurisdiction to entertain the dispute.

The original plaintiff filed the Civil Suit and as substantial time was consumed in prosecuting the proceedings under the Maharashtra Co-operative Societies Act, 1960, the original plaintiff relied on the provisions of Section 14 of the Limitation Act, 1963 for excluding that period.

3. The original defendant opposed the claim made by the original plaintiff. The original defendant stated in the written statement that the plaintiff had agreed to

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pay Rs. 5355/- at the time of the execution of the sale-deed and this amount was not paid and, therefore, the contract came to an end. The original defendant contended that the original plaintiff committed breach of contract and was not entitled for the specific performance of the contract.

4. The learned Trial Judge proceeded with the trial and by the judgment dated 26th November, 1982 concluded that the original plaintiff proved that the original defendant agreed to sell the suit house and that he had paid Rs. 5644.58 to the original defendant and had paid the outstanding dues of the society, insurance premium and electricity charges, etc. The learned Trial Judge concluded that the original defendant had paid Rs.1728.50 to the society from the amount received by him from the original plaintiff. The learned Trial Judge recorded that the original defendant had committed breach of agreement of sale. However, the Civil Suit was dismissed as barred by limitation.

5. The plaintiff being aggrieved by the judgment and decree passed by the Trial Court filed the appeal before the District Court. The learned District Judge allowed the appeal in the terms as stated earlier. Being aggrieved by the judgment and decree passed by the District Court the original defendant has filed this appeal. During the pendency of the proceedings, the original defendant died and his legal representatives are brought on the record.

6. This Court while admitting the appeal formulated the following substantial questions of law:-

1.) Whether the plaintiffs suit was barred by limitation and therefore liable to be dismissed?

2.) Whether the provisions of section 14 of the Limitation Act whether attracted to the facts of the case and whether the delay in filing the suit was liable to be condoned under section 14 of the Limitation Act?

3.) Whether Exhibit 69 or 62 can be construed as legal agreements between the parties incorporating all the terms of the alleged agreement of sale?

7. Shri M.K. Mishra, the learned Advocate for the appellants has submitted that the learned District Judge has committed an error in granting benefit of Section 14 of the Limitation Act, 1963 to the respondent. It is submitted that the proceedings under Section 91 of the Maharashtra Co-operative Societies Act, 1960 were filed before the nominee of the Registrar, who cannot be said to be "Court" for the purposes of Section 14 of the Limitation Act and, therefore, the respondents are not entitled for the exclusion of the period which was consumed for the prosecution of those proceedings. The learned Advocate has submitted that the documents (Ex. 62 and Ex.69) are receipts showing the monetary transactions and they cannot be considered as an agreement of sale. The submission is that the documents (Ex.62 and Ex.69) do not incorporate the terms and conditions governing the rights and liabilities of the parties and the decree for specific performance of contract could not have been granted on the

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basis of the above mentioned documents. The learned Advocate has submitted that the original plaintiff was given possession of the suit property, however, the original defendant had filed Special Civil Suit No. 13/1976 against the original plaintiff praying for the decree for possession and other ancillary reliefs and Second Appeal No. 189/1988 arising out of it is pending before this Court and is to be heard along with the present appeal.

8. Shri S.P. Palshikar, the learned Advocate for the respondents has submitted that the subordinate Courts have concurrently held that the original defendant entered into the agreement of sale and that the original plaintiff had paid the amount of consideration to the original defendant and that the original plaintiff was ready and willing to perform his part of the contract and there is breach of contract by the original defendant. It is submitted that the original plaintiff and then his legal representatives-the respondents had been in possession of the suit property since the date of the agreement dated 5th April, 1962. The learned Advocate has submitted that the Trial Court had dismissed the Civil Suit filed by the original plaintiff by misdirecting itself and not granting benefit of Section 14 of the Limitation Act, 1963. It is submitted that the District Court has properly appreciated the material on the record and has given the benefit of Section 14 of the Limitation Act and excluded the period which was consumed for prosecuting the proceedings under Section 91 of the Maharashtra Co-operative Societies Act, 1960. The learned Advocate has submitted that the original plaintiff and the original defendant were members of the Co-operative Society and both were under the bonafide impression that the dispute will fall under Section 91 of the Maharashtra Co-operative Societies Act, 1960 and the original defendant and the original plaintiff both filed proceedings under Section 91 of the Maharashtra Co-operative Societies Act, 1960 for redressal of their grievances. It is submitted that the original defendant had not raised the ground that the proceedings under Section 91 of the Maharashtra Co-operative Societies Act, 1960 were not maintainable and this Court while deciding the Special Civil Application no.1397/1970 and Special Civil Application no. 1398/1970 held that the proceedings under Section 91 of the Maharashtra Co-operative Societies Act, 1960 were not maintainable. The submission is that in view of the conduct of the original defendant, the objection raised by him opposing the entitlement of the original plaintiff for the benefit of Section 14 of the Limitation Act, 1963 cannot be considered.

9. The learned Advocate for the respondents has submitted that the nominee of the Registrar and the Co-operative Appellate Tribunal are "Courts" for the purposes of Section 14 of the Limitation Act, 1963 and the learned District Judge has rightly given the benefit of Section 14 of the Limitation Act, 1963 to the plaintiff.

It is submitted that the Registrar while exercising jurisdiction under Section 91 of the Maharashtra Co-operative Societies Act, 1960 and the Co-operative Appellate Tribunal while deciding the appeal, have all the trappings of the Court as they

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have the powers to issue summons and enforce the attendance of witnesses and to compel them to give evidence on oath, affirmation or affidavit and to compel production of the documents, by the same means and as far as possible in the same manner, as provided in the case of Civil Court by the Code of Civil Procedure, 1908.

10. In support of his submissions, the learned Advocate has relied on the following judgments:-

(1) Rupchand Rajaram Shah Vs. Janata Consumers Co-operative Society Ltd. and Others, ;

(2) Zafar Khan and Others Vs. Board of Revenue, U.P. and Others,

(3) Jai Mahavir Co-operative Housing Society Ltd. Vs. Panchal Keshavlal Narbheram and Others,

(4) Ranchoddas and Another Vs. Gupta Brass Stores and Others,

(5) Laxman Narhar Saraf Vs. Sukhdeo Shriram Awaghare,

11. It is submitted that admittedly the original plaintiff and then the respondents had been in possession of the suit property from the date of the agreement that is, 5th April, 1962 and the amount was paid to the original defendant as per the agreement and the plaintiff and the respondents have spent substantial amount on developing the property and it would not be proper to dismiss the claim of the respondents.

12. Considering the facts of the case, I inquired from the learned Advocates for the respective parties as to whether there are any chances of amicable settlement between the parties. However, there was no positive response from the appellants and the respondents. Shri Mishra, the learned Advocate for the appellants stated that the appellants have not executed the sale-deed of the suit property as per the judgment and decree passed by the learned District Judge, till today. Shri Mishra, the learned Advocate has relied on the following judgments:

(1) Purshottamdas Hassaram Sabnani Vs. Impex (India) Ltd., ;

(2) Rama Rao and Another Vs. Narayan and Another, .

Shri Palshikar, the learned Advocate for the respondents has submitted that the sale-deed has been executed pursuant to the judgment and decree passed by the learned District Judge.

13. The substantial question of law as framed by this Court while admitting the appeal regarding applicability of Section 14 of the Limitation Act, 1963 arises for consideration. Section 14(1) of the Limitation Act, 1963 reads as follows:-

"14. Exclusion of time of proceeding bona fide in Court without jurisdiction (1) In computing the period of limitation for any suit the time during which the plaintiff

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has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceedings relates to the same matter in issue and is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it."

The point which is required to be considered is "whether the nominee of the Registrar while exercising the powers under Section 91 of the Maharashtra Co-operative Societies Act, 1960 can be considered as "Court" for the purposes of Section 14 of the Limitation Act, 1963. It is undisputed that the proceedings under Section 91 of the Maharashtra Co-operative Societies Act, 1960 were filed by the original plaintiff before the District Deputy Registrar. According to the original plaintiff, the District Deputy Registrar had admitted the dispute and had referred it to his nominee who decided the dispute. The Registrar''s nominee cannot be considered as the "Court" for the purposes of Section 14 of the Limitation Act, 1963.

Section 91 of the Maharashtra Co-operative Societies Act, 1960 as it stood in 1968, when the dispute was filed, provided that the dispute as stated in Section 91 of the Maharashtra Co-operative Societies Act, 1960 should be referred to the Registrar.

Section 2(24) of the Maharashtra Co-operative Societies Act, 1960 provided that the "Registrar" meant a person appointed to be the "Registrar" of the Co-operative Societies under the Act.

Section 3 of the Maharashtra Co-operative Societies Act, 1960 lays down that the State Government may appoint the person to be the Registrar of Co-operative Societies for the State, and may appoint one or more persons to assist such Registrar. It provides that the person or persons so appointed to assist Registrar and on whom the powers of the Registrar are conferred shall work under the general guidance, superintendence and control of the Registrar.

In the judgment given by this Court in the case of Rupchand Rajaram Shah Vs. Janata Consumers Co- operative Society ltd., Sangli and others (supra) it is held that the Registrar deciding the dispute under Section 91 of the Maharashtra Co-operative Societies Act, 1960 is "Court" and the dispute being civil proceedings, Section 14 of the Limitation Act would be available to the party to claim the exclusion of the period consumed in prosecuting the dispute. This judgment does not assist the respondent inasmuch as it does not deal with the issue as to whether nominee of the Registrar can be considered as "Court" as contemplated under Section 14 of the Limitation Act, 1963.

The judgment given by the Hon''ble Supreme Court in the case of Zafar Khan and others Vs. Board of Revenue, U.P. and others (supra) considers the requirements which should be satisfied for availing the benefit of Section 14 of the Limitation Act, 1963. This judgment does not deal with the issue which falls for consideration in the present appeal i.e. whether the nominee of the Registrar

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while deciding the dispute under Section 91 of the Maharashtra Co-operative Societies Act, 1960 is "Court" for the purposes of Section 14(1) of the Limitation Act, 1963.

The judgment given by the Hon''ble Supreme Court in the case of Jai Mahavir Co-operative Housing Society Ltd. Vs. Panchal Keshavlal Narbheram and others (supra) deals with the powers of the Registrar to review the order passed by him, exercising the jurisdiction under Section 96 of the Maharashtra Co-operative Societies Act, 1960. This judgment also does not assist the respondents as the issue which is required to be considered in this appeal, is not dealt with in this judgment.

In the judgment given by this Court in the case of Ranchoddas Atmaram Bairagi and another Vs. Gupta Brass Stores and others (supra) this court has laid down that the authorities under C.P. and Berar and Letting of Houses and Rent Control Order, 1949 are "Courts" as the orders passed by them are definite and authoritative and there is power to execute the orders and to secure the compliances of the provisions and to prevent the breaches, and the appeal and review are provided. This Court held that the powers are conferred on the authorities by State under the statute and some of the powers are judicial powers of the State.

In the judgment given by this Court in the case of Laxman Narhar Saraf Vs. Sukhdeo Shriram Awaghare (supra) this Court has held that the Agricultural Lands Tribunal is the Civil Court for the purposes of Section 125 of the Maharashtra Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958. For coming to this conclusion, this Court has relied on the explanation below Section 125 of the Maharashtra Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 which provides that for the purposes of this Section, Civil Court shall include a Mamlatdar''s Court constituted under the Mamlatdars'' Courts Act, 1906 and on the provisions of Section 102 of the Maharashtra Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 which provides for the procedure to be followed by the Tahsildar or Tribunal.

The above mentioned two judgments do not support the contentions of the learned Advocate for the respondents. The view taken by this Court in the case of Ranchhoddas Atmaram Bairagi and another Vs. Gupta Brass Stores and others (supra) is on consideration of the provisions of the C.P. and Berar Letting of Houses and Rent Control Order, 1949. The view taken by this Court in Laxman Narhar Saraf Vs. Sukhdeo Shriraram Awaghare (supra) is also based on explanation below Section 125 and provisions of Section 102 of the Maharashtra Tenancy and Agricultural Lands (Vidarbha Region)Act, 1958.

14. In my view, the issue which falls for consideration in this appeal has to be examined in the light of the judgment given by this Court in the case of Purshottamdas Hassaram Sabnani Vs. Impex (India) Ltd. and the judgment given by the Hon''ble Supreme Court in the case of Ramrao and another Vs.

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Narayan and another (supra).

In the judgment given by the Division Bench of this Court in the case of Purshottamdas Hassaram Sabnani Vs. Impex (India) Ltd., , the Division Bench has recorded in paragraph nos.5 and 6 as follows:-

"Paragraph no.5:But in the judgment it appears that the learned Judges have taken the view that even on a strict construction the word "Court" used in S. 14 would cover a domestic forum. It is difficult to agree with that view. As already pointed out, S. 14 does not merely refer to "Court", but it refers to "a Court of first instance and a Court of appeal", and these expressions in our opinion make it amply clear that what the Legislature had in mind were judicial Courts, Courts established by the law of the land, and not Courts in the wider sense of domestic forums or tribunals. This decision of the Allahabad High Court has been followed by the Nagpur High Court in -AIR 1948 334 (Nagpur).

That High Court also construed the word "Court" used in S. 14 of the Limitation Act as not only statutory Courts but also arbitrators and proceedings before them. The learned Judge below has found himself unable to accept the view taken by the Allahabad High Court and the Nagpur High Court and he has rightly pointed out that the Privy Council decision does not directly apply because the facts that their Lordships were considering were different and that the decision must be restricted to the facts of that case".

Paragraph no.6 : "Therefore, whatever validity the Nagpur and the Allahabad decisions may have had before the Arbitration Act of 1940 was passed, in view of the provisions of S. 37(5) it is clear that S. 14, Limitation Act, cannot be made applicable to arbitration proceedings. Undoubtedly, the time taken up in arbitration proceedings can be excluded, but that time can be excluded not under S. 14, Limitation Act, but under S. 37(5), Arbitration Act, and in order to exclude time taken up in arbitration proceedings the test laid down by the Legislature in S. 37(5) must be applied and satisfied."

The Hon''ble Supreme Court in the case of Ramrao and another Vs. Narayan and another (supra) has considered the authority of the nominee of the Registrar and has recorded in paragraph 25 as follows:-

"Paragraph 25 : After carefully considering the powers conferred and the source of authority of the nominee, we have no doubt that the nominee exercising power to make an award under Section 96 of the Maharashtra Co-operative Societies Act, 1960 derives his authority not from the statute but from investment by the Registrar in his individual discretion. The power so invested is liable to be suspended and may be withdrawn. He is therefore not entrusted with the judicial power of the State: he is merely an arbitrator authorised within the limits of the power conferred to adjudicate upon the dispute referred to him."

15. The issue as to whether the nominee of the Registrar while exercising the powers under Section 91 of the Maharashtra Co-operative Societies Act, 1960

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can be considered as "Court" as contemplated by Section 14 of the Limitation Act, 1963 has to be decided in the light of the propositions laid down in the above mentioned two judgments.

16. The Division Bench of this Court in the judgment given in the case of Purshottamdas Hassaram Sabnani Vs. Impex (India) Ltd., has held that the expressions used in the phrase "a Court of first instance and a Court of appeal", in Section 14 of the Limitation Act make it clear that the "Court" for the purposes of Section 14 of the Limitation Act is a judicial Court established by law of the land and not the Court in the wider sense of domestic forms or Tribunal.

17. The Hon''ble Supreme Court in the judgment given in the case of Ramrao and another Vs. Narayan and another (supra) has held that the nominee of the Registrar derives his authority from his appointment by the Registrar and the Registrar is entitled to withdraw the authority of the nominee. It is held that the nominee of the Registrar does not derive the authority from the statute but derives the authority because of the investing of the powers by the Registrar in his discretion, and the powers so invested are liable to be suspended and may be withdrawn. It is held that the judicial powers of the State are not entrusted to him and he acts only as Arbitrator authorised with the power conferred to adjudicate the dispute referred to him.

18. In view of the above, it has to be held that the nominee of the Registrar cannot be considered as "Court" as contemplated by Section 14 of the Limitation Act, 1963. Consequently, the time consumed by the original plaintiff in prosecuting the dispute before the nominee of the Registrar cannot be excluded under Section 1 144 of the Limitation Act, 1963. The Civil Suit filed by the original plaintiff is barred by limitation prescribed for filing of the Civil Suit.

19. In view of the finding that the Civil Suit filed by the original plaintiff was barred by limitation, it would not be proper for me to consider the other points raised by the learned Advocate for the appellants. The other substantial questions of law formulated by this Court while admitting the appeal regarding the documents (Ex.62 and Ex. 69) are not being considered for the above mentioned reason. The decree as prayed for in the suit cannot be granted as the Civil Suit is filed beyond the prescribed period of limitation and the Court does not have the jurisdiction to entertain and decide the Civil Suit and grant decree. The judgment and decree passed by the learned District Judge in Civil Appeal No. 70 of 1983 on 17th December 1987 is set aside and the Regular Civil Suit No. 53/1978 passed by the Civil Judge (Sr. Dn.) Yavatmal on 26th November, 1982 is dismissed. In the circumstances, the parties to bear their own costs.

Second Appeal No. 189/1988

20. This appeal is filed by the original plaintiff challenging the judgment and decree passed by the subordinate Courts dismissing the suit for decree for possession of the suit house and for inquiry into mesne profits.

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21. The facts are reproduced in the judgment given in Second Appeal No. 190/1988 and are not repeated.

22. This Court while admitting the appeal has formulated the substantial question of law as follows:-

"What does constitute an agreement for the purposes of Section 53-A of the Transfer of Property Act so as to avail the benefit of protection of possession?

23. It is undisputed that the original defendant-Gulabrao Ganpatrao Bakade was put in possession of the suit property pursuant to the agreement of sale dated 26th March, 1962. The subordinate Courts have recorded the findings of fact concurrently that the original defendant-Gulabrao Ganpatrao Bakade was ready and willing to perform his part of agreement and the original plaintiff-Balaji Ramaiya Manthanwar has committed breach of the agreement.

24. In Regular Civil Suit No. 53/1978 filed by Gulabrao Ganpatrao Bakade praying for specific performance of the agreement of sale, the learned trial Judge recorded the finding that Balaji Ramaiya Manthanwar committed breach of the agreement of sale. In Regular Civil Appeal No. 70/1983 the learned District Judge confirmed this finding that Balaji Ramaiya Manthanwar committed breach of the agreement of sale.

Gulabrao Ganpatrao Bakade is denied the decree for specific performance of agreement of sale in the connected proceedings, on the ground that the time consumed in prosecuting the dispute before the nominee of the District Deputy Registrar praying for award for specific performance of the agreement of sale cannot be excluded and the civil suit filed by Gulabrao Ganpatrao Bakade was barred by limitation.

25. In view of the findings recorded by the subordinate Courts that the original defendant-Gulabrao Ganpatrao Bakade was put in possession of the suit property pursuant to the agreement of sale dated 26th March, 1962 and that the breach of agreement is by the original plaintiff-Balaji Ramaiya Manthanwar and in view of the facts on the record showing that the original defendant-Gulabrao Ganpatrao Bakade was ready and willing to perform his part of the agreement, the subordinate Courts have concluded that the original defendant-Gulabrao Ganpatrao Bakade is entitled to protect his possession under Section 53-A of the Transfer of Property Act. I do not find any irregularity or illegality in the findings recorded by the subordinate Courts.

26. The judgment given by this Court in the case of Balasaheb Manikrao Deshmukh and Another Vs. Rama Lingoji Warthi, covers the point. This Court has held that the protection under Section 53-A of the Transfer of Property Act is available to the purchaser even if the suit for specific performance of contract has become time-barred.

27. In view of the above, the appeal is dismissed. In the circumstances, the parties to bear their own costs.

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