

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

**BENCH AT AURANGABAD**

903 SECOND APPEAL NO.407 OF 2019  
WITH CA/6596/2019 IN SA/407/2019

CHANDAN SATISH TOSHNIWAL  
VERSUS  
LEELA MARUTI BIRHADE

...

Advocate for Appellant : Shri Totla Rameshwar F.  
Advocate for Respondent : Shri S.B. Bhapkar

**CORAM: V.L. ACHLIYA, J.**

**DATE: 27.08.2019**

**PER COURT :**

1] Being aggrieved and dissatisfied by the judgment and decree passed in Regular Civil Appeal No.206/2015 dated 30.11.2018 by learned District Judge, Jalgaon, thereby dismissing the appeal of present appellant – defendant and confirming the judgment and decree passed in Special Civil Suit No.13/2013 dated 10.2.2015 by learned Civil Judge, Senior Division, Jalgaon, the appellant – defendant has preferred this second appeal.

2] Heard learned counsel for the appellant and the respondent. Perused the judgment and decree passed by the Courts below. Further perused the copies of

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complaints and agreement of sale forming the basis for filing the suit for recovery of amount paid as earnest money.

2] On due consideration of the submissions advanced in the light of the substantial questions of law raised in the appeal, I am of the view that the appeal deserves to be admitted. The appeal raises following substantial questions of law:-

1] Whether the judgment and decree passed by the trial Court deserves to be set aside for not framing proper issues ?

2] Whether the trial Court erred in rejecting the application filed by the appellant – defendant for framing additional issues ?

3] Whether the finding recorded by the trial Court to hold that the suit is within limitation is sustainable in law ?

4] Whether the suit as framed and filed by the plaintiff is maintainable in law ?

5] Whether the Courts below committed error in passing decree in favour of the plaintiff ?

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3] In view of above, the appeal deserves to be admitted. Hence, the following order:-

**O R D E R**

A] Admit.

B] Issue notice to respondent.

C] Shri S.B. Bhapkar Advocate waives notice of appeal for the respondent – plaintiff.

D] Call R & P.

E] Printing is dispensed with. Appellant is directed to prepare private paper book in accordance with the procedure provided under the Bombay High Court Appellate Side Rules and tender the same with the Registry within twelve weeks from the date of this order.

F] Hearing of the appeal is expedited.

G] Liberty granted to both the sides to move the Court for fixing the appeal for final hearing after the appeal is ready in all respects.

H] In the mean time, there shall be stay to the execution of decree subject to deposit of Rs.5,00,000/- by the appellant in this Court

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within four weeks from the date of this order.

I] In case the amount is deposited by the appellant, the same shall be invested in fixed deposit and to remain in deposit till disposal of the appeal.

J] On failure to deposit the amount within four weeks, the interim order operating shall stand vacated without further reference to Court.

K] Civil Application No.6596/2019 is disposed of in above terms.

**(V.L. ACHLIYA, J.)**