

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

CIVIL APPLICATION (CAO) NO.739 OF 2019

IN

MISC. CIVIL APPLICATION (STAMP) NO.581 OF 2019

IN

SECOND APPEAL (STAMP) NO.21878 OF 2018 (R.C. NO.13/2019)

(Sunil s/o Vedmitra Bajaj and others ..vs.. Smt. Renuka wd/o Dnyaneshwar Ambadare and others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri Kulkarni, Counsel h/f. Shri Anand Parchure, Counsel for the
appellants.

CORAM : ROHIT B. DEO, J.

DATED : 10-04-2019

For reasons stated in the application, the delay of 27 days in preferring the application for restoration of the second appeal is condoned.

2. The application is disposed of accordingly.

Misc. Civil Application (Stamp) No.581/2019

For reasons stated in the application, the second appeal is restored to file.

Second Appeal No.178/2019.

The appellants are the original defendants in the suit for specific performance brought by the plaintiffs -respondents 3 to 6.

2. By judgment and decree dated 16-8-2014

rendered by the Civil Judge (Senior Division), Nagpur, the trial Court refused the relief of specific performance and directed refund of the earnest amount. The defendants carried the judgment in first appeal. By judgment and decree dated 18-7-2018, the District Judge-14, Nagpur dismissed the appeal.

3. The learned Counsel for the appellants Shri Kulkarni would submit that in view of the terms and conditions of the suit agreement, the defendants are entitled to forfeit the earnest amount. Both the Courts below have considered the said submission. The Courts below have recorded a finding of fact that both the plaintiffs and the defendants shared the blame. In particular, it is observed that there was a dispute between the co-owners of the property i.e. defendants 1 and 2 and other family members.

4. Having considering the evidence on record holistically, both the Courts below have directed the refund of the earnest.

5. The findings of fact recorded by the Courts below are unexceptionable. This appeal does not involve any question of law, much less substantial question of law.

6. The appeal is dismissed with no order as to costs.

JUDGE