

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO.232 OF 2024
WITH
INTERIM APPLICATION NO.7767 OF 2024
IN
SECOND APPEAL NO.232 OF 2024**

Rajaram Dhulappa Patil ...Appellant

Versus

Suryakant Gangadhar Hiremath ...Respondent

...

Mr. Kuldeep U. Nikam *for the Appellant.*

Mr. Gajanan M. Sawagave *with Mr. Abhiman Patil for the Respondent.*

CORAM : SANDEEP V. MARNE, J.

DATED : 26 APRIL 2024.

PC:

1. The challenge in the present appeal is to the Decree dated 22 August 2023 passed by District Judge-2, Sangli, dismissing Regular Civil Appeal No.360 of 2019 and confirming the Decree of the Trial Court passed in Special Civil Suit No.198 of 2015. The Trial Court in fact dismissed Plaintiff's Suit for specific performance and has granted the alternate prayer for compensation in the sum of Rs.9,00,000/-.

2. The only objection that Mr. Nikam, the learned counsel appearing for the Appellant raises is to the direction of Trial Court for payment of compensation of Rs.9,00,000/-. That the Trial Court could

not have indirectly directed refund of earnest money deposited, by branding the same as compensation. According to Mr. Nikam, the Trial Court has arrived at a finding that Rs.9,00,000/- were paid towards earnest money and thus what is actually awarded by the Trial Court is refund of the earnest money. He would submit that there is no prayer in the plaint for refund of earnest money. According to Mr. Nikam “compensation” and “refund of earnest money” are two different heads which cannot be mixed together.

3. Mr. Nikam would rely upon the Judgment of the Apex Court in *Deshraj and Others vs. Rohtash Singh (2023) 3 SCC 714* in support of his contention that in absence of any prayer for refund of earnest money, the Trial Court could not have granted the said relief to the Plaintiff.

4. In my view the reliance of Mr. Nikam on the judgment of Deshraj (supra) is completely misplaced. There is specific prayer for payment of compensation made by Plaintiff in the plaint. The Trial Court has not awarded amount of Rs.9,00,000/- towards refund of earnest money. What is awarded by the Trial Court is compensation. However, instead of awarding compensation of Rs.15,00,000/- as demanded by Plaintiff, the Trial Court has scaled it down to Rs.9,00,000/-.

5. After having considered the submissions canvassed by Mr. Nikam, I am of the view that no serious flaw can be noticed in the

Decree passed by the Trial Court once a finding of fact recorded that Plaintiff paid amount of Rs.9,00,000/- to the Defendant in respect of a transaction. The Trial Court has not even awarded any interest on the amount of Rs.9,00,000/- even though the Suit has remained pending for four long years and the agreement in question was executed on 14 November 2014. The first Appellate Court has confirmed the Decree of the Trial Court. In my view no substantial question of law is involved in the appeal. The Second Appeal is accordingly rejected.

6. In view of disposal of the Second Appeal, interim application does not survive and accordingly stands disposed of.

[SANDEEP V. MARNE, J.]