

Iresh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**SECOND APPEAL NO. 753 OF 2024
WITH
INTERIM APPLICATION NO. 15125 OF 2024
IN
SECOND APPEAL NO. 753 OF 2024
WITH
SECOND APPEAL NO. 754 OF 2024
WITH
INTERIM APPLICATION NO. 15120 OF 2024
IN
SECOND APPEAL NO. 754 OF 2024**

Vijay Raghunath Patil

.....Appellant

Vs.

Sudhir Sitaram Pise
Since Decd. Thr. LRs

.....Respondents

Mr. Tejpal S. Ingale i/b Mr. Umesh Pawar a/w Mr. Sagar Sonawane for
the appellant

Mr. Bhushan Walimbe with Ms. Khushi Gupta and Ms. Vaishnavi
Nagargoje for the respondents

IRESH
MASHAL

Digitally
signed by
IRESH
MASHAL

Date:
2024.12.04
10:12:04
+0530

CORAM : GAURI GODSE, J.

DATE : 3rd DECEMBER 2024.

ORDER:

**SECOND APPEAL NO. 753 OF 2024 AND SECOND APPEAL NO.
754 OF 2024:**

1. These second appeals arise out of the same impugned judgment

and decree dated 9th May 2024 passed in Regular Civil Appeal No. 107 of 2019 and 111 of 2019. Hence, common order is passed in both the Second Appeals.

2. Heard learned counsel for the parties. The second appeals are admitted on the following substantial questions of law :

- (i) Whether the plaintiff would be entitled for a decree of recovery of amount in terms of the cheques, in the absence of any findings recorded regarding the receipt of payment by the defendants in terms of alleged oral agreement?
- (ii) Whether plaintiff is entitled for a decree for recovery of money against the defendants, when the basis of said claim is under the oral Agreement for Sale and Deed of Cancellation of Agreement dated 29th May 2010 at Exhibit 70?
- (iii) Whether the provision of Negotiable Instrument Act in respect of awarding interest as provided under Section 117(c) of the Negotiable Instrument Act are applicable to the present Civil suit for recovery of money and the First Appellate Court was justified in awarding interest @ 18% p.a. to the plaintiff ?

(iv) Whether the First Appellate Court is justified in granting interest @ 18% p. a. in favour of plaintiff when the transaction in question is not commercial and as such contrary to the provisions of Section 34 of Code of Civil Procedure and more particularly when the Deed of Cancellation of Agreement dated 29th May 2010 at Exhibit 70 is silent on providing interest for refund of the amount of consideration received ?

3. Learned Advocate for the respondent waives notice.
4. Call for record and proceedings.
5. Printing is dispensed with.
6. Learned Advocate for the appellants shall file private paper book within one year from today.
7. To be heard alongwith Second Appeal No. 731 of 2024 and Second Appeal No. 751 of 2024.

INTERIM APPLICATION NO. 15125 OF 2024 AND INTERIM APPLICATION NO. 15120 OF 2024:

8. These applications are for stay to the execution of the impugned decree. Learned counsel for the applicant submits that the First

Appellate Court has modified the decree and granted interest @ 18% per annum from the date of transaction. He submits that there is no valid reason recorded for awarding interest @ 18% per annum from the date of the transaction. He further submits that 50% of the decretal amount as per trial court's decree is already deposited by the appellants in the trial court. Learned counsel for the applicants therefore submits that the impugned decree be stayed during the pendency of the Second Appeal.

9. Learned counsel for the respondent opposes grant of any interim stay. He submits that in the agreement for cancellation of the first agreement, the defendants admitted receipt of the amount which he secured by issuing cheques. He thus submits that it is now not open for the appellants to argue that the amount was never received by him and therefore he is not liable to pay the amount. He thus submits that the interest awarded by the First Appellate Court is justifiable and reasons cannot be faulted. He submits that the First Appellate Court has recorded reasons for awarding 18% per annum interest.

10. I have perused the impugned judgments. The suit is filed for recovery of the amount as the cheques issued by the appellants were

dishonoured. The plaintiff's claim for recovering amount is based on oral agreement for sale between the parties. It is the plaintiff's case that the oral agreement was cancelled and thus the defendants had agreed to return the amount received by him at the time of oral agreement. The plaintiff's case is based on the cheques issued by the defendants which were dishonoured.

11. The Second Appeal is admitted on the point of appellate court's findings on awarding interest and on the point of plaintiff's entitlement to recovering the amount in the absence of any findings recorded that the amount was actually received by the defendants.

12. The reasons recorded by the First Appellate Court by awarding interest @ 18 % per annum is not justifiable in the facts of the present case. In the facts and circumstances of the case the appellants would be entitled to stay of the impugned decree subject to depositing the entire decretal amount with interest @ 6% per annum from the date of trial court's decree.

13. Learned counsel for the appellants submits that 50% of the decretal amount deposited by the appellants in the trial court is withdrawn by the respondent. Learned counsel for the appellants thus

submits that if the appellants succeed in this second appeal, the amount already withdrawn by the respondent needs to be secured.

14. Learned counsel for the respondent submits that after the appellants deposits the balance amount as directed by this order, the respondent would file an undertaking in this court within two weeks thereafter stating that the respondent would refund the amount withdrawn by the respondent in the event the appellants succeed in the Second Appeal.

15. For the reasons stated above, the impugned decree shall remain stayed during the pendency of the Second Appeal subject to the appellants depositing in the trial Court, entire balance decretal amount with 6% interest per annum from the date of trial court's decree within eight weeks from today.

16. In the event the amount is deposited, the respondent shall file undertaking in this court within two weeks thereafter, stating that he would refund the entire amount withdrawn by him with 6% interest in the event the appellants succeeds in the Second Appeal. Statement made on behalf of the respondent is accepted as an undertaking to this court.

17. The trial Court shall invest the amount that would be deposited by the appellants pursuant to this order. The amount to be invested in some nationalized bank till the pendency of the second appeal or further orders passed by this Court.

18. Interim Applications are allowed in the aforesaid terms.

[GAURI GODSE, J.]