



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

SECOND APPEAL NO. 19 OF 2020

APPELLANTS

- : 1. M/s. Chaware Oil Industries, a Partnership Firm through its Partner Shri Deokumar Rukhabdas Chaware, Aged about 85 years, Occu: Business, R/o. Chaware Line, Karanja (Lad), Tah. Karanja (Lad), Distt. Washim.
- Sau. Surekhabai W/o. Rajkumar Chaware (since deceased through legal representatives)
2. Pradeep S/o. Rajkumar Chaware, Aged about 56 years, Occu: Business.
3. Amol S/o. Rajkumar Chaware, Aged about 47 years, Occu: Business, Nos.2 & 3 R/o. Chaware Line, Karanja (Lad), Tah. Karanja (Lad), Distt. Washim.
4. Sau. Jyoti W/o. Kiran Jain, Aged about 52 years, Occ: Household, R/o. Near RTO Office, Kesarbagh Road, Indore.
5. Deokumar Rukhabdas Chaware, Aged about 85 years, Occu: Business, R/o. Chaware Line, Karanja (Lad), Tah. Karanja (Lad), Distt. Washim.

//VERSUS//

RESPONDENT

- : Sachin S/o. Prakashrao Deshmukh, Aged about 49 years, Occu: Business, R/o. Prabhat Colony, Near Dasara Maidan Road, Tq. & Distt. Amravati.

Mr. M.R. Joharapurkar, Advocate for the Appellants.

Mr. A.M. Sudame, Advocate for the Respondent.

CORAM : G. A. SANAP, J.

DATED : 19th JANUARY, 2024.

ORAL JUDGMENT

. **Admit.** Heard finally with the consent of the learned advocates for the parties.

02] In this second appeal, challenge is to the judgment and order dated 1st August, 2019, passed by the learned District Judge-2, Amravati, whereby the learned District Judge dismissed the appeal filed by the appellants and confirmed the judgment and decree dated 29th September, 2012 for refund of the earnest money, passed by the learned Civil Judge (Senior Division), Amravati.

03] This Court by order dated 7th February, 2020 observed that the following substantial question of law may arise for consideration:

(1) *Whether the suit for recovery, which was filed on 07.04.2008, was within limitation?*

04] The facts leading to this question are as follows:

The appellants/defendants had agreed to sell the suit property to the respondent/plaintiff pursuant to the agreement dated 25th July, 2002, for a total consideration of Rs.33,51,000/-. The amount of Rs.8,71,000/- was paid as earnest money. The appellants had agreed to execute the sale-deed on or before 30th June, 2003. It appears that no action was taken on the part of the parties to give finality to the agreement till 10th April, 2005. The respondent thereafter filed a suit for refund of earnest money from the appellants on the ground that the contract was rescinded on 10th April, 2005, and on that date, the appellants had refunded Rs.3,31,000/-, being a part of the total earnest money, with a promise to pay the balance amount of the earnest money of Rs.5,00,000/-. It is the case of the respondent that, on failure of the appellants to pay the balance amount of earnest money, he issued a notice. The notice was replied, but the earnest money was not paid. He, therefore, filed the suit. The appellants opposed the said suit. According to the appellants, the agreement for sale was not rescinded as alleged. The appellants expressed their readiness and willingness to execute the sale-deed in favour of the respondent on

receipt of the balance consideration. The appellants have set up a defence that the amount of Rs.3,31,000/-, paid to the respondent on 10th April, 2005, had nothing to do with the refund of the earnest money, but it was a separate loan transaction.

05] The Courts below have recorded a concurrent finding of fact that the suit filed for recovery of the balance amount of the earnest money was within limitation. As far as the fact with regard to the recession of the contract is concerned, the Trial Court held that the contract was rescinded on 10th April, 2005. However, the learned Judge of the Appellate Court did not agree with this finding on the point of the recession of the contract.

06] The learned advocate for the appellants submitted that the reversal of the finding of the Trial Court with regard to the recession of contract by the Appellate Court would show that the Appellate Court has indirectly accepted the case of the appellants that the amount of Rs.3,31,000/-, paid to the respondent was not towards the earnest money but was an independent transaction. The learned advocate submitted that the earnest money was forfeited in terms of

the stipulation of the agreement on 30th June, 2003. The learned advocate submitted that the cause of action sought to be set up for filing the suit on 10th April, 2005 was just to bring his time-barred suit within limitation. The learned advocate further submitted that without setting up a justifiable reason for filing the suit for recovery of the earnest money alone, the suit by itself would not be maintainable in law. The learned advocate submitted that the amount of earnest money in this case was forfeited on 30th June, 2003, and not thereafter, as held by the Courts below.

07] The learned advocate for the respondent submitted that the concurrent findings of fact on the point of limitation recorded by the Courts below is supported by the evidence. The learned advocate submitted that the Appellate Court has not recorded a categorical finding that the amount of Rs.3,31,000/-, proved to have been received by the appellants was not towards the part of refund of the earnest money, but it was a separate transaction of advance of money to the respondent. The learned advocate submitted that the facts, circumstances, and evidence produced before the Court clearly indicate that the cause of action accrued in favour of the plaintiff for

filing the suit when the forfeiture of the earnest money was communicated to the respondent pursuant to the reply to the notice of the respondent by the appellants, Exh.14 dated 22nd May, 2006. The learned advocate submitted that the issue of limitation has to be answered keeping in mind the facts of the case and the evidence adduced by the parties. The learned advocate submitted that there is no reason to interfere with the concurrent findings of fact recorded by the Courts below.

08] I have gone through the record and proceedings. At the outset, it is necessary to state that the question of limitation is not a pure question of fact, but it is the mixed question of law and fact. The question of limitation has to be addressed, keeping in mind the facts of the case and the evidence adduced by the parties. In short, while addressing the issue of limitation, there cannot be any straight-jacket formula or rule. The answer to the question depends upon the facts of the case and the evidence adduced by the parties. On going through the record and proceedings, particularly the decisions rendered by the Courts below, I am satisfied that the Courts below have not committed any error or mistake while addressing this issue

of limitation in favour of the respondent and against the appellants. The Trial Court, on threadbare analysis of the evidence, rejected the defence of the appellants. The Trial Court, as can be seen from the judgment and order, has taken into consideration the entire factual gamut of the case as well as the evidence on record. The First Appellate Court, except for the issue of recession of contract as put forth by the respondent, has not reversed any other finding of fact recorded by the Trial Court. It is undisputed that even by reply dated 22nd May, 2006 Exh.14, the appellants contended that they were ready and willing to perform their part of the contract. They called upon the respondent to pay the balance consideration and appear before the Sub-Registrar for execution of the sale-deed on a particular date. This fact would clearly indicate that, till the date of the reply dated 22nd May, 2006, on the part of the appellants, this agreement for sale dated 25th July, 2002, was not terminated. There was no separate specific intimation to the respondent by the appellants that, on termination of the agreement on 30th June, 2003, the earnest money was forfeited. The case of the appellants set up in the written statement, in my view, would go against the appellants.

09] I have already observed that the First Appellate Court has not set aside the observation or the order passed by the learned Trial Judge that the amount of Rs.3,31,000/-, paid to the appellants, was part of the earnest money. Both the Courts below have not recorded a finding of fact that the payment of Rs.3,31,000/- had nothing to do with this transaction of agreement to sell, but it was an independent loan transaction, as sought to be contended by the appellants.

10] Whether the earnest money would stand forfeited or not in this situation would be a question of fact. The payment of Rs.3,31,000/- by the appellants to the respondent on 10th April, 2005, clearly suggests that the agreement for sale was not terminated by the parties. The parties, as can be seen from the evidence, did not expressly terminate the said agreement. The material on record suggests that there was some understanding between the parties after the expiry period of that agreement i.e. 30th June, 2003, with regard to certain issues necessary for giving finality to this agreement one way or the other. In my view, the learned Judge of the Appellate Court has rightly observed that the appellants not only waived their

right to forfeit the earnest money but also suppressed the facts about the true nature of the transaction. The Courts below have not committed any mistake in concluding that the forfeiture of the earnest money was expressly communicated to the respondent by a reply dated 22nd May, 2006. The Courts below have rightly observed that in this case, Article 113 would be applicable.

11] In the facts and circumstances, I am of the view that the Courts below have not committed any illegality. The issue of limitation was answered keeping in mind the facts and the evidence on record. Accordingly, I answer the above question in the affirmative. As a result of this, the appeal is **dismissed**.

12] The learned advocate for the appellants submits that for the purpose of six weeks from today, the respondent may not be allowed to withdraw the amount of Rs.5,00,000/-.

13] The learned advocate for the respondent opposes this prayer.

14] In view of the facts and circumstances, the respondent shall not withdraw this amount for the next six weeks.

(G. A. SANAP, J.)

Vijay