



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

**SECOND APPEAL NO. 180 OF 2025
WITH
CIVIL APPLICATION NO. 5202 OF 2025**

Janardhan Sadhusant Shinde .. Appellant

Versus

Kalpana Pralhad Dangre .. Respondent

Shri Chandrakant V Thombre, Advocate for the Appellant.
Shri Sanjay D. Hiwrekar, Advocate for the Respondent.

**CORAM : SHAILESH P. BRAHME, J.
DATE : 15TH SEPTEMBER, 2025.**

FINAL ORDER :

. Heard both sides.

2. Concurrent findings of facts have been questioned by the original plaintiff in the second appeal. Simultaneously, concurrent findings of facts for granting decree of possession in counter claim are also questioned.

3. The suit house is situated in CIDCO, which was part of low income group scheme. It was allotted to one Babusing Rathod. He transferred it to appellant. It was transferred by following due procedure of law and executing registered instrument in favour of the appellant. Possession was also handed over. Appellant agreed to sell the suit house for Rs. 8,00,000/- to the

respondent vide agreement dated 30.03.2010. It was agreed that the sale deed was to be executed by 27.05.2010. Appellant was paid an amount of Rs. 7,08,422/-. The balance amount of Rs. 91,578/- remained to be paid. A assignment deed was executed on 17.05.2010 in favour of the respondent, though she committed breach of the agreement. Same has resulted into filing of Spl. C. S. No. 367 of 2011 for declaration and injunction.

4. Respondent contested the suit on the ground that entire amount of consideration was paid. Even cheque of the balance amount was also issued, but the appellant did not encash it. It is contended that assignment deed was executed on 17.05.2010, which was registered, transferring interest to the respondent. In pursuance of that respondent is entitled to receive the possession of the suit house. Hence a counter claim is filed claiming relief of possession.

5. Appellant contested counter claim before the Trial Court and raised plea that it was not tenable and there was no cause of action.

6. Both the Courts below dismissed suit filed by the appellant and decreed the counter claim for possession. The counter claim is allowed by conditional decree directing the respondent to pay Rs. 91,578/- to the appellant within stipulated period.

7. Learned counsel Mr. Chandrakant Thombre for the

appellant submits that the respondent committed breach of agreement and failed to pay entire amount of consideration. Hence assignment deed is bad in law. It is contended that due to partial payment, the assignment deed in question is invalid. It is further submitted that cheque issued by the respondent of the balance amount of Rs. 91,518/-, which is not encashed cannot be said to be payment of consideration. It is submitted that both the Courts below have committed error of jurisdiction in dismissing the suit and allowing the counter claim.

8. Per contra, Mr. Sanjay Hiwrekar, learned counsel for the respondent supports impugned judgment. It is submitted that a notice was issued by the bank concerned to the appellant on 08.06.2010 for collecting the cheque, but he failed to collect. It is submitted that assignment deed was executed on 17.05.2010 and it is a registered document, which cannot be questioned by the appellant. It is submitted that both the Courts below are justified in directing the respondent to pay balance amount, which she is ready to pay to complete the transaction agreed between the parties.

9. I have considered rival submissions of the parties. I have also gone through the judgments passed by the Courts below. Both the Courts below have recorded that as per the agreement between the parties on 30.03.2010, suit house was proposed to be sold for consideration of Rs. 8,00,000/-. From time to time the consideration was paid and only amount of Rs. 91,578/- remained

to be paid of which a cheque was issued. Deed of assignment was executed on 17.05.2010 and it was registered one. No case is made out to show that transaction is vitiated by fraud, misrepresentation, breach of any statutory provision or any legal defect. I concur with the findings recorded by the Courts below in that regard.

10. If a small part of the consideration is remained to be unpaid that would not vitiate the transaction. Even if that is presumed to be breach of condition on the part of the respondent the remedy is to ask the defaulting party to make the payment of the balance amount. Therefore, I find no substance in the submissions of the learned counsel for the appellant.

11. Both the Courts below have properly appreciated the evidence on record. They have recorded reasonable and plausible findings. I find that no substantial question of law is involved in the appeal.

12. A reference is made by the learned counsel for the respondent to ratio laid down by the Supreme Court in the matter of Vidhyadhar Vs. Manikrao and another reported in (1999) 3 SCC 573. The ratio is rightly made applicable in confirming the decree of counter claim by directing the respondent to pay the balance amount.

13. Second appeal sans merit. It is dismissed.

14. In view of disposal of second appeal, Civil Application No. 5202 of 2025 for stay also stands disposed of.

15. After pronouncement of judgment, the learned counsel for the appellant prays for continuation of the interim relief i. e. protection to possession.

16. The learned counsel Mr. Hiwrekar for the respondent opposes the request. It is submitted that the appellant has inducted third person taking undue advantage of interim relief granted by this Court that too without there being any substantial questions of law.

17. It reveals that the handing over of possession is stayed not only during the pendency of present appeal but even in the lower Appellate Court also. The appellant is desirous of approaching the Apex Court. A limited indulgence can be granted on condition that appellant submits undertaking before this Court within a period of one week that he shall not create any third party interest.

18. Stay to the possession granted earlier shall continue for a period of four weeks on furnishing an undertaking to this Court within a period of one week that the appellant shall not create any third party interest which shall be condition precedent. The

interim protection granted shall not be continued thereafter and shall stand vacated without reference to the Court.

[SHAILESH P. BRAHME J.]

bsb/Sept. 25