



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

APPEAL FROM ORDER NO. 35 OF 2023

Sopan Sahebrao Patil .. plaintiff

Versus

Sopan Pandharinath Patil .. defendant

Shri Milind M. Patil, Advocate for the plaintiff.
Shri Ajit M. Gholap, Advocate for the defendant.

CORAM : SHAILESH P. BRAHME, J.

DATE : 19TH SEPTEMBER, 2025.

FINAL ORDER :

. Heard both sides.

2. An order of remand passed on 20.08.2022 in R.C.A. No. 100 of 2016 is questioned by the plaintiff who is successful in R.C.S. No. 30 of 2012. Respondent is original defendant. Parties are referred as per their original status in the suit.

3. Defendant is the owner of gut No. 151, out of which 40R was proposed to be alienated to the plaintiff. An agreement was executed between them on 29.12.2008, which was registered also for the consideration of Rs. 1,70,000/-. As an earnest Rs. 1,05,000/- was paid by the plaintiff. The balance was agreed to be paid at the time of execution of sale deed. The possession was agreed to be handed over at the same time. It is contended by

the plaintiff that defendant refused to perform his part of contract, despite receiving notice dated 03.11.2009. R.C.S. No. 30 of 2012 was filed for specific performance of contract, injunction and in the alternatively for refund of earnest amount.

4. Defendant contested the suit by filing written statement. He denied agreement to sale and payment of earnest amount. Additionally it is pleaded that plaintiff was having dealership of Sonalika Tractor and defendant had purchased a tractor. He was given assurance of discount of Rs. 40,000/-. No such discount was given. Plaintiff obtained the signatures of the defendant on blank papers under the pretext of procuring the loan. He fraudulently got executed agreement.

5. Defendant was being represented by a lawyer in the trial Court.

6. Plaintiff examined two witnesses, who were cross examined by the lawyer of the defendant. Thereafter no evidence was adduced by the defendant. The Trial Court decreed the suit by judgment dated 03.10.2015 granting relief of specific performance of contract. Being aggrieved, defendant preferred R.C.A. No. 100 of 2016. It was contended in appeal that no opportunity was given to the defendant. He was not aware of foreclosure of the evidence. His lawyer abruptly retired from the matter without any intimation. A separate application U/O XLI Rule 27 of the Code of Civil Procedure (for the sake of brevity and

convenience hereinafter referred as to the “C.P.C.”) was filed.

7. By the impugned judgment and order, appeal was partly allowed and the matter was relegated to the Trial Court by quashing judgment and decree passed by the Trial Court for trial afresh. Being aggrieved present appeal from order is preferred.

8. Learned counsel Mr. Patil for the appellant - plaintiff canvassed substantial questions of law that the order of remand is perverse because no specific defence was raised by the defendant and no evidence was adduced. It is submitted that on the basis of pursis Exhibit 44, the evidence of the defendant was foreclosed. There are lapses on the part of the defendant. It is further submitted that there was no need for remand considering the written statement. No case was made out for considering the additional evidence, which is not supported by the pleadings in the written statement. It is further submitted that order of remand is an abuse of process of law and an empty formality.

9. Per contra, Mr. Gholap for the respondent - defendant submits that the judgment passed by the Trial Court is against the principles of natural justice, which is properly appreciated by the lower Appellate Court. It is submitted that considering the sequence of events without intimating the client the lawyer proceeded to get himself discharged on very first date of leading evidence by the defendant. On 29.08.2015 the evidence was foreclosed by the Trial Court, which is patent illegality. It is

further submitted that if an opportunity is given the defendant is ready to adduce the evidence. Reliance is placed on Rule 53 of Chapter VI of the Bombay Regulation Act.

10. Having considered rival submissions of the parties it reveals that defendant's evidence was foreclosed and in the absence of his evidence trial Court decreed the suit. After discharge of his lawyer on 29.08.2015, the defendant was not represented by any other lawyer. The suit was decreed on 03.10.2015.

11. Following dates and events are very relevant.

Sr. No.	Dates	Events
01.	21.03.2014	Issues were settled by the Trial Court.
02.	23.06.2014	Exhibit 37 a pursis showing notice sent to the defendant and acknowledgment.
03.	16.08.2014	Affidavit in lieu of examination in chief of plaintiff.
04.	13.11.2014	Cross examination of the plaintiff was conducted by the lawyer.
05.	10.03.2025	Affidavit of examination in chief of the witness Yuvraj.
06.	04.04.2015	Cross examination by the advocate of the defendant.
07.	29.08.2015	Suit posted for defence witness.
08.	29.08.2015	Exhibit 44 retirement pursis filed by the advocate of the defendant.
09.	29.08.2015	Order foreclosing the evidence of the defendant.
10.	03.10.2015	Judgment by the Trial Court.

12. The lawyer representing the defendant had sent notice to the defendant, which was produced on record at Exhibit 37 along with acknowledgment. But thereafter cross examination of the first and second witnesses of the plaintiff was conducted by self same lawyer on 13.11.2014 and 04.04.2015 respectively. Hence Exhibit 37 became redundant. Till the evidence of the plaintiff was underway, defendant was being represented by lawyer.

13. After completion of evidence of the plaintiff, 29.08.2015 was the first date when the matter was posted for leading oral evidence of the defendant. Though Exhibit 44 retirement pursis was presented, it was not disclosed that any intimation was given by the lawyer to the defendant. Without ascertaining such an intimation Trial Court proceeded to discharge the lawyer. It was impermissible for a pleader to withdraw himself without the consent of the client. The procedure undertaken in the present matter is clearly against Rule 53 of the Bombay Regulation Act, which is as follows :

The Bombay Regulation

1.
2.

53. First. Half fees :
[Repealed by Act No. XII of 1873]

**Second. Several Pleaders may be engaged
but without prejudice to opposite party :**

.....

Third. Client may withdraw his vakalatnama but pleader not to withdraw without his consent or order of Court :

It shall be competent to a party at any time to withdraw the authority vested in a pleader to act in his behalf, on giving the Court notice in writing to that effect; but it shall not be competent to a pleader to withdraw from acting in behalf of his client without his consent or the special permission of the Court.

14. I have gone through order dated 29.08.2015 passed below Exhibit 01 of the plaint, which is as follows :

O

Deft. Absent when called out repeatedly. Adv. For deft. Present & filed pursis below Exh. 44 that deft. Remained absent since long & not giving any instruction. The conduct of deft. Shows that he is not interested, hence evidence of deft. Closed.

15. Surprisingly, on very first day when matter was for the first time posted for evidence of the defendant, the order foreclosing the evidence was passed, which is a blatant violation of principles of natural justice. The defendant had no occasion to know that his lawyer had retired and his evidence was foreclosed. The learned Trial Judge proceeded in arbitrary manner. In the impugned judgment, lower Appellate Court has rightly taken into account the procedure adopted by the Trial Court in holding that no opportunity was given to the defendant. I concur with the finding that judgment of the Trial Court is in utter violation of principles of natural justice and unsustainable.

16. Once it is concluded that defendant was not given opportunity to lead the evidence, there is no alternative than to remand the matter to the Trial Court. The submission of the learned counsel for the plaintiff that no defence is available to the defendant and there is no point in remanding the matter to the Trial Court is misplaced. It cannot be appreciated at this juncture as to whether defendant has any defence available or not. After extending opportunity of hearing it would be open for the plaintiff to agitate before the Trial Court in that regard and then the Trial Court would decide the issue. I find merit in the submissions of the learned counsel for the defendant that matter is rightly relegated to the Trial Court.

17. It is not brought to my notice that application Exhibit 39 filed U/O XLI Rule 27 of the C. P. C. was decided either way. As I am confirming the order of remand, it is not necessary to examine application Exhibit 39 and the documents annexed along with it. The defendant would be at liberty to adduce the evidence and, therefore, application Exhibit 39 has become redundant.

18. It is brought to my notice that decree passed by the Trial Court was almost executed and only handing over of possession is remaining. The defendant has deposited an amount of Rs. 19,770/- on 06.09.2022 in pursuance of stamp duty and registration charges as per the impugned judgment. I propose to

permit the plaintiff to withdraw the amount as cost imposed on the defendant.

19. For the foregoing reasons I pass following order :

O R D E R

A. Appeal from order is dismissed thereby confirming the judgment and order dated 20.08.2022 passed in R.C.A. NO. 100 of 2016.

B. The amount of Rs. 19,770/- (Rs. Nineteen thousands Seven hundred Seventy only) deposited by the defendant shall be paid to the plaintiff with accrued interest.

C. Parties shall appear before the Trial Court on 06.10.2025.

D. The Trial Court shall decide the suit by extending opportunity of hearing to the parties as expeditiously as possible and preferably within a period of six (06) months thereafter.

E. Application Exhibit 39 filed U/O XLI Rule 27 of the C. P. C. is declared to be redundant.

[SHAILESH P. BRAHME J.]

bsb/Sept. 25