



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

**MISC. CIVIL APPLICATION (REVIEW) NO.256 OF 2025
IN SA/193/2022**

1. Mohan Harikishanji Chandak,
Aged about 41 years,
Occupation: Builder,
R/o. Opp. Arvi Bus Stop, Arvi,
District: Wardha
 2. Shriniwas Sambashiv Dhartiwar,
Aged about 41 years,
Occupation: Business,
C/o Ganesh Chandak, Opposite
Arvi Bus Stop, Arvi Dist. Wardha
-APPLICANTS**

VERSUS

1. Yashwant S/o Charandas Gondane,
Aged about 48 years,
Occ: Agriculturist
R/o. Plot No.29, C/o. H. B. Khandekar,
New Kailash Nagar, Post: Bhagwan Nagar,
Nagpur-440 027
 2. Shri Arun S/o Haridas Gondane,
Aged about 46 years, Occu: Agriculturist,
R/o. Ghat Road in the building of old (R-2 deleted as per
Passport office, Nagpur Court's order dated 05.10.2023)
Passport office, Nagpur
-RESPONDENTS**

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Ms. R. P. Jog, Advocate for the applicants
Mr. P. A. Gode, Advocate for respondent No.1

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CORAM : SANJAY A. DESHMUKH, J.

RESERVED ON : 21.07.2025

PRONOUNCED ON : 26.09.2025

ORDER:-

1. This is an application for review of the judgment and decree

passed by this Court in Second Appeal No.193 of 2022 dated 9th December 2024.

2. It was the suit filed by respondent No.1 for the cancellation of sale deed dated 05.05.2006 and possession of suit property etc. The suit was decreed. First Appeal was dismissed. The Second Appeal filed by the applicants was also dismissed by this Court.

3. The grounds for review are as under:

It is contended that this Court erred in misreading the judgment of the Hon'ble Supreme Court in **Kewal Krishan Vs. Rajesh Kumar**. The evidence of Shri Gulabchand, as recorded in paragraph No.17 of the impugned judgment, was not properly appreciated. The cash amount of Rs. 1,00,000/- paid to the respondent N.1 by the applicant at the time of the contract of sale was not considered. The written notes of arguments submitted by the applicants were not taken into account. The law laid down in case of **Vidhyadhar** was followed in **Dahiben** but it was not followed by this Court. The fact that a co-owner of the suit property cancelled the power of attorney executed in favour of plaintiff No.1, thereby acting upon the sale deed, was also not considered. The substantial question of law No.1, though framed, was not answered by this Court. Plaintiff No.1 admitted that he received Rs. 1,00,000/- as part of the sale consideration. It being an admitted fact, it did not require further proof, but this aspect was not considered by this Court. Whether the sale deed was complete or not is to be gathered from the sale deed itself; however it is not

considered properly. The conduct of the applicant and the true intention of the parties to the transaction were also not duly considered by this Court.

4. By filing affidavit in reply, learned advocate for the respondent No.1 denied the grounds raised in the review application and prayed to reject the application.

5. The learned advocate for the applicants pointed out the bullet points of arguments and submitted that this Court failed to consider and appreciate the evidence and the intention of the parties in its proper perspective. It is submitted that the first substantial question of law was not properly answered and that the finding is contrary to the record of the case. The registered sale deed clearly records that an amount of Rupees one lakh in cash was received, and the contents of the sale deed are admitted. This Court erred in holding that Rahul Mundada was not a witness to the sale deed., whereas he is, in fact, a witness to it.

6. It is submitted that, plaintiff No.1 admitted that Rupees one lakh in cash was received and an additional amount of Rs.7,50,000/- was paid to him at the time of registration of the sale deed. The receipt for Rs.3,50,000/- marked as Exhibit-156 was neither executed nor signed by the plaintiff. However, Exhibit 157, which is a Memorandum of Understanding (MoU), is duly signed by the plaintiff was not considered.

7. It is submitted that the Memorandum of Understanding (exhibit-157) was executed on 05.05.2006 and the suit filed earlier by Gulabchand Rathi was already withdrawn prior to that date. However, the First Appellate Court disbelieved the evidence of Gulabchand and the defendant. It is also submitted that the cross-examination of Gulabchand Rathi was not properly considered.

8. The second substantial question of law has not been answered by this Court. However, a case of **Vidyadhar Vs. Manikaro** which was followed in the **Dahiben Vs. Arvindhbai** is justified. It is contended that partial cancellation of sale deed is not legally permissible and that the present case is not of sale without consideration, but of part payment of consideration of sale transaction. It is lastly prayed to allow the review application.

9. The learned Advocate for respondent No.1 submitted that the impugned judgment is legal and correct. He argued that since this is a second appeal, only substantial questions of law are to be considered and decided, as per the settled legal position. He further contended that the scope of review is extremely limited and that a review petition cannot be treated as an appeal. It is prayed to reject the application.

10. The facts of this case are that cheque of Rupees one lakhs given for consideration and it was dishonoured. The consideration of Rupees one lakhs is not received by seller-plaintiff as held by the First Appellate Court in

paragraph Nos.21 and 33 of the impugned judgment. Therefore, admissions of plaintiff, if any is of no use for defendant. The learned advocate though submitted that sale deed Exhibit-50 is signed by Rahul Mundada, it is not signed by him as witness. It is also a finding of the First Appellate Court. Further admission is not conclusive proof. The defendants failed to prove the payment of consideration. Therefore, the law laid down in case of **Vidhyadhar** (supra) or **Dahiben** (supra) are not helpful to the applicants.

11. In the present case, all the grounds raised in the review application pertain to factual aspects., and no error of law apparent on the face of the record has been demonstrated by the learned counsel for the applicants. There is no error based on the record or any other sufficient ground to consider the review in the context of a second appeal. Though reliance has been placed on the case of Vidhyadhar, which was followed in Dahiben, it is settled law that the facts of particular case are always decisive. Therefore, the said case law is not helpful to the applicants. Hence, the review cannot be entertained merely on the basis that entire sale deed must be decided as void or valid. The intention to pay consideration was decisive, it is rightly held by this Court that it was absent. Thus, this Court has not committed any error apparent on the face of the record. There is no any other legal and justifiable ground to interfere with the impugned judgment.

12. Considering all these aspects, there is no scope for interfering with the impugned judgment. Hence, the review application deserves to be

rejected and it is accordingly rejected.

13. The applicants have filed this review application without any justifiable legal ground, thereby compelling respondent No.1 to contest the same. Therefore, it would be appropriate to award costs of Rs.10,000/- to be paid by the applicants to respondent No. 1. Hence, the following order:

O R D E R

- a. The review application is rejected.
- b. The applicants are directed to pay costs of Rs.10,000/-(Rs. Ten Thousand only) to the respondents within a period of three months from the date of uploading of this judgment and if the costs is not paid within stipulated period, the applicant has to pay 9% interest on the said amount until the realization of entire amount.

13. After pronouncement of this order, learned advocate for the applicant prayed for continuation of interim relief for a period of four weeks. Learned advocate for the respondent strongly objected to grant such relief. Considering the facts and circumstances of the case and submissions of both sides, prayer of the applicant cannot be allowed. The prayer is, therefore, rejected.

[SANJAY A. DESHMUKH, J.]