



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

SECOND APPEAL NO.190 OF 2025

APPELLANT

(Ori. Plaintiffs)
(On R.A.)

:- Krishna s/o Shankarrao Bahadure,
Aged about 56 Years, Occ.: Service,
R/o Plot No.137, Shivam Villa
Apartment, Amar Asha Co-operative
Society, Chikhali Khurd, Ward No.20,
Nagpur.

..VERSUS..

RESPONDENT

(Ori. Defendant)
(On R. A.)

:- Sanjeev Shekhar s/o. Umeshwar Prasad,
Aged about years, Occ. Chartered
Accountant, R/o Plot No.161, Gajanan
Apartment, Shivaji Nagar, Nagpur

Mr. P. P. Kotwal, Advocate for Appellant.
Mr P. P. Kothari, Advocate for the Respondent.

CORAM : **ROHIT W. JOSHI, J.**

DATE : **07.10.2025**

ORAL JUDGMENT :

- 1) Heard finally with consent of learned counsel for the respective parties.
- 2) Substantial questions of law were framed in the present appeal vide order dated 25.08.2025, which read as under:-

i) Whether the First Appellate Court was right in holding that the appellant had not paid the amount of Rs. 4,00,000/- and therefore, the appellant was not ready and willing to perform his part of contract despite the Trial Court's observation based on the defendant's admissions and suggestions regarding the earnest amount of Rs. 4,05,000/-?

ii) Whether both the Courts below were right in holding that the time is not essence of contract, can the plaintiff be said to have breached the contract for not making payment within 60 days?

3) The present Second Appeal arises out of a suit for specific performance of contract. The learned Trial Court had decreed the suit. However, on re-appreciation of evidence, the learned First Appellate Court has reversed the judgment and has dismissed the suit. The original plaintiff has filed the present Second Appeal assailing the decree passed by the learned First Appellate Court.

4) The agreement in question is dated 29.01.2010. The total sale consideration is mentioned as Rs.15,05,000/-.

The agreement recites that a sum of Rs.5,000/- was paid in cash and further amount of Rs.4,00,000/- was paid via demand draft dated 28.01.2010 and cheque dated 05.02.2010. Perusal of paragraph 2 of the plaint will indicate that it is the case of plaintiff that the cheque of Rs.2,00,000/- was taken back from the defendant and that this amount was paid by the plaintiff to the brother of the defendant namely Mr. Sudhanshu Shekhar in cash. It is also mentioned that the demand draft of Rs. 2,00,000/- was drawn in the name of brother of the defendant, one Mr. Sudhanshu Shekhar. However, the defendant has denied that this person is his brother.

5) The defendant had filed a counterclaim seeking possession of the suit property. The learned First Appellate Court has allowed the counter claim.

6) The learned First Appellate Court has reversed the findings of fact recorded by the learned Trial Court, particularly with respect to the issues pertaining to payment of earnest amount of Rs.4,05,000/- and also readiness and willingness. The learned First Appellate Court has observed

that the plaintiff has failed to substantiate the alleged payment of Rs.2,00,000/- in cash to the said Mr. Sudhanshu. As regards, the demand draft, it was admittedly not issue in the name of the defendant but in the name of said Mr. Sudhanshu. The learned First Appellate Court has also recorded that the defendant had denied that Mr. Sudhanshu was his brother. The plaintiff has failed to prove that said Mr. Sudhanshu is brother of defendant. The plaintiff has also failed to produce any evidence to establish that he had requisite cash amount of Rs.2,00,000/- which was allegedly paid to Mr. Sudhanshu. Thus, the finding of fact recorded by the learned First Appellate Court is based on appreciation of evidence on record which does not warrant any interference.

7) It will also be pertinent to state that perusal of the cross-examination of plaintiff will demonstrate that he has categorically admitted that he was unable to raise the amount of balance sale consideration and to perform his part of the contract. This material and direct admission on the part of the plaintiff is not adverted to by the learned Trial Court.

8) Likewise, the plaintiff has also admitted in the cross-examination that, as per mutual understanding between him and the defendant, the agreement of sale dated 29.01.2010 was cancelled and it was agreed that a fresh agreement would be executed which, in fact, was never executed. This admission of the plaintiff is also corroborated by letter dated 09.08.2011 issued by him to the Branch Manager, Bank of Maharashtra, wherein it is stated that the vendor/defendant had agreed to execute a fresh agreement in his favour. This letter is at Exh. 53.

9) The learned Trial Court has drawn an adverse inference against the defendant for not examining the said Mr. Sudhanshu Shekhar Jha as his witness. As against this, the learned First Appellate Court has drawn adverse inference for not examining the said person as witness against the plaintiff. In this regard, perusal of the cross-examination of plaintiff will demonstrate that the plaintiff has stated that said Mr. Sudhanshu is a builder and the plaintiff had obtained his signature on the documents as an attesting witness.

10) In the light of aforesaid, in the considered opinion of this Court, the findings recorded by the learned First Appellate Court do not warrant any interference. The learned First Appellate Court has properly re-appreciated the evidence and has recorded pure findings of fact, which are immune from re-appreciation in a Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908.

11) The substantial questions of law framed in the appeal vide order dated 25.08.2025 are, therefore, answered against appellant/plaintiff and in favour of the defendant/respondent.

12) Since the defendant is the owner of the suit property and the plaintiff has miserably failed to prove readiness and willingness to perform his part of the contract and moreover has specifically admitted that the agreement was cancelled the counter claim is rightly decreed.

13) The Second Appeal, therefore, stands dismissed, with no order as to cost.

14) At this stage, Mr. Kotwal, learned Advocate for the appellant, makes a request for stay of the execution of the

decree for possession passed in the counterclaim for a period of 8 weeks. Undisputedly, the plaintiff is in possession of the suit property for a period of 11 years. It is also not in dispute that he has not paid any amount to the defendant for his occupation in the suit property for a period of 15 years. The payment of consideration is also not proved.

15) In that view of the matter, prayer for stay to the execution of decree stands **rejected**.

(ROHIT W. JOSHI, J.)

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