



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

WRIT PETITION NO. 7522/2025

(ASHOK NILKANTH EKRE **VERSUS** NILESH SHANKAR TAJNE)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Shri A.M. Chandekar, counsel for the petitioner.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE : DECEMBER 02, 2025

Heard the learned counsel for the petitioner.

2. The petitioner's challenge is to the order dated 24.03.2025 passed by the Appellate Court thereby allowing the application for amendment of the plaint to raise the claim for refund of the earnest amount as an alternate relief.

3. The petitioner is the original defendant in the suit for specific performance of contract which was dismissed by the judgment and decree dated 31.10.2018. The respondent who is the original plaintiff in the suit had preferred an appeal which is registered as Regular Civil Appeal No.127 of 2018. During pendency of the appeal, the respondent sought to amend the plaint to raise claim for refund of the earnest amount by invoking Section 22(2) of the Specific Relief Act, 1963. After considering the contentions of the parties, the Appellate Court has allowed the application by order dated 24.03.2025 which is subjected to challenge in the instant petition.

4. The counsel for the petitioner submits that the claim for refund of earnest amount was not raised initially while filing the plaint and the issue as to whether the amount was paid as earnest amount or otherwise was required to be considered. He also submitted that the claim for refund of money ought not to have been allowed to be raised being time barred.

5. A perusal of the impugned order shows that the Court below has allowed the application by considering the provisions of Section 22(1) of the Specific Relief Act, 1963 which has an overriding effect over the provisions of the Code of Civil Procedure, 1908 and the relief of refund of earnest money is allowed to be added. No perversity is seen with the impugned order. The issue as to whether the claim for refund of earnest money is barred by limitation would be decided at an appropriate stage. Having regard to the above, no indulgence is warranted under Article 227 of the Constitution of India with the impugned order. The writ petition is accordingly dismissed with no order as to costs.

(PRAFULLA S. KHUBALKAR, J.)