



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

SECOND APPEAL NO.341 OF 2021

APPELLANT / :- Shri Bhavesh Jiwanchandra Nirwan,
Ori. Def. No.1
Aged about 48 years, Occ. Business,
R/o : Bela, Tq. & District – Bhandara.

..VERSUS..

RESPONDENTS :- 1) Narendra Vansantrao Gurjar,
Ori. Plaintiff
Aged about 58 yrs. Occu: Business,
R/o : Sahakar Nagar, Bhandara. District
Bhandara.

Ori. Def. No.3
2) Jiwanlal Bakshuram Nagori,
Aged about 48 yrs. R/o : Sant Tukdoji
Ward, Bhandara, District – Bhandara.

Ori. Def. No.2
3) Nitin Ramlal Chaudhari,
Aged about 48 yrs. Occu: Business,
R/o : Rajswa Colony, Ganeshpur, District –
Bhandara.

Mr. A.B. Patil, Advocate for Appellant.
Mr Tabish Mirza, Adv. h/f Mr. A.M. Quazi, Adv. for the Respondent No.1.

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

DATE : **10/09/2025**

ORAL JUDGMENT :

1. Heard.

2. The present second appeal takes exception to concurrent judgments and decrees passed in a suit for recovery of money. The appellant is the original defendant No.1. The respondent No.1 is the original plaintiff and the respondent Nos.2 and 3 are the original defendant Nos.2 and 3. The parties will be referred as per their nomenclature before the learned trial Court.

3. The plaintiff had filed a suit for recovery of money being Special Civil Suit No.16 of 2012. It is the case of the plaintiff that he had advanced a sum of Rs.12,00,000/- to the defendants under an agreement dated 27.09.2010 in terms whereof the defendants had agreed to refund him the said amount of Rs.12,00,000/-, within a period of 12 to 18 months and in addition to pay an amount of Rs.4,00,000/-.

4. It is the case of the plaintiff that, the defendants had availed loan of Rs.12,00,000/- for purchasing an immovable property over which they were to carve out a layout comprising of several plots. The agreement states that the principal amount of

Rs.12,00,000/- was to be refunded to the plaintiff within a period of 12 to 18 months and that out of the profits from the sale of plots in the land to be purchased, additional amount of Rs.4,00,000/- was to be paid by the defendants to the plaintiff.

5. Both the Courts have decreed the suit in favour of plaintiff *inter alia* directing to pay an amount of Rs.16,02,000/- along with interest @ 6% per annum, from the date of filing of the suit i.e. 25.04.2012 till the date of realization of the amount. Amount of Rs.16,00,000/- is ordered to be paid in terms of agreement dated 27.09.2010 and further amount of Rs.2000/- is held to be payable towards notice charges.

6. The contention of the learned counsel for the appellant is that, the agreement contemplated payment of Rs.12,00,000/- which was to be refunded within a period of 12 to 18 months and that further amount of Rs.4,00,000/- was payable only if any profit was earned from selling of plots in the proposed layout. In view of the said contention, a substantial question of law was framed in the present appeal vide order dated 07.05.2025.

7. It will be pertinent to state that, the appeal was dismissed vide order dated 07.05.2025 with respect to the decree directing payment of Rs.12,02,000/-. Following substantial question of law was framed with respect to the said amount of Rs.4,00,000/-.

“Whether the Plaintiff was entitled for a decree for payment of Rs.4,00,000/-, when admittedly the defendant Nos.1 to 3 have not earned any profit from the proposed business of development of layout and sale of plots in land bearing Gat No.153?”

8. Mr. A.B. Patil, learned counsel for the appellant strenuously urges that the evidence on record does not indicate that the defendants have purchased land specified in the agreement dated 27.09.2010. He contends that since the land was not purchased, no profits were earned form the proposed business of sale of plots in the said land. The learned counsel for the appellant therefore, states that the question of payment of Rs.4,00,000/- did not arise. It is his contention that payment of Rs.4,00,000/- was only subject to the condition that profits were earned from the sale of plots in the subject land.

9. *Per contra*, Mr. Tabish Mirza, learned counsel holding for Mr. A.M. Quazi, learned counsel argued on behalf of the plaintiff contends that the defendants had approached the plaintiff seeking

financial assistance to the tune of Rs.12,00,000/-. He contends that, since the amount was to be refunded tentatively within 12 to 18 months, there was a covenant for payment of an additional amount of Rs.4,00,000/-. The learned counsel contends that the plaintiff had agreed to defer the payment of an additional amount of Rs.4,00,000/- until the defendants commenced sale of plots and earned profits therefrom. His contention is that the basic idea behind the agreement is that against loan of Rs.12,00,000/- advanced by the plaintiff, the defendants must pay amount of Rs.16,00,000/-.

10. He further contends that the point which is now raised in the present second appeal was never raised by the defendant No.1 either before the learned trial Court or before the learned first appellate Court. He further contends that such defence is not even set up in the written statement. The learned counsel contends that a substantial question of law must be seeded in the pleadings and a contention which is not raised in the pleading cannot constitute a substantial question of law.

11. I have perused the plaint avernments and written statement of the defendant No.1 / appellant, agreement in question and other documents including deposition of respective parties.

12. Perusal of the pleadings and depositions, will demonstrate that the contentions with respect to interpretation of the document which is now raised by the defendant No.1/appellant was not raised in the pleadings. Perusal of the written statement of defendant No.1, will demonstrate that his defence is one of complete denial. He has denied execution of the document and receipt of amount.

13. While interpreting an agreement, the Court must take into consideration, the manner in which the parties to have interpreted it. The interpretation adopted by the parties to an agreement is a relevant consideration for an interpretation of agreement by the Courts.

14. Having regard to the said legal principle, in the considered opinion of this Court, it was necessary for the defendant No.1 to putforth his interpretation of the agreement in his written

statement and further to lead the evidence accordingly. This would have given an opportunity to the plaintiff to meet the case now set up by the defendant No.1 and lead evidence to clarify his stand with respect to interpretation of the agreement. It is also well settled that a substantial question of law must have foundation in the pleadings. Reference in this regard can be made to the judgments in the cases of *Garware – Wall Ropes Ltd., Pune ..vs.. M/s A.I. Chopra, Engineers and Contractors*, reported in **2009 (3) Mh.L.J. 196** (Paragraph 9) and *Manganese Ore (I) Ltd., Nagpur ..vs.. Mohd. Yunusuddin Sheith and others*, reported in **2018(1) Mh.L.J. 135** (Paragraph 21).

15. Even otherwise, perusal of the agreement will indicate that the bargain between the parties appears to be that in lieu of loan of Rs.12,00,000/- advanced by the plaintiff to the defendants, the defendants should remit amount of Rs.16,00,000/- to the plaintiff. The agreement does not state that additional amount of Rs.4,00,000/- will be paid if and only if plots in the proposed layout are sold and profits are derived by selling the plots.

16. In view of the aforesaid, in the considered opinion of this Court, a substantial question of law framed vide order dated 07.05.2025, needs to be answered in favour of the respondent No.1/plaintiff and against the defendant No.1/appellant.

The second appeal therefore stands **dismissed**. Parties to bear their own costs.

17. The appellant has deposited some of Rs.7,00,000/- with this Court in pursuant to the order dated 22.12.2021. The respondent No.1 / plaintiff is permitted to withdraw the said amount along with accrued interest thereon, if any.

(ROHIT W. JOSHI, J.)

C.L. Dhakate