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

SECOND APPEAL NO. 10/2025.

M/s. Hanumant Infratech Pvt. Ltd. And another.

-VERSUS-

Birendrakumar Sahadeo Gop and another.

Office notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders

Shri V.R. Mundra, Advocate for Appellants.
Shri S.P. Kshirsagar, Advocate for Respondent No.1.

CORAM : ROHIT W. JOSHI, J.

DATE : MAY 02, 2025.

Heard.

2. The respondents in the present appeal are the original plaintiffs. They have executed a sale-deed dated 02.05.2011 with respect to the suit property in favour of the appellant no.1 Company. The appellant no.2 is the Director of appellant no.1. Appellants are the original defendants. The parties hereinafter will be referred to as 'plaintiffs' and 'defendants'.

3. In terms of the sale-deed dated 02.05.2011, a consideration of Rs.10 lakhs was payable to the plaintiff no.1. As regards the plaintiff no.2, she was to enter into an arrangement with the defendants for profit sharing in the project to be

developed over the suit property. This profit was her consideration under the sale-deed. It is the case of the plaintiffs that the defendant no.1 had issued a cheque of Rs.10 lakhs towards payment of sale consideration to the plaintiff no.1, however, this cheque was dishonoured and the plaintiff no.1 did not receive sale consideration. In this backdrop, the suit for cancellation of sale-deed along with a relief of declaration and perpetual injunction came to be filed by the plaintiffs.

4. In addition, the plaintiffs also prayed for a decree for payment of Rs.10 lakhs to the plaintiff no.1 as per the sale-deed. It is also contended by the plaintiffs that on the very day i.e. on 02.05.2011, plaintiff no.1 entered into an agreement of sale with the defendants in order to purchase one flat in the proposed building for a total consideration of Rs.7 lakhs. It is the case of plaintiffs that since the defendants were in need of money for making construction, a sum of Rs.6.50 lakhs was paid by the plaintiff no.1 in cash on the date of agreement.

5. The defendants have filed written statement contending that the plaintiff no.1 had entered into an agreement with the wife of defendant no.2 on 27.01.2011, under which a

sum of Rs.6.50 lakhs was received by him, which was to be adjusted against the sale consideration. It is averred that apart from this, a sum of Rs.2 lakhs was also paid and only Rs.1.5 lakhs was outstanding against the sale consideration of Rs.10 lakhs. As regards the agreement of sale, the defendants denied the same.

6. The learned Trial Court has decreed the suit in part holding that out of total consideration payable under the sale-deed, defendants had paid a sum of Rs.2 lakhs to the plaintiff no.1 and accordingly passed a decree for payment of Rs.8 lakhs towards balance consideration. The learned trial Court has also accepted the case of plaintiffs regarding payment of Rs.6.50 lakhs by the plaintiff no.1 in terms of agreement of sale dated 02.05.2011, and has directed the defendants to refund the said amount. However, the prayer for cancellation of sale-deed is rejected. The defendants have filed First Appeal being Regular Civil Appeal No.163/2023 which came to be dismissed.

7. Shri Mundra, learned Counsel for the appellants has contended that the original sale deed and agreement of sale dated 02.05.2011, on the basis of which a suit for recovery was filed, have not been produced on record. He contends that during the

course of evidence, while the documents were to be exhibited and objection was raised as regards admissibility of the documents on the ground that the said documents were nor primary documents, and the foundational facts to make secondary evidence admissible, were not proved by the plaintiffs. The contention is that the objections were erroneously rejected and documents were exhibited.

8. Perusal of the plaint and written statement will demonstrate that execution of sale deed dated 02.05.2011 is not in dispute. The defendants have not filed any other documents on record to demonstrate that the contents of the documents are incorrect or some other document was executed between the parties. The documents exhibited are certified copies of sale-deed and agreement of sale. Perusal of the cross examination will demonstrate that when the defendants have disputed receipt of Rs.6.50 lkahs under agreement of sale, however, they did not challenge the statement in the examination-in-chief with respect of execution of sale agreement. Thus, the execution of agreement is not challenged in cross examination, although execution is denied in the written statement. As regards the sale-deed,

execution of the same is not disputed in written statement. It is the specific case of the defendants that as against consideration of Rs.10 lakhs, a sum of Rs.2 lakhs was already paid and further amount of Rs.6.50 lakhs was to be adjusted against the amount received by the plaintiff no.1 from the wife of defendant no.2. This document is admitted. The veracity of the said document is thus not questioned in the cross examination. The defendants have not entered the witness box. Since the documents are not in dispute, it cannot be said that any prejudice is caused to the defendants on account of reading copies of the same in evidence by marking them as exhibits. The first contention pertaining to admissibility of the documents is therefore, rejected.

9. The second contention raised by the learned Counsel for appellants is that the agreement dated 27.01.2011 was entered into between the plaintiff no.1 and Jyoti Sudhanshu Shekhar, who is wife of defendant no.1. It is his contention that an amount of Rs.6,50,000/- was paid by the wife of defendant no.1 to plaintiff no.1 under this agreement and this amount was to be adjusted against sale consideration of Rs.10 lakhs in the sale deed dated 02.05.2011. Perusal of the sale deed does not

indicate that there is any reference of this agreement in the sale deed. It is stated in the sale deed that the sale consideration is of Rs.10 lakhs for which a cheque of Rs.10 lakhs was issued by the defendant no.1 Company. If the amount of Rs.6.50 lakhs allegedly paid by wife of defendant no.2 to plaintiffs was to be adjusted towards sale consideration, then certainly reference of agreement and statement about adjustment of amount of Rs.6.50 lakhs allegedly paid thereunder, would have been made in the subsequent sale deed. It needs to be reiterated that the agreement of sale between the plaintiff no.1 and wife of defendant no.2 is dated 27.01.2011 and the sale deed is executed after a period of four months i.e. on 02.05.2011. It also needs to be mentioned that the purchaser under the sale deed is defendant no.1 Company. The defendant no.2 is the Director of the defendant no.1. It is thus clear that the wife of defendant no.2 has no direct concern with the transaction in question. In this backdrop the fact that the defendant has not entered the witness box assumes significance.

10. The defendants have not entered the witness box and have failed to prove their defence that an amount of Rs.6.50

lakhs was to be adjusted against the sale consideration under sale-deed dated 02.05.2011. The learned Courts have rightly drawn adverse inference against the defendants for not entering the witness box.

11. It will be pertinent to mention that the defendants have issued a public notice dated 26.01.2012, which is at Exh.100. There is express admission in the said public notice that an amount of Rs.8 lakhs was payable by the defendants to the plaintiff no.1 in terms of the sale-deed dated 02.05.2011. In view of the express admission, coupled with the fact that the defendants have not entered the witness box, no fault can be found with the concurrent findings recorded by both the Courts holding that the defendants are liable to pay an amount of Rs.8 lakhs towards sale consideration to the plaintiff no.1.

12. As regards the decree for payment of Rs.6.50 lakhs as per the agreement of sale dated 02.05.2011 is concerned, though the execution of the agreement is disputed, in the written statement execution of aforesaid document is not challenged, in the cross examination of plaintiff no.1. The defence that was raised and sought to be proved, was that although an amount of

Rs.6.50 lakhs is stated to be paid by plaintiff no.1 under said agreement, the said amount was infact not paid. The said defence is not accepted by the learned Courts below by drawing adverse inference against the defendants for not entering the witness box. If the defendants wanted to make out a case contrary to the contents of the document, it was necessary for them to enter witness box in order to prove their case. The defendants have avoided cross examination by the plaintiffs on this aspect. The learned Courts below have rightly discarded the defence in this regard by drawing adverse inference against the defendants.

13. Shri Mundhra, learned Counsel for the appellants has also raised a contention that the Memorandum of Understanding and Partnership Deed between the plaintiff no.2 and defendant no.2 are not filed on record, and therefore, adverse inference ought to have been drawn against the plaintiffs. In this regard it needs to be mentioned that the defendant no.2 was also party to said document. No explanation is forthcoming as to why he has not filed these documents on record in order to prove his defence based on the said documents. Although it appears from the

plaint averments, as also from the sale deed that the plaintiff nos.1 and 2, are joint owners of the suit property, it is apparent that from Clause 2 of the sale deed that the sale consideration of Rs.10 lakhs was to be paid only to the plaintiff no.1. The plaintiff no.2 was not entitled to receive sale consideration of Rs.10 lakhs. The consideration of plaintiff no.2 is share in the profit of the project to be developed over the suit property. The learned trial Court has not granted any relief to the plaintiff no.2, therefore, the contention that adverse inference drawn against the plaintiffs for not examining plaintiff no.2 is liable to be rejected.

14. In the light of above, the decree passed by the learned Courts below against the defendant no.1 Company cannot be faulted with.

15. However, perusal of the judgments do not indicate any reason of passing a decree against the defendant no.2, who is Director of the defendant no.1. It is well settled that the Company and its Directors are separate juristic persons. In view of above, issue notice to respondents on the following substantial question of law, returnable on 23.06.2025.

"*Whether the decree of recovery of amount could* *have been passed against defendant no.2 who is Director of defendant no.1 Company ?"*

In addition to regular mode of service, appellants are permitted to serve respondents by other private mode, as permissible in law.

JUDGE