



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

SECOND APPEAL NO. 19 OF 2025

Hariom Satyanarayan Bhoot
Age : 69 Years, Occu : Civil Contractor; R/o
Gandhi Nagar, Yavatmal, Tahsil and District
Yavatmal.

... **APPELLANT**

VERSUS

1. State of Maharashtra
Through the Collector, Yavatmal, Tahsil and
District Yavatmal.
2. The Collector, Yavatmal
Tahsil and District Yavatmal.
3. The Public Works Department
Through the Secretary, Mantralaya,
Mumbai-400 032.
4. The Chief Engineer,
Regional Office, Public Works Department,
Amravati, Tahsil and District Amravati.
5. The Executive Engineer,
Special Project, Public Works Department,
Yavatmal, Tahsil and District Yavatmal.
6. The Superintendent Engineer
Public Works Department, Yavatmal, Tahsil
and District Yavatmal.
7. The Deputy Executive Engineer
Public Works Sub Division No.3, Yavatmal,
Tahsil and District Yavatmal.

8. The Junior Engineer
Public Works Sub Division No.3, Yavatmal,
Tahsil and District Yavatmal.

... **RESPONDENTS**

Mr. Samir. S. Das, Advocate for Appellant.
Ms. M. R. Kavimandan, AGP for Respondents/State.

CORAM : ROHIT W. JOSHI, J.
DATE : APRIL 29, 2025.

ORAL JUDGMENT

. Heard Mr. Samir S. Das, learned Counsel for the Appellant and
Ms. M. R. Kavimandan, the learned AGP for Respondents/State.

2. The present Appellant had filed a suit being Special Civil Suit No. 31/2005 against the present Respondents *inter alia* seeking recovery of security deposit of Rs.1,40,000/- along with interest of Rs. 8400/-; refund of Rs.26,714/- towards increased material costs along with interest at the rate of 2% per month; and for refund of Rs.50,000/- towards financial, physical and mental harassment caused at the hands of Respondents.

3. The Plaintiff is a registered contractor, executing construction work. The State of Maharashtra/Defendant No.5 had floated a tender for construction of bridge over Nagpur-Bori-Wardha-Yavatmal-Umarkhed road on 1/1/2004 for an amount of Rs.33,72,962/-. The Plaintiff was the successful

bidder, to whom the work was allotted. The Plaintiff had deposited sum of Rs.1,40,000/- towards security deposit. The Plaintiff completed the work, however, despite completion of the work satisfactorily, the amount of security deposit of Rs.1,40,000/- was not refunded to him. The Plaintiff has also deposited a sum of Rs.14,000/- in addition to security deposit of Rs.1,40,000/-.

4. The Plaintiff requested Defendant Nos.5 and 7 to release the security deposit in view of completion of the work. However, the Defendant No.5 issued reply stating that the Plaintiff had failed to carry out the work of repair of Yavatmal Bye-pass road during the defect liability period, and therefore, the said amount was being withheld.

5. It will be pertinent to mention that the work of construction of Yavatmal Bye-pass road was allotted to the Plaintiff. The work was completed on 15/3/2003. Under the contract for construction of Bye-pass road, the defect liability period was of two years. In the month of September-2004, the Defendant had issued a letter to the Plaintiff calling upon him to carry out work of repair, which the Plaintiff failed to do. This work was thereafter allotted to another agency namely, 'M/s Chiddarwar Constructions Company' and an amount of Rs.2,93,373/- was expended on the work of repairs of

Yavatmal Bye-pass road. The Defendant has withheld the amount of Rs.1,40,000/- i.e. the amount of security deposit against the work of construction of bridge towards recovery of amount of Rs.2,93,373/-, placing reliance on Clause 20 of the Agreement. Clause 20 of the Agreement provides that if the Plaintiff/Contractor fails to carry out the necessary work of repairs during the defect liability period, the Defendant will be entitled to recover the same from amount payable to Plaintiff against any other contract.

6. The Plaintiff filed a suit for recovery of amount of security deposit towards the work for construction of bridge on the ground that the same could not be withheld against alleged dues with respect to another contract i.e. construction of Yavatmal Bye-pass road. This contention is rejected by both the courts below by placing reliance on Clause 20 of the Agreement. The learned courts below have concurrently held that the Plaintiff had failed to carry out work of repairs of Yavatmal Bye-pass road during the defect liability period and that as a consequence of this failure, the Defendant was required to get the work executed through another agency, for which an amount of Rs.2,93,373/- expended.

7. Mr. Das, the learned Counsel for Appellant contends that the act of withholding the amount is in breach of principles of natural justice, in as much

as, the Respondent No.5 did not issue any notice to the Plaintiff before withholding amount. Perusal of the plaint, however, indicates that the only contention raised is that the Defendant could not appropriate any amount payable to a contractor under one contract for his alleged liability in other contract. The Defendants have set up defence, placing reliance on Clause 20 of the Agreement, and have justified the act of withholding the amount of security deposit by demonstrating that amount of Rs.2,93,373/- was spent due to failure on the part of Plaintiff to maintain the road during defect liability period.

8. The findings recorded by both the learned courts below are findings of facts, which do not warrant any interference. As regards the contention in the suit that amount payable under contract cannot be adjusted against liability of Plaintiff, arising out of another contract, the same is liable to be rejected in view of Clause 20.

9. The contention with respect to breach of principles of natural justice is also liable to be rejected, because such is not the case set up in the plaint. It is well settled that the substantial question of law, which is raised in Second Appeal must have foundation in the pleadings. That apart, the parties have led evidence in the matter, based on which, findings of fact are recorded.

Both the parties had full opportunity to lead evidence as desired in a full dressed trial in the court below. In that view of the matter, the learned Counsel for Appellant is not in a position to demonstrate any prejudice on account of alleged failure of the principles of natural justice.

10. At this stage, the learned Counsel for Appellant makes a submission that another suit being Special Civil Suit No. 71/2004 is filed, wherein liability under the contract for Yavatmal Bye-pass road is also disputed. A submission is made that it should be held that the findings recorded in the present suit should not operate as *res judicata* in the said suit. It is now well settled that *res judicata* is mixed question of law and facts. The court, dealing with Special Civil Suit No. 71/2004 will have due regard to the said legal position as also mandate of Section 11 of the Code of Civil Procedure to decide the question of *res judicata* accordingly, if it is raised by the Defendants in the subsequent suit i.e. Special Civil Suit No. 71/2004.

11. In view of aforesaid, Second Appeal is dismissed with no order as to costs.

(ROHIT W. JOSHI, J.)