



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

SECOND APPEAL NO. 20 OF 2025

Subhash S/o. Raghunath Badhe

Vs.

Sau. Manju W/o. Kishor Baheti

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri Akshay Naik a/w. Shri Madhur Deo, Advocate for appellant.

CORAM :- M. W. CHANDWANI, J.

DATED :- 18.02.2025

Heard.

2. The appeal challenges the judgment and decree dated 11.11.2024 of the Appellate Court in Regular Civil Appeal No 1/2013, whereby the Appellate Court overturned the decree of dismissal of suit for specific performance of contract filed by the respondent/original plaintiff. The defense of the appellant/original defendant before the Trial Court was that the transaction was nothing but a money lending transaction. The Trial Court was convinced on the premise that the plaintiff was unable to state encumbrance over the suit land, at the time of execution of the agreement, and variance in the notice and plaint. But, the Trial Court was also convinced with the fact that valuation report was not certified by a government valuer but, by a private engineer and went on to hold that valuation of the suit land is more than what is

mentioned in the agreement. The Appellate Court overturned the findings of the Trial Court.

3. Shri Akshay Naik, learned Senior Advocate, would submit that the Appellate Court ought not to have disturbed the findings of the facts recorded by the Trial Court. He also stressed on the point that a bearer cheque was handed over to the appellant therefore, it is the respondent who fails to prove receipt of money by showing the amount has been withdrawn by the appellant.

4. Just because the plaintiff was unable to tell the encumbrances over the suit land, at the time of the agreement, apart from variance in the notice and plaint that it cannot be said to a money lending transaction. So far as handing over of a bearer cheque by the respondent to the appellant is concerned, the respondent has proved foundational facts of tendering the cheque and it was for the appellant to prove that inspite of receipt of the bearer cheque, amount has not been received by him.

5. Considering the material available on record and the findings recorded by the First Appellate Court, I do not find any substantial question of law arises in this appeal. Hence, it is dismissed.

(M. W. CHANDWANI, J.)