

**IN THE HIGH COURT AT CALCUTTA  
CIVIL APPELLATE JURISDICTION**

**Present : Hon'ble Justice Rajasekhar Mantha  
And  
Hon'ble Justice Rai Chattopadhyay**

**F.A. T. No. 403 of 2012**

**Bratindra Narayan Munshi  
Versus  
Barun Kumar Mitra**

**For the appellant** : Mr. Sourav Sen,  
Ms. Subhangi Bhattacharya

**For the respondent/plaintiff** : Mr. Chitta Ranjan Chakraborty  
Mr. Sumit Banerjee,  
Ms. Puspa Rani Jaisweara.

Heard on : 21.05.2026

Judgement on : 21.05.2026.

**Rajasekhar Mantha, J:-**

1. The appeal is directed against a judgement and order dated 13<sup>th</sup> June, 2012 passed by the learned Civil Judge (Senior Division), Seventh Court at Alipore, District South 24 Parganas in Money Suit No. 256 of 2008.

2. The brief facts relevant to the case are that sometime in 2006 the plaintiff entered into an agreement for sale with the defendant for purchasing an immovable property. The plaintiff paid the defendant a sum of Rs.1 lac initially and thereafter a further sum of Rs.2 lac. Despite

repeated request the appellant did not execute the deed of conveyance in favour of the plaintiff/respondent.

3. Sometime in 2007 the plaintiff came to know the property in question could not have been sold by the appellant since it was subject to mortgage of the Burdwan Branch of the West Bengal SC & ST Development Finance Corporation, employer of the appellant. The plaintiff/respondent thereafter filed the Money Suit No. 256 of 2008, inter alia, seeking recovery of money paid to the appellant being a sum of Rs.3 lacs and Rs.40,000/- for purchasing the stamp papers and for preparation conveyance etc. A claim for Rs.26,547/- was towards processing fees including expenses for searching and mutation and obtaining sanction of building plan and for interest and other expenses Rs.33,453/-. The appellant contested the suit.

4. The trial judge received evidence on behalf of both parties and exhibited unregistered agreement for sale. In cross examination the appellant challenged the admission of the documents and exhibiting unregistered agreement for sale which was duly noted by the trial court. Despite whereof the trial judge decreed the suit for Rs.4 lacs against the appellant together with interest @ 12 per cent from the date of institution of the suit till the date of the decree and further interest of 9 per cent from the date of decree till realization.

5. This Court has carefully heard the arguments advanced by the learned counsel for the parties. Admittedly the plaintiff/respondent was deceived and cheated by the appellant in putting up for sale of property that was already encumbered by mortgage.

6. It is true that agreement of sale could not have been exhibited before the trial court for want of the procedure of impounding of the same under the provisions of both the Registration Act and the Indian Stamp Act. The other evidence on record however indicates that the plaintiff was able to prove a sum of Rs.3 lacs advanced to the appellant.

7. This Court notes that the trial judge committed error in awarding the principal sum of Rs.4 lacs to the respondent despite finding that the plaintiff was able to prove only payment of Rs.3 lacs. The rest of the claims of the plaintiff towards searching and other application for sanction of building plan and purchase of stamp duty and interest do not appear to have been proved before the trial court.

8. Having regard to the facts and circumstances of the case, this Court is inclined to modify the decree to entitle the plaintiff respondent to sum of Rs.3 lacs as principal sum paid to the appellant. Interest on the said sum of Rs.3 lacs would be calculated @ of 9 per cent per annum on and from March, 2006 till the date of decree i.e. 13<sup>th</sup> June, 2012 being the pre and pendente lite interest.

9. Interest on judgment shall be calculated @ 7 per cent per annum since transaction between the parties is commercial in nature.

10. The appellant has deposited the sum of Rs.3 lacs with the Registrar General of this Court at the time of admission of the appeal. The respondent decree holder shall be entitled to withdraw the said sum together with all accrued interest.

11. The Registrar General of this Court shall make payment of the same into the bank account of the respondent decree holder within a period of 10 days of receipt of a copy of this order. Particulars of such bank account shall be furnished to the Registrar General by the advocate on record of the plaintiff/decreed holder/respondent.

12. The appellant shall pay the balance being interest component as calculated herein above within 30 days from date.

13. In default of payment within 30 days, as indicated herein above, the rate of interest on judgment shall increase to 9 per cent per annum. Interest on all counts above, shall be simple.

14. The Registry of this Court shall draw up the decree expeditiously.

15. If the payment, as aforesaid, is made, the respondent shall not proceed with criminal proceedings initiated against the appellant.

16. With the aforesaid observations, the instant appeal is disposed of. Consequently all connected pending applications, if any, are also disposed of.

17. There shall be, however, no order as to costs.

18. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

***(Rajasekhar Mantha, J.)***

**I agree**

***(Rai Chattopadhyay, J.)***