



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**SECOND APPEAL NO. 304 OF 2026
WITH CIVIL APPLICATION NO. 5783 OF 2026**

Iifl Capital Ltd Serviced Through Its Authorized Representative Kiran
Namdev Lokare

VERSUS

Pukhraj Hanumandas Rathod And Others

Mr. S. S. Kulkarni h/f Ms. R. S. Kulkarni, Advocate for appellant
Mr. M. N. Navandar, Advocate for respondent Nos. R1, R2-A to R2-C and
R3

CORAM : R. M. JOSHI, J.

DATE : 08th JUNE, 2026

PER COURT :-

1. By consent of both sides, appeal is heard and decided at the stage of admission.
2. This appeal under Section 100 of the Code of Civil Procedure takes exception to the judgment and order dated 07.05.2026 passed in Regular Civil Appeal No. 49 of 2024 whereby the First Appellate Court confirmed the judgment and decree passed in counter claim in Special Civil Suit No. 237 of 2014.
3. Appellant/original plaintiff filed suit against the defendants for recovery of sum of Rs. 6,82,500/- with interest arising out of leave and license agreement. In the said suit, counter claim came to be filed

by the defendants/respondents herein. The counter claim was resisted by the plaintiff by filing its written statement. In the said written statement specific plea was raised with regard to the leave and license agreement between the parties being executed on non judicial stamp of 100/- and it being unregistered one. Parties led evidence. After conclusion of trial, suit came to be dismissed; however, the counter claim was allowed by judgment and decree dated 04.09.2024. Plaintiff being aggrieved by the said judgment and decree preferred First Appeal bearing Regular Civil Appeal No. 49/2024. This appeal came to be dismissed by impugned judgment dated 07.05.2026. Hence, this second appeal.

4. Learned counsel appearing on behalf of appellant submits that the First Appellate Court has committed error in not considering the arbitration clause in the agreement between the parties. Apart from this, it is his contention that the point of limitation though was not framed by the Trial Court was considered for the first time by the Appellate Court. Finally, it is argued that the Trial Court has committed error in not taking cognizance of the written statement filed by the plaintiff wherein specific plea was raised challenging the counter claim on the ground that the leave and license agreement is insufficiently stamped. To support his submission, he drew attention of this Court to the observations made by the First Appellate Court in Paragraph No. 57 of the impugned judgment.

5. Learned Counsel for respondent/original defendant supported the impugned judgment. He however, on instructions, records consent for setting aside the operative part of the judgment and order dated 07.05.2026 passed in Regular Civil Appeal No. 49 of 2024 and observations made by First Appellate Court in Paragraph 57 of judgment. According to him, appeal can be allowed only to a limited extent i.e., to the extent of observations made in Paragraph No. 57. According to him, the plaintiff/appellant has not taken exception to the rejection of his application exhibit 71 specifically before the First Appellate Court and as such, the said order has attained finality. As far as the issue of limitation is concerned, it is his submission that the issue of limitation has rightly being taken into consideration and dealt with by the Appellate Court and denial of the claim of the defendants for the period 01.09.2010 to 30.09.2011, indicates the same.

6. As far as the present appeal is concerned, the appellant has to show substantial question of law being involved herein. In so far as issue with regard to the arbitration clause is concerned, there is no dispute about the fact that application Exhibit 71 was moved by the plaintiff before the Trial Court taking exception to the maintainability of the counter claim on the ground that there exist the arbitration clause in the said agreement. Application Exhibit 71 was rejected by the Trial

Court by order dated 23.10.2023. Admittedly, the said order has neither been independently challenged nor it is specifically challenged in the appeal filed before the First Appellate Court. As such for want of any challenge by the plaintiff, the said order has attained finality and it is accordingly been rightly held do by the First Appellate Court. In so far as the issue of limitation is concerned, the findings recorded by the First Appellate Court are in consonance with the evidence on record and as such, no perversity is found therein. Thus, on these two counts, it cannot be said that the substantial question of law is involved in this Second Appeal.

7. With regard to the maintainability of the counter claim on the ground of insufficiently stamped document, the Trial Court has dealt with the said issue and made certain observations in that regard. It would be relevant to take note of the observations made by the First Appellate Court in Paragraph No. 57 which reads thus :-

57. The learned counsel for the plaintiff company submitted that the licence agreement is insufficiently stamped by Rs. 3500/- and therefore, suit is liable to be dismissed. In my view the agreement got exhibited before learned trial Court without any objection having been raised by the plaintiff-company. Section 36 of Bombay Stamp Act bars the reopening of the issue of insufficiency of stamp when it was not agitated before trial court at the time of exhibiting the document. The contention of the plaintiff-company that in first round of litigation this document got exhibited when the counter

claim proceeded without written statement cannot be heard now. The reason is that by omitting to remain present in proceeding, the company can be taken to have waived that right of taking objection. Therefore, I hold that though the licence agreement may be insufficiently stamped now the suit cannot be dismissed.

8. Perusal of the above observations of the First Appellate Court indicates that the First Appellate Court has refused to entertain and decide the said objection raised by the plaintiff for the reason that in the first round of litigation, the counter claim proceeded without written statement and therefore, the said issue cannot be heard now. The First Appellate Court; however, has erred in not considering the fact that the judgment and decree passed by the Trial Court in the first round of litigation was set aside by the First Appellate Court and the lis was relegated back for decision afresh. Admittedly, thereafter, written statement came to be filed before the Trial Court by the plaintiff to the counter claim. The said written statement amounts to pleadings of plaintiff against counter claim as the same cannot be ignored. Thus, it was obligatory on the part of the Trial Court as well as First Appellate Court to take into consideration the said objection and decide the same on merit. Having not done so, the Trial Court has committed error in law. This amounts to a substantial question of law involved in the present appeal.

9. Following substantial question of law therefore, is framed This Court has apprised learned Counsel for both sides of the said question of law and heard them by consent.

“ Whether the First Appellate Court committed error in law by refusing to take cognizance of written statement filed by plaintiff to counter claim of defendants and denying to decide the objection raised on the ground of no written statement being filed by plaintiff in the first round of litigation.”

10. Admittedly, the decree passed by trial Court in counter claim came to be set aside by First Appellate Court and plaintiff was permitted to file written statement to counter claim. Once leave is granted to file written statement and it is taken on record by Trial Court, it becomes pleadings of plaintiff and the Court is duty bound to consider the same. The Trial Court allowed such written statement to be filed on record and proceeded to pass decree thereafter. In such case question of refusal by First Appellate Court to decide the issue raised therein does not arise. Learned First Appellate Court thus committed serious error in law in making observations in Paragraph No. 57 as quoted above. The said finding being perverse cannot sustain. The substantial question of law therefore, is answered in affirmative.

11. Moreover the respondents/original defendants now consent for setting aside the impugned judgment with further direction to

expedite appeal. This Court thus finds no reason not to set aside the impugned judgment and decree. It is however clarified that the appeal is relegated back to the First Appellate Court only for decision of the point No. 5 afresh. First Appellate Court is not permitted to re-decide other issues/points, since the said findings stand confirmed by this Court.

12. Learned Counsel for respondents submits that respondent No. 1 is aged about 84 years and hence, the Appellate Court be directed to decide the appeal expeditiously. Considering the said fact, Appellate Court is requested to decide the appeal expeditiously and in any case, within a period of six months from today.

13. Considering relegation of the appeal to the First Appellate Court for decision as observed herein above, decretal amount deposited by the plaintiff be not parted to the defendants till the decision of the appeal.

14. Second Appeal stands disposed of in above terms.

15. Pending Civil Application, if any, stands disposed of.

(R. M. JOSHI, J.)

B. S. Joshi