

Ajit

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 189 OF 2026**

Nana Shankar Burkul And Anr.	...Appellants
Versus	
Bramhesh Radheshyam Agarwal And Ors.	...Respondents
Mr. Sangram B. Suryavanshi, for the Appellants.	

**CORAM: N. J. JAMADAR, J.
DATE : 22nd APRIL 2026**

P.C.:

- 1.** Heard the learned counsel for the Appellants.
- 2.** This Second Appeal is directed against the judgment and decree dated 21st November 2025, passed by the learned District Judge, Malegaon, whereby the appeal preferred by the Appellants and Defendant Nos.3 to 6 came to be partly allowed and the judgment and decree passed by the Trial Court, in Regular Civil Suit No.120 of 2015, came to be set aside to the extent of the order of payment of compensation amount and the rate of interest on the amount at which the earnest was to be repaid to the Plaintiff.
- 3.** The learned District Judge directed that the Appellants-Defendant Nos.1 and 2 only shall refund the earnest amount of Rs.2,00,000/- to the Plaintiff, along with interest at the rate of 6% per annum from the date of the Suit till realization. The claim for compensation qua

Defendant Nos.1 and 2, and the Suit, in its entirety, qua Defendant Nos.3 to 6, came to be dismissed.

4. Respondent No.1-Plaintiff had instituted the Suit for recovery of the earnest amount and compensation alleging breach of contract in respect of an agreement for sale of immovable property dated 16th March 2013. The Plaintiff had asserted that Defendant Nos.1 to 6 had agreed to sell the suit property for a total consideration of Rs.24,88,750/-, out of which an amount of Rs.2,00,000/- was paid by way of earnest. The balance amount was to be paid in installments. In the meanwhile, the Defendants allegedly transferred the suit property to the third parties.

5. The Defendants contested the claim, *inter alia*, on the grounds that there was breach on the part of the Plaintiff in performing his part of the contract, and on account of delay, the Defendants had suffered losses.

6. By a judgment and decree dated 24th July 2023, the Trial Court partly decreed the Suit and directed Defendant Nos.1 to 6 to pay a sum of Rs.3,00,000/- to the Plaintiff, inclusive of an earnest of Rs.2,00,000/- and compensation of Rs.1,00,000/-, along with interest at the rate of 9% per annum from the date of the Suit till realization.

7. In the Appeal, the learned District Judge interfered with the decree passed by the Trial Court noting *inter alia* that Defendant No.3

and 4 were not the executants to the agreement for sale and Defendant Nos.5 and 6 had not acknowledged the receipt of the earnest of Rs.2,00,000/-. The learned District Judge thus considered it appropriate to award interest on the earnest amount at the rate of 6% per annum. The claim for compensation was negated, as it appeared that there was non-performance of the contract on the part of the Plaintiff as well.

8. The learned counsel for the Appellants submitted that the learned District Judge committed an error in fastening liability to refund the amount of Rs.2,00,000/- upon the Appellants-Defendant Nos.1 and 2, as the endorsement of payment of Rs.2,00,000/- was subsequently made on the agreement for sale, in handwriting. The payment of the sum of Rs.2,00,000/- was not proved. In any event, on account of breach of the contract on the part of the Plaintiffs, the Defendants had suffered huge loss.

9. I have perused the impugned judgment as well as the judgment delivered by the Trial Court. The Courts have recorded a finding of fact that the endorsement of receipt of a sum of Rs.2,00,000/- appeared to have been made by Defendant Nos.1 and 2. The learned District Judge had recorded that, though Defendant No.1 denied receipt even a sum of Rs.1,00,000/-, the signatures below the endorsement acknowledging receipt of Rs.2,00,000/- appeared to be those of Defendant Nos.1 and 2. Applying the standard of proof of preponderance of probabilities, the

Courts below have recorded a finding of fact that the Plaintiff paid a sum of Rs.2,00,000/- to Defendant Nos.1 and 2, and the same was acknowledged by them. Such findings of fact are not open to interference in the exercise of the appellate jurisdiction under the regime of Section 100 of the Code of Civil Procedure.

10. The award of interest at the rate of 6% per annum can only be said to be conservative, by any standard. Therefore, no question of law, much less a substantial question of law, arises for determination.

11. The Second Appeal stands dismissed.

12. In view of the dismissal of the Second Appeal, the pending Interim Application shall also stand disposed.

[N. J. JAMADAR, J.]