



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

**SECOND APPEAL NO. 39 OF 2025**

( SADANAND S/O RAMCHANDRA KALASKAR VS. JAGADISH S/O BALAJI HANDEKAR )

*Office Notes, Office Memorandum of Coram,  
appearances, Court's orders or the directions,  
and Registrar's orders.*

*Court's or Judge's order*

Mr. A.M.Chandekar, Advocate for appellant.

Mr. M.P.Khajanchi, Advocate for respondent.

**CORAM : ROHIT W. JOSHI, J.**

**DATED : FEBRUARY 27, 2026**

- 1) The present appellant is the original defendant in R.C.S.No.12/2012, which is filed against him by the respondent for specific performance of contract. The suit was initially registered Spl.C.S.No.138/2008 and was pending on the file of Civil Court at Chandrapur; it was thereafter transferred to the Court at Mul and came to be re-registered. The first date of the hearing before the learned Civil Court at Mul was 20/02/2012. Initially, the defendant did not appear in the matter before the learned Civil Court at Mul. It will be pertinent to state that the depositions of all three witness of plaintiff was recorded before the Court at Chandrapur and thereafter, the suit was transferred to the Court at Mul. Since the defendant did not appear, the learned Civil Court at Mul passed order closing evidence of the defendant and posted the suit for arguments. The learned Civil Court realised that fresh notice was not issued to the defendant after transfer of the suit and accordingly, ordered issuance of fresh notice to the defendant vide ordere dated 20/02/2012. Summons pursuant to the order dated 20/02/2013 were served on the defendant and the defendant appeared before the learned

Court at Mul along with his Advocate on 28/02/2013. The order sheet shows that defendant and his Advocate were present before the learned Civil Court on 28/02/2013, 21/03/2013 and 18/04/2013. On 13/06/2013 the defendant was present in the Court. Similarly, on 25/07/2013 learned counsel for the defendant was present in the Court and made oral motion seeking adjournment for advancing oral arguments. The suit was adjourned to 12/09/2013. It was adjourned for final arguments from time to time. However, it appears that learned counsel for the respondent did not advance his oral arguments. The suit was posted for judgment on 20/02/2014 and ultimately decided on vide judgment dated 14/03/2014. The learned trial Court has passed a decree for specific performance of contract in favour of the plaintiff.

- 2) Aggrieved by the aforesaid judgment and decree, the present appellant preferred first appeal being R.C.A.No.40/2014. The said appeal is dismissed by the learned Principal District Judge, Chandrapur vide judgment and decree dated 12/01/2023. These, concurrent decrees are subject matter in the present second appeal.
- 3) The contention of Mr.Chandekar, learned counsel for the appellant/defendant is that the learned Courts ought to have granted opportunity of leading evidence to the defendant and since said opportunity is not granted, the judgments and decrees are vitiated on account of failure to follow principles of natural justice. The learned counsel contends that although fresh summons were issued to the defendant upon transfer of the suit from Chandrapur to Mul, order closing evidence of defendant was passed by the learned trial Court before service of fresh summons upon the defendant. Mr.Chandekar, further contends

that due to procedural impropriety the defendant was deprived of an opportunity to lead evidence.

4) As regards merits of the matter, Mr.Chandekar contends that it is case of the plaintiff that out of total agreed sale consideration of Rs.3 Lakhs, an amount of Rs.1,70,000/- was paid to the defendant on the date of execution of the agreement of sale dated 21/12/2006. Mr.Chandekar, contends that this payment is not proved by the plaintiff. He states that in order to prove the payment, the plaintiff has placed reliance on bank account statement at Exh.34. He contends that the said statement was proved on the basis of certificate issued under Section 2A of the Bankers' Books Evidence Act, 1891, which is at Exh.54. The contention of Mr.Chandekar is that this certificate is not proved inasmuch as the witness who was summoned for production of the document has merely produced the certificate and that this witness did not enter the witness box in order to prove the said certificate. He contends that in the absence of proof of certificate, the account statement was not admissible in evidence.

5) As regards, first contention, although initially the evidence of defendant was closed erroneously without issuing fresh summons after transfer of the suit, the mistake was corrected by the learned trial Court by issuing fresh witness summons. It is apparent from the record that the defendant had appeared before the learned trial Court after transfer of the suit along with his Advocate on several occasions. The defendant did not take any steps to recall the order closing his evidence and to lead evidence in the matter. There is no application or even on oral request seeking permission to lead oral evidence. The first

contention that defendant is deprived of an opportunity to lead evidence, is therefore, unsound and liable to be rejected.

- 6) As regards, the second contention with respect to failure to prove payment of money, the said contention also cannot be accepted. The agreement recites that payment of Rs.1,70,000/- is made by the plaintiff to the defendant on the date of agreement. The agreement is signed by the defendant. The agreement is duly proved in the evidence of the plaintiff. The statement of account which shows the said payment is at Exh.34. It will be pertinent to state that receipt of amount of Rs.1,70,000/- is reiterated in the subsequent agreement for extension of time which is dated 21/02/2008. The defendant has re-confirmed the receipt of the said amount in the subsequent agreement. The record does not indicate that any objection was raised to marking of the said documents i.e. statement of account and certificate under Banker's Books Act. The objection is merely to mode of proof of documents and not to their admissibility in evidence. The objection to exhibiting the said documents should have been raised when the said documents were being marked by the learned trial Court. It appears that on record that while the learned trial Court marked the said documents, the defendant has not raised any objection. It will also be pertinent to state that the application for issuing summons to the bank witness filed at Exh.32 was allowed by the learned trial Court only to the extent of production of document. Apart from this, in two agreements, execution whereof is duly proved, there is reference of payment of Rs.1,70,000/- by the plaintiff to the defendant.

- 7) In view of above, the contention that the consideration of Rs.1,70,000/- is not proved to have been paid also cannot be accepted.
- 8) In view of the aforesaid, no substantial question of law arises in the present appeal, the Second Appeal, is therefore, dismissed with no order as to costs.

**( ROHIT W. JOSHI, J. )**