



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

SECOND APPEAL NO.191 OF 2025

APPELLANTS

Ori. Non-applicants
on R.A.

- :-** 1. Akola City Municipal Corporation
Akola through its Commissioner cum
Administrator, Akola Municipal
Corporation Akola.
2. City Engineer Akola City Municipal
Corporation Akola, Akola

..VERSUS..

RESPONDENT

Ori. Applicant
on R.A.

- :-** Shoeb Abubakar Sorathia Age about 54
years, Occ: Contractor, R/o. Firdos
Colony, Akola, Tq. Dist. Akola.

Mr. Apurv De, Advocate for Appellants.
Mr. Parth Sagdeo, Advocate for the Respondent.

CORAM : ROHIT W. JOSHI, J.

DATE : 21.01.2026

J U D G M E N T :

- 1) Heard finally by consent of learned Advocates for
the respective parties.
- 2) The present Second Appeal is preferred challenging
judgment and decree dated 02.05.2022 passed by the learned
4th Joint Civil Judge, Senior Division, Akola in Special Civil
Suit No.40 of 2027 and judgment and decree dated

26.03.2025 passed by the learned District Judge-1, Akola in Regular Civil Appeal No.72 of 2022.

3) The appellants are the original defendants and respondent is the original plaintiff. The parties will be referred as 'plaintiff' and 'defendants' hereinafter.

4) The plaintiff is a contractor by profession who was performing construction works for the defendants. The defendant No.1 is Municipal Corporation of Akola and defendant No.2 is City Engineer of Akola Municipal Corporation. On 15.12.2012, work of construction of a concrete drainage line and plantation of trees and construction of a compound wall was awarded to the plaintiff by the defendants vide Work Order Nos.347 and 348. The total value of the said works was Rs.5,98,950/-. The plaintiff received payment for the said work from the defendants. In the year 2016, a complaint was lodged by one of the Corporators alleging that the plaintiff received payment for the said work orders although he had not executed the work.

5) The plaintiff was awarded separate work for construction of concrete road on 05.04.2016 vide Work Order

No.3 of 2016. Likewise, Work Order No.78 of 2016 dated 17.05.2016 for work of construction of drainage line was allotted to the plaintiff. The total value of these construction works was Rs.1,23,395/- and Rs.5,97,947/- respectively. The plaintiff completed the said work. However, the defendants did not make payment for the same on the ground that the plaintiff had not executed works under the Work Orders Nos.347 and 348 and yet received payments for the same by practicing fraud acting in collusion with concerned officials of the defendant/AMC. The defendants contended that the amount payable under the contracts of the year 2016 was adjusted against the amount which was paid to the plaintiff against contracts of the year 2012.

6) In this backdrop, the plaintiff filed a suit for recovery of money for the works executed under Work Order Nos.3 of 2016 and 78 of 2016. The plaintiff sought declaration vide letter dated 02.03.2017 issued by the defendant/AMC for adjustment of amount as aforesaid was illegal and not binding on him. It will be pertinent to mention here that the plaintiff was also blacklisted vide letter dated

15.02.2017 and had challenged the said letter of blacklisting also in the civil suit.

7) The defendants entered appearance in the suit on being served with the suit summons and filed written statement contending that pursuant to a newspaper report published on 25.09.2016 with respect to the aforesaid works allotted to the plaintiff in the year 2012, an inquiry was conducted by the defendant/AMC in which it was found that payments were made to the plaintiff for the said works although the same were not executed. The defendants stated that three engineers were suspended in view of the findings arrived at in the inquiry. The defendants also made reference to Google images dated 18.04.2013, 06.11.2013, 22.05.2014, 11.02.2015 and 23.05.2015 to contend that the work was not executed. The defendants stated that as per entries in relevant Measurement Book (MB) the work was allegedly completed on 14.02.2013. It is stated that in view of collusion between the plaintiff and officers of defendant/AMC amount of Rs.5,80,663/- was illegally received by plaintiff against aforesaid work orders of the year

2012.

8) Based on rival pleadings, the learned Trial Court framed issues on which the parties led their evidence. The plaintiff examined himself as his sole witness. The defendants examined two engineers namely Ajay Gujar (D.W. 1) and Iqbal (D.W.2), who were working with the defendant.

9) It is not in dispute that the plaintiff has in fact completed the work allotted to him under Work Order Nos.3 of 2016 and 78 of 2016. It is also not in dispute that the suit is filed for recovery of amount payable for the said works. The defense of the defendants is that work was not executed for the work orders issued in the year 2012 and the said amount was adjusted against the payment to be made against work orders of the year 2016.

10) The learned Trial Court has decreed the suit directing the defendants to pay amount of Rs.5,97,947/- to the plaintiff with interest @ 6% per annum from the date of institution of suit. The learned Trial Court has observed that undisputedly no notice was issued to the plaintiff before taking decision to adjust the amount payable under work

orders of the year 2016 against payment made to him for the work orders of the year 2012. The learned Trial Court observed that there was no evidence on record to arrive at conclusion that plaintiff had not executed work as per work order Nos.347 and 348 issued in his favour in the year 2012. The learned Trial Court has also referred to admissions of D.W. 1 and D.W.2 that payments for the work orders of the year 2012 were released after following the prescribed procedure. The learned Trial Court thereafter recorded that the defendants could not withhold bills of plaintiff/contractor without even issuing notice to him. In view of such findings the suit came to be decreed directing payment of bill amount for the work executed in the year 2016. The learned Trial Court has referred to admission of P.W.1 where he has stated that for the work which was done by the plaintiff in the year 2012 another work order was issued in favour of another contractor in the year 2016.

11) As stated above, the defendants preferred first appeal challenging the said decree for payment of money. The learned First Appellate Court has confirmed the findings

recorded by the learned Trial Court and has dismissed the appeal accordingly. The learned First Appellate Court has held that the fact that the plaintiff had executed the works of the year 2016 was not in dispute. With respect to the defense that plaintiff had not performed the work in the year 2012 and yet he received money for the same, the learned First Appellate Court recorded that the defendant did not have authority to deduct the amount unilaterally. It has recorded that the said action was taken without notice and opportunity of hearing to the plaintiff. With respect to the inquiry report the learned First Appellate Court has observed that although the inquiry report was proved and marked as exhibit, contents thereof were not proved. It has observed that there was no material on record to substantiate the observations in the inquiry report.

12) In view of the aforesaid, the decree for payment of money was maintained. The appellants/defendants have filed Civil Application No.1131/2025 seeking permission to lead additional evidence as per Order XLI Rule 27 of the Code of Civil Procedure,1908. The documents with respect to which

evidence is sought to be led are as under:-

- i. Inquiry report dated 13.10.2016.
- ii. Notice dated 16.11.2016.
- iii. Order dated 15.02.2017 passed by Municipal Corporation, Akola blacklisting the respondent.
- iv. Set off letter dated 02.03.2017 issued by the appellants to the respondent.
- v. Document of police investigation dated 01.11.2017.
- vi. Google image of work/construction not carried out by the respondent.

13) As stated above, the fact that the work allotted in the year 2016 is admittedly done by the plaintiff. Payment for the said work is not paid to him on the ground that he has not executed work under two work orders allotted in the year 2012 and has received consideration for the said work acting in collusion with officials of the defendant/AMC. It is a well settled proposition of law that no man can be a judge in his own cause. The defendant/AMC, on its own, arrived at satisfaction that the plaintiff had not executed works allotted to him in the year 2012 and yet received consideration by

practicing fraud. To buttress the said contention, it is stated that the corporation has taken action against three erring officers who were responsible for making payments of bills.

14) The defendant/AMC has not filed a suit for recovery of money against the plaintiff on the ground that the aforesaid work was not executed and yet payment was received by him. It is also a matter of record that in the present suit also the defendant/AMC did not file any counterclaim or a claim for sett-off as per Order VIII Rule 6(a) or Rule 6 of CPC. In order to recover the amount for the earlier contract which was essential for the plaintiff to file a suit for recovery within the prescribed period of limitation. The defendant/AMC could have filed counterclaim or set off as well in the present suit, which also ought to have been filed within limitation. Even if it is assumed that the amount was wrongly received by the plaintiff by practicing fraud, the defendant/AMC ought to have initiated proceedings for recovery within the prescribed period of limitation from the date of detection of fraud.

15) As stated above, the defendant/AMC cannot, on its own, claim that the plaintiff is guilty of fraud and recover the amount unilaterally, acting as a judge in its own cause. The learned Courts have rightly held that there is no authority in law vested with the defendant/AMC to unilaterally retain the amount as is done by them. Assuming that an adjustment of money payable by the defendant to plaintiff and recoverable by the defendant from the plaintiff can be made, it is first necessary to establish, in a properly instituted proceeding, that the amount allegedly payable by the plaintiff to the defendant is, in fact payable by him. In this regard, reference can be had to the judgment of the Hon'ble Supreme Court in the case of ***State of Karnataka Vs. Shree Rameshwara Rice Mills, Thirthahalli***, reported in ***AIR 1987 SC 1359***. In the said case, security deposit of the contractor was unilaterally forfeited by placing reliance on a clause in the contract which permitted the same. The Hon'ble Supreme Court held that in order to attract the said clause to recover the amount, first it was essential to prove that the contractor had committed breach of the agreement. The amount could be recovered

only if it was held by competent authority that the contractor had committed breach of agreement. In view of the aforesaid, although the contract permitted forfeiture of amount, the Hon'ble Supreme Court quashed the action of forfeiture on the ground that claim of breach was not adjudicated by a competent judicial forum. Relevant observations of Hon'ble Supreme Court in paragraph 7 of ***Shree Rameshwara (supra)*** is reproduced herein-below:-

"7. On a consideration of the matter we find ourselves unable to accept the contentions of Mr Iyenger. The terms of clause 12 do not afford scope for a liberal construction being made regarding the powers of the Deputy Commissioner to adjudicate upon a disputed question of breach as well as to assess the damages arising from the breach. The crucial words in clause 12 are "and for any breach of conditions set forth hereinbefore, the first party shall be liable to pay damages to the second party as may be assessed by the second party". On a plain reading of the words it is clear that the right of the second party to assess damages would arise only if the breach of conditions is admitted or if no issue is made of it. If it was

the intention of the parties that the officer acting on behalf of the State was also entitled to adjudicate upon a dispute regarding the breach of conditions the wording of clause 12 would have been entirely different. It cannot also be argued that a right to adjudicate upon an issue relating to a breach of conditions of the contract would flow from or is inhered in the right conferred to assess the damages arising from a breach of conditions. The power to assess damages, as pointed out by the Full Bench, is a subsidiary and consequential power and not the primary power. Even assuming for argument's sake that the terms of clause 12 afford scope for being construed as empowering the officer of the State to decide upon the question of breach as well as assess the quantum of damages, we do not think that adjudication by the officer regarding the breach of the contract can be sustained under law because a party to the agreement cannot be an arbiter in his own cause. Interests of justice and equity require that where a party to a contract disputes the committing of any breach of conditions the adjudication should be by an independent person or body and not by the officer party to the contract. The position will,

however, be different where there is no dispute or there is consensus between the contracting parties regarding the breach of conditions. In such a case the officer of the State, even though a party to the contract will be well within his rights in assessing the damages occasioned by the breach in view of the specific terms of clause 12.”

16) In the facts of the present case, the defendant has adjusted the amount by holding that the plaintiff is guilty of fraud in relation to earlier contract. However, it did not institute any proceeding for recovery of amount or even lodge a counterclaim or set off of the amount on the ground of fraud.

17) It may also be stated that in the present case, except of the inquiry report at Exhibit 87 there appears to be no evidence to make out case of fraud. The learned First Appellate Court has rightly held that although the said inquiry report is exhibited, correctness of the contents thereof is not proved. In order to effect recovery on the basis of the said inquiry report, the defendants were required to prove the said document, contents thereof and truthfulness of the

contents. The learned First Appellate Court has rightly not accepted the defence of defendants merely on the basis of the said inquiry report. It will also be pertinent to state that both the witnesses of the defendant/AMC have categorically stated that bills of the year 2012 furnished by the plaintiff were cleared after following the prescribed procedure and more particularly, photographs of the work done are also taken before the bills are released.

18) Apart from legal position as recorded above, in the considered opinion of this Court, the case of fraud is also not proved by the defendants.

CIVIL APPLICATION NO.1131 OF 2025

19) As regards the application for permission to lead additional evidence, document No.1 is an inquiry report dated 13.10.2016 which is already on record as Exhibit-87. This document is proved by P.W. 2, Mr. Iqbal Khan, who has authored the said report. This report is considered by the learned First Appellate Court in its judgment. The document No.2 is a show-cause notice for blacklisting the plaintiff. Document No.3 is order of blacklisting. The plaintiff's

challenge to order of blacklisting is dismissed. Document No.4 is communication dated 02.03.2017 intimating the plaintiff that the amount received by him towards the works of the year 2012 was adjusted against the work executed by him in the year 2016. This document is challenged by the plaintiff in the suit and is already on record. Document No.5 is a communication issued by police inspector to the City Engineer of the Corporation which is not relevant. Document No.6 is Google image. There is no explanation as to why these images could not be filed before the learned Civil Court. Even otherwise in the absence of any counterclaim or set of the evidence with respect to which is sought to be led in order to establish that work was not executed in the year 2012 will not be relevant. Civil Application is therefore, **rejected.**

20) Learned Advocate for the appellants/defendants has placed reliance on judgment in case of ***Sanjay Kumar Singh VS. State of Jharkhand*** reported in ***(2022) 7 SCC 247***. It cannot be disputed that in a given case, even if, ingredients of Order 41 Rule 27(a) or (aa) are not made out, opportunity to

lead additional evidence can be granted if the Appellate Court requires the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause. The ratio of the said case will not be applicable in the present case, since the defendants have neither filed counterclaim nor claimed set-off.

21) In the light of reasons recorded above, in the considered opinion of this Court, no substantial question of law arises for consideration. Second Appeal is, therefore, **dismissed** with no order as to costs.

(ROHIT W. JOSHI, J.)

Tanmay..