



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

SECOND APPEAL NO.374 OF 2025

APPELLANTS

(Ori. plaintiff)
(On R.A.)

- :-** 1) Sunilkumar S/o nandlal Peepra, (Dead)
through his Legal heirs,
1(a) Smt. Geeta w/o Sunilkumar Peepra
Aged about 50 years, occ: Business,
1(b) Saurav S/o Sunilkumar Peepra,
Aged about 25 years, Occ: Student
1(c) Shivam S/o Sunilkumar Peepra,
Aged about 23 years, Occ: Student,
All R/o Ward No.10, Baihar Road,
Balaghat-481001, District Balaghat
(M.P.).
1(d) Muskaan d/o Sunilkumar Peepra,
Aged about 21 years, Occ: Student,
R/o Ward No.28, Saraswati Nagar,
Balaghat-481001, District- Balaghat.

..VERSUS..

RESPONDENT

(Ori. Defendant)
(On R.A.)

:- The Chief Conservator of Forest
(Production), Maharashtra State,
M.E.C.L. Building, Near T.V. Tower,
Seminary Hills, Nagpur-440006.

Mr. U.M. Aurangabadkar, Advocate for Appellants.
Mr. H.D. Dubey, Advocate for Respondent.

CORAM : ROHIT W. JOSHI, J.

DATE : 21/01/2026

ORAL JUDGMENT :

1. Heard finally with consent of learned counsel for the
respective parties.

2. The present second appeal is filed by the original plaintiff, who had filed a suit for refund of the earnest money deposit, deposited by him with the respondent/original defendant in response to a tender notice at Exh.73. The bid of the appellant was accepted on 07.01.2002 (Exh.65). Intimation with respect to acceptance of tender is sent to the plaintiff vide communication dated 11.01.2002 (Exh.66). Thereafter, the defendant issued letter dated 07.02.2002 to the plaintiff, extending the time for execution of agreement upto 10.02.2002. Plaintiff issued communication to the defendant stating that his bid was not technically qualified and therefore, same should have been rejected as non-responsive. He contends that in case bid is rejected as non-responsive, the defendant is not entitled to forfeit the earnest money deposit. In the present case, the defendant has forfeited the earnest money deposit on account of failure on the part of plaintiff to execute agreement despite acceptance of his bid. The earnest money is forfeited placing reliance on clause 12 of the terms and conditions of the tender.

3. The contention of Mr. Aurangabadkar, the learned Advocate for the appellant/plaintiff, is that the letter of acceptance dated 11.01.2002 was not served on the plaintiff. He contends that the letter of extension dated 07.02.2002 was posted on 09.02.2002

and was, in fact, served on the plaintiff on 12.02.2002. The contention is that since the time was extended only till 10.02.2002, it is obvious that the plaintiff could not have entered into the agreement before 10.02.2002, i.e., the date upto which the period for execution of the agreement was extended. The learned Advocate therefore contends that the earnest money deposit cannot be forfeited as is done by the defendant. As per the contention of the plaintiff, his bid ought to have been rejected as a non-responsive bid.

4. In the considered opinion of this Court, a bidder cannot be withdraw his offer on the ground that he does not fulfill the technical criteria under the tender conditions. Clause 4 of the tender conditions prescribes that the tenderer shall be bound by his offer till the tendering authority passes an order accepting or rejecting the tender. It is also provided that in case the tender is withdrawn prior to passing of the order, the earnest money shall be forfeited.

5. The contention of Mr. Aurangabadkar, is that the offer is withdrawn after passing of the order dated 11.01.2002 and therefore clause 4 would not apply.

6. As regards clause 12, the contention that the earlier

communication accepting the offer of the plaintiff offer was not served on the plaintiff. He contends that only letter of extension dated 07.02.2002 is served and that too after the dates stipulated for execution of agreement had expired. The contention is that forfeiture of amount under clause 12 can be made only on account of failure on the part of the plaintiff /tenderer to execute the agreement. The learned Advocate contends that since the communication dated 07.02.2002 was received after 10.02.2002, the plaintiff cannot be held responsible for non-execution of the agreement. The foundation of the argument of Mr. Aurangabadkar is that the initial communication accepting the tender was never served on the plaintiff. The learned First Appellate Court has specifically recorded that the contention with respect to non-receipt of letter dated 16.01.2002 was not raised before the learned trial Court. The learned First Appellate Court has recorded that this contention was recorded for the first time in the appeal after a period of around 19 years. It will be pertinent to state that the letter dated 07.02.2002 clearly records that the communication of acceptance was dispatched by the defendant to the plaintiff by fax. The plaintiff has made correspondence after receiving this letter. However, the correspondence does not indicate that the plaintiff

disputed receipt of the letter of acceptance.

7. Likewise, as rightly observed by the learned Courts that there is no contention regarding non-communication of acceptance in the plaint. In view of the aforesaid, it must be held that the plaintiff has failed to execute the agreement after receipt of letter of acceptance of his bid by the defendant, thereby warranting forfeiture of the earnest money as per clause 12 of the tender condition.

8. Even otherwise, if the contention of plaintiff regarding non-receipt of letter of acceptance is accepted, the earnest money deposited can be forfeited under Clause 4, since the plaintiff is withdrawing his offer before receipt of any communication from the defendant regarding acceptance or rejection of his bid. The contention of Mr. Aurangabadkar that the bid is withdrawn after passing of the order dated 11.01.2002 accepting the bid does not hold water, since passing of the order qua the plaintiff will obviously mean communication of the order accepting the bid to the plaintiff.

9. In view of the aforesaid, 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.)