



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

SECOND APPEAL NO. 495 OF 2022
WITH
CIVIL APPLICATION NO.3792 OF 2020

1. Khandesh Gosevashrmantatgat Goshala, Dhule through its Secretary, Balmukund Shriram Poddar Age: 70 years, Occu: Agriculturist, R/o. Malegaon Road, Dhule, Dist. Dhule.
2. Radheshyam Shriram Poddar Age: 74 years, Occu: Buisness, R/o. M.G. Road, Panch Kandil, Dist. Dhule. (Trustee and Vice President Of Appellant No.1 Trust)
3. Balmukund Shriram Poddar Age: 70 years, Occu: Agriculturist, R/o. Malegaon Road, Dhule, Dist. Dhule. (Trustee Of Appellant No.1 Trust)
4. Puranmal Baluram Agrawal Age: 80 years, Occu: Agriculturist, R/o. Malegaon Road, Dhule, Dist. Dhule. (Trustee Of Appellant No.1 Trust)

...Appellants

VERSUS

1. Late Sau. Taisaheb Sunanda Gopalrao Kele Mahila Nagari Sahkari Patsanstha Maryadit Dhule Through its Secretry & Manager, Smt. Bharti Hemant Joshi, Age: Adult, Occu: Service, R/o. H. No.4525, Dinesh Complex, Nehru Chowk, Agra Road, Deopur, Dhule Dist. Dhule.
2. Mohanlal Shaligram Bhartiya, Died Age: 75 years, Occu: Agriculture & R/o. Bhartiya Bunglow, Station Road Dhule, Dist. Dhule. (As A President & Trustee Of Appellant No.1 Trust) (Died as per Court order dated 30.08.2021)
3. Pralhadrai Bherkubagas Agrwal Age: 70 years, Occu: Agriculture & Buisness, R/o. Oil Mill Compound, Agrasen Chowk, Dhule, Dist. Dhule. (As Former Trustee Of Appellant No.1 Trust)

4. Ravindra Sawarmalji Agrawal Age: 66 years, Occu: Buisness, R/o. 503/504, K Punit Park 'c' Wing Sector No.17, Nerul, Navi Mumbai (As Former Trustee Of Appellant No.1 Trust)
5. Nandkishor Kanhaylal Agrawal
Age: 65 years, Occu: Buisness, R/o. Near Shere Punjab Hotel, M.G. Road Dhule, Dist. Dhule. (As Former Trustee Of Appellant No.1 Trust)
6. Ajit Devendranath Varma
Age: 40 years, Occu: Service, R/o. Nisrgopchar Kendra, Malegaon Road Dhule, Dist. Dhule. (As Former Trustee Of Appellant No.1 Trust)

...Respondents

Mr. D. S. Bagul, Advocate for Appellants

CORAM : MEHROZ K. PATHAN, J.

DATED : 29.01.2026

ORAL JUDGMENT :

1. The Appellants have filed the present Appeal challenging (i) the judgment and order dated 26.03.2012 passed by the learned 2nd Joint Civil Judge, Senior Division, Dhule in Regular Civil Suit No. 25 of 2012 (new) i.e. Regular Civil Suit No. 16 of 2005 (old), and (ii) the judgment and order dated 03.01.2018 passed by the learned Adhoc District Judge-2, Dhule in Regular Civil Appeal No. 236 of 2012.

FACTS :

2. Plaintiff is a cooperative credit society registered under the

Maharashtra Cooperative Societies Act, 1960. Defendant No.1 is a public charitable trust, and Defendants No.2 to 5 are trustees of Defendant No.1. Defendant No.2 is the Chairman of Defendant No.1. The Defendants have put to sale 71 R land out of Survey No.483/A/1 situated at Agra Road, Dhule. An advertisement regarding the sale of the said land was published in a daily newspaper. The Plaintiff submitted the highest proposal for purchase of the said land. Thereafter, on 23.01.2002, negotiations were held between the Plaintiff and the Defendants regarding the consideration amount. Pursuant to the Defendants' letter dated 26.01.2002, the Plaintiff deposited an amount of Rs.2,00,000/- with Defendant No.1. Subsequently, the terms and conditions of sale were executed between the Plaintiff and Defendant No.1.

3. On 30.08.2002, a notice was published in Dainik Aapla Maharashtra. However, one Babulal Shaligram Bhartia raised objections to the sale of Survey No.483/A/1, contending that Defendant No.1 trust had no title, right, or interest in the said property and therefore had no authority to sell it to the Plaintiff. On 25.10.2002, the Plaintiff issued a notice to the Defendants calling upon them to produce the title documents of Survey No.483/A/1. However, the Defendants did not comply with the said notice. Defendant No.2, by letter dated 30.11.2002, informed the Plaintiff that the earnest amount of Rs.2,00,000/- had been forfeited. The Plaintiff claimed that he was and

continues to be, ready and willing to perform his part of the contract, hence, the Defendants had no right to forfeit the earnest amount of Rs.2,00,000/-. Meanwhile, Babulal Shaligram Bhartia filed Regular Civil Suit No.196 of 2003 against the Defendants in respect of Survey No.483/A/1 and also raised objections before the Charity Commissioner. The Defendants have not obtained permission from the Charity Commissioner to sell Survey No.483/A/1. Thus, the Defendants have committed breach of contract and consequently have no right to forfeit the earnest amount of Rs.2,00,000/-. The Plaintiff thus prayed for recovery of the said amount along with interest at the rate of 18% per annum from 23.01.2002 until realization. Hence, this suit.

4. Defendant No.3 was the President of Defendant No.1 in the year 1997–98. During his tenure, he sold a portion of Survey No.483/A/1 to Mr. Chhoria after obtaining permission from the Charity Commissioner. Subsequently, a dispute arose between Mohanlal Shaligram Bhartia and Babulal Shaligram Bhartia regarding their ancestral properties. Thereafter, Defendant No.1 offered for sale 71 R land out of Survey No.483/A/1. The Plaintiff accepted the highest bid. In accordance with the terms and conditions, on 19.01.2002 the Plaintiff deposited Rs.2,00,000/- towards earnest money with Defendant No.1. Defendant No.1 agreed to sell 71 R out of Survey No.483/A/1 to the Plaintiff for a consideration of Rs.64,25,000/-. As per the terms of sale dated 26.01.2002, the Plaintiff was required to

deposit 20% of the consideration amount, and thereafter 30% within 60 days, with Defendant No.1. Defendant No.1 was then to submit an application to the Charity Commissioner seeking permission for the sale. The Plaintiff failed to deposit the consideration amount as stipulated under the agreement dated 26.01.2002, thereby committing breach of the terms of sale. On 01.06.2002, the Defendants called upon the Plaintiff to deposit the consideration amount in accordance with the agreement. The Plaintiff replied to the said notice on 12.06.2002 but avoided depositing the consideration amount. Thus, the Plaintiff committed breach of the contract. Consequently, the Defendants cancelled the sale and forfeited the earnest amount of Rs.2,00,000/-. The Plaintiff is therefore not entitled to recover the said amount from the Defendants. The Defendants accordingly prayed that the suit be dismissed with costs.

5. Defendant No.3 has resisted the suit by filing a written statement at Exh.34. The suit property, Survey No.483/A/1 admeasuring 71 R, is not owned or possessed by Defendant No.1. Defendant No.3 claims title and possession over the said property. Therefore, Defendant No.1 and its trustees have no right, title, or interest to sell the suit property in favour of the Plaintiff. The Plaintiff has already filed Regular Civil Suit No.63 of 2003, wherein he did not claim refund of the earnest money. Hence, the present suit is barred under the provisions of Order II Rule 2 of the Code of Civil Procedure, 1908. Further, Bharti

Hemant Joshi (the then Secretary of the Plaintiff Trust) has no locus standi to file the present suit. The Plaintiff is not entitled to recover the amount of Rs.2,00,000/- from the Defendants. Defendant No.3 therefore prays that the suit be dismissed with costs.

6. Defendant No.10 has resisted the suit by filing a written statement at Exh.111. According to Defendant No.10, he ceased to be a trustee of Defendant No.1 after February 2001. Hence, the suit is bad for misjoinder of party. Defendant No.10 therefore prays that the suit be dismissed with costs.

7. The learned trial Court has found that the Plaintiffs were willing and ready to perform their part of the contract by purchasing the property on the following grounds :

(i) After payment of the earnest money, the Plaintiff/Society published a paper notice (Exhibit-67) dated 30.08.2002, which constituted a step towards performance of its part of the contract.

(ii) It is not disputed by the Defendants that Babulal Bhartiya raised objections to the sale of the suit property when the Plaintiffs published a paper notice (Exhibit-67) dated 30.08.2002, inviting objections, if any, for execution of the sale deed in favour of the Plaintiffs.

(iii) The Plaintiffs issued a notice Exhibit-72 calling upon the

Defendants to furnish the relevant documents of the property, as Babulal, claiming to be the owner of the property, had objected that Defendant No.1 Trust and its trustees were not the exclusive owners of the property. Defendant No.1/Trust, on the other hand, issued a reply (Exhibit-73) denying the request to furnish the documents to the Plaintiffs.

(iv) The Plaintiffs participated in the auction and initially made a bid of Rs.55,00,000/-. However, the bid was subsequently enhanced to Rs.64,25,000/-, which itself shows that the Plaintiffs were always ready and willing to perform their part of the contract by purchasing the suit property. The bid of the Plaintiffs was accordingly accepted.

(v) Despite of notice issued by the Plaintiffs calling upon the Defendants to furnish the relevant documents, the Defendants failed to produce clear title to the suit property. No settlement deed of 1955 was produced before the trial Court to show whether the predecessor of Babulal had in fact transferred the property to the Trust. Because of the Defendants' inaction, the contract could not be fulfilled.

(vi) Exhibit-64 contained a condition that if the Plaintiffs violated any terms and conditions, the deposit amount would be forfeited. However, the Plaintiffs were unable to perform their part of the contract due to the objection raised by Babulal regarding the title of the property. Babulal filed Regular Civil Suit No.196 of 2003 claiming ownership over the property, and the Defendants themselves were unable to produce title

documents.

. Hence, the learned trial Court found that there was no fault on the part of the Plaintiffs. Therefore, the condition that the amount would be forfeited if the Plaintiffs failed to perform their part of the contract cannot be accepted, as the Plaintiffs were always ready and willing to perform their obligations, but were prevented from doing so due to the Defendants. Accordingly, the Defendants were not entitled to forfeit the earnest amount of Rs.2,00,000/-.

8. Insofar as the objection taken by the Defendants that the present suit would be barred by the principles of res judicata in view of earlier suit being RCS No. 63/2003 was withdrawn, the learned trial Court has held that the earlier RCS was withdrawn on 12.09.2007. The foundation of both suits is totally different, as the cause of action in the previous suit for simpliciter injunction was based on the Plaintiffs' expectation that they would purchase the property in the meanwhile, showing the cause of action as 04.02.2003 when the Defendants published a tender notice again to sell the said property. The said suit was withdrawn on 12.09.2007, whereas the subsequent suit was filed for recovery of the earnest money forfeited by the Defendants. Hence, the subsequent suit was maintainable.

9. The learned Appellate Court has rejected the Appeal on following grounds :

(a) Defendant No.1/Trust, being aggrieved by the judgment dated 26.03.2012 passed in RCS No.25 of 2012, filed an appeal before the learned District Judge, Dhule, registered as RCA No.236 of 2012. The learned District Judge found that the suit was instituted on 19.01.2005 and that the earnest money of Rs.2,00,000/- had been deposited on 23.01.2002. The Chairman of Defendant No.1/Trust issued Exhibit-74 dated 30.11.2002 forfeiting the said amount of Rs.2,00,000/-. Hence, the present suit, i.e., Regular Civil Suit No.25 of 2012 (new) and Regular Civil Suit No.16/2005 (old), was held to be within three years as per Article 47 of the Limitation Act.

(b) The Plaintiffs were the highest bidders in the auction for purchase of the property, i.e., Survey No.483/A/1 admeasuring 70 R, and deposited an amount of Rs.2,00,000/- on 23.01.2002. The Plaintiffs issued Exhibit-72 on 25.10.2002, calling upon the Defendants to furnish the relevant documents. The Chairman of the Trust, by communication dated 19.11.2002 (Exhibit-73), refused to furnish the documents. Thereafter, by communication dated 30.11.2002 (Exhibit-74), the Chairman of the Trust forfeited the earnest money of Rs.2,00,000/-. Meanwhile, one Babulal instituted a suit in respect of the said property before the Civil Judge, Senior Division, Dhule. On 03.12.2002, the Plaintiffs issued Exhibit-75 expressing their readiness and willingness to perform their part of the contract. Hence, it was found that the Defendants had no right to forfeit the earnest amount of Rs.2,00,000/-.

(c) The award of interest was not agreed upon between the parties. Accordingly, the trial Court awarded interest at the rate of 9% per annum, in line with the lending rates of nationalized banks, from the date of filing of the suit. This was found to be just and proper.

. Hence on the aforesaid grounds, the Appellate Court

has rejected the appeal filed by the Defendants/Appellants herein.

10. The substantial questions of law urged on behalf of the Appellants are as under :

- (i) Whether the subsequent suit was barred in view of provisions of Order II Rule 2?
- (ii) Whether the Plaintiffs were always ready and willing to perform their part of contract?
- (iii) Whether the Plaintiffs were entitled to recover the earnest money along with interest so awarded?

REASONINGS :

11. Heard the learned Counsel for the Appellants on the aforesaid questions of law and also gone through the judgment and order dated 26.03.2012 passed by the learned 2nd Joint Civil Judge, Senior Division, Dhule in Regular Civil Suit No.25/2012 (new) and Regular Civil Suit No.16/2005 (old) and the judgment and order dated 03.01.2018 passed by the learned Adhoc District Judge-2, Dhule in Regular Civil Appeal No.236/2012.

12. Insofar as the Question No.1 that is Whether the subsequent suit was barred in view of provisions of Order II Rule 2? is concerned, It could be seen from the record that the Plaintiffs had earlier filed Civil Suit RCS No.63 of 2003, seeking to restrain Defendant No.1/Trust from disposing of the suit property to anyone other than the Plaintiffs/Society. The said

suit, which was simpliciter for injunction, was filed on 31.03.2003. It was subsequently withdrawn by filing a pursis (Exhibit-45), wherein the Plaintiffs stated that since they had filed another suit for recovery of the deposit, vide RCS No.16 of 2005 (old), they did not wish to proceed with RCS No.63 of 2003. The Court accepted the pursis and permitted withdrawal of the earlier suit. The cause of action for claiming refund of the amount accrued later, when the Plaintiffs lost hope that the Defendants would establish title over the suit property. Accordingly, Regular Civil Suit No.25 of 2012 (new) and RCS No.16 of 2005 (old) came to be filed, and during their pendency, the earlier suit RCS No.63 of 2003 was withdrawn. Thus, the plea of res judicata was rightly rejected by the learned trial Court, and the same was correctly upheld by the learned Appellate Court. I find no substance in the question of law raised by the Appellants and the same is answered accordingly.

13. Insofar as the question of law urged, whether the Plaintiffs were willing to perform their part of the contract, is concerned, the learned trial Court relied upon the following points to conclude that the Plaintiffs were always ready and willing to perform their part of the contract.

(i) After payment of the earnest money, the Plaintiff/Society published a paper notice (Exhibit-67) dated 30.08.2002, which constituted a step towards performance of its part of the contract.

(ii) It is not disputed that Babulal Bhartiya raised objections to

the sale of the suit property when the Plaintiffs published a paper notice (Exhibit-67) dated 30.08.2002, inviting objections, if any, for execution of the sale deed in favour of the Plaintiffs.

(iii) The Plaintiffs issued a notice calling upon the Defendants to furnish the relevant documents of the property, as Babulal, claiming to be the owner of the property, had objected that Defendant No.1 Trust and its trustees were not the exclusive owners of the property, by issuing Exhibit-72. Defendant No.1/Trust, on the other hand, issued a reply (Exhibit-73) denying the request to furnish the documents to the Plaintiffs.

(iv) The Plaintiffs participated in the auction and initially made a bid of Rs.55,00,000/-. However, the bid was subsequently enhanced to Rs.64,25,000/-, which itself shows that the Plaintiffs were always ready and willing to perform their part of the contract by purchasing the suit property. The bid of the Plaintiffs was accordingly accepted.

(v) Despite of notice issued by the Plaintiffs calling upon the Defendants to furnish the relevant documents, the Defendants failed to produce clear title to the suit property. No settlement deed of 1955 was produced before the trial Court to show whether the predecessor of Babulal had in fact transferred the property to the Trust. Because of the Defendants' inaction, the contract could not be fulfilled. Exhibit-64 contained a condition that if the Plaintiffs violated any terms and conditions, the deposit amount would be forfeited. However, the Plaintiffs were unable to perform their part of the contract due to the objection raised by Babulal regarding the title of the property. Babulal filed Regular Civil Suit No.196 of 2003 claiming ownership over the property, and the Defendants themselves were unable to produce title documents. Hence, there was no fault on the part of the Plaintiffs. Therefore, the condition that the amount would be forfeited if the Plaintiffs failed to perform their part of the contract cannot be accepted, as the Plaintiffs were always ready

and willing to perform their obligations, but were prevented from doing so due to the Defendants. Accordingly, the Defendants were not entitled to forfeit the earnest amount of Rs.2,00,000/-.

. Thus the findings arrived at by the learned trial Court are just and proper and have been upheld by the learned Appellate Court. These findings do not call for any interference by this Court, under its jurisdiction under Section 100 of the Code of Civil Procedure.

14. Insofar as the substantial question of law raised by the Appellants, pertaining to the entitlement of the Plaintiffs to seek refund of the earnest money deposited, is concerned, the learned trial Court has already recorded a finding that the Defendants could not have forfeited the amount, as the Plaintiffs were always ready and willing to perform their part of the contract. Though there was a condition below Exhibit-84 that if the Plaintiffs failed to comply with the terms and conditions, the amount so deposited could be forfeited, it was found that the Plaintiffs were indeed willing to perform their obligations. It was only due to the objection raised by Babulal that the sale deed could not be executed. The Plaintiffs had issued a notice to the Defendants calling upon them to furnish the title documents. The Defendants, however, issued a reply denying the request and failed to produce clear title to the property. Hence, the Plaintiffs could not execute the sale deed.

15. Thus the learned trial Court having found that the

Plaintiffs were ready and willing to perform their part of the contract, and that the Defendants were not entitled to forfeit the earnest money under Exhibit-64, held that the Plaintiffs had every right to file a suit for recovery of the said amount. Section 22 of the Specific Relief Act is as under:

“22. Power to grant relief for possession, partition, refund of earnest money, etc

(1) Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908 (5 of 1908), any person suing for the specific performance of a contract for the transfer of immovable property may, in an appropriate case, ask for —

(a) possession, or partition and separate possession, of the property, in addition to such performance; or

(b) any other relief to which he may be entitled, including the refund of any earnest money or deposit paid or made by him, in case his claim for specific performance is refused.

(2) No relief under clause (a) or clause (b) of sub-section (1) shall be granted by the court unless it has been specifically claimed:

Provided that where the plaintiff has not claimed any such relief in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just for including a claim for such relief.

(3) The power of the court to grant relief under clause (b) of sub-section (1) shall be without prejudice to its powers to award compensation under section 21.”

16. The Hon’ble Supreme Court in the case of ***Desh Raj Vs. Rohtash Singh, (2023) 3 SCC 714***, has held as under :-

*“35. On a plain reading of the above reproduced provision, we have no reason to doubt that the plaintiff in his suit for specific performance of a contract is not only entitled to seek specific performance of the contract for the transfer of immovable property **but he can also seek alternative relief(s) including the refund of any earnest money, provided that such a relief has been specifically incorporated in the plaint.** The court, however, has been vested with wide judicial discretion to permit the plaintiff to amend the plaint even at a later stage of the proceedings and seek the alternative relief of refund of the earnest money. The litmus test appears to be that unless a plaintiff*

specifically seeks the refund of the earnest money at the time of filing of the suit or by way of amendment, no such relief can be granted to him. The prayer clause is a sine qua non for grant of decree of refund of earnest money.”

17. Section 24 of the Specific Relief Act bars the Plaintiffs’ right to claim compensation for breach of contract after dismissal of a suit for specific performance, it does not bar their right to seek any other relief to which they may be entitled by reason of such breach. It is clear from the aforesaid provision that if the Plaintiffs are entitled to refund of the earnest money, they are not barred from filing a fresh suit for that relief.

18. Insofar as the interest is concerned, the learned trial Court specifically observed that there was no agreement regarding the rate of interest. In such circumstances, the Plaintiffs were found entitled to charge interest at the bank rate of a Nationalized Bank. The trial Court further considered that the rate of interest of Nationalized Bank, has not exceeded 9% per annum for a long period, and accordingly held that the Plaintiffs were entitled to recover the deposit amount at the rate of 9% per annum. The Appellate Court has also considered the said finding for granting interest recorded by the trial Court and upheld the same.

19. Recently the Hon’ble Supreme Court in the case of **I.K. Merchants Pvt. Ltd. & Ors. Vs. the State of Rajasthan & Ors.** reported in 2025 LiveLaw (SC) 377, was pleased to hold that the Courts have the authority to determine the appropriate rate of interest to be awarded for decree amounts. The Court also have

the discretion to decide from which date the interest is payable-whether from the date of the filing of the suit, from any date prior to it, or the date of decree. In the absence of an agreement between the parties regarding the rate of interest on delayed payment of amount in a commercial transaction, the interest may exceed 6% p.a. as per Section 34 CPC after taking into account the totality of facts and circumstances in accordance with law. I do not see any error in the said findings arrived at by the lower Courts below and hence the question of law no. (iii) is answered accordingly.

20. Therefore in my view, the Plaintiffs were entitled to file a civil suit for refund of the earnest money in accordance with law. The interest awarded is just and proper taking into consideration that the Appellants have enjoyed the amount of Rs. 2 Lakhs since 19.01.2002. The substantial questions of law framed above are accordingly answered. No other substantial question of law was urged by the learned Counsel for the Appellants while arguing the appeal. There is no merit in the appeal. The appeal is dismissed with no order as to costs.

21. The Civil Application is also disposed of.

(MEHROZ K. PATHAN, J.)