
(2026) 08 BOM CK 1158

In the Bombay High Court, Goa Bench

Case No : Second Appeal No. 30 of 2014 with Civil Application No. 2229 of 2025 (F) in Second Appeal No. 30 of 2014

Mr. Muni Raj

APPELLANT

Vs

Mr. Narayan Krishna Malwankar & Ors.

RESPONDENT

Date of Decision : 04-08-2026

Acts Referred:

Code of Civil Procedure, 1908 — Section 100, 100(5)
Indian Evidence Act, 1872 — Section 91, 92
Portuguese Civil Code — Article 1156

Citation : 2026:BHC-GOA:1520

Hon'ble Judges : Amit S. Jamsandekar, J.

Bench : Single Bench

Advocate : for the Petitioner: Mr. V.A. Lawande with Mr. Parimal Redkar and Ms. Smita Gawas; for Respondent Nos. 4 & 5: Mr. Vibhav R. Amonkar; for Respondent No. 6: Mr. Gauravvardhan A.S. Nadkarni

Final Decision : Dismissed

Judgement

1. The Appellant (Original Plaintiff) instituted a Suit before the learned Civil Judge, Senior Division, Mapusa, Goa, (Civil Suit No. 87/2008/B) for specific performance of the Agreement dated 14thMay 2005. The Suit was instituted on the basis of the following facts and circumstances.

a. The Appellant entered into an Agreement dated 14.05.2005 with Respondent No. 1 (Defendant No. 1) for the purchase of a property known as "Botor", also known as "Bhatier", admeasuring 1,775 square metres, situated in the Village of Arpora, Bardez, North Goa, for a total consideration of Rs.18,50,000/- (Rupees Eighteen Lakhs Fifty Thousand only). In terms of the said Agreement, a sum of Rs.1,00,000/- was paid at the time of its execution; a further sum of Rs.2,50,000/- was to be paid on or before 31.07.2005; and the balance of Rs.15,00,000/- was to become payable after Respondent No. 1 had secured the Conversion Sanad for N.A land.

b. According to the Appellant, he paid Rs.1,00,000/- in cash and by cheque to the Defendant as earnest money under the agreement for sale, towards obtaining N.A. permission in respect of the suit property. Being aggrieved by the reluctance of the Defendant to execute the sale deed, the Plaintiff caused a notice dated 28.04.2008 to be issued to the Defendant calling upon him to execute the sale deed in pursuance of the agreement to sell. According to the Appellant, the 1st Respondent failed to execute the sale deed pursuant to the Agreement dated 14.05.2005.

c. Being aggrieved by the delay and reluctance on the part of the Defendant in converting the suit property into N.A. land, and by the non-execution of the agreement of sale dated 14.05.2005, the Plaintiff instituted Special Civil Suit No. 87/2008/B before the Civil Judge, Senior Division, "B" Court at Mapusa, seeking specific performance of the agreement dated 14.05.2005.

2. The learned Civil Judge, Senior Division, by judgment and decree dated 31.03.2012, dismissed Special Civil Suit No. 87/2008/B, inter alia, on the grounds that the Appellant failed to perform his part of the obligation under the Agreement dated 14.05.2005 and therefore, was not entitled to a decree of specific performance. In view of the provisions of Sections 91 and 92 of the Indian Evidence Act, the learned Judge rejected the plea of the Appellant of oral understanding. The learned Civil Judge has also relied upon the Appellant's admissions in the cross-examination that he did not perform his obligations under the Agreement dated 14.05.2005.

3. Being aggrieved thereby, the Appellant preferred Regular Civil Appeal No. 77/2012 before the learned District Judge-1, at Panaji, Goa, against the judgment and decree dated 31.03.2012 passed in Special Civil Suit No. 87/2008/B.

4. The learned District Judge-1, at Panaji, Goa, by judgment dated 20.08.2013, was pleased to dismiss Regular Civil Appeal No. 77/2012, inter alia, on the ground that the evidence on record establishes that the Appellant failed to perform his part of the obligation under the Agreement dated 14.05.2005 and therefore, concurred with the finding of the learned Civil Judge.

5. Thus, there are concurrent findings of fact against the Appellant for rejecting the prayer of specific performance of the Agreement dated 14th May 2005.

6. Against the concurrent findings of fact, the Appellant has preferred the present Second Appeal, which was admitted on 16.02.2018 and the following questions of law are framed for consideration.

i) Whether the finding of the Lower Appellate Court, that the appellant was not ready and willing to perform his part of the contract merely on account of there being a shortfall of Rs.50,000/- in the payment agreed to be made under Clause (2) of the Agreement, is perverse; and, incidentally, whether the said condition stood modified by the money receipt at Exhibit 22 ?

ii) Whether the Courts below ought to have drawn an adverse inference against the respondents for their having failed to enter the witness box in substantiation of their defence ?

iii) Whether the First Appellate Court fell into error in invoking the provisions of Article 1156 of the Portuguese Civil Code, in the absence of any pleading or proof that the respondents/defendants were governed by the Portuguese Law and were married under the regime of Communion of Assets ?

iv) Whether, in the facts and circumstances of the case, the discretion exercised by the Courts below in declining to grant specific performance can be said to be perverse ?

7. Mr. Lawande, the learned Counsel appearing for the Appellant submitted that, the 1stRespondent/vendor has already received a sum of Rs.1,00,000/- in cash on 14.05.2005, at the time of the execution of the agreement to sell, and a further sum of Rs.1,00,000/- by way of a demand draft drawn on ABN Amro Bank, Barakhamba Road, New Delhi, towards the processing the conversion proceedings. Further, both the Courts below failed to appreciate that the money receipt was signed by the 1stRespondent, thereby acknowledging receipt of Rs.1,00,000/- by way of demand draft and cash for processing the conversion proceedings.

8. Mr. Lawade further submitted that the entire basis of the concurrent dismissal rests upon a misconstruction of the money receipt dated 21.07.2005 (Exhibit 22), a document issued and signed by Respondent No. 1. It is contended that the said receipt records that a sum of Rs.1,00,000/- was received "to process the conversion proceedings", and that it thereby evidences a consensual modification and waiver of the provisions of Clause 2 of the Agreement as to the quantum and timing of the part-payment. It is urged that the learned First Appellate Court fell into manifest error in reading Clause 2 in isolation, as an inflexible condition precedent, whilst omitting all reference to the vendor's own subsequent acknowledgement in Exhibit 22.

9. According to Mr. Lawande, Respondent No. 1 was himself in fundamental breach of his primary obligation under Clause 3 of the Agreement, whereunder he had undertaken to obtain conversion of the land to non-agricultural use, at his own cost, within four to five months of the date of the Agreement, that is, by 14.05.2005. It is submitted that the vendor's obligation under Clause 3 and the purchaser's obligation under Clause 2 were independent and ran concurrently, the former not being contingent upon the receipt of the balance under the latter; and that a party who has himself defaulted upon his own primary and independent obligation cannot invoke the other party's shortfall as a defence, nor take advantage of his own wrong.

10. Mr. Nadkarni, the learned Counsel for the 6thRespondent submitted that no question of law arises in the present Second Appeal in view of the concurrent findings of fact and therefore, he should be heard on that point by virtue of the

provisions of Section 100 (5) of the Code of Civil Procedure, 1908. I agree with the submissions of Mr. Nadkarni that by virtue of the provisions of Section 100 (5) of the Code of Civil Procedure, 1908, the Respondent in a Second Appeal ought to be heard as to why no substantial question of law arises in the matter.

11. In the present case, there are concurrent findings of fact that the Appellant has failed to perform his part of the obligation under the Agreement dated 14.05.2005 and the money receipt dated 21.07.2005 (Exhibit 22) does not establish any modification of the Agreement dated 14.05.2005. On the factual aspects and after appreciating the evidence, the learned Civil Judge, as well as the learned District Judge in Appeal, have exercised their discretion and refused to grant a decree of specific performance.

12. Therefore, I agree with the submission of Mr. Nadkarni that the Appellant, having failed to comply with and perform his obligations under the Agreement, cannot be held entitled to the relief of specific performance of that Agreement. His has rightly relied on the judgments of the Hon'ble Supreme Court in

Pemmada Prabhakar and Others v. Youngmen's Vysya Association and Others, [(2015) 5 SCC 355] (paragraphs 31-32), and in **Padmakumari and Others v. Dasayan and Others**, [(2015) 8 SCC 695] (paragraphs 19-20). A plaintiff who has failed to pay part of the consideration amount within the stipulated timeline is not entitled to a decree for specific performance.

13. I further agree with the submissions of Mr. Nadkarni that the concurrent findings of fact recorded by the Courts below cannot be disturbed unless they are shown to be wholly perverse. In view of the fact that the Appellant's failure to perform his obligations under Clause 2 of the Agreement is established by documentary as well as oral evidence. Therefore, the findings of fact are not perverse, and in view thereof, concurrent findings of fact ought not to be interfered with in a Second Appeal.

14. At the threshold, it must be borne in mind that the jurisdiction of this Court in a Second Appeal is a narrowly circumscribed one. Section 100 of the Code of Civil Procedure, 1908 permits interference only where the case involves a substantial question of law. The provisions of the Section do not empower this Court to re-appreciate the evidence, or to sit in judgment over the findings of fact recorded by the Courts below. The test of what constitutes a substantial question of law is now well settled. The Hon'ble Supreme Court in **Sir Chunilal V. Mehta & Sons Ltd. vs. Century Spinning & Manufacturing Co. Ltd.**, [AIR 1962 SC 1314], held that:-

"6.The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. **If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is**

a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law.”

15. This salutary principle has been reiterated time and again, including the very decision relied upon by Mr. Nadkarni, in the case of **Rabindranath Panigrahi v. Surendra Sahu**, [2025 SCC OnLine SC 504].

16. It is equally well settled that concurrent findings of fact recorded by the Trial Court and affirmed by the First Appellate Court, cannot be interfered at the Second Appellate stage unless such findings are shown to be perverse, on the ground, that they are based on no evidence, or are founded upon a misreading or misappreciation of material evidence, or are such that no reasonable person could have arrived at it.

17. I do not find any perversity or arbitrariness in the approach, findings and reasoning of the learned Civil Judge or the learned District Judge’s judgment. The judgments are based on an appreciation of the evidence and are in accordance with well-established principles of law. The learned Civil Judge and the learned District Judge have exercised their discretion judicially and have refused specific performance. Once it is established in a suit for specific performance that the Plaintiff has failed to perform his part of the obligation under the Agreement, then there is no question of granting a decree of specific performance to the Plaintiff. In the present case, it is clearly established that the Plaintiff has failed to perform his part of the obligation under the Agreement.

18. In view thereof, none of the questions of law as framed while admitting the present Second Appeal meet the criteria of a substantial question of law and therefore I agree with the submissions of Mr. Nadkarni that no question of law arising in the present Second Appeal, particularly in view of the concurrent findings of fact that the Appellant has failed to perform his part of obligation under the Agreement dated 14.05.2005.

19. Accordingly, the Second Appeal is dismissed.

20. No order as to costs.

21. Pending Application, if any, also stands disposed of.

22. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.