



Received on : 06.01.2023
Registered on : 07.01.2023
Decided on : 30.07.2026
Duration : 3 Y 6 M 24 D.

Exh. No. 22.

IN THE DISTRICT COURT, CHANDRAPUR

(Presided over by Abhay K. Lahoti
Principal District Judge, Chandrapur)

REG CIVIL APPEAL No. 01/2023
(CNR No.MHCH-01-000057-2023)

Shri. Manoj Purushottam Nandanwar,

Aged about : 39 years, Occ. Business,
R/o. C/o. Prashant Baburao Dhobale
Near Hariom Medical Stores &
Mahakalkar Loan, Pardi, Nagpur,
Tah. & Dist. Nagpur.

.. **APPELLANT**
(Original Defendant)

-Versus-

Shri. Ashok Ramnath Sonkusare,

Aged about : 57 years, Occ. Service,
R/o. Gajmukh Apartment, Flat No.F-1,
First Floor, Wasekar Layout, Akashwani
Road, Chandrapur,
Tah. & Dist. Chandrapur.

.. **RESPONDENT**
(Original Plaintiff)

APPEAL UNDER SEC.96 OF THE CIVIL PROCECURE CODE.

Shri. R. W. Chaudhari, Advocate for Appellant.

Shri. G. G. Murkute, Advocate for Respondent.

J U D G M E N T(Delivered on 30th July, 2026)

01] Being aggrieved by the judgment and decree passed by the Ld. 4th Jt. Civil Judge, Senior Division, Chandrapur in Special Civil Suit No. 69/2017 of dtd. 07.12.2022, thereby decreed the suit of the plaintiff/present respondent.

02] The Ld. Advocate for appellant/original defendant submitted that, the plaintiff had filed a suit for recovery of earnest amount with interest against the defendant. The Ld. Trial Court decreed the suit and thereby directed to pay the total amount of Rs.8,98,100/- with interest at the rate of 6% per annum to the plaintiff from the date of decree till its realization.

03] The Ld. Advocate for appellant/original defendant submitted that, the Ld. Trial Court proceeded further in the matter by passing an order of no-cross and closed the evidence of defendant. Thus, the defendant didn't get an opportunity to cross-examine the plaintiff and to putforth his defence. The defendant is permanent resident of Nagpur and running a small business of Hotel. During the course of trial, he was suffering from illness of pneumonia and typhoid

diseases and hence he could not meet his counsel and to provide the necessary information. In the year 2020-2021 the COVID period was going and due to pandemic almost the court were closed. Evenafter, completion of Corona period the defendant was not fully recovered from his illness and was not in a position to travel from a long distance. Therefore, he prayed to allow the appeal by granting one opportunity to cross-examine the plaintiff/present respondent.

04] Per-contra, the Ld. Advocate for original plaintiff/present respondent urged that, repeatedly the opportunities were granted to the defendant to cross-examine but he failed to cross-examine the plaintiff. On 12/08/2022, the evidence of plaintiff was closed and the defendant failed to cross-examine. On 05/09/2022, the defendant did not lead his evidence and hence his evidence was also closed. On 07/10/2022 the matter was posted but no application was filed by defendant nor he lead any evidence. At last the matter was posted for argument. After considering the entire facts the judgment and decree is passed by the Ld. Trial Court. There is no merits in the present appeal and hence he prayed to dismiss the present appeal. The Ld. Advocate for original plaintiff/present respondent has also placed his reliance on

the Judgment of the Hon'ble Apex Court in **Vidyadhar Vs. Manikrao & Anr.**, reported in **AIR 1999 SC 1441**.

05] Heard, the rival submissions of Ld. Advocates. Perused, the Judgment and the paper-book filed on record. Considering their rival submissions and evidence on record, the following points arise for my determination and I have recorded my findings against each of them for the reasons mentioned below:

POINTS

FINDINGS

- | | |
|--|-------------------------|
| [1] Whether the appellant has made sufficient grounds to remand the matter ... back to the Trial Court ? | Affirmative. |
| [2] Whether the Judgment and decree passed by the Trial Court requires any ... interference in it ? | Affirmative. |
| [3] What order ? | ... As per final order. |

REASONS

AS TO POINT NOS.1 TO 3:-

06] As all the points are interconnected with each other's and hence, I am discussing them together in order to avoid the replication and to achieve the brevity.

07] Ongoing through the record, it shows that, the present respondent / original plaintiff has filed the special suit bearing No. 69/2017 for recovery of earnest amount Rs.8,98,100/- with interest against the appellant / original defendant.

08] The fact which emerges from record is that, the plaintiff was willing to purchase a house at Chandrapur. One Mangesh Patil being friend of defendant and having cordial relations with him shown the flat of defendant to plaintiff which is located at first floor of the building "Shri. Gajmukh Apartment" with constructed area 49.179 Sq. Mtrs. Situated at Mouze Govindpur Rith, P.S. No. 10, Old Survey No.7/2, total admeasuring 486 Sq. Mtrs. As per their negotiation, the amount of flat was fixed Rs.16,85,000/-. The plaintiff has paid Rs. One Lakh as token amount on dated 27/12/2014. The agreement was executed between them. The plaintiff has paid total Rs.8,98,100/- to defendant. But in the mean time, due to extra-demand of money by defendant than agreed terms and not ready to mutate on revenue record, the plaintiff informed his displeasure and conveyed that he is not interested in the said property. The plaintiff issued notice to defendant and called upon to comply as per notice but he

failed to do so. Therefore, the plaintiff has filed a suit for recovery of amount of Rs.8,98,100/-.

09] The summon suit was issued. The defendant appeared before the Ld. Trial Court through his advocate. The defendant has filed his written statement vide Exhibit-11. The defendant has admitted that, plaintiff has paid Rs.7,00,000/- as per notice and Rs.98,130/- paid towards the loan account of defendant. Rest of the contents of the plaint seems to be denied by the defendant. The issues were framed by the Trial Court. The plaintiff has filed his evidence on affidavit vide Exhibit-16 on dated 23/09/2021. The defendant was absent on that day. Thereafter, on 18/11/2021, the affirmation of the plaintiff was recorded by the Trial Court and on that day also defendant and his advocate were absent. The plaintiff has examined PW-2 Mangesh Patil by filing his evidence on affidavit on dated 20/01/2022. The defendant and his advocate were absent. The PW-2 affirmation was recorded on dated 28/07/2022 and on that day also the defendant and his counsel was absent. Thereafter the plaintiff closed his evidence. The defendant neither led the evidence nor remained present for final hearing. The suit was decided by the Trial Court considering the evidence on record.

10] Perusal of the entire record shows that, the defendant was absent on material dates. Due to his reluctance to appear before the court, the matter was proceeded further. Thus, he has consumed the valuable time of the court even after due service of summon and filing of his own written statement. These facts cannot be overlooked while considering the grounds of appeal and other points raised in the appeal. Admittedly, the defendant has not applied before the Trial Court to set aside the no-cross order passed against him nor moved any application before the Trial Court during the suit proceeding to substantiate his defense. The Trial Court delivered the judgment in the suit on dated 07/12/2022 and thereby decreed the suit. Thereafter, the appellant preferred the said appeal contending that at least one opportunity be given to him to substantiate his defence.

11] It is the contention of appellant that during period of 2020 and 2021 the covid period was going on. He became ill and could not recover even after the completion of COVID period. The aforesaid aspect cannot be overlooked while deciding the appeal. It requires to be considered liberally rather than technically.

12] The Ld. Advocate for present respondent / original plaintiff has placed his reliance on the judgment of Apex Court in case of **Vidhyadhar Vs. Manikrao and Anr., (AIR 1999 SC 1441)**. In this case the Hon'ble Apex Court has observed that, "Where a party to the suit does not appear into the witness box and states his own case on oath and does not offer himself to be cross examined by the other side, a presumption would arise that the case set up by him is not correct. In the instant case defendant No.1 alleged that the sale deed, executed by defendant No.2 in favour of the plaintiff, was fictitious and the whole transaction was a bogus transactions as only Rs.500/- were paid as sale consideration to defendant No.2. But this plea was not supported by defendant No.1 as he did not enter into the witness box. He did not state the facts pleaded in the written statement on oath in the Trial Court and avoided the witness box so that he may not be cross-examined. This, by itself is enough to reject the claim that the transaction of sale between defendant No.2 and the plaintiff was a bogus transaction." I have gone through the aforesaid citation. With due respect, I have no doubt about the legal proposition laid down in the said citation. In the case-in-hand the defendant failed to cross examine by appearing before the Trial Court due to the reasons as put-forth by the appellant in the present appeal. In the case before

Hon'ble Apex Court the defendant No.1 failed to appear in witnesses box to substantiate his plea. Thus, the facts mentioned the citation are different than the facts of the case-in-hand and therefore, in my humble view, the aforesaid citation will not be helpful to the respondent / original plaintiff in the present case.

13] It is necessary to mention that, the opportunity of being heard requires to be given to every one before passing any order against him. However, it cannot be ignored that repeatedly the opportunities were received by the appellant / original defendant. But taking into consideration the pandemic situation prevailing at that time, illness of appellant as pleaded, and his substantial right in the property is involved, I am of the view that, the appellant should get one more opportunity to substantiate his right which is defeated by passing an order of no-cross and delivery of judgment by the Trial Court. It will avoid the multiplicity of proceedings and also will help to decide the matter on merits.

14] Taking into consideration, the entire aspects, in my considered opinion the matter requires to be remanded back to decide it afresh by setting aside the order of no-cross. At the same time, I am of the view that, it is necessary to saddle

the cost on appellant which will balance the opposing right of plaintiff / present respondent. One more aspect while saddling the cost is required to be considered is the age of litigation. The appellant has kept on lingering the present matter. As discussed supra, one more opportunity is granted to the appellant / original defendant to substantiate his right which is defeated by no-cross order. Hence, I am inclined to interfere in the judgment and decree passed by the Trial Court and consequently, I pass the following order,

ORDER

- 1) The appeal is allowed subject to payment of cost of Rs.15,000/- (Rupees Fifteen Thousand only).
- 2) The appellant to deposit the cost amount within the period of 20 days from today. The cost is condition precedent. The plaintiff/present respondent is at liberty to withdraw the same.
- 3) The Judgment and decree passed by the Ld. Trial Court in Spl. Civil Suit No. 69/2017 of dtd. 07/12/2022 is hereby quashed and set aside.
- 4) The matter is remanded back to the Trial Court to decide it afresh. The suit be restored on its original number.

- 5) Considering the age of the suit, it be disposed off expeditiously or as early as possible probably within the period of one year from the receipt of the said order.
- 6) The plaintiff and defendant to remain present before the Ld. Trial Court on 20/08/2026 without fail. No separate notice will be issued to them.
- 7) No-cross order passed by the Ld. Trial Court are hereby set aside and defendant is at liberty to cross-examine the plaintiff and his witness.
- 8) Parties are at liberty to lead the evidence, if any, in support of their claim.
- 9) The record and proceeding be sent back immediately.
- 10) The appeal stand disposed off in terms of above.
- 11) Inform the Ld. Trial Court accordingly.

Chandrapur.
Date : 30.07.2026.

(Abhay K. Lahoti)
Principal District Judge,
Chandrapur.