MHTH020036522011	Received on	:	20/10/2011		
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	Decided on	:	23/07/2026		
	Duration on	:	14Y.	9M.	3D

IN THE COURT OF 4th Jt. CIVIL JUDGE SENIOR DIVISION, THANE AT DISTRICT: THANE

(Presided over by Shri H.V.Kulkarni)

R.C.S. No. 580/2011 **Exh. No. 128**

Abhimanyu J. Patole (deceased)

1a. Smt. Kalavati Abhimanyu Patole
Age- 64 years, Occupation- Housewife.

1b. Shri Indar Abhimanyu Patole
Age- 37 years, Occupation Service

1c. Mr. Manoj Abhimanyu Patole
Age 35 years, Occupation: Service

1d. Smt. Asha Hemant Jadhav
Age- 40 years, Occupation: Service
All above r/o : Flat No. A-9/002, Ground Floor,
Veena Nagar Co-op Hsg Society Ltd,
LBS Road, Mulund (West)
Mumbai - 400 080

..... Plaintiff

Vs

Mr. L.M. Ramchandra
Age : Adult, Indian Inhabitant,
Occupation- Business, Residing at C-11,
China Chawl, Tananji Nagar,
Safed Pool, J.B. Andheri Road,
Sakinaka,Mumbai 400072

...Defendant

Appearance: -

Advocate Shri Mukesh Pabari	-For plaintiffs.
Advocate Shri S.R. Gotavade	-For defendant

JUDGMENT

(Delivered on 23/07/2026)

The present suit has been filed by plaintiff for Specific Performance u/s 10 of Specific Relief Act 1963.

The facts of the plaintiff case are as under: -

2. According to the plaintiff, a retired resident of Mulund (E), Mumbai, agreed to purchase Flat No. 402, Ashapura Dham Building, Bhiwandi Road, Thane (herein after referred to as “Suit Property”), from defendant for a consideration of ₹23,50,000/-. Accordingly, he paid ₹3,00,000/- in two instalments (₹1,00,000 by cheque on 08/07/2011 and ₹2,00,000 in cash on 03/08/2011), duly acknowledged by the defendant through receipts. At the relevant time, defendant promised to hand over original title documents and register the agreement for sale to enable the plaintiff to obtain a bank loan, but failed to do so despite repeated requests and legal notice dated 24/08/2011. Instead, the defendant issued one letter dated 22/09/2011 and threatened plaintiff indicating his intention to sell the flat to third parties and forfeit the plaintiff’s earnest money. Plaintiff gave reply to the said letter through his advocate by reply notice dated 27/09/2011. According to Plaintiff, such conduct of defendant is dishonest, amounts to breach of promise, and caused irreparable loss to the plaintiff. Therefore, by way of filing present suit, plaintiff has sought relief of permanent injunction restraining the defendant from alienating or creating third-party rights in the suit property and for recovery of ₹3,11,095/- (principal plus interest at 18% p.a.) along with further interest from the date of filing suit till its realisation.

3. Defendant by filling his written statement (Exh. 80) has denied the suit claim of the plaintiff. According to defendant, the suit filed by the plaintiff is false, frivolous, and barred by limitation. He has admitted receipt of ₹3,00,000/- as token money but contended that plaintiff has failed to pay the balance consideration despite repeated extensions, including up to 25/08/2011, and despite being supplied with necessary documents to secure a home loan. He has further stated that due to the plaintiff's default, he cancelled the transaction by letter dated 22/09/2011 and informed plaintiff that the token amount would be forfeited if the balance was not paid within 15 days, which the plaintiff failed to do. He has denied the allegations of withholding documents or refusing registration, emphasizing that only a token amount was paid and no sale agreement was executed. He has further submitted that plaintiff has instituted the suit merely to cover his own defaults and to restrain him from dealing with the property.

4. In his additional written statement, the defendant has asserted that the plaint was amended after six years to convert it into a money claim, which is barred by limitation. The forfeiture of token money (bayana) is customary in property transactions when the purchaser fails to honour contractual terms. He had mortgaged the flat to obtain a loan of ₹20 lakhs at 14% interest wherein he suffered heavy loss and ultimately had to dispose of the property. Therefore, he has prayed for dismissal of the suit with compensatory costs, maintaining that the plaintiff has no enforceable right to injunction or refund, and that the defendant acted within his contractual and legal rights.

5. In view of the pleading and documents filed on record following issues (Exh.82) were framed by My Ld. Predecessor and I have recorded findings thereon for the reasons stated below: -

Sr.No.	POINTS		FINDINGS
1.	Whether plaintiff proves that defendant committed breach of oral terms?	--	Affirmative
2.	Whether plaintiff is entitled for relief as claimed?	--	Partly affirmative
3.	Whether suit is within in limitation?	--	Affirmative
4.	Whether plaintiff proves that defendant is liable to pay Rs. 3,11,095/- with interest to him?	--	Partly Affirmative
5.	What Order and decree?	--	Suit is Partly decreed.

AVAILABLE EVIDENCE

6. In support of his claim, plaintiff Abhimanyu Patole (PW1) has examined himself vide Exh. 84. He has filed the following documents and closed evidence as per pursis at Exh.107.

Sr No.	Description of Documents	Exh.
1.	Receipt dated 08/07/2011 of ₹. 1,00,000/-and receipt dated 03/08/2011 of ₹. 2,00,000/- .	91 & 92
2.	Letter of defendant dtd 11/10/2011 to the plaintiff.	93
3.	Reply defendant dtd 22/09/2011 to the plaintiff.	94
4.	Office copy of notice dtd 24/08/2011 issued to defendant.	95
5.	Letters dtd 27/09/2011 issued by plaintiff to defendant.	96

6.	Letters issued by plaintiff to Sr. Police Inspector Majiwada Police station and Mumbai District Co-operative bank.	97 to 98
7.	Lease pendency notice sent to offices of Sub-Registrar.	99
8.	Certified copy of evidence of affidavit in Spl C.S. No. 4695/20120	103
9.	Notices dated 24/08/2011 and 14/09/2011	104 Coll.

7. Defendant has examined himself (DW1) vide Exh. 113 and Ramesh Balkrushna Dalvi (DW2) vide Exh. 121. He has filed the following documents and closed evidence as per pursis at Exh.127.

Sr No.	Description of Documents	Exh.
1.	Demand notice dated 05/05/2012 issued by Mumbai District Central Co-operative Bank	114
2.	Copy of income tax return	115
3.	Agreement for sale dtd 30/12/2014	116
4.	Sanction letter issued to defendant.	122
5.	Certificate u/s 65B.	123
6.	Account statement and interest statement.	124 & 125

R E A S O N S ::

AS TO POINT NO. 1 to 5:-

8. The discussion for all these issues is made in together so as to avoid repetition of the facts. Plaintiff Abhimanyu (PW1) has entered into a witness box and reiterated suit claim in his evidence to establish both the factual matrix and the legal foundation of his

claim. He has clearly narrated the oral agreement to purchase the suit property for ₹23,50,000/-, and proved payment of ₹3,00,000/- as earnest money through receipts. He has demonstrated repeated demands for original documents and registration of the sale agreement, supported by notices dated 24/08/2011 and 27/09/2011, and letters exchanged with the defendant. During his evidence, plaintiff has produced documentary evidence such as the lis-pendens notice, police complaint, and legal notices to corroborate his version.

9. In cross-examination, the plaintiff admitted that he has limited education and relied on his advocate to prepare the affidavit. He confirmed that apart from his Mulund flat, he owned no other property, and acknowledged a transaction with Umesh Joshi for sale of that Mulund flat, including receipt of ₹4,00,000 as earnest money and subsequent litigation between them. He accepted that he filed suits and counter-claims against Joshi, and that those matters are still pending. He stated that his son wished to purchase the Thane flat and would have paid EMIs if a loan was obtained, but conceded there was no written agreement between his son and the defendant. He admitted paying ₹1,00,000 as earnest money and acknowledged the receipt (Exh.91), but agreed that it did not mention any obligation of the defendant to assist in obtaining a loan. He further admitted that he first sought refund of earnest money only in 2014 through amendment application Exh.25, but denied that the claim was time-barred. He maintained that the defendant never gave him original documents, hence he never applied for a loan, and rejected

suggestions that notices were fabricated or back-dated. He acknowledged that the defendant mortgaged the suit flat to the Mumbai District Central Co-op Bank in 2012, but denied that the defendant suffered losses due to his default.

10. The evidence of defendant Ramchandra (DW1) presents a clear defensive narrative where he has asserted that the suit is false, not maintainable, and barred by limitation, since the plaintiff amended the plaint in 2014 to claim refund of ₹3,00,000 nearly three years after the transaction. He added that the plaintiff failed to pay the balance consideration of ₹20,50,000 by 25/08/2011, making time the essence of the contract, and therefore he cancelled the deal by letter dated 22/09/2011 and later informed by letter dated 11/10/2011 that the earnest money would be forfeited. He has denied receiving the plaintiff's notice dated 24/08/2011 and further stated that the plaintiff cannot simultaneously claim the amount of ₹3,00,000 in this suit and in his counter-claim against Umesh Joshi in City Civil Court, Mumbai, thereby accusing the plaintiff of perjury.

11. In cross-examination, the defendant admitted that he sold the suit property during pendency of the litigation without informing the plaintiff, and acknowledged receiving certain notices (Exh.96) and replying to them (Exh.93). He conceded that Exh.92, the receipt, did not expressly mention the amount as "token money," though he maintained that it was understood as such. He also admitted that the plaintiff filed a police complaint against him, though no action followed. He confirmed mortgaging the flat to Mumbai District Central Co-op Bank and receiving demand notices. He has

specifically stated that he has never given any document for loan and never agreed for any of loan with plaintiff. Therefore, his evidence seeks to portray the plaintiff as the defaulting party who failed to honour payment obligations, while justifying forfeiture of earnest money and cancellation of the deal, but his admissions in cross-examination particularly about selling the property during lis pendens and absence of explicit mention of “token money” in the receipt undermine the strength of his defence.

12. The defendant has examined a bank official Shri Dalvi (DW No.2) to prove that he had mortgaged the suit flat and obtained a loan after the plaintiffs allegedly failed to complete the purchase. The witness produced the loan sanction letter (Exh.122), the 65B certificate (Exh.123), and account statements (Exhs.124–125) showing disbursement of ₹20 lakhs at 14% interest and subsequent repayments. In cross-examination, the bank witness admitted that he was not the author of the 65-B certificate and that the certificate did not mention the software details used to generate the electronic records. He further conceded that he had not personally prepared the documents and was only producing them from bank records.

13. The written arguments filed by the plaintiffs (legal heirs of late Abhimanyu J. Patole) consolidate their case by emphasizing the admitted receipts (Exhs. 91 and 92) for ₹3,00,000, which the defendant signed and acknowledged. It is argued that receipt at Exh.91 itself contains a condition that if the home loan was not sanctioned, the amount would be refunded, thereby negating any right of forfeiture. There is no forfeiture clause in either receipt, and

settled law prohibits a vendor from withholding earnest money without an express contractual stipulation. The plaintiffs have highlighted that the defendant sold the suit property during pendency of the litigation for ₹32,50,000, earning a profit of about ₹10,00,000 over the agreed price with the plaintiff, without informing them. It is contended that this conduct, coupled with admissions in cross-examination (acknowledging receipt of earnest money, admitting sale during lis pendens, admitting profit, and failing to produce evidence of alleged losses), renders the defendant's testimony unreliable.

14. Plaintiff has also challenged the evidentiary value of the bank documents (Exhs. 122–125) produced by defendant, arguing they were unproved under Section 65-B of the Evidence Act. On limitation, it is submitted that cause of action arose afresh when the defendant sold the property in December 2014, knowledge of which they acquired in 2016, and the amendment application filed in 2017 was within three years. Once the amendment was allowed and not challenged, the amended plaint relates back to the original filing. In conclusion, the plaintiffs have prayed for a decree directing refund of ₹3,00,000 with interest @ 18% per annum.

15. Considering the evidence produced on behalf of both parties, it is now necessary to appreciate the documentary evidence produced on record. Plaintiffs have relied upon the receipt dated 08/07/2011 (Exh.91 "First Receipt") which records payment of ₹1,00,000 as token money. Importantly, it stipulates that the

transaction was *subject to sanction of home loan from the bank, otherwise to be refunded*. This clause is crucial, as it makes the agreement contingent upon loan sanction. The defendant has admitted his signature on this receipt. Thus, the document establishes both payment and the refund condition.

16. The second receipt dated 03/08/2011(Exh.92“Second Receipt”) acknowledges further payment of ₹2,00,000, making the total earnest money ₹3,00,000. It also records that the balance of ₹20,50,000 would be paid by 25/08/2011, “time being the essence of the contract.” This receipt shows that while a deadline was fixed, the earlier refund clause remained operative. The defendant admitted execution of this receipt as well.

17. The plaintiff’s first notice dated 24/08/2011 (Exh.95) demanded share certificate, society NOC, electricity bill, approved plan, and bank NOC with defendant. It records that without these documents; the plaintiff was unable to obtain loan sanction. This notice corroborates the plaintiff’s oral evidence that the defendant failed to supply necessary papers. It also shows readiness and willingness of the plaintiff to pay balance consideration upon receipt of documents.

18. The defendant’s letter dated 22/09/2011 (Exh.94) admits extension of time till 25/08/2011, but alleges false assurances by the plaintiff. Defendant has claimed to have given copies of documents and declares the deal cancelled. This letter is significant because it shows unilateral repudiation by the defendant. Even if copies were

given, the plaintiff's demand was for originals, and the defendant's cancellation without refund contradicts the refund clause in First Receipt at Exh.91.

19. The defendant's reply dated 11/10/2011 (Exh.93) reiterates cancellation and refusal to refund. Defendant has alleged that plaintiff raised doubts about legality of the building and informed that the question of returning token money does not arise. This document confirms defendant's stand of forfeiture, though no forfeiture clause exists in the receipts. It strengthens the inference of breach by defendant.

20. The plaintiff's second notice dated 27/09/2011 (Exh.96) refers to defendant's cancellation letter, asserting that documents were not supplied, alleging illegality of the building, and demands refund of ₹3,00,000 with 21% interest plus damages. This notice demonstrates plaintiff's consistent demand for refund and interest, and his assertion that defendant failed to perform his obligations.

21. On considering these documents together, it can be seen that the oral evidence of plaintiff is consistent with these documents. The defendant's admissions in cross-examination regarding receipt of earnest money, cancellation, and subsequent sale of property corroborate the plaintiff's case. The plea of forfeiture as raised by defendant is unsupported by any contractual clause and contradicted by his own profit on resale.

22. In view of the rival contentions now it is necessary to refer the “oral terms” between the plaintiff and defendant, as reflected in the pleadings and evidence, were essentially the informal conditions agreed at the time of the transaction as follows:-

i. Defendant agreed to sell Flat No. 402, Ashapura Dham, Thane, for ₹23,50,000.

ii. Plaintiff paid ₹3,00,000 as earnest money, acknowledged by receipts (Exhs. 91 and 92).

iii. Exhibit 91 specifically recorded that the transaction was *subject to sanction of a home loan from the bank*, and if the loan was not sanctioned, the amount would be refunded. This was the key oral understanding carried into writing.

iv. Defendant orally assured that he would provide original documents and register the agreement for sale to enable the plaintiff to obtain the loan.

v. Plaintiff, relying on these assurances, expected the defendant to cooperate until the loan was sanctioned and the balance consideration paid.

23. On the issue of whether the plaintiff proves that the defendant committed breach of the oral terms of the contract, the evidence on record strongly supports the plaintiff’s case. The plaintiff’s evidence shows that the defendant has accepted ₹3,00,000 as earnest money (Exhs. 91 and 92), with receipt at Exh.91 expressly stipulating that the transaction was conditional upon sanction of a

home loan, failing which the amount would be refunded. Plaintiff has deposed that despite repeated requests, the defendant failed to supply original documents necessary for loan sanction and refused to register the agreement, thereby frustrating the condition precedent. The plaintiff's evidence demonstrates that the defendant failed to supply original documents necessary for loan sanction, refused to register the agreement, and instead cancelled the deal unilaterally and threatened forfeiture. The defendant's own admissions in cross-examination that he sold the property during pendency of the suit, earned profit of ₹10,00,000, and never executed any written agreement with the plaintiff undermines his plea of forfeiture. Importantly, there is no forfeiture clause in the receipts, and it is settled law which requires an express stipulation for forfeiture. Therefore, it can be seen that by cancelling the deal unilaterally and disposing of the property despite Lis pendens, the defendant acted in breach of the oral understanding and the conditional terms recorded in the receipts. Thus, the plaintiff has satisfactorily proved that the defendant committed breach of the oral terms of the contract.

24. In view of the foregoing discussion, it is now necessary to deal with the question of time being the essence of the contract which is central to this dispute. It is defense of defendant that the plaintiff had agreed to pay the balance consideration of ₹20,50,000 by 25/08/2011, and that this date was expressly treated as the essence of the contract. He has claimed that since the plaintiff failed to pay by that date, he was entitled to cancel the deal and forfeit the earnest money.

25. According to Plaintiff, however, the receipts (Exh. 91 and 92) do not contain any forfeiture clause. In fact, receipt at Exh. 91 specifically states that the transaction was *subject to sanction of a home loan*, and if the loan was not sanctioned, the amount would be refunded. Therefore, defendant himself has frustrated this condition by failing to provide original documents necessary for loan sanction, and therefore the plaintiff could not be bound by the said deadline.

26. It is settled law that ordinarily, a claim for refund of money must be filed within three years from the date the cause of action arose (Article 55/113 of the Limitation Act, 1963). In present case, plaintiff originally filed the suit in 2011 only for injunction. The prayer for refund of ₹3,00,000 was added later by amendment in 2017. However, it can be seen that defendant has cancelled the transaction by letter dated 22/09/2011 (Exh.94), but then sold the property during pendency of the suit on 30/12/2014 without informing the plaintiff. Once the amendment application is allowed which was not challenged before a higher court, the amended plaint is treated as part of the original plaint from the date of filing (2011). Thus, the relief of refund is deemed to have been claimed within time.

27. By carefully appreciating both the oral testimony and the documentary evidence it can be seen that as per receipt dated 08/07/2011 (Exh.91) which expressly states that the transaction was *"subject to sanction of a home loan from the bank otherwise, the amount shall be refunded to the party in case of disapproval of the home loan."* It therefore shows that furnishing documents for loan

sanction was a necessary obligation on the defendant's side. Plaintiff during his deposed that he demanded original documents from the defendant to process the loan, but the defendant failed to supply them. He also stated that despite notices dated 24/08/2011 and 27/09/2011, the defendant did not cooperate. Notices (Exh. 95, 96, 104) clearly shows that defendant has been called upon the defendant to hand over original documents so that the plaintiff could proceed with the bank loan. However, the defendant did not comply. Defendant's reply (Exh.94-letter dated 25/08/2011) rather shows that instead of providing documents, the defendant wrote that he was cancelling the deal, stating it would be "favourable and comfortable for both of us". During his evidence, defendant has admitted the receipt of earnest money but denied ever executing an agreement with the plaintiff. He also admitted selling the property later. These admissions contradict his claim of cooperation and reinforce that he never provided the necessary papers.

28. Under Section 32 of the Contract Act, the agreement was contingent upon loan sanction. Since the defendant did not provide the documents required for sanction, he frustrated the contingency. A party cannot take advantage of a condition precedent that he himself prevents. Thus, by combining the express condition in Exh.91, the plaintiff's testimony and notices demanding documents, and the defendant's own reply cancelling the deal instead of supplying papers, it goes to the conclusion that defendant failed to provide the documents necessary for loan sanction, thereby committing breach of the oral terms.

29. So far as evidence of bank witness examined by defendant is concerned, plaintiff has rightly challenged the evidentiary value of documents produced during the bank witness of defendant, arguing that they were not proved in accordance with Section 65-B of the Evidence Act. Even if considered, the records only demonstrate that the defendant voluntarily borrowed money and incurred interest liability, but they do not establish any contractual right to forfeit earnest money or any loss attributable to the plaintiffs. On the contrary, they corroborate that the defendant encumbered and later sold the property during pendency of the suit, thereby strengthening the plaintiff case of breach. Thus, the bank evidence carries limited probative value and cannot absolve the defendant of his obligation to refund the earnest money to plaintiff.

30. Now it is necessary to consider whether the defendant is liable to pay earnest amount of ₹3,11,095 with interest. During the evidence, defendant has admitted receiving the earnest money and signing the receipts. He has admitted selling the property in 2014 for ₹32,50,000, earning profit of about ₹10,00,000. It is admitted fact on record no forfeiture clause exists in the receipts whereas forfeiture is permissible only if expressly stipulated and if purchaser commits breach. Therefore, defendant's own conduct in selling the property during lis pendens and failing to provide documents amounts to breach of his obligations. The plea of limitation taken by the defendant is also weakened because the amendment was allowed which was not challenged and therefore, cause of action revived upon sale. Therefore, plaintiff has proved entitlement to refund of

₹3,11,095 with interest. However, as per the evidence produced on the record, it is clear that such contractual obligation for payment of interest on earnest amount was not fixed between the parties. Therefore, plaintiff is entitled for the refund of earnest amount alongwith interest @ six percent per annum from the date of filing suit till its realization.

31. The evidence on record shows that the defendant sold the suit flat on 30/12/2014 to a third party for ₹32,50,000, while the present suit was pending. This fact is admitted by the defendant in cross-examination. Under Section 52 of the Transfer of Property Act, 1882, any transfer of immovable property during pendency of a suit in which rights to that property are directly and specifically in question is subject to the doctrine of *lis pendens*. Such transfer cannot prejudice the rights of the parties to the litigation. The defendant's act of alienation, therefore, does not extinguish the plaintiff's claim. Even though the plaintiffs did not seek specific performance, the sale demonstrates that the defendant himself repudiated the contract and rendered performance impossible. The defendant's sale of the suit property during pendency of the suit, though not directly connected to specific performance, is legally relevant under Section 52 T.P. Act. It establishes breach, revives cause of action for refund, and strengthens the plaintiffs' entitlement to restitution of earnest money with interest.

32. In view of foregoing discussion, it can be concluded that the relief of permanent injunction in this case will not survive as

defendant has admitted in cross-examination that he sold the suit flat on 30/12/2014 to a third party for ₹32,50,000, during pendency of the suit. Therefore, once the property is alienated, the relief of restraining him from selling or creating third-party rights becomes infructuous. Moreover, plaintiff has amended the plaint in 2017 to convert the suit into a money claim for refund of earnest money with interest. Therefore, that amendment itself shows that the injunction relief had become redundant.

33. The facts of this case must be examined in light of the relevant provisions of the Indian Contract Act, 1872, applied sequentially to determine the enforceability and consequences of the parties' conduct. As per Section 39 of the Contract Act, defendant's refusal to provide the requisite documents and the issuance of a cancellation letter dated 22/09/2011 constitute a clear refusal to perform his contractual obligations. Under Section 39, such refusal entitles the plaintiff to rescind the contract and seek remedies for breach. Although, the defendant contended that time was of the essence with a deadline of 25/08/2011, the plaintiff demonstrated that the condition precedent of loan sanction was frustrated by the defendant's own conduct. Therefore, the defendant cannot rely on Section 55 of the Contract Act to avoid liability, as the failure to perform within the stipulated time was caused by his own default. Therefore, as per Section 73 of the Contract Act plaintiff is entitled to compensation for the loss caused by the defendant's breach of contract. This includes interest on the earnest money withheld, flowing directly from the breach.

34. In view of foregoing discussion, Suit of the plaintiff deserves to be partly decreed. Plaintiff is therefore, entitled for the refund of earnest amount alongwith interest @ six percent per annum from the date of filing suit till its realization. Hence, issue No. 1 and 3 are answered in affirmative whereas issue No. 2 and 4 are answered in partly affirmative. Therefore, in answer to issue No. 5, the following order is passed:

:ORDER:

1) Suit is partly decreed.

2) Defendant is directed to pay ₹. 3,00,000/- (Three lakhs) with interest @ six percent per annum from the date of filing suit alongwith costs of the suit to the plaintiff and to bear his own costs.

3) Decree be drawn up accordingly.

Digitally signed by HRISHIKESH VIVEK KULKARNI Date: 2026.07.23 17:17:23 +0530

(H.V. Kulkarni)

Dated:-23/07/2026 4th Jt. Civil Judge, S.D. Thane