

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.317 OF 2026
WITH
INTERIM APPLICATION NO.6093 OF 2026**

Kamdhenu Chemicals and Fertilizer Industries
a partnership firm, through its partners and Ors. ... Appellants
versus
Southern Petrochemical Industries Corporation ... Respondent

Mr. S.S.Kanetkar with Mr. P. Kothari, for Appellants.
Mr. Raj Mehta with Ms. Hesha Mehta i/by RKM Legal Services for
Respondent.

CORAM: N.J.JAMADAR, J.

**RESERVED ON : 19 AUGUST 2026
PRONOUNCED ON : 29 AUGUST 2026**

ORDER :

1. Heard the learned Counsel for the parties.
2. This Second Appeal is directed against the judgment and decree dated 29 October 2025 passed by the learned District Judge, Pune, in RCA No.566 of 2016, whereby the appeal preferred by the Appellants against the decree dated 27 November 2001 passed by the learned Civil Judge, Sr. Division, in SCS No.453 of 1992, thereby passing a money decree in favour of the Respondent and dismissing the counter-claim filed by the Appellants-Defendants, came to be dismissed.
3. The Respondent was dealing in the business of manufacture and sale of urea and Dia Ammonium Phosphate (DAP). Defendant No.1 is a

registered partnership firm. Defendant Nos.2 to 11 were the partners of Defendant No.1. Defendant No.1 was engaged in manufacture and sale of fertilizers.

4. Since June 1987, the Plaintiff claimed to have supplied urea and DAP to the Defendants, pursuant to the orders placed by the Defendants. An amount of Rs.16,57,250.50 was outstanding towards the price of the goods sold and delivered by the Plaintiff. Thus, the suit was instituted for recovery of the said amount along with interest @ 20% upto 19 July 1991 and @ 26% p.a. from 20 July 1991.

5. The Defendants resisted the suit by filing the Written Statement. A Counter-claim in the sum of Rs.40,19,854/- was also made to recover the alleged losses suffered by the Defendants on account of the breach of the contract by the Plaintiff, in as much as the Plaintiff had not supplied urea and DAP in equal proportion and that impacted the manufacture of the granule fertilizers. It was further contended that, the goods were to be supplied by the Plaintiff to the Defendants for captive consumption and they were to be paid for by the Defendants after the manufacture of the fertilizers.

6. By a judgment and order dated 27 November 2001, the learned Civil Judge was persuaded to decree the suit, holding that the Plaintiff was entitled to recover an amount of Rs.35,42,877.27 along with interest @18% p.a on the principal amount of Rs.16,57,250/-. Conversely, the Counter-claim of the

Defendants came to be dismissed. It was also held that the Counter-claim was barred by law of limitation.

7. Being aggrieved, the Defendants preferred an appeal before the District Court. By the impugned judgment and decree dated 29 October 2025, the learned District Judge dismissed the appeal finding no error in the decree passed by the trial Court.

8. Mr. Kanetkar, learned Counsel for the Appellants, submitted that the learned District Judge committed a grave error in law in returning a finding that the Defendants did not function as the consignee for captive consumption for the goods supplied by the Plaintiff, though the trial Court has answered Issue No.7 in the affirmative to the extent of supply of 250 tones of DAP. Secondly, the Courts below committed an error in misconstruing the documents which indicated that the Defendants were the consignee of the Plaintiff for captive consumption and that led to mis-carriage of justice. Thirdly, both the Courts were in error in holding that the counter-claim was barred by law of limitation. It was a case of continuing cause of action and the Courts below were wrong in holding that the period of limitation for the counter-claim started to run from the date the Plaintiff stopped supply of DAP.

9. In opposition to this, Mr. Mehta, learned Counsel for the Respondent, submitted that, the concurrent findings of facts do not warrant interference in exercise of the appellate jurisdiction under Section 100 of the Code of Civil

Procedure, 1908. Both the Courts, upon appraisal of the evidence, especially the admissions in the cross-examination of the Defendants witness, have recorded categorical findings that the Defendants failed to establish that the Defendants were the consignee for captive consumption. Nor the Defendants could establish that they ever raised any grievance on the count that the Plaintiff did not supply urea and DAP in equal proportion and that affected the manufacturing of fertilizers. Such findings of facts are not open for interference in Second Appeal, was the thrust of the submission of Mr. Mehta.

10. I have perused the material on record and given careful consideration to the submissions canvassed across the bar. The submission premised on the captive consumption, forcefully canvassed by Mr. Kanetkar, is not borne out by the evidence on record. Learned Civil Judge has, after meticulous evaluation of the evidence, recorded a clear and unequivocal finding that, neither the oral nor documentary evidence supported the stand of the Defendant that they were the consignee for captive consumption. On the contrary, the correspondence exchanged between the parties indicated that the Defendants had repeatedly placed orders for supply of urea and DAP.

11. The submission of Mr. Kanetkar that the Courts below had misconstrued the documents, is simply not borne out by the evidence adduced by the parties. Indeed, the trial Court has recorded a finding that the initial supply of 250 tones of DAP by the Plaintiff to the Defendants was in the

nature of consignment. However, there was overwhelming evidence to show that, thereafter, the jural relationship between the parties was that of pure seller and purchasers of the goods.

12. In regard to the counter-claim as well, the Courts below have upon the evaluation of the evidence, recorded findings that there was no material to show that the Defendants had ever raised the dispute about the non-supply of the urea and DAP in equal proportion or contemporaneous conduct of the Defendants supported the said defence. Incontrovertibly, there was no express contract between the parties in regard to the supply of urea and DAP in equal proportion and simultaneously. The case of oral agreement and understanding between the parties was demolished during the course of cross-examination of the Defendants witness. To add to this, the Defendants chose not to examine a witness who was allegedly privy to such verbal arrangement. At any rate, the determination by the Courts below is in the arena of appreciation of evidence and finding of facts.

13. The last ground raised by Mr. Kanetkar was that of alleged error in dismissing the counter-claim as being barred by law of limitation. Once the Courts have found that no case for damages on account of non-supply of urea and DAP in equal proportion was proved, in a sense, the bar of limitation loses significance. Even otherwise, under no circumstances, the aspect of non-supply of the goods assumes the character of a continuing cause of

action. The legal position is well settled. In the case of **Balakrishna Savalram Pujari Waghmare V/s. Shree Dhyaneshwar Maharaj Sansthan**¹, a three-Judge Bench of the Supreme Court expounded as to when a continuous cause of action arises, as under :

“31.....Does the conduct Does the conduct of the trustees amount to a continuing wrong under S. 23 ? That is the question which this contention raises for our decision. In other words, did the cause of action arise de die in them as claimed by the appellants ? In dealing with this argument it is necessary to bear in mind that S. 23 refers not to a continuing right but to a continuing wrong. It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the 'doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong. In this connection it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury. It is only in regard to acts which can be properly characterised as continuing wrongs that s. 23 can be invoked.”

(emphasis supplied)

14. In the case at hand, the Plaintiff had allegedly stopped supply of DAP in the month of February / March 1989 and the counter-claim was filed on 7

1 AIR 1959 sc 798

December 1992. Failure to supply the goods at a particular point of time, thus, gave rise to the cause of action for the Defendants. It was not the case of continuing cause of action. Thus, the Courts below have rightly held that, the counter-claim was barred by the law of limitation.

15. The conspectus of aforesaid consideration is that, no question of law, much less, a substantial question of law, arises for consideration on any of the counts. Resultantly, the Second Appeal fails.

16. Hence, the following order :

ORDER

(i) The Second Appeal stands dismissed.

(ii) In view of the dismissal of the Second Appeal, IA No.6093 of 2026 also stands disposed.

(N.J.JAMADAR, J.)

17. At this stage, the learned Counsel for the Appellants seeks stay to the execution and operation of the decree. Since the decree in question is a money decree passed in the year 2001, the prayer for stay does not deserve to be entertained.

18. Oral application for stay, thus, stands rejected.

(N.J.JAMADAR, J.)