

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**929 CIVIL APPLICATION NO.143 OF 2019
IN FA/15/2019**

Jeevan s/o Onkar Choudhari,
Age 55 years, Occupation Agri.and
Business, R/o Vidyavihar Colony,
Plot No.36, Chopda Tq.Chopda
Dist. Jalgaon.

...Applicant.

VERSUS

Sau. Sushila Manik Mahale,
Age 67 years, Occupation Household,
R/o Morning Glory, Sukhwani
Campus, Sant Tukaram Nagar,
Pimpri, Pune – 18.

...Respondent.

...
Advocate for applicant : Mr. R. A. Tambe.
Advocate for Respondent : Mr. J. R. Shah.

...

**CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 23-07-2019.**

PER COURT :

1. Present application has been filed for grant of temporary injunction restraining the respondent from alienation or creating third party interest over the suit plot.
2. Heard both sides.
3. The applicant - appellant filed Special Civil Suit No.327 of 2011

before the learned Civil Judge, Senior Division, Jalgoan for specific performance of the contract. The said suit has been partly decreed. Relief of specific performance has been rejected. The relief of refund of earnest amount has been allowed, and therefore, appeal has been filed.

4. The applicant says that, he has every hope in the appeal. He had filed application for temporary injunction during the pendency of the suit at Exhibit 6 and the order of injunction was operating against the respondent till decree. Under such circumstance, the application has been filed for the above said prayer.

5. The application has been rejected by filing affidavit-in-reply. It has been submitted that, the applicant has been held to be not ready and willing to perform his part of the contract. He had no financial capacity to pay the remaining amount of consideration on the agreed date, and therefore, the learned Trial Court had rightly refused the decree for specific performance of the contract. Under such circumstance, the right of the respondent to enjoy her own property cannot be curtailed by an order of injunction.

6. It will not be out of place to mention here that both the

learned advocates have made submissions in support of their respective contentions.

7. The applicant has produced on record the copy of the common order passed below Exhibits 6 and 13 by the learned Trial Court. It appears that, application Exhibit 6 was for temporary injunction whereas application Exhibit 13 was filed by the defendant to direct the plaintiff to deposit the balance consideration amount of Rs.1,29,29,290/- within 15 days. By order dated 07-12-2011 the Trial Court was allowed application Exhibit 6 and rejected application Exhibit 13. Today the appeal has been admitted which is mainly to challenge the rejection of the decree for specific performance. Under such circumstance, as regards the position of the suit plot is concerned, it is required to be maintained till the decision of the appeal. If third party interest is created then it would be difficult and cumbersome for the applicant to get the decree executed if he succeeds in the appeal. No doubt a competent Court at this stage has arrived at a conclusion that, plaintiff was not ready and willing to perform his part of the contract but as per the applicant the said finding is not proper and his averments regarding readiness and willingness ought to have been considered. Therefore taking into

consideration all these aspects and the fact that, the temporary injunction was operating against the respondent throughout the trial, case is made out for granting temporary injunction at this appellate stage also. Hence, the application is allowed in terms of prayer Clause 'B'. Application stands disposed of accordingly.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-