



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**APPEAL FROM ORDER NO. 56 OF 2023
WITH
CIVIL APPLICATION NO. 10913 OF 2023 IN AO/56/2023**

Jitendra Namdev Patil,
age 40 years, Occ. Agri and Business,
R/o Plot No.16/B, Shahu Nagar,
Nalwa Road, Nandurbar,
Tq. & District Nandurbar.

Appellant.
(orig plaintiff.)

VERSUS

Bhagwan Ramchandra Marathe,
age 64 years, Occ. Agri and Business,
R/o Plot no.39, Ramchandra Nagar,
Near Jijamata College,
Bypass road, Nandurbar,
Tq & Dist. Nandurbar.

Respondent.
(orig. defendant.)

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Advocate for appellant : Mr. R S Wani
Advocate for Respondent-sole : Mr. A.S. Abhyankar a/w
Mr. N.S. Shah h/f Mr. S.V. Natu

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CORAM : S. G. CHAPALGAONKAR, J.
Reserved on : January 14, 2025
Pronounced on : February 26, 2025.

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ORDER :-

1. The appellant impugns the order dated 4.5.2023 passed by the 2nd Joint Civil Judge Sr. Division, Nandurbar on an

application below Exhibit-5 in Special Civil Suit No.31 of 2023.
(Parties hereinafter are referred to as per their original status).

2. The appellant is original plaintiff filed Special Civil Suit no.31 of 2023, seeking relief of specific performance of contract on the basis of agreement to sale dated 11.7.2022 executed by defendant. According to plaintiff, suit property plot no.1, Survey No.183/4, admeasuring 557.37 sq. meters situated at Nandurbar is owned by defendant. He agreed to sale same to plaintiff for total consideration of Rs.2,11,00,000/- (Rs.Two Crore Eleven Lakh). Plaintiff paid Rs.1,00,000/-(Rs. One Lakh) prior to execution of the agreement. Thereafter, paid Rs.4,00,000/- (Rs. Four lakh) through cheque dated 11.7.2022. It was agreed that balance amount of Rs.1,94,00,000/- shall be paid as per Schedule stipulated in agreement and last installment of Rs.12,00,000/- (Rs. Twelve Lakh) was to be released at the time of execution of sale-deed. According to plaintiff, defendant had agreed to remove tin-shed standing over the suit property and pan shop adjacent to the suit property. It was also agreed that property would be measured through competent authority and possession would be handed over to plaintiff before execution

of sale-deed. Plaintiff contends that as per agreement, he paid Rs.15.00 Lakh on 11.7.2022 and Rs.10.00 Lakh on 22.7.2022. Defendant acknowledged receipt of said amount on agreement itself. As such, before 27.07.2022 total amount of Rs.30 Lakh has been paid to defendant. On 01.11.2022 plaintiff offered amount of Rs.45.00 Lakh to defendant, however, he avoided to accept amount by giving personal reason. Lateron, plaintiff told that entire consideration amount be paid at the time of execution of the sale-deed. Such changed agreed terms were acceptable to both parties.

3. After some days, plaintiff made inquiry with defendant as to measurement of the land, but defendant gave evasive answers. Lastly, plaintiff requested defendant to accept consideration amount as per schedule of payment stipulated in the original agreement, however, he denied to accept amount and complete the sale transaction. Plaintiff was forced to issue legal notice in January, 2023 calling upon defendant to complete sale transaction. A cheque of Rs.45.00 Lakh was also passed on alongwith the notice. However, defendant falsely replied alleging breach of agreement against plaintiff contending that unless entire consideration amount is paid, he

is not bound to complete the transaction. Eventually, plaintiff filed present suit alongwith an application at Exhibit-5 seeking temporary injunction to restrain the defendant from alienating or creating third party interest over the suit property.

4. Defendant filed written statement and refuted averments in suit. Defendant specifically denies receipt of cash amount of Rs.15.00 Lakh and 10 Lakh so also signature acknowledging those amounts. According to defendant, plaintiff breached terms of contract. Hence, prayed for dismissal of the suit.

5. Trial Court, after considering rival submissions and documentary evidence tendered into service, opined that since defendant has denied signatures acknowledging receipt of cash amount of Rs.15.00 Lakh plus Rs.10.00 Lakh, prima facie, there is breach of the contract. As such, plaintiff could not make out prima facie case entitling him for relief of temporary injunction, as prayed.

6. Mr. Ruchir Wani, learned advocate appearing for the appellant vehemently submits that there is no dispute as regards to execution of the agreement to sale dated 4.7.2022.

Amount of Rs.5.00 Lakh was paid prior to agreement of sale. Lateron, amount of Rs.25.00 Lakh was paid. Receipt of said amount has been duly acknowledged by defendant on agreement to sale itself. He invites attention of this Court to the Schedule of payment, which depicts signatures of defendant acknowledging receipt of Rs.15.00 Lakh and Rs.10.00 Lakh on 11.7.2022 and 22.7.2022, respectively. Mr. Wani would further submit that, it was obligatory on the part of plaintiff to carry out measurement through Land Record Office, then execute sale-deed as per actual area found in such measurement. Since defendant failed to carry measurement as agreed between parties, the parties have mutually decided to change the schedule. Accordingly, plaintiff offered defendant an amount of Rs.45.00 Lakhs alongwith legal notice, but defendant avoided to accept the same.

7. Per contra, Mr.Abhyankar, learned advocate appearing for respondent vehemently submit that time was the essence of contract. Defendant wanted to sell his land for specific purpose. Schedule of payment was specifically agreed by the parties. Plaintiff failed to adhere with schedule. As such, he lost right to seek specific performance of the contract.

By inviting attention to clause no.2 of the agreement to sale, he submits that the defendant had private debts and after clearing the same, he wanted to purchase convenient plot. He would point out that defendant has specifically denied receipt of cash amount and signatures acknowledging the same. He would therefore urge to confirm the order passed by the Trial Court.

8. Having considered submissions advanced, it can be observed that, there is no dispute between parties as regards to execution of agreement to sale dated 11.7.2022 as regards to the suit land. Defendant agreed to sell the suit land for total consideration of Rs.2,11,00,000/- (Rs. Two Crores Eleven Lakhs) in favour of the plaintiff. It is not disputed that on 4.7.2022 amount of Rs.1.00 Lakh was paid by cash and on 11.7.2022 amount of Rs.4.00 Lakh has been paid through cheque. Therefore, initial receipt of Rs.5.00 Lakh in pursuance to the agreement is not in dispute. Schedule of further payment has been specified in the agreement to sell. Clause no.4[C] stipulates payment terms in tabular form. Plaintiff specifically alleges that on 11.7.2022 he paid cash installment of Rs.15 Lakh and on 22.7.2022 next installment Rs.10 Lakh to the defendant. However, defendant denied receipt of the

amount, so also his signature acknowledging such receipt. Plaintiff states that third installment of Rs.25.00 Lakh could not paid on scheduled date i.e. on 1.11.2022 since defendant refused to accept cash amount under the pretext that he is going out of station. According to plaintiff, again he offered payment after eight days, but, defendant asked him to pay full amount of consideration at the time of execution of the sale-deed. According to plaintiff, terms of contract were mutually modified and, therefore, further installment were not paid. The defendant failed to cause measurement of land and also accepted balance amount of consideration. Lastly, legal notice was served in the month of January, 2023.

9. On the other hand, defendant's contention is that, plaintiff never paid cash amount as agreed in terms of the Schedule specified in the agreement. According to him, signatures appearing in agreement to sale acknowledging receipt of cash amount are fabricated. First time, on 7.1.2023 plaintiff forwarded cheque of Rs.45.00 Lakh. In absence of agreement to pay amount by way of cheque, there was no reason for defendant to accept said cheque. Plaintiff has clearly defaulted in performance of his part of contract.

10. Minute reading of contents of the agreement to sale depicts that Schedule of payment was specified. Receipt of cash amount was to be acknowledged and that was to be considered as earnest money and on payment of last installment of Rs.12 Lakhs, sale deed was to be performed and possession was to be handed over. However, agreement to sale nowhere prescribes consequences of non-observance of schedule of payment. Although, parties had fixed payment schedule, date for execution of sale-deed was not specified. Defendant was put under obligation to remove a Panshop situated on northern side of the plot before execution of the sale-deed. Consequences of cancellation of the agreement are provided and plaintiff was entitled to receive the earnest money paid as per market rate.

11. Aforesaid contents of the agreement to sale are sufficient to hold that parties have agreed to complete the sale transaction on transfer of the consideration amount of Rs.2 crores as per payment schedule. However, in absence of consequence of non-adherence to the Schedule, agreement to sale would not automatically render invalid or un-executable.

12. It is true that, *prima facie*, plaintiff failed to follow the Schedule of payment. Whether such non-observance amounts to breach of contract and whether time was essence of the contract are the questions to be answered at the trial. Prima facie, plaintiff has proved execution of agreement to sale. In case, the defendant transfers property in favour of third person, purpose of suit would be frustrated. Plaintiff is likely to suffer irreparable loss/injury in case third party rights are created. It is difficult to accept contention of Mr. Abhyankar that plaintiff would be entitled for refund of earnest money alongwith interest, but cannot seek specific performance. Trial Court refused to grant injunction merely on the ground that cash receipt of Rs.25.00 Lakh is denied by the defendant. Even assuming that such payment was not made, agreement to sell subsists. Plaintiff has certainly proved prima facie case as to subsistence of agreement for sale. Breach of contract as alleged against the plaintiff needs to be proved during the trial. Therefore, prima facie case exists in favour of the plaintiff. The plaintiff is likely to suffer irreparable loss or injury. Interest of the parties can be protected by putting certain conditions. Hence, following order.

ORDER

- i. Appeal From Order is allowed.
- ii. The impugned order dated 4.5.2023 passed by the 2nd Joint Civil Judge Sr. Division, Nandurbar on application below Exhibit-5 in Special Civil Suit no.31 of 2023 is hereby quashed and set aside.
- iii. The respondent/defendant shall not alienate or create third party interest over suit property till final disposal of the suit, subject to condition that plaintiff deposits undisputed consideration amount of Rs.1,70,00,000/- (Rs.One Crore Seventy Lakh) with the Trial Court within four weeks from the date of this order. Non-deposit of the amount shall entail vacation of the interim relief.
- iv. Appeal From order stands **disposed of**. Pending civil application also stands **disposed of**.

(S. G. CHAPALGAONKAR)
Judge

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