

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
WRIT PETITION NO.7643 OF 2023**

Shri. Shrikant Ramchandra Jadhav,
Age 62 years,
Occupation – Business,
Residing at Revivar Peth,
Nana Patil Chowk, Phaltan,
Taluka- Phaltan, District- Satara.

..Petitioner

Versus

1. Shri. Ashok Namdev Ganbote,
Age 62 years, Occupation – Business,
Residing at 142, Revivar Peth, Phaltan
Taluka- Phaltan, District- Satara.
2. Shri. Laxman Namdev Ganbote,
(Deceased) Thro. Legal Heirs,
- 2A. Shri. Rahul Laxman Ganbote,
Age Adult, Occupation – Business,
Resident of Vishwas Medical
Siddharth Apartment, Near Mehendale Garage,
Yerandwana, Ganesh Nagar,
Pune-411038.
3. Shri. Manohar Eknath Ganbote,
Age 65 years,
Occupation – Business,
4. Shri. Yuvraj Namdev Ganbote,
Age 59 years,
Occupation – Business,
5. Shri. Milind Eknath Ganbote,
Age 50 years,
Occupation – Business,
6. Shri. Nilesh Mahadev Ganbote,
Age 39 years, Occupation – Business,

Nos.3 to 6 are the resident of
Ravivar Peth, Phaltan,
Taluka- Phaltan, District- Satara.

7. Shri. Dilip Eknath Ganbote,
Age Adult, Occupation – Business,
8. Shri. Shrikant Eknath Ganbote,
Age 50 years, Occupation – Business,
Nos.7 and 8 are Resident of
Nandadip Cloth Center,
Budhwar Peth, Pune.
9. Shri. Manohar Eknath Ganbote,
Age Adult, Occupation – Business,
Residing at Nandini Cloth Center
Baramati, District Pune.
10. Smt. Uma Shankarrao Hawal,
Age Adult, Occupation-Household.
11. Sou. Shila Dilip Rahane,
Age Adult, Occupation – Household,
Nos.10 and 11 are Resident of
Ravivar Peth, Phaltan
Taluka- Phaltan, District- Satara.

..Respondents

...

Mr. Rushikesh Chandrakant Barge, Advocate for petitioner.

Mr. Vaibhav Ramchandra Gaikwad, Advocate for Respondent Nos.1 and 3 to 6.

...

CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 10th OCTOBER, 2025.

PRONOUNCED ON : 14th OCTOBER, 2025.

JUDGMENT:-

1. Rule. Rule made returnable forthwith. With consent of parties,
matter is taken up for final hearing at admission stage.

2. The present Writ Petition takes exception to order dated 23.03.2023 passed below Exhibit-38 in Regular Civil Appeal No.144/2017 by District Judge, Satara, thereby declining petitioner's application seeking amendment in plaint of Regular Civil Suit No.22/2006.

3. The petitioner/plaintiff instituted Regular Civil Suit No.22/2006 seeking relief of permanent injunction in relation to shop no.17 and shop no.10, more particularly mentioned in plaint paragraph no.1. It was contention of petitioner that on 19.08.2004, plaintiffs and defendants had triparted agreement for development of complex Parvati Plaza. The plaintiffs agreed to hand over old shop after getting possession of new shop in proposed complex. The original plaintiff no.2 had handed over his shop no.10 to defendant no.1. According to plaintiffs, although they were ready to act as per agreement, defendants failed to complete construction as per sanctioned plan and obtain completion certificate of Phaltan Municipal Council. The plaintiffs were required to hand over shop after completion of building "C". However, defendants have failed to raise construction as per sanctioned plan, but trying to take possession of shops in their possession. According to plaintiffs, defendants have committed breach of terms of conditions of agreement. On 19.11.2005, plaintiffs issued notice to defendants calling upon them to make construction as per agreement. The defendants failed to comply such notice, but trying to

demolish plaintiffs' old shops. Therefore, plaintiffs filed suit seeking permanent injunction to not to demolish old shops and not to obstruct its use by plaintiffs. The plaintiff no.2 withdrawn his claim against defendants during pendency of suit. However, plaintiff no.1 continued his suit in respect of shop no.17 described in plaint paragraph no.1.

4. The defendants filed written statement contending that plaintiff has handed over 1 room out of 2 rooms given to him on rental basis and same has been demolished 1 year ago as per agreement. The defendants are ready to give possession of new shop to plaintiff, but plaintiff is not ready to comply terms and pay agreed price of Rs.60,000/- to defendants. Even plaintiff has failed to pay rent since July 2004 and hand over possession of old shop, but filed present suit with intention to grab new shop free of cost by harassing defendants.

5. The Trial Court dismissed suit of plaintiff, observing that plaintiff failed to comply condition no.10 in agreement, whereby plaintiff was required to pay Rs.60,000/- towards price of shop no.1 in new building and hand over old shop no.17 to defendants. Since plaintiff has not approached Court with clean hands, he is not entitled for equity.

6. The petitioner/plaintiff filed Regular Civil Appeal No.144/2017 before District Judge, Satara. During pendency of said Appeal, plaintiff filed application at Exhibit-38 seeking permission to amend plaint and incorporate amendment seeking specific performance of contract based

on agreement dated 19.08.2004. The Appellate Court refused to grant amendment observing that amendment would change nature of suit and claim sought to be raised by way of amendment is apparently barred by limitation. The plaintiff failed to make out requirement of due diligence clause under proviso of Order VI Rule 17 of Code of Civil Procedure.

7. Mr. Rushikesh Barge, learned Advocate appearing for petitioner submits that during pendency of Appeal, plaintiff wants to bring on record subsequent events. The old shop, which was in possession of plaintiff has been demolished by Municipal Council on 17.03.2020. In that view of matter, plaintiff is required to seek specific performance of contract dated 19.08.2004, whereby defendants agreed to hand over shop in new building on acceptance of Rs.60,000/-.

8. The pleading in original plaint shows that plaintiff sought injunction against defendants attributing breach of terms and conditions of contract date 19.08.2004 and sought relief of perpetual injunction. The defendants in their written statement alleged that although defendants are ready to give possession of new shop to plaintiff, plaintiff has failed to comply obligation under contract and pay price of Rs.60,000/- to defendants, so also he failed to hand over possession of old shop. In wake of such pleading, it was obligatory on part of plaintiff to seek specific performance of contract. Instead he filed suit only for perpetual injunction and remained in possession of

shop no.17 without complying his part of contract, purportedly on ground that construction of new building is not as per sanction plan. The suit was pending from 2004 till 2017 before Trial Court, who dismissed suit observing plaintiff himself defaulted in performance of his part of contract. The plaintiff, thereafter, filed Appeal before District Judge in year 2017 and filed present application on 08.02.2023 seeking amendment in plaint under pretext that shop in his possession has been demolished by Municipal Council on 17.03.2020.

9. Apparently, demolition of shop cannot give fresh cause of action to plaintiff to seek specific performance of contract based on agreement dated 19.08.2004. The plaintiff had sufficient notice at the time of institution of suit that defendants were alleging breach of contract against him and they were ready to perform their part of contract before institution of suit in year 2004. In this background, now plaintiff cannot be allowed to claim relief of specific performance after 19 years of institution of suit. The Trial Court has, therefore, rightly refused to entertain application for amendment at appellate stage.

10. In result, no case is made out for interference under Article 227 of Constitution of India. Hence, Writ Petition stands dismissed.

11. Rule stands discharged.

(S. G. CHAPALGAONKAR)
JUDGE