

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO. 12541 OF 2025
IN
FIRST APPEAL NO. 2001 OF 2025**

Anand SubramaniamApplicant/Ori.Defendant

Versus

Dr. Vikram Kishore ShekatkarRespondent/Ori.Plaintiff

Mr. Jeetendra Ranawat a/w. Mr.Gaurav Gupta and Mr. Aditya Narayan i/b
Mr.Anant Narayan for the Applicant.

Mr. Preet Chheda for Respondent.

CORAM : M. M. SATHAYE, J.

DATED : 11th NOVEMBER 2025

P.C.:

1. Heard Learned Counsel for the parties and perused the record.
2. This is an application filed by the Defendant seeking stay of the impugned Judgment and Decree dated 12.09.2025 passed by the City Civil & Sessions Court, Greater Mumbai in Suit No. 4254 of 2013. By the impugned Judgment and Decree, the suit filed by the Respondent/Plaintiff is decreed thereby declaring that the Agreement to Sell dated 11.11.2011 and Deed of Rectification dated 09.01.2012 are null and void and cancelled and the Sub-Registrar of Assurance, Chembur, Mumbai is directed to take note/entry about cancellation of said Agreement and Deed of Rectification. Applicant is also seeking interim injunction against the Respondent – Plaintiff, not to create third party interest in Flat No. 6, Bal Murali Building, situated on Plot No.86, Chedda Nagar, Chembur, Mumbai 400 089.

3. Both the documents are registered documents, under which the Respondent had agreed to sell the said flat to the Appellant for a total consideration of Rs. 70,00,000/-, out of which an amount of Rs. 1,00,000/- was paid as an earnest amount, receipt of which is acknowledged is registered document itself. The document contained Clause 5 which reads as under :

"5) It is clearly understood by and between the parties hereto that the time is of the essence of the contract and the purchaser shall under no circumstances seek extension of the due date of 30th November 2011, for the payment of the balance Rs. 69,00,000/- (Rs. Sixty Nine Thousand only) as mentioned hereinabove. In case the sale is not completed on or before the 30th November 2011 due to any fault on the part of purchaser, the vendor shall forfeit the entire money paid by the purchaser and the entire agreement ceases to exist and the purchaser shall have no claim against the vendor under this agreement. In case if the sale is not completed on or before the said date due to any fault of the vendor then the vendor shall refund the entire money received by him from the purchaser without any interest."

[emphasis supplied]

4. It is therefore clear that Applicant agreed that time was essence of the contract and any default in payment would entitle the Respondent to forfeit the amount paid by the Applicant. The Learned Trial Judge on appreciation of evidence has held that time is proved to be essence of contract. Termination / cancellation of the said Agreement and Rectification Deed has been held as proved.

5. Learned counsel for the Applicant submitted that the time cannot be

held as essence of contract, because the agreement was in respect of sale of immovable property. That Applicant has stated in written statement that he was ready and willing to perform the contractual obligations and he is ready and willing to pay reasonable interest at bank rate for the delay. It is contended that the Respondent withheld the documents and therefore loan could not be raised and payment could not be made. He relied on the judgments of (i) Gomathinayagam Pillai & Ors.V. Palaniswami Nadar [AIR (1967) Supreme Court 868], (ii) Govind Prasad Chaturvedi V. Hari Dutt Shastri And Another [(1977) 2 SCC 593] and (iii) Chand Rani (Smt) (Dead) By LRS. V. Kamal Rani (Smt) (Dead) By LRS. [(1993) 1 SCC 519] in support of his case. The sum and substance of the argument is that being an Agreement to sell immovable property, time cannot be taken as essence of contract.

6. Learned counsel for the Respondent, on the other hand, submitted that having specifically agreed under the registered document, the Applicant – Defendant cannot contend that time was not essence of contract. It is submitted that, in the cross-examination, the Applicant specifically admitted that he had no documents to show that he had availed loan from any Bank and therefore no fault can be found with the conduct of the Plaintiff. That there is nothing to indicate that the Applicant was serious about completing the transaction. He submitted that the suit flat is occupied by the Plaintiff and by his family members. He further submitted that in absence of counter claim, the Respondent can not be restrained from dealing with flat and escalation of prices of immovable properties will have to be factored in, while considering granting stay to the impugned order.

7. I have considered the submissions. Admittedly, the Respondent-

Plaintiff is in possession of the said flat and the same is occupied by him alongwith his family. It is further admitted position that the Applicant - Defendant did not file any counter claim seeking either specific performance or injunction or recovery of amount paid under transaction. The Applicant is not put in possession as part performance. Therefore the aspect of specific performance and protection of part performance is completely out of consideration and beyond the remit of this appeal / application. Since there is no prayer for specific performance and protection of possession in part performance, the aspect of readiness and willingness is also really not of vital importance or relevance, definitely not at this interim stage. There is not even counter claim for seeking refund of money paid under transaction.

8. Clause 5 agreed between the parties is *prima facie* clear. The Applicant being proposed purchaser had agreed that time was essence of contract and he shall under no circumstances seek extension of date of 30/11/2011 for payment of balance amount. Forfeiture clause is provided only for refund of amount based on fault.

9. So far as the argument of learned counsel for the Applicant that the document was withheld and therefore he could not raise loan for completing the transaction is considered, the Applicant has himself admitted in cross examination that he has no document to show that even any loan was availed. The statement of the Plaintiff shown by learned counsel for the Applicant indicates that Plaintiff has stated in examination in chief that he is in possession of document and the original would be handed over to the Bank after the sanction letter is received. *Prima facie*, this admission cannot be held as 'withholding of the document' especially when Defendant has admitted that he has nothing to show that loan was availed.

10. The notice of termination has been considered by the Trial Judge holding that the Plaintiff did not receive the balance sale consideration as per the terms of the agreement and therefore agreement was terminated.

11. The judgments relied upon by the Applicant are essentially under Specific Relief Act, about reciprocal promises in a suit for specific performance. In the case at hand, case about entitlement to specific performance or protection of possession in part performance is absent. Therefore the judgments will not will not help the Applicant, seeking stay to the declaration.

11. If the declaration and direction to the Sub-Registrar is stayed, it would mean that the document shall continue to operate as a registered document thereby putting fetter over the right of the Plaintiff to deal with his own property. There is no strong prima facie case in favor of the Defendant to permit such situation.

12. Further, it is not brought to the notice of the Court that during pendency of the suit there was any injunction or other order restraining the Respondent- Plaintiff from dealing with the property in any manner whatsoever. In absence of any counter claim, no such injunction (not to create third party interest) can be granted, for the first time in appeal.

13. In the aforesaid facts and circumstances, the Interim Application is rejected.

14. All concerned to act on duly authenticated or digitally signed copy of this order.

(M. M. SATHAYE, J.)

Digitally signed
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