



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

APPEAL AGAINST ORDER NO.09 OF 2024

APPELLANT / :- Sau Shobha Yograj Thakre
Ori. Defndant
Aged about 57 yrs, Occ. Housewife,
R/o. 365, Darshan Colony,
Nandanwan, Nagpur

..VERSUS..

RESPONDENT :- Ashok Anandrao Dhapodkar,
Ori. Plaintiff
aged about 58 yrs, Occ. Business,
R/o. Jagnath Budhwari, Pachpaoli
Road, Kumbharpura, Nagpur.

Mr. S. S. Sitani, Advocate for Appellant.
Mr. K. N. Jain, Advocate for Respondent.

CORAM : **ROHIT W. JOSHI, JJ.**

DATE : **11.09.2025**

ORAL JUDGMENT :

1) Heard.

2) The present appeal is filed under Order 43, Rule 1(r) of the Code of Civil Procedure, challenging the order dated 21.03.2024 passed by the learned 14th Joint Civil Judge, Senior Division, Nagpur, on application at Exh. 5 in Special Civil Suit No. 805 of 2023. The respondent is the original plaintiff and the appellant is the original defendant. (The parties hereinafter referred to as “the plaintiff and the defendant”.)

3) The defendant had entered into an agreement to sale with the plaintiff on 10.03.2021 *inter alia* agreed to sell 4.5 acres of land owned by him bearing Survey No. 80/2 at Village Temasna, Tah. Kamptee, Dist. Nagpur. The agreed rate was Rs. 37,50,000/- per acre. The sale deed could not be executed in terms of the agreement, as a consequence of which the plaintiff filed a suit for specific performance of contract, being Special Civil Suit No. 507 of 2022. Pending the said suit, the parties arrived at an amicable settlement, the terms whereof are enumerated in a document titled as, "Apsi Samjhota" dated 28.08.2022. The compromise terms were placed before the National Lok-Adalat at Nagpur. The suit was disposed of in terms of the compromise, vide order dated 13.08.2022. It appears that, there is a mistake in mentioning the date either in the agreement or in the order. If the compromise terms were arrived at on 28.08.2022, the suit could not have been disposed of in terms of the compromise on 13.08.2022. Nonetheless, both these documents i.e. the agreement titled as "Apsi Samjhota Patra" which mentions the date 28.08.2022 as also the order passed below Exh. 1 in Special Civil Suit No. 507 of 2022 disposing of the suit in terms of compromise are not in dispute and are admitted by both the parties.

4) In terms of the agreement dated 28.08.2022 the rate of land was revised to Rs. 55,00,000/- per acre. The plaintiff had agreed to purchase 2 acres of land on or before 15.09.2022 and remaining 2.5 acres of land on or before 31.01.2023. The parties further agreed that amount of Rs. 22,50,000/- which was received by the defendant under the earlier agreement of sale dated 10.03.2021, would be adjusted towards the sale consideration against the second sale deed.

5) It however, appears that sale deeds with respect to the property were not executed as agreed between the parties under the agreement dated 28.08.2022. It is, however, undisputed that 2.5 acres of land is sold by the defendant to the plaintiff vide registered sale deed dated 07.11.2022. It is also undisputed that the amount of Rs. 22,50,000/-, which was agreed to be adjusted against the second sale deed was adjusted towards sale consideration payable under the first sale deed which is executed on 07.11.2022. The dispute now pertains to remaining 2 acres of land.

6) Since the sale deed with respect to remaining 2 acres of land was not executed, the plaintiff filed a fresh suit for specific performance of contract, being Special Civil Suit No. 805 of 2023. In the said suit, an application for grant of temporary injunction

was filed seeking orders restraining the defendant from creating third party interest over the suit property. Vide order dated 21.03.2024, the said application is allowed. The defendant has filed the present appeal assailing the said order.

7) Mr. S. S. Sitani, the learned Advocate for the appellant/defendant states that admittedly, there is a breach of the agreed terms and conditions as recorded between the parties under the agreement dated 28.08.2022. He contends that a person who has committed a breach of agreement is not entitled to the relief of specific performance of contract in view of Section 16(b) of the Specific Relief Act. Mr. Sitani further contends that the conduct of the plaintiff in not honoring the agreed terms and conditions on the basis of which earlier suit was disposed of demonstrates that he was not, throughout, ready and willing to perform his part of the contract.

8) Apart from this, a legal submission is made with respect to the maintainability of the suit. Placing reliance on provisions of the Legal Services Authorities Act, 1987, it is contended that the award passed by the National Lok-Adalat is deemed to be a decree of the Court in view of Section 21 of the Legal Services Authorities Act, 1987 and, therefore, the fresh suit filed on the basis of the agreement, which has culminated with an award by the National

Lok-Adalat, will not be maintainable.

9) *Per contra*, the learned Advocate for the respondent/plaintiff supports the impugned order. He contends that, since a suit for specific performance of contract is filed, it is appropriate that the defendant be restrained from creating any third party interest. The learned Advocate contends that the plaintiff was all throughout ready and willing to perform his part of the contract and has, in fact, purchased a part of the suit property in terms of the agreement dated 28.08.2022.

10) As regards the alleged breach of the terms and conditions enumerated in the said agreement, the contention of the learned Advocate is that the defendant has willingly executed sale deed with respect to 2.5 acres of land, which will indicate that the agreement dated 28.08.2022 stands novated by conduct of parties. He further contends that time is never an essence of contract in a suit for specific performance of contract relating to sale of immovable property.

11) The learned Trial Court, as stated above, has allowed the application. The learned Trial Court has observed in paragraph 17 of the order that the aspect of readiness and willingness on the part of the plaintiff shall be decided on merits after recording evidence. It has then observed that, according to the compromise

deed, the plaintiff had already purchased 2.5 acres of land and had also issued a notice calling upon the defendant to execute sale deed with respect to remaining 2 acres of land. It is also observed that the plaintiff had also purchased stamp on 12.06.2023 to show his presence in the office of Sub-registrar. This, according to the learned Trial Court, was sufficient to make out a *prima facie* case for grant of temporary injunction.

12) Perusal of the order will demonstrate that the learned Trial Court has completely ignored Section 16(b) of the Specific Relief Act, which speaks as a person who is guilty of breach of agreement is not entitled to relief of Specific Performance. The learned Trial Court has also not commented on the aspects of financial capability of the plaintiff to discharge his financial obligation under the agreement.

13) The date on which the plaintiff was allegedly present in the office of Sub-registrar is after the period of around 5 months from the date stipulated for execution of second sale deed. The learned Trial Court should have appreciated that the agreement between parties is relating to controversy which was subject matter of a civil suit and the suit was disposed of in terms of the said compromise. The compromise terms *prima facie* assume character of a decree. It, therefore, *prima facie* appears that the

plaintiff has committed breach of terms of compromise decree and is therefore, not entitled to avail benefit thereof.

14) The issue of maintainability of suit for Specific Performance of Contract is also doubtful in view of Section 21 of the Legal Services Authorities Act, 1987. However, since the said point is raised for the first time in the present appeal, it will not be appropriate to express any final opinion as regards maintainability of suit.

15) However, the undisputed facts of the case indicate that the plaintiff has committed breach of the contract and is therefore not entitled to relief of specific performance in view of Section 16(b) of the Specific Relief Act.

16) In that view of the matter, in the considered opinion of this Court the appeal deserves to be allowed and is accordingly allowed by quashing and setting aside order dated 21.03.2024 passed by the learned 14th Joint Civil Judge, Senior Division, Nagpur on application below Exh. 5 in Special Civil Suit No. 805 of 2023 and further rejecting the said application below Exh. 5.

(ROHIT W. JOSHI, J.)