



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

APPEAL AGAINST ORDER NO.13/2025

Gurvindersingh Jagdishsingh Sasan

...Versus...

Bhimandas Narayandas Waswani and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Mr. Y.J. Maheshwari, Advocate for appellant
Mr. V.A. Gosavi, Advocate for respondents

CORAM : ROHIT W. JOSHI, J.

DATE : 10/12/2025

1. The present appeal takes exception to the order dated 22/07/2025, passed by the learned 12th Joint Civil Judge Senior Division, Nagpur on application at Exh.5 in Special Civil Suit No.237/2022, whereby the present appellant/original defendant is restrained from creating third party rights over the suit property and also from parting with possession of the same till final disposal of the suit.

2. Mr. Maheshwari, learned Advocate for the appellant contends that the dispute between the parties pertains to agreement of sale dated 24/11/2020. He contends that although the plaintiffs have filed a suit for specific performance of contract, prior to filing of the suit, the plaintiffs have admittedly issued legal notice dated 09/06/2021. Referring to paragraph 19 of the legal notice, learned Advocate contends that the plaintiffs have terminated the agreement in question and as such, are not entitled to seek

relief of specific performance of contract. He draws attention to paragraph 15 of the plaint to further contend that the plaintiffs are standing by the said legal notice. Learned Advocate contends that in such situation, the defendant, who is owner of the suit property, ought not to have been restrained from dealing with the same.

3. Per contra, Mr. Gosavi, learned Advocate for the respondents/plaintiffs contends that the plaintiffs were always desirous of completing the sale transaction by making payment of the balance consideration. However, the sale transaction could not be completed due to pendency of another civil suit with respect to the suit property. He states that the contents of paragraph 19 of the legal notice should not be read in isolation and should be viewed in the light of overall conduct of the plaintiffs, which shows that they were always ready and willing to perform their part of contract. The learned Trial Court has granted temporary injunction in favour of the plaintiffs, restraining the defendant from creating third party interest over the suit property and also from parting with possession of the same observing that more than 50% of the agreed sale consideration is paid by the plaintiffs to the defendant. The learned Trial Court has found that creation of third party interest would lead to multiplicity of litigation which must be avoided.

4. Perusal of the order passed by the learned Trial Court will indicate that the principal contention of the defendant that the plaintiffs have themselves terminated the agreement and consequently question of specific performance did not arise, is not dealt with. Perusal of paragraph 19 of the

legal notice issued by the plaintiffs and paragraph 15 of the plaint will indicate that *prima facie* the plaintiffs were not willing to go ahead with the sale transaction, in view of pending litigation. The plaintiffs *prima facie* do not satisfy the requirement of Section 16 (c) of the Specific Relief Act, 1963 particularly, on the aspect of willingness.

5. In view of the aforesaid, in the considered opinion of this Court, Appeal Against Order will have to be allowed. However, it will be necessary to safeguard the interest of the plaintiffs as well, who have admittedly made payment of consideration of Rs.87,24,725/-, out of sale consideration of Rs.1,60,00,000/-. Admittedly, the agreement does not have any clause of forfeiture. In the absence of clause of forfeiture, the defendant *prima facie* is not entitled to forfeit the amount, as is contended by him in the written statement. In order to balance equities, it is directed that in the event the defendant sells the suit property, amount of Rs.1,00,00,000/- (Rupees One Crore Only) will be deposited with the Trial Court in order to secure the amount of consideration that the defendant has received from the plaintiffs.

6. Appeal Against Order is allowed in the following terms :-

(i) Order dated 22/07/2025, passed by the 12th Joint Civil Judge, Senior Division, Nagpur in Special Civil Suit No.237/2022 below Exh.5 is quashed and set aside and the said application is rejected.

(ii) It is directed that in the event third party interest over the suit property is created during pendency of the aforesaid civil suit, amount of Rs.1,00,00,000/- (Rupees

One Crore Only) will be deposited by the appellant/defendant with the learned Trial Court prior to creation of third party interest.

(iii) No order as to costs.

(ROHIT W. JOSHI, J.)

Wadkar