



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

WRIT PETITION NO.7670 OF 2022

PETITIONER

(Ori. Plaintiff)

:-

Rupesh Rameshrao Deshmukh,
Age 43 years, Occ. Service,
R/o. C/o. Shri. Bhamkar, Bhagyashree
Colony, Behind Rangoli Lawn, Kathora
Road, Amravati.

..VERSUS..

RESPONDENTS

(Ori. Defendants)

:-

- 1) Vilas Devidas Tayade,
Age – Adult, Occ. Not known, R/o. Vijay
Sahakari Gruh Nirman Sanstha, Saurabh
Colony, Near Ram Mandir, Amravati.
- 2) Bharat Baiyyasaheb Raut,
Age 39 years, Occ. Service,
- 3) Punam Bharat Raut,
Age 31 years, Occ. Household,
Both R/o Plot No.3, Maharshi Colony,
Tower Line Road, V.M.V. Amravati.

Mr. S.M. Vaishnav, Advocate for Petitioner.

Mr. S.S. Upadhyay, Advocate for Respondent No.1.

Mr. N.J. Patil, Advocate for Respondent Nos.2 and 3.

CORAM : ROHIT W. JOSHI, J.

DATE : 12/12/2025

ORAL JUDGMENT :

1. Heard finally with consent of learned counsel for the
respective parties.

2. The present petition was filed in order to challenge order dated 25.11.2022 passed by the learned 4th Joint Civil Judge Senior Division, Amravati, on application at Exh.61 in Special Civil Suit No.154 of 2016, whereby the application for extension of time to deposit court fees came to be rejected by the learned trial Court. Thereafter, petition was amended in order to raise a challenge to order dated 22.02.2022, passed by the learned trial Court on application Exh.48, whereby payment of additional court fees was directed by the learned trial Court.

3. The present petitioner has filed suit for specific performance of contract in Special Civil Suit No.154 of 2016. Pending the said suit, the original defendant No.1 sold the suit property to the defendant Nos.2 and 3 vide sale deed dated 27.01.2021. As a consequence of this, the plaintiff amended the plaint to incorporate a prayer in order to challenge the said *lis pendence* transfer effected vide sale deed dated 27.01.2021. In addition, the plaintiff also incorporated another prayer by way of amendment seeking damages of Rs.4,50,000/- along with refund of sum of Rs.1,72,000/-, which was stated to be paid by him to the defendant No.1 (vendor) in terms of the agreement of sale.

4. In view of the aforesaid development, namely the

amendment of the plaint in order to challenge the subsequent *lis pendence* transfer and prayer for compensation, the defendant No.1 moved an application for rejection of the plaint on the ground that Court fees were not paid for the prayers for challenging the *lis pendence* sale deed dated 27.01.2021 as also for the prayer for damages.

5. The contention of the respondent No.1 that court fees is required to be paid in view of the fact that the sale deed dated 27.01.2021 is also challenged is rightly rejected by the learned trial Court, since the said sale deed is a *lis pendence* sale deed which is not required to be challenged. The learned trial Court has rightly found that the Court fees is not payable for the said prayer, since the fate of the said sale deed will be subject to outcome of the suit.

6. Perusal of the plaint indicates that the suit is for specific performance of contract and that the prayer for refund of the consideration stated to be paid by the defendant No.1/vendor amounting to Rs.1,72,000/-, as also damages of Rs.4,50,000/-, is an alternate prayer. In the considered opinion of this Court, the suit will have to be valued having regard to the principal prayer in the suit i.e. the prayer for specific performance of the contract. The plaintiff has paid the appropriate Court fees for the prayer for

specific performance of contract as per Section 6(xi) of the Maharashtra Court Fees Act, 1959.

7. It will also be pertinent to state that even if the prayer for refund of the amount paid and damages were required to be valued, the valuation of the same will be Rs.6,22,000/-, which is the same valuation as that of the plaint for specific performance of contract. The plaintiff is not praying for both the reliefs simultaneously therefore, he has to pay Court fees only for one of the reliefs. In either case, the valuation of the main prayer i.e. the prayer for specific performance of contract, as also the alternate prayer for refund of sale consideration and damages will be the same i.e. Rs.6,22,000/-.

8. In the considered opinion of this Court, the plaintiff was not required to pay two sets of court fees; one for the prayer for specific performance of contract and another for the prayer for refund of consideration and damages which as stated above, is an alternate prayer. The learned trial Court has erred in directing the plaintiff to pay additional Court fees for the prayer of refund of pay consideration and damages. In view of the above, order passed below Exh.48 will have to be quashed and set aside. Consequently, order passed below Exh.61 refusing to extend time for payment of

additional court fees also cannot be sustained and the same will also have to be quashed and set aside. Accordingly, writ petition is **allowed** in the following terms :-

- i) Orders dated 22.02.2022 and 25.11.2022, passed by the learned 4th Joint Civil Judge, Senior Division, Amravati, on applications at Exhs.48 and 61 respectively in Special Civil Suit No. 154 of 2016, are quashed and set aside.
- ii) Application at Exh.48 in Special Civil Suit No.154 of 2016, pending on the file of learned 4th Joint Civil Judge, Senior Division, Amravati, is **rejected**.
- iii) Application at Exh.61 in Special Civil Suit No.154 of 2016, pending on the file of learned 4th Joint Civil Judge, Senior Division, Amravati, is rendered infructuous.
- iv) Parties to appear before the learned trial Court on **05.01.2026**. Parties to note that separate notice of appearance will not be issued.
- v) Parties to bear their own costs.

(ROHIT W. JOSHI, J.)