



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

MISC. CIVIL APPLICATION NO.910 OF 2025
IN
SECOND APPEAL NO.331 OF 2016 (D)

APPELLANT
(Defendant on RA)

:- Tulshiram S/o Yashwantrao Virulkar,
Aged about 75 years, Occu: Retired,
R/o Mandarkrupa Society, Tajeshwar
Nagar, Hudkeshwar Road, Nagpur.

..VERSUS..

RESPONDENTS :-
(Plaintiffs on RA)

- 1) Umeshchandra S/o Jagmohanlal Gupta,
Aged about 74 years, Occu: Agriculturist,
R/o Ramwadi, New Shukrawari, Nagpur.
- 2) Sau. Vaishali Omprakash Gupta,
Aged about 45 years, Occu: Household,
R/o Hanuman Galli, Hansapuri, Nagpur.

Mr. R.G. Kavimandan, Advocate for applicant.
Mr. P.V. Ghare, Advocate for Respondents.

CORAM : ROHIT W. JOSHI, J.

DATE : 17/12/2025

ORAL JUDGMENT :

1. Heard finally with consent of learned counsel for the respective parties.
2. The concurrent decrees of specific performance of contract were assailed before this Court in Second Appeal No.331

of 2016. Second appeal came to be dismissed vide judgment dated 08.05.2025. The present application is for seeking review of the said judgment. The learned Advocate for the applicant contends that although a substantial question of law in that regard was not framed, the learned Senior Advocate appearing for the applicant had raised a contention that, in order to balance equities, the respondents/plaintiffs must be directed to pay some additional amount over and above the agreed sale consideration, the said contention is not recorded in the judgment. During the course of hearing of the appeal, this Court had expressed disinclination to entertain the said contention on the ground that substantial question of law in that regard was not framed and this Court had also expressed that the contention raised did not merit acceptance in the facts of the present case. The contention was therefore given up and accordingly, it is not specifically dealt with in the judgment. However, the present application is filed for seeking review of the judgment on the ground that the plaintiffs should be directed to pay some additional amount in order to balance equities.

3. The facts of the case will indicate that the suit property was agreed to be sold for consideration of Rs.6,00,000/-, vide

agreement dated 07.05.2007. Suit for specific performance of contract was filed on 27.04.2011. The plaintiff had paid a sum of Rs.1,51,000/- towards consideration prior to the date of institution of the suit. The suit was decreed on 11.12.2013 and the balance sale consideration of Rs.4,49,000/- is deposited by the plaintiff on 20.02.2014. The First appeal preferred by the appellant/defendant, being Regular Civil Appeal No.129 of 2014 was dismissed on 09.12.2015.

4. The contention that some amount over and above the agreed sale consideration should be ordered to be paid was neither raised before the learned Trial Court nor before the learned First Appellate Court. The said contention was raised for the first time during the course of final hearing of the Second Appeal. As mentioned above, no substantial question of law on this count was framed at the time the application was admitted.

5. The learned Advocate for the appellant/applicant places reliance on judgment of the Hon'ble Supreme Court of India in the matter of *Satya Jain(D) through LRs ..vs.. Anis Ahmed Rushdie (D) through LRs*¹ and judgment in the matter of *Jayakantham and others ..vs.. Abaykumar*².

1 AIR 2013 SC 434

2 (2017) 5 SCC 178

6. In the case of *Satya Jain* (Supra), agreement of sale was executed in the year 1970 and suit for specific performance was filed in the year 1977. The suit was decreed by the learned trial Court. However, decree for specific performance granted by the learned trial Court was reversed in appeal. The plaintiff filed appeal before the Hon'ble Supreme Court. The Hon'ble Supreme Court found that the plaintiff was entitled for relief of specific performance. However, by the time, the Hon'ble Supreme Court decided the time span of 40 years has lapsed. In such circumstances, the Hon'ble Supreme Court of India expressed that defendant/vendor will be entitled to receive some consideration over and above the agreed sale consideration and directed the learned Trial Court to make an assessment of market value of the suit property as on the date of judgment. The ratio of the said judgment cannot be applied in the present case where the balance sale consideration was deposited by the plaintiff, pursuant to decree for specific performance granted in his favour within a period of around six and half years from the date of execution of agreement.

7. In the case of *Jayakantham* (Supra), the Hon'ble Supreme Court of India substituted the decree for specific performance of contract with a decree for payment of compensation. The facts of

the said case indicate that an amount of Rs.60,000/- was paid by the purchaser out of the agreed sale consideration of Rs.1,60,000/- in the month of June, 1999. The vendor had voluntarily offered to pay compensation of Rs.10,00,000/- in lieu of specific performance. The Hon'ble Supreme Court accordingly set aside the decree for specific performance of contract directed the vendor to pay a sum of Rs.15,00,000/- to the purchaser/plaintiff in view of specific performance.

8. The applicant/ review petitioner has not come up with any offer for payment of compensation. The prayer made is that the plaintiffs should be directed to pay some amount over and above the agreed sale consideration.

9. In the present case, while admitting the appeal vide order dated 11.08.2017, this Court has permitted the defendant/review petitioner to withdraw the sale consideration deposited by the respondents/plaintiffs along with accrued interest, without prejudice to the right to contest the appeal. The said amount was not withdrawn by applicant/review petitioner. Likewise, within a short span from the date of the decree, the entire balance sale consideration was deposited. The decree for specific performance of contract is maintained throughout. The contention regarding

escalation of price was also not raised before either of the Courts below. For the reasons mentioned in the application, review stands **rejected.**

10. Since the decree for specific performance of contract passed concurrently by three courts and the application for review is also rejected, the request for granting stay to the execution of decree is rejected.

(ROHIT W. JOSHI, J.)

C.L. Dhakate