



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

WRIT PETITION NO. 5794 OF 2025

Trinetra Real Estate Builders & Developers, Through
its Proprietor Dnyaneshwar Vitthalrao Chinchone,
Aged 46 years, Occ. Business, R/o Plot No.30, Iris Villa,
Flat No.101, First Floor, Nagar Vikas Society, Near Puri
Hospital, Narendra Nagar, Nagpur – 440037.

PETITIONER

VERSUS

1. Gajadhar Prasad Hiralal Kosta, Aged 69 years, Occ. Retired,
R/o A-6, Sky Multi Tower No.1, Ananttara Residency,
Telhari, Jabalpur Madhya Pradesh – 482020.
2. Mangala Kashinathji Dhage, Aged 68 years,
Occ.Housewife, R/o Plot No.11, Ujwal Nagar, Wardha
Road, Opp.Kachore Bhawan, Chhota Hanuman Mandir,
Somalwada Chowk, Nagpur – 440025.
3. Amitkumar Kashinathji Dhage, Aged 36 years,
Occ.Business, R/o Plot No.11, Ujwal Nagar, Wardha
Road, Opp.Kachore Bhawan, Chhota Hanuman Mandir,
Somalwada Chowk, Nagpur – 440025.

RESPONDENTS

Shri P.A. Gode, counsel for the petitioner.
Shri Bhushan Mohata, counsel for the respondents.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE ON WHICH ARGUMENTS WERE HEARD : OCTOBER 13, 2025

DATE ON WHICH JUDGMENT IS PRONOUNCED : DECEMBER 04, 2025

JUDGMENT

RULE. Rule is made returnable forthwith and heard finally with consent of the learned counsel for the parties.

2. By this petition, the petitioner has challenged order dated 25.04.2025 passed by the trial Court on an application at Exhibit 68 under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 and also the judgment and order dated 04.09.2025 passed by the appellate Court, dismissing the miscellaneous civil appeal.

3. The petitioner is the original plaintiff, who had filed a suit for specific performance of contract with respect to agreement dated 11.10.2021 relating to plot no.4, Jaihind Co-operative Housing Society Limited, Nagpur admeasuring 4000 square feet. It is the plaintiff's case that the defendant no.1 decided to sell the suit property and entered into an agreement to sell dated 11.10.2021 for total consideration of Rs.2,20,00,000/- and as per the agreement, the plaintiff paid an amount of Rs.25,00,000/- and further agreed to pay the balance amount at the time of sale deed, which was to be executed within three months from the date of the agreement. On 15.01.2022, an amount of Rs.10,000/- was transferred by the plaintiff to the defendant no.1. As per the agreement, it was agreed that the defendant no.1 shall obtain the regularization letter of the suit property from the Nagpur Improvement Trust and shall also obtain necessary documents for executing the sale-deed. It was agreed that the sale-deed would be executed within three months from the date of receipt of all necessary documents. The plaintiff has alleged that it was ready and willing to perform its part of contract. It is the plaintiff's case that on 20.01.2022, the defendant no.1 published a notice in daily newspaper 'Nav Bharat' stating that the agreement with the plaintiff stood cancelled. Hence, the plaintiff filed the suit for specific performance of agreement and for possession of the suit property.

4. In this suit, the plaintiff also filed an application for grant of temporary injunction Exhibit 68 to restrain the defendant nos.2 and 3 from

creating third party interest and from carrying out any construction over the suit property. This application came to be rejected by order dated 25.04.2025, which was challenged by the plaintiff *vide* Miscellaneous Civil Appeal no.206 of 2025, which came to be partly allowed by judgment and order dated 04.09.2025. The plaintiff has challenged these orders by way of the instant petition.

5. Pertinent to note, the appellate Court has partly allowed the miscellaneous civil appeal and rejected the temporary injunction application to the extent of restraining the defendant nos.2 and 3 from making construction and transferring or alienating the suit property to third parties, however, granted a direction that the defendant nos.2 and 3 shall make a disclosure in writing in every transaction with third party regarding pendency of the Special Suit no.172 of 2022 and the other details. The petitioner has grievance about rejection of the temporary injunction application to the extent of injunction about construction on the suit property and injunction for transfer or alienation of the suit property to the third person.

6. Shri P.A. Gode, learned counsel for petitioner vehemently submitted that in view of the controversy involved in the suit, the plaintiff has made out a *prima-facie* case and was thus entitled for grant of temporary injunction. He submitted that the plaintiff was always ready and willing to perform its part of contract but the defendant no.1 has not obtained the necessary documents, including regularization letter for the purpose of executing the sale-deed. He submitted that during pendency of the civil

suit the defendant no.1 has played fraud with the plaintiff and has transferred the earnest amount of Rs.25,00,000/- by way of RTGS in its account. He also submitted that this transfer was done during pendency of an order of *status quo*. He also submitted that immediately after rejection of the temporary injunction application *vide* Exhibit 5, the defendant no.1 has executed the sale-deed of the property in favour of defendant nos.2 and 3 and they have started construction by attempting to change the nature of the suit property. He therefore submitted that the defendants need to be restrained from making construction on the suit property and creating further third party interest.

7. In support of his submissions, the learned counsel for the petitioner has relied upon the following case laws:-

- (a) ***Gopal Dwarkadas Gupta & Another Versus Prashant Prabhakar Rao Kothekar*** [2015(3) Mh.L.J. 640].
- (b) ***Ramakant Ambalal Choksi Versus Harish Ambalal Choksi & Others*** [(2024) 11 SCR 1343].
- (c) ***Julien Educational Trust Versus Sourendra Kumar Roy & Others*** [(2010) 1 SCC 379].
- (d) ***Prakash Gobindram Ahuja Versus Ganesh Pandharinath Dhonde & Others*** [2016(6) BomCR 262].

By pointing out the position of law as laid down in the aforesaid judgments, it is submitted that the defendant nos.2 and 3 are not entitled to change the nature of the suit property, during pendency of the civil suit and temporary injunction needs to be granted to avoid multiplicity of proceedings.

8. As against this, Shri Bhushan Mohata, learned counsel for respondents vehemently submitted that all the points raised by the petitioner by its application at Exhibit 68 were earlier raised by him at the time of consideration of the application at Exhibit 5 for grant of temporary injunction. He submitted that the application for temporary injunction (Exhibit 5) was rejected by order dated 01.09.2023 and now these contentions cannot be again allowed to be agitated. He submitted that the defendant no.1 had already returned the amount of Rs.25,00,000/- to the plaintiff and as such the contention of the plaintiff about readiness and willingness are without any basis. He submitted that after the temporary injunction application at Exhibit 5 was rejected, the suit property was purchased by the defendant nos.2 and 3 and they being the owners are entitled to make construction over the suit property. On the basis of the factual and legal aspects, the Courts below have passed the discretionary orders, which do not need any interference on any count. He thus submitted that the plaintiff has failed to prove the three basic ingredients for grant of temporary injunction and additionally, in view of the conduct of the plaintiff in suppressing the material facts about refund of the amount of Rs.25,00,000/-, the plaintiff was not at all entitled for any discretionary relief of temporary injunction. He justified the impugned orders and opposed the petition.

9. In support of his submissions, the learned counsel for the respondents has relied upon the following case laws:-

- (A) *Wander Ltd. & Another Versus Antox India P Ltd.* [1990 Supp.SCC 727].
- (B) *Dalpat Kumar & Another Versus Prahlad Singh & Others* [(1992) 1 SCC 719].
- (C) *Pydi Ramana @ Ramulu Versus Davarasety Manmadha Rao* [Civil Appeal No.434 of 2013].
- (D) *Rajendra Diwan Versus Pradeep Kumar Ranibala & Another* [(2019) 20 SCC 143].
- (E) *R. Shama Naik Versus G. Srinivasiah* [2024 SCC OnLine 3586].
- (F) *I.S. Sikandar (Dead) by LRs Versus K. Subramani & Others* [(2013) 15 SCC 27].
- (G) *Mandali Ranganna & Others Versus T. Ramachandra & Others* [(2008) 11 SCC 1].
- (H) *Sangita Sinha Versus Bhawana Bhardwaj & Others* [2025 SCC OnLine SC 723].

10. By inviting attention to the position of law as laid down in the aforesaid judgments, he submitted that grant of temporary injunction is a discretionary relief and it has to be granted only when the plaintiff fulfills all the essential ingredients. By relying on the judgment in *I.S. Sikandar (Dead) By LRs* (supra), he submitted that in view of cancellation of the agreement to sell by the public notice, the plaintiff was bound to seek a declaration about illegality of the cancellation of agreement and in absence of any relief in that nature in the plaint, the suit itself is liable to be dismissed. By relying on the judgment in *Mandali Ranganna & Others* (supra), he submitted that apart from the three essential ingredients for grant of temporary injunction, the conduct of parties is also of vital importance.

11. In the backdrop of these rival contentions, the controversy fall for my consideration. The issue is, whether the petitioner-plaintiff is entitled for grant of temporary injunction to restrain the respondents from making construction over the suit property and creating third party interest. It has to be noted that the trial Court has refused to exercise discretionary powers in favour of the petitioner and refused the temporary injunction. So also, the appellate Court has refused to interfere with the discretionary order passed by the trial Court and rejected the miscellaneous civil appeal. In this background, the issue is, whether the petitioner has made out a case to demonstrate perversity in the approach of the courts below, in exercising the discretionary jurisdiction.

12. In order to delve into the issue as to whether the plaintiff is entitled for grant of temporary injunction, it has to be seen, whether the plaintiff has fulfilled the three essential ingredients for seeking the said relief, viz. *prima-facie* case, balance of convenience and irreparable loss.

13. It is crucial to note that the plaintiff had earlier filed a temporary injunction application *vide* Exhibit 5, which was rejected by order dated 01.09.2023, which order was challenged by the plaintiff in Miscellaneous Civil Appeal no.157 of 2023, which also came to be dismissed. As such, the plaintiff had earlier claimed the relief of temporary injunction to restrain the defendant no.1 from creating third party interest and after the said application was rejected, the defendant no.1 has sold the suit property to the defendant nos.2 and 3. Thereafter, the defendant nos.2

and 3 started construction over the suit property on 29.12.2024. Pertinent to note, after the construction reached to an advanced stage, the plaintiff filed the application at Exhibit 68 on 25.03.2025 and then prayed for temporary injunction to restrain the defendant nos.2 and 3 from making construction and creating third party interest in the suit property. Thus, it is clear that the plaintiff had earlier failed to demonstrate the *prima-facie* case and the discretionary order was not passed in favour of the plaintiff.

14. In this background, if the *prima-facie* case tried to be pointed out by the plaintiff is taken into consideration, then it has to be seen that the defendant nos.2 and 3 have purchased the suit property after the temporary injunction was rejected against the plaintiff. The defendant nos.2 and 3, having purchased the suit property, are entitled to make construction over it. As such, the petitioner does not have any *prima-facie* right to restrain the defendant nos.2 and 3 from making construction over the suit property. In this regard, it is important to note that although the plaintiff had earlier claimed that it had paid an amount of Rs.25,00,000/- for purchase of the suit property, however, the said amount was refunded by the defendant no.1 to the plaintiff and it has not re-deposited the said amount. Thus, it becomes clear that the plaintiff has paid only an amount of Rs.10,000/- as against the total consideration of Rs.2,20,00,000/-, which was agreed as per the agreement to sell. Having regard to this aspect, the plaintiff's claim of having a *prima-facie* case to restrain the defendant nos.2 and 3 from making construction over the suit property or from creating third party interest is not established. At the most, the limited extent to which

the plaintiff can claim its right is, to put the subsequent purchasers on notice that the civil suit regarding the property is pending. Thus, the appellate Court has rightly observed that the plaintiff has got a *prima-facie* case only to this extent. The observation of the appellate Court about existence of *prima-facie* case to this extent cannot be understood to mean that the plaintiff has got a *prima-facie* case to stop the construction on the suit property. Having given anxious consideration to all the aspects, the reasoning of the Appellate Court in this regard appears to be sound and need no interference on any count.

15. As regards, the aspect of balance of convenience and irreparable loss, it has to be seen that the plaintiff has paid only an amount of Rs.10,000/- towards consideration of the suit property, which was agreed to be sold for a total consideration of Rs.2,20,00,000/- . It is crucial to note in this regard that although earlier the plaintiff has paid an amount of Rs.25,00,000/-, however, same was refunded by the defendant no.1 and the plaintiff has not re-deposited it with the defendant no.1. The reason mentioned by the plaintiff that he was not having the details of the account number of the defendant no.1 is not at all convincing. Most important to note, the defendant no.1 has terminated the agreement by publishing a public notice in daily Nav Bharat on 14.01.2022 itself and refunded the amount of Rs.25,00,000/-. The suit was filed on 05.02.2022. The plaintiff has not disclosed the fact of receipt of the earnest amount of Rs.25,00,000/- in the plaint even by amending the plaint and even his application to deposit the amount in the trial Court was rejected. Thus, in the backdrop of all these

circumstances, it has to be seen that the defendant nos.2 and 3 are having ownership of the suit property and are entitled to make construction on it and the plaintiff cannot claim to have any right to restrain them from making construction or selling the suit property to the third parties.

16. It is trite law that while considering the application for temporary injunction, apart from the three essential ingredients as mentioned above, the conduct of parties is also very vital. In the instant case, the conduct of the plaintiff who has received back the amount of earnest money of Rs.25,00,000/- and failure to disclose the same voluntarily in the plaint is very crucial to decide about exercise of discretionary powers in its favour. Further, the fact that the plaintiff has not raised any objection for a long time with respect to the construction started by the defendant nos.2 and 3 and filed the application at Exhibit 68 after the construction reached at plinth level is a circumstance which goes against the plaintiff even though he had knowledge since his office is situated just in front of the suit property. As such, the plaintiff was having knowledge about the starting of construction by the defendant nos.2 and 3 and has allowed it to go ahead to a large extent. This conduct on the part of the plaintiff also shows that the plaintiff wants to somehow create hurdles in the ownership rights of the defendant nos.2 and 3 that too on the basis of payment of Rs.10,000/- only, as against the sale consideration of Rs.2,20,00,000/-. Thus, in the wake of all these crucial aspects demonstrating conduct of the plaintiff, its entitlement to claim the discretionary relief of temporary injunction comes under serious doubt.

17. As regards the judgments on which the counsel for petitioner has placed reliance, it has to be noted that the position of law laying down the principles for grant of injunction is not disputed. By applying the legal position to the facts of the instant case, it has to be seen that the entitlement of the petitioner for grant of temporary injunction has to be decided on the basis of facts of the instant case. In view of the factual aspects of the instant case with respect to *prima-facie* right of the plaintiff to restrain the defendant nos.2 and 3 from making any construction, it has to be noted that the plaintiff has failed to make out a case, to establish *prima-facie* right to restrain the defendant nos.2 and 3 from making construction over the suit property. None of the judgments relied upon by the petitioner can be of any assistance since the petitioner has itself failed to show that all the three essential ingredients are in its favour.

18. The trial Court as well as the appellate Court has given due consideration to all the relevant aspects of *prima-facie*, balance of convenience and irreparable loss while passing the discretionary orders against the plaintiff. The Courts below have also taken note of the conduct of the plaintiff, which disentitled it for any discretionary relief. The petitioner has failed to demonstrate any illegality much less perversity in the impugned orders.

19. I have given anxious consideration to the factual and legal aspects pointed out by the learned counsel for the petitioner as well as the

respondents. Considering the fact that the temporary injunction application filed by the plaintiff *vide* Exhibit 5 was earlier rejected and the sale-deed in favour of the defendant nos.2 and 3 was executed after the rejection of temporary injunction, it appears that the defendant nos.2 and 3 have got ownership rights over the suit property. Also, considering the fact that the defendant no.1 has returned the amount of earnest money of Rs.25,00,000/- to the plaintiff and also cancelled the agreement to sell, which cancellation is not challenged by the plaintiff in the suit, the very basis for claiming any relief gets shattered. It is also crucial to note that the construction is carried out by the defendant nos.2 and 3 on their own property and it has reached to an advanced stage. In such situation, granting temporary injunction would definitely render irreparable loss to the defendant nos.2 and 3. Apart from this, having regard to the conduct of parties and the comparative hardship, I am of the firm view that the petitioner has failed to make out any case for grant of temporary injunction.

20. In view of the above mentioned factual and legal aspects, I find no perversity in the approach of the appellate Court in refusing to grant temporary injunction to restrain the respondent nos.2 and 3 from making construction or creating third party rights, however, by issuing a direction to disclose the fact of pendency of the civil suit in further transactions.

21. As such, no interference is warranted with the impugned orders under article 227 of the Constitution of India. The writ petition therefore deserves to be dismissed and it is dismissed with no order as to costs. Rule stands discharged.

(PRAFULLA S. KHUBALKAR, J.)

APTE