IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 13585 OF 2026

Shri. Sharad s/o Manoharrao Lokhare
Age : 60 yrs, Occu : Retired.
R/o. Honaji Nagar, Jatwada Road, Aurangabad ….Petitioner
(Org. Defendant)

VERSUS

Sau. Darshu w/o Shreyas Phulfagar
Age : 37 years, Occu.: Business.,
R/o. Plot No.552, N-3, CIDCO,
Aurangabad, Dist. Aurangabad. Respondent
(Org. Plaintiff)

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Adv.R.V. Gore and Adv.D.N. Kakade for the Petitioner.
Adv.Karan Sarosiya for the Respondent.

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CORAM : MANJUSHA DESHPANDE, J.
RESERVED ON : 06.10.2026
PRONOUNCED ON : 03.11.2026

JUDGMENT :

1. The Petitioner, who is the original defendant in R.C.S. No.881 of 2011, is raising challenge to the order dated 03.09.2026 passed below Exhibit-102 by the 12th Joint Civil Judge Senior Division, Aurangabad. The Respondent, who is the original plaintiff, has filed R.C.S. No.881 of 2011 claiming that suit property, Plot No.54 in Gut No.97 of Arunodaynagar, Gandheli, Taluka and District admeasuring 2000 sq. ft. was sold by him by way of a registered sale deed in favour of the plaintiff/Respondent herein in presence of two witnesses. When the sale deed was produced before the Sub-Registrar, the defendant had

promised to hand over the original documents within five minutes, but he left without executing the deed. Hence, the plaintiff has filed a suit for specific performance, wherein she has claimed that entire amount under consideration, i.e., Rs.75,000/- was paid by a cheque dated 08.09.2011 from her husband's account. An alternative prayer for refund of Rs.75,000/- with interest of 24% per annum is also made in the suit. The defendant has filed written statement and the issues are framed on 17.01.2013.

2. The learned Advocate, Mr.Gore appearing for the Petitioner submits that, the Petitioner is the original defendant in the suit, he had filed an application for seeking direction to plaintiff to produce the document dated 09.09.2011, which is claimed to be a document cancelling the agreement. According to him, the original documents were with the plaintiff and he had retained a photocopy of the same. The plaintiff denied to have issued any such document. In view thereof, the Petitioner had applied for leading secondary evidence of the document dated 09.09.2011. The Trial Court rejected the application for leading secondary evidence as it did not bear signature of the plaintiff and the defendant has failed to show that the original documents is in her custody. This Court, in Writ Petition No.377 of 2016 vide order dated 05.01.2026, set aside the order of the Trial Court and directed to decide the suit within a period of six months from the date of order.

3. On 13.06.2026, the plaintiff was cross-examined by the defendant below Exhibit-33. On 15.06.2026, the plaintiff submitted her evidence affidavit below Exhibit-79, after which she was cross-examined by the Petitioner on 16.06.2026. On 01.07.2026, the Petitioner submitted his evidence affidavit below Exhibit-85 and he was cross-examined on 02.07.2026. After cross-examination of the Petitioner, the Respondent again moved an application on 27.07.2026 below Exhibit-98 and prayed for exhibiting the fixed deposit receipt. This application for exhibiting the fixed deposit was rejected by the Trial Court on 19.08.2026 on the ground that it did not form part of the pleadings. Since the evidence regarding fixed deposit in the examination-in-chief is without pleading, and is also contradictory with her pleading regarding payment of entire consideration amount of Rs.75,000/- to the defendant by way of cheque dated 08.09.2011. Therefore, exhibiting of the document was refused by the learned Judge.

4. It is submitted that when the permission to exhibit the fixed deposit, which was contrary to the pleadings about making payment of consideration of Rs.75,000/- itself, has been refused by the trial Court on 03.09.2016, the order passed by the Trial Court on the application below Exhibit-102 is contrary to its own order refusing to exhibit the said fixed deposit. According to the Petitioner, permitting the deposit of an amount

of Rs.75,000/- towards consideration would cause prejudice to his defence in the trial. It is submitted that the contents of Exhibit-98 refusing to exhibit the fixed deposit receipt and Exhibit-102 seeking permission to deposit the amount encashed from the said fixed deposit are one and the same. Granting permission to deposit the said amount is contrary to Order 7, Rule 14(3) of the Code of Civil Procedure.

5. He submits that in terms of Section 16 of the Specific Relief Act, 1963, the plaintiff is seeking a decree of specific performance. Thus, she is required to plead and prove her continuous readiness and willingness *dehors* the objection raised by the defendant. In the present suit, the pleading of the plaintiff is that she had given a cheque of her husband's account to the defendant towards the entire consideration and she has also stated in the plaint that she had paid the entire consideration amount to the defendant, but she has failed to prove it in the trial. Thus, allowing her to deposit the amount would give her an edge over the defendant without any pleading to that effect. This application is made by the plaintiff for filling in the lacuna of her evidence.

6. Per contra, the learned Advocate, Mr.Sarosia appearing for the Respondent has opposed the prayer of the Petitioner, contending that by depositing the said amount, no prejudice would be caused to the Petitioner. According to him, the FD was purchased by the plaintiff on

12.01.2011 and the said FD is on record in original documents with the list of documents at Exhibit-22. The due amount of the said fixed deposit was Rs.1,29,080/-. This itself proves that the plaintiff, at the time of purchase of the suit property from the defendant, had the capacity to purchase the suit property. In view of the amendment to the Specific Relief Act of 2018, Section 16 requires that the plaintiff has to show readiness of the amount from the date of the agreement. In the cases that are pending prior to the Amendment Act of 2018, in view thereof, he has already filed the original receipt of fixed deposit of Bank of Maharashtra for an amount of Rs.1,00,000/-. Thus, this itself demonstrates that the consideration amount is always available with the plaintiff. Consequently, non-performance of her part of the contract does not arise. She has mentioned about the fixed deposit in Bank of Maharashtra amounting to Rs.1,00,000/- in her affidavit. He, therefore, prayed that he may be permitted to break the fixed deposit bearing no.814523 amounting to Rs.1,00,000/- and permitted to deposit Rs.75,000/- consideration amount.

7. Heard the respective parties and perused the documents placed on record with the assistant of the parties. The Petitioner is the original defendant in the suit filed for specific performance of contract dated 08.09.2011 in respect of Plot No.54 at Arunodaynagar, Gandheli, Taluka and District Aurangabad. In the plaint, it is the case of the

Petitioner that the plaintiff had purchased a plot for her *bona fide* needs, which was sold by the defendant for financial needs. The defendant entered into a contract with the condition that the stamp duty, franking charges, registration expenses shall be borne by the plaintiff, and the stamp duty shall be borne by him. It is pleaded that the defendant has received the entire consideration through cheque bearing no.000044 dated 05.09.2011 of Ahmednagar Merchants Co-operative Bank, Ahmednagar, Branch Aurangabad, from the account of the husband of the plaintiff and has executed the document in favour of the plaintiff. On receiving the consideration, the plaintiff has also handed over possession to the defendant of the plot under sale. The defendant, after receiving the total consideration amount by way of the cheque, executed the sale deed. The entire original documents of the original sale deed of the defendant, copy of layout, tax receipts, etc., are in the custody of the defendant. However, when the parties had approached the Office of the Sub-Registrar for registration of the document, the defendant never turned up. Since the plaintiff had already parted with the entire consideration and the defendant has refused to execute the registered sale deed, the plaintiff has filed a suit for specific performance. In view thereof, in the affidavit of evidence at Exhibit-33, the plaintiff has again reiterated that the amount of consideration was already parted with by the plaintiff. It is further stated that she is always ready to execute the registered sale deed and ready to perform her part of the contract. In order to show her

capacity to purchase the said plot, she has invested an amount of Rs.1,00,000/- in the fixed deposit of Bank of Maharashtra. After filing of the affidavit of evidence and cross-examination is over, an application was filed by the plaintiff for exhibiting the fixed deposit receipts on record, which was rejected by the Trial Court by passing an order below Exhibit-98 holding that when there is a specific averment that she has already parted with the entire consideration amount and the defendant did not turn up for registration of the document, the entire pleading of the plaintiff goes to show that there is no averment in the plaint that the amount of consideration has remained to be paid and she is ready to pay the same. Since there is no pleading in the plaint regarding purchasing of the fixed deposit receipt, it would not be permissible to allow her to exhibit the same. The plaintiff filed an application below Exhibit-102 with a prayer to permit the plaintiff to break the fixed deposit amounting to Rs.1,00,000/- and permit to deposit Rs.75,000/- consideration amount was filed on 24.08.2026, the learned 12th Joint Civil Judge Senior Division, Aurangabad allowed the application by permitting to withdraw the due amount from the fixed deposit as per the rules of the concerned bank and deposit it towards the consideration amount in the Court. This order passed on 03.09.2026 is clearly contrary to the order passed by the trial Court refusing permission to exhibit the said fixed deposit on the ground that there is no pleading about the fixed deposit in the plaint, therefore, exhibiting such document would not be permissible. When the

exhibiting of the fixed deposit itself was held to be not permissible due to absence of pleading, allowing the plaintiff to encash the fixed deposit of Rs.1,00,000/- and permitting to deposit Rs.75,000/- towards consideration is very much against Section 16(c) of the Specific Relief Act, which provides that specific performance of a contract cannot be enforced in favour of a person who fails to prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant. In the Explanation to sub-clause (c), it is held that where the contract involves payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in Court any money except when so directed by the Court. Continuous readiness and willingness is required to be pleaded and proved by the plaintiff. In the present case, it is pleaded by the plaintiff that she has made payment by her husband's cheque, but has failed to prove it. PW-2 has only deposed that he gave her the cheque and she filed it in the Court. There is no pleading about the fixed deposit receipt, which shows that she was not ready at the relevant time. After Exhibit-98 was rejected, she has filed Exhibit-102 to fill in the lacuna. Her alternate prayer made in the suit for refund of Rs.75,000/- paid by her towards the entire consideration with interest of 24% also shows that her case is that she had already paid the said amount. Therefore, the Trial Court has committed an error by allowing

her to deposit the said amount. It is brought to the notice of this Court, even after the impugned order has been passed, the plaintiff has filed another application for permission to deposit the fixed deposit receipt itself in the custody of the Nazar of the Court, which has been allowed by the court vide order dated 01.10.2026. Even this order, further perpetuates the prejudice caused to the defendant by allowing the plaintiff to produce evidence which has not been pleaded. A profitable reference can be made to the observations of the Delhi High Court in a decision in the case of ***Bal Krishan Gupta and others V/s. Vikas Aggarwal and others***, ***2014 (5) ADR 682,*** where the position of law on the subject of issuance of direction to the plaintiff in a suit for specific performance of agreement of immovable property for deposit of the balance amount of consideration has been culled out. The relevant part is reproduced hereunder, which read thus :

> *"**27.** The position in law, on the subject of issuance of direction to a plaintiff/purchaser in a suit for specific performance of an Agreement to Sale of immovable property to deposit the balance sale consideration in Court can thus be culled out as under :-*
> *(v) a direction to the plaintiff/purchaser to deposit balance sale consideration in the Court as a condition to maintainability of the suit for specific performance can be made only where the Court, for reasons to be recorded, entertains a doubt about the readiness and willingness of the plaintiff/purchaser. Only where the Court feels that though an averment as postulated in Section 16(c) is made, but the plaintiff may not have the money to pay the balance consideration, can the Court, to satisfy itself about the truthfulness about the averment, direct to deposit the money in Court. This course is however to be adopted rarely;*

> *(vi) the question of payment otherwise would arise only after the trial of the suit and when the rights of the parties are determined and such a direction should be issued when the final decree is passed and not at an earlier point of time; and*
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> *(vii) direction to the plaintiff/purchaser to deposit the balance sale consideration in the Court can also be made as a condition for granting interim relief sought of restraining the defendant/seller from, during the pendency of the suit, dealing with the property agreed to be sold or to balance the equities in appropriate cases but again, not as a matter of routine i.e. only where the readiness and willingness of the plaintiff/purchaser is in doubt and again, rarely; the effect of non-deposit inspite of such direction in such cases will only be vacation of the interim order or applicability of Section 52 supra and not to ipso-facto presume the plaintiff/purchaser to have been not ready and willing."*

8. Thus, only when there is a doubt in the mind of the Court about the readiness and willingness of the plaintiff, only in such circumstances directions can be issued to deposit the money in the Court. In the present case, by permitting the plaintiff to deposit the amount to show willingness to perform her part of the contract, it was not necessary to allow her to deposit the amount since her case itself was that she has already parted with the consideration amount.

9. In view thereof, the order passed by the 12th Joint Civil Judge Senior Division, Aurangabad becomes unsustainable and is quashed and set aside.

[MANJUSHA DESHPANDE, J.]