



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 3766 OF 2024

Raju Chagan Rathod
VERSUS
Sindhubai Ramesh Gaikwad

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Mr. A. C. Deshpande, Advocate for the Petitioner

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CORAM : AJIT B. KADETHANKAR, J.

DATED : 09TH MARCH, 2026

FINAL ORDER :-

. Heard Mr. A. C. Deshpande, learned Counsel for the petitioner. On the last occasion, notice was issued to the respondent-sole vide order dated 15.04.2024. The record shows that the notice issued to respondent-sole is served. Subsequently, Mr. Gaddime, learned Counsel marked his appearance for respondent-sole. It appears that thereafter, the matter was adjourned from time to time and lastly on 07.03.2026, this matter was on board. On that day, Mr. A. C. Deshpande, learned Counsel for the petitioner marked his presence; however, none appeared for the respondent. Hence, to give an opportunity to the respondent, this matter was placed today specifically at 02:30 p.m.

2. Today, when the matter is called out, again there is no one for the respondent. Hence, the matter is taken up for final disposal.

3. It seems that the petitioner is claiming relief of specific performance of contract seeking directions against the respondent to execute registered sale deed of the subject matter-suit property.

4. Mr. A. C. Deshpande, learned Counsel for the petitioner points out that an agreement was executed between the petitioner and the respondent, whereby the respondent agreed to sell the subject matter-property to the petitioner for a consideration of Rs.23,00,000/-. He further submits that the plaintiff/petitioner initially paid Rs.1,00,000/- as an earnest amount, and subsequently paid a further sum of Rs.4,25,000/-, thereby making total payment of Rs.5,25,000/- to the respondent. Receiving disinclination from the respondent to execute his part of contract, the petitioner/plaintiff instituted the Special Civil Suit No.1 of 2022 in the Court of learned Civil Judge Senior Division, Vaijapur for specific performance of contract.

5. During the pendency of the suit, an application below Exhibit-5 i.e. an application under Order XXXIX, Rule 1 and 2 of the Civil Procedure Code, read with Section 151 of the Code came to be filed by the petitioner. Upon hearing the parties, the learned Civil Judge Senior Division vide order dated 14.06.2023 allowed the application and granted temporary injunction against the defendant in the following terms:

1. *Application is allowed as under:*
2. *By way of temporary injunction, defendant is hereby restrained from alienating, transferring or creating third party interest in the title of the suit property till final decision of the suit, subject to the condition that, plaintiff to deposit consideration amount of Rs.22,00,000/- (Rs. Twenty Two Lac only) within 15 days from the date of order at the disposal of the Court in the matter.*
3. *Costs in cause.*

6. Being dissatisfied by the said order dated 14.06.2023 to the extent of condition to deposit Rs.22,00,000/- The plaintiff/petitioner preferred Miscellaneous Civil Appeal No.29 of 2023 in the Court of learned District and Sessions Court, Vijapur. This appeal was contested by both the parties and in

result of appeal, learned Appellate Court pleased to dismiss the appeal and confirmed the order therein. The order in appeal came to be passed on 09.02.2024.

7. Mr. A. C. Deshpande, learned Counsel for the petitioner would submit that the defendant/respondent has not challenged both these orders in this Court or in any other Court to his knowledge. He would submit that the petitioner/plaintiff is in appeal only to the extent of directions to the plaintiff to deposit Rs.22,00,000/- in the Civil Court towards grant of injunction. He would further submit that the consideration of relief under Order XXXIX, Rule 1 and 2 read with Section 151 of C.P.C. rests only on three principles as under:

- i. Whether the party seeking injunction convinces the Court on *prima facie* case?
- ii. Whether the party seeking injunction establishes that the balance of convenience rests in such party's favour to show that injunction could be granted in favour of such party?
- iii. Whether the party seeking injunction convinces the Court that non grant of injunction would result into irreparable loss to such party?

8. Mr. A. C. Deshpande, learned Counsel submits that it is not in dispute that on all these three points, the petitioner/plaintiff has convinced the Trial Court, and hence the Trial Court pleased to issue the temporary injunction order in favour of the petitioner. He would submit that the injunction order is still intact as the defendant/respondent has not challenged that order in this Court.

9. Mr. Deshpande, learned Counsel would further submit that in fact it is the case of the plaintiff that he has already paid Rs 5,25,000/- to the defendant, and that he is ready and willing to perform his part of contract i.e. payment of the balance amount. He concludes his argument with a submission that imposition of such condition to deposit Rs.22,00,000/- against the injunction is arbitrary and would defeat the provisions of the C.P.C. Mr. Deshpande, learned Counsel would however on instructions make a statement that taking into consideration his contention that he has made part payment to the respondent/defendant, the petitioner/plaintiff is ready and willing to deposit an amount of Rs.17,75,000/- in the Trial Court as would be directed by this Court. As such, he prays to allow the Writ Petition.

10. As observed supra, nobody has caused appearance for the respondent. On the last occasion also there was nobody present. Besides this, it is to be noted that the injunction orders passed by the learned Civil Court and confirmed by the learned Appellate Court are not challenged by the respondents. As such as on today, the defendant/respondent is suffering the injunction order.

11. I accept the argument advanced by learned Counsel for the petitioner that the grant of Temporary Injunction under Order XXXIX, Rule 1 and 2 of the C.P.C. read with Section 151 of the Code rest on above said three principles (supra).

12. Apparently, the petitioner has satisfied the Trial Court on these three points. Therefore, the learned Civil Court found the petitioner deserving for grant of temporary injunction. Now, so far as putting a condition of depositing the consideration amount in the Court is concerned, the Trial Court cannot be said to be unjustified in calling upon the plaintiff to show his readiness and willingness to perform his part of contract. However, in such circumstances, at-least for *prima facie* purpose, it would be justifiable if the contention of

the plaintiff on payment of partial amount/earnest amount has to be taken into consideration.

13. The petitioner before me showed his readiness and willingness to deposit the entire amount. Hence, his contention is that he was even made earlier payment of Rs.5,25,000/-. In any case, for the short amount of Rs.4,25,000/- (excluding Rs.1,00,000/-) mentioned in the pleadings, the temporary injunction must not remain only on paper.

14. Under these circumstances, the statement made by the petitioner before this Court that the petitioner is ready and willing to deposit the amount of Rs.17,75,000/- within the time as directed by this Court is taken on record. As such, this Writ Petition can be disposed of with following directions. Hence, I pass following order:

ORDER

- a. Writ Petition stands allowed.
- b. Clause 2 of the order dated 14.06.2023, passed by the learned Jt. Civil Judge Senior Division, Vaijapur in Special Civil Suit No.1 of

2022 to the extent of an amount of Rs.22,00,000/- to be deposited within 15 days from the order of the disposal of the Court in the matter is modified thereby reducing the amount to 17,75,000/- to be deposited within a period of four weeks from today in the learned Trial Court.

c. The effect of this modification in the order passed by the learned Trial Court shall apply to the order passed by the learned Ad-hoc District Judge-2, Vaijapur on 09.02.2024 in Miscellaneous Civil Appeal No.29 of 2023.

d. Writ Petition stands disposed of accordingly.

(AJIT B. KADETHANKAR, J.)