



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

WRIT PETITION NO. 1540 OF 2026

SITARAM GOURAM DHORAJKAR

VERSUS

DNYANDEO ANANTRAO BORUDE AND OTHERS

...

Mr. Mahesh Ramnath Sonawane, Advocate for the Petitioner.

Mr. S. A. Gaikwad, AGP for Respondents-State.

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CORAM : S. G. CHAPALGAONKAR, J.

DATED : 11th FEBRUARY, 2026.

P.C.:-

1. The present Writ Petition is filed with following prayers:-

“B. The impugned order dt. 5.11.2025 below exhibit 1 in Special civil suit no.79/2017 passed by the Ld. 21st Civil Judge Senior Division Ahmednagar Dist. Ahmednagar thereby the pursis filed by plaintiff below exh.100 is accepted and suit was disposed off without hearing to the parties, may kindly be quashed and set-aside and application below exh.103 filed by petitioner original defendant no.7 for transpose as plaintiff may kindly be allowed in the interest of justice and for that purpose issue necessary orders.”

2. The respondent no.1/plaintiff has instituted suit seeking specific performance of contract on the basis of agreement to sale dated 28.04.2016. It was contention of plaintiff that defendant no.1 has executed agreement to sale and agreed to sale out suit property to him. It is contention of petitioner/original defendant no.7 that plaintiff has executed agreement to sale in his favour on 03.06.2016 in respect of suit property. The petitioner has also filed counter

claim raising his independent right on the basis of agreement to sale. At this stage, respondent no.1/plaintiff filed pursis at Exhibit-100 seeking permission to withdraw suit. The Trial Court permitted withdrawal of suit. However, directed that counter claim filed by petitioner/defendant no.7 shall proceed.

3. Mr. Sonawane, learned Advocate appearing for petitioner would submit that impugned order is passed without hearing petitioner. Even petitioner's application for transposition as plaintiff was pending for consideration and ignoring such pendency, impugned order has been passed.

4. Having considered submissions advanced, it can be observed that petitioner/defendant no.7 is independently prosecuting his claim for specific performance of contract by way of counter claim. The counter claim is kept alive for consideration. The withdrawal of claim by respondent no.1/plaintiff in suit would no way prejudice petitioner's right, if any, and he would be entitled to establish his right in pending counter claim. Apparently, no prejudice is shown to have been caused to petitioner in view of permission granted in favour of plaintiff to withdraw suit.

5. In result, keeping all contentions and rights of petitioner open for adjudication, Writ Petition stands dismissed.

6. Looking to fact that counter claim of petitioner is pending since 2017, Trial Court shall endeavour to dispose of same expeditiously and in any case, within period of one year from today.

7. Parties to co-operate.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/February-2026