



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

**CIVIL REVISION APPLICATION NO. 102 OF 2024**

( Mr.Mahadeo s/o Khamdeo Rokade and others vs. Mrs.Mangala w/o Bhojraj Lanjewar and another )

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*Office Notes, Office Memorandum of Coram,  
appearances, Court's orders or the directions,  
and Registrar's orders.*

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*Court's or Judge's order*

Mr. N.R.Tekade, Advocate for applicants.

Mr. Sandeep B. Tiwari and Ms.Pragati B.Mishra, Advocates for respondent No.1.

**CORAM : ROHIT W. JOSHI, J.**

**DATED : MARCH 13, 2026**

1) The present Civil Revision Application is filed by defendant Nos.1 to 3 in Spl.C.S.No.750/2023, which is pending on the file of learned 7<sup>th</sup> Joint Civil Judge, Senior Division, Nagpur, thereby, challenging the order dated 29/08/2024, passed by the learned trial Court rejecting application for rejection of plaint filed below Exh.13. Respondent No.1 is the original plaintiff, while Respondent No.2 is the original defendant No.4 and the sister of the plaintiff.

2) The plaintiff, defendant No.4 and their father had entered into an agreement of sale with respect to suit property being lands bearing Survey No.63, admeasuring 0.90HR and Survey No.64 admeasuring 1.00HR situated at Mouza-Vihirgaon, Tahsil and District Nagpur in favour of 'Shubhlaxmi Developers' on 01/01/2022. The defendant Nos.1 to 3 are partners of the said firm. It is the case of the plaintiff that thereafter a sale deed with respect to the suit property came to be executed by her and her brother, defendant No.4, on 16/11/2022. It is stated that the defendants had not paid the entire sale consideration at the time

of execution and registration of the sale deed, and that the sale deed makes reference to post-dated cheques issued by the defendants/purchasers to the plaintiff towards payment of the sale consideration. She has stated that the said cheques were not handed over to her. She has filed the aforesaid civil suit seeking cancellation of the sale deed and, in the alternative, recovery of the sale consideration amounting to Rs. 98,59,850/- (Rupees Ninety-Eight Lakhs Fifty-Nine Thousand Eight Hundred and Fifty only).

3) The defendant Nos.1 to 3 filed an application for rejection of plaint vide Exh.13 in the said suit. It is their contention that failure to pay sale consideration does not result in cancellation of sale deed and therefore, the suit is not maintainable with respect to prayer for cancellation of sale deed. With respect to the prayer for recovery of money, the contention raised is that the suit is premature, since it is filed prior to the dates of respective cheques and as such on the date of filing of suit, the plaintiff had no cause of action for seeking recovery of amount. The said application came to be rejected by the learned trial Court vide order dated 29/08/2024, which is impugned in the present revision application.

4) The contention of learned counsel for the applicants is that failure to pay agreed sale consideration as per the sale deed does not result in cancellation of the sale deed. The learned counsel has placed reliance on judgment of the Hon'ble Supreme Court in the case of *Dahiben vs. Arvindbhai Kalyanji Bhanushali (Gajra) Dead through legal representatives and others* reported in *(2020) 7 SCC 366* in support of his contention. With respect to the alternate prayer for recovery of amount, the contention is that the suit is premature. The learned counsel contends that for

both the prayers made in the suit, the plaintiff did not have a cause of action and therefore, the plaint is liable to be rejected.

5) The learned trial Court held that in view of the alternate prayer for recovery of amount, the plaint cannot be rejected, even if, plaintiff is not entitled to prayer for cancellation of sale deed. There cannot be any dispute with respect to the proposition that mere failure to pay entire sale consideration does not *ipso facto* result in cancellation of sale deed. However, as observed by the learned trial Court, there is an alternate prayer for payment of balance sale consideration. The suit is certainly maintainable with respect to the prayer for balance sale consideration.

6) The contention that suit is premature, even if it is accepted, cannot be a ground for rejection of plaint. The Hon'ble Supreme Court has in the case of **Vitthalbhai (P) Ltd. vs. Union Bank of India (2005) 4 SCC 315** held that a suit need not be dismissed merely on the ground that it is premature. The Hon'ble Supreme Court has held that filing of premature suit does not go to root of jurisdiction of the Court to entertain and decide the suit on merits. It is held that in such cases, the Court may decide as to whether plaintiff should be granted relief or the relief should be refused on the ground that the suit, when it was filed, was premature. It is held that this is a matter of discretion of the Court. The Hon'ble Supreme Court has held that a suit which is premature must, however, be necessarily dismissed if there is statutory bar to filing of a suit before a particular date or event or if institution of a premature suit results in defeating public policy or public purpose or premature presentation renders the suit patently void and the invalidity is incurable or that the subject matter of suit affects persons other than parties

to the suit e.g. election petition or in case where leave of Court of some Authority is required to be obtained before institution of suit. In the present case, reading of the plaint, does not disclose existence of any such situation. The plaint, therefore, cannot be rejected on the ground that the suit is premature. It must also be stated that the suit is principally filed for cancellation of sale deed, and the prayer for recovery of amount is made only in the alternative.

7) As regards the contention with respect to cancellation of sale deed, it must be stated that the averments in the plaint will indicate that plaintiff is seeking cancellation of sale deed on the ground that she has not received the balance sale consideration. However, this contention is coupled with the further allegation that the post-dated cheques referred to in the sale deed were not handed over to her. She has also alleged that the earnest amount received by her was withdrawn by defendant No.1 acting in collusion with defendant No.4. The pleading is not one of simple non-payment. The plaintiff has alleged that the defendants never had the intention to pay the amount and therefore, did not handover the cheques. It is well settled that the averments in the plaint have to be considered to be true and correct and accepted at their face value while dealing with an application for rejection of plaint.

8) In view of the aforesaid, in the considered opinion of this Court, the learned trial Court has not committed any jurisdictional error in rejecting the application for rejection of plaint. Civil Revision Application, is therefore, rejected, with no order as to costs.

( ROHIT W. JOSHI, J. )