



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

SECOND APPEAL NO.49 OF 2025

APPELLANTS

On R.A. (Ori. Defs)

:- 1) Kalimulla Ajimulla (DEAD)

Age about 70 years, Occ-Business, Po Old Jaikhana Road, Shaukat Ali Chowk, Ganjipeth, Nagpur. Since deceased through his LRs.

a) Smt. Firozabi Wd/o Kalimulla (Wife)

Age about 65 years, Occupation : Household, R/o Jailkhana Road, Shoukat Ali Chowk, Ganjipeth, Nagpur.

b) Salimulla Kalimulla (Son)

Age about 40 years, Occupation : Business, R/o Sadar, Chhaoni, Nagpur.

c) Nargis Sayyad Ashfaq (Daughter)

Age about 42 years, Occupation : Household, R/o Kazipura, Ganjipeth, Nagpur.

d) Raeesa Kalimulla (Daughter)

Age about 39 years, Occupation : Household,

e) Shabana Mohammad Abidkhan (Daughter) Age about 38 years, Occupation Household

f) Ruksana Liyakatali (Daughter)

Age about 35 years, Occupation : Household

g) Shanno Kalimulla (Daughter)

Age about 35 years, Occupation Household, Nos. (d) to (g) C/o Jailkhana

Road, Shoukat Ali Chowk, Ganjipeth,
Nagpur.

..VERSUS..

RESPONDENT :- Shri Hitesh s/o Mathuradas Kariya,
On R.A. (Ori. Plnt) Aged about 39 years, Occupation Business,
R/o Maa Vaishnavi Apartment, Quetta
Colony, Lakadganj, Nagpur.

Mr. U.K. Bisen, Advocate for Appellants.
Mr. Anilkumar Mulchandani, Advocate for Respondent.

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

DATE : **06/02/2026**

ORAL JUDGMENT :

1. Notice in the present Second Appeal was issued on
28.04.2025 on the following substantial question of law:

“Whether the findings recorded by learned Courts with respect to readiness and willingness on the part of the plaintiff are perverse, inasmuch as although the stipulated date for execution of the sale-deed was 24.06.2011, finding that the plaintiff was ready and willing to perform his part of the contract is recorded on the basis of pay order dated 25.06.2012 and affidavit showing his presence in the office of Sub-registrar on the said date?”

2. The appellant before this Court is the original defendant.

He has suffered concurrent decrees for specific performance of contract. The suit property is a house property admeasuring 568.46 sq.ft. situated within municipal limits of Nagpur city. The agreement was executed on 24.01.2011 for a consideration of Rs.15,00,000/-. Out of this amount, a sum of Rs.7,00,000/- is paid

by the plaintiff/purchaser to the defendant/vendor on the date of execution of agreement, a sum of Rs.2,00,000/- is paid through cheque and Rs.5,00,000/- in cash. The sale deed was to be executed upon making payment of balance sale consideration of Rs.8,00,000/- on or before 24.06.2011. The sale deed was not executed as decided and therefore, the plaintiff has filed a suit for specific performance of contract.

3. It is the case of the plaintiff that he was always ready and willing to perform his part of the contract however sale deed could not be executed on or before the stipulated date for reasons attributable to the defendant. It is particularly stated that the defendant's son was to undergo some examination, for which the defendant made a request for extension of time to which the plaintiff agreed. The plaintiff issued notice dated 20.06.2012 (Exh.32), calling upon the defendant to execute the sale deed.

4. *Per contra*, the case of the defendant is that the plaintiff avoided to complete the sale transaction within the stipulated period and that he was not ready and willing to discharge his obligations, particularly financial obligation under the agreement. It is also contended that in terms of the agreement, the responsibility of completing all formalities such as obtaining Release Letter from

the Nagpur Improvement Trust, No Objection Certificate from the concerned cooperative society and updating entries in the property card etc., were to be got completed by the plaintiff which he failed to do. The defendant had issued notice dated 30.06.2012 (Exh.35) in reply to notice dated 20.06.2012 to the plaintiff in which it is stated that the plaintiff had agreed to pay a sum of Rs.1,00,000/- over and above the agreed sale consideration in order to compensate the defendant for the delay. The defendant also stated that he was ready and willing to get the sale transaction completed in order to avoid litigation.

5. With these rival stands, the parties proceeded for trial of the suit. The plaintiff reiterated his contentions raised in the plaint in the examination of chief and was cross-examined by the defendant. During the course of evidence, the plaintiff has proved affidavit dated 25.06.2012 (Exh.36) wherein he has stated that on 25.06.2012, he was present in the office of Sub-Registrar, Nagpur-1, Nagpur, at Collector Compound, Civil Lines, Nagpur from 10.30 a.m. onwards. The plaintiff has also filed on record certificate issued by Senior Officer and Manager, Akola Urban Co-operative Bank Limited, Akola, dated 05.12.2012 wherein it is stated that the plaintiff had obtained three pay orders dated 25.06.2012 bearing

Nos.40268, 40269 and 40270 in the name of defendant for a total amount of Rs.8,00,000/-. The statement of the plaintiff in the examination-in-chief that the defendant requested for extension of time on account of examination of his son is not challenged in the cross-examination. In view of the such evidence, the learned trial Court held that plaintiff had made out a case of readiness and willingness and decreed the suit. The learned First Appellate Court has confirmed the decree for specific performance of contract for the same reasons.

6. Mr. Bisen, learned Advocate for the appellant/defendant, vehemently argues that the agreement contemplated a fixed date for completion of sale transaction and admittedly, the first notice issued by the plaintiff for execution of the sale deed is issued after a period of around one year from the date stipulated for the execution of the sale deed. He further draws attention to the agreement, particularly Page 3 thereof, and contends that the plaintiff has not established that the documents required for completing the sale transaction were obtained by him in terms of the agreement, which imposed an obligation on him to obtain the said documents. Mr. Bisen, further draws attention to the cross-examination of plaintiff's witness No.2, who has stated that since the property is situated within the

municipal limits of Nagpur Municipal Council, permission for sale of the suit property is required, and that the stipulation with respect to permission is incorporated in the agreement for the said purpose.

7. Mr. Mulchandani, the learned Advocate for the respondent counters the contention stating that although such conditions were incorporated in the agreement, the land is a Malik Makbuja land, which implies absolute ownership of the defendant, and as such the permissions and documents mentioned in the agreement were not required to be obtained. Mr. Mulchandani, has also drawn attention to the fact that a portion of the property in which the suit property is located was already sold by the defendant to some third persons.

8. The term “readiness” implies financial capability of a purchaser to discharge his financial obligations under the agreement. The plaintiff has stated that he was ever ready and willing to complete his part of the contract and has also produced documentary evidence in the form of certificate by the Bank Manager regarding obtaining demand draft of Rs.8,00,000/- to make payment of balance sale consideration. He has filed affidavit on record indicating his presence in the office of concerned Sub-Registrar. The learned Courts have taken into consideration this

evidence to come to the conclusion that aspect of readiness and willingness was duly proved. It is not in dispute that the plaintiff has deposited the balance consideration of Rs.8,00,000/- with the learned trial Court on 08.03.2019 i.e. within the period stipulated by the learned trial Court. As regards willingness, the act of issuing notice and remaining presence in the office of Sub-Registrar is taken into consideration by the learned Courts. The appreciation of the evidence in this regard cannot be termed to be perverse by any stretch of imagination. The Courts have meticulously appreciated the evidence to arrive at particular finding of facts, which in the respectful opinion of this Court, cannot be interfered in the Second Appeal.

9. As regards the contention that plaintiff did not take steps to obtain documents required for completing the sale transaction, although the agreement states that the said documents will be obtained by the plaintiff, the material on record is grossly insufficient to establish that the said documents were in fact required. The evidence of the defendant does not refer to any particular provision of law or any other office order etc., under which the permission was required in order to complete the sale transaction.

10. In view of the aforesaid, the contention of Mr. Bisen, learned Advocate that plaintiff was not willing to perform his part of contract on account of failure to obtain the documents allegedly required for completing the sale transaction cannot be accepted.

11. The argument of Mr. Bisen, that time was essence of contract and right to obtain sale deed after the stipulated date is lost cannot be accepted, in view of the reply notice issued by the defendant, whereby the defendant has expressed readiness to complete the sale transaction on condition that additional amount of Rs.1,00,000/- as promised by the plaintiff is paid.

12. In the light of the aforesaid, the substantial question of law framed in the appeal deserves to be answered in favour of the plaintiff/respondent and against the appellants/defendants.

13. The agreement between the parties was arrived on 24.01.2011. The parties contemplated completing of the sale transaction within a period of six months. Having regard to escalation of rates in the meantime, in the considered opinion of this Court, equities will be balanced by directing the plaintiff to pay a sum of Rs.7,50,000/- over and above the balance sale consideration. The defendant will be entitled to receive the amount of balance sale consideration of Rs.8,00,000/- deposited by the

plaintiff with the learned trial Court along with accrued interest.

The additional amount of Rs.7,50,000/- shall be paid to the defendant or deposited with the learned trial Court on or before **15.03.2026**.

14. Second Appeal is **partly allowed** by modifying judgment and decree dated 02.01.2019 passed by the learned 9th Jt. Civil Judge Senior Division, Nagpur, in Special Civil Suit No.478 of 2012 and judgment and decree dated 09.07.2024 passed by the learned Adhoc District Judge-2, Nagpur, in Regular Civil Appeal No.119 of 2019 by directing the plaintiff to pay to the defendant sum of Rs.7,50,000/- over and above the agreed sale consideration of Rs.15,00,000/- or to deposit the said amount of Rs.7,50,000/- with the learned trial Court with prior written intimation to the defendant on or before **15.03.2026**. Subject to this additional condition, the impugned decree for specific performance, is maintained. Parties to bear their own costs.

(ROHIT W. JOSHI, J.)

C.L. Dhakate