



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

CROSS-OBJECTION ST. NO.2187 OF 2026 IN
APPEAL AGAINST ORDER NO.27 OF 2025

APPELLANT

(Org. Plaintiffs)

- :-** 1) Pravin Mansaram Walde, Aged about 52 years, Occ.: Business, & Agriculturist, R/o 530/1, Old Bagadganj, Dadaji Dhuniwale Chowk, Nagpur.
- 2) Sharad Dwarikaprasad Dixit, Aged about 57 yrs, Occ. Service, R/o Tekadi Colony, Kanha, Nagpur.
- 3) Satish Gidwani Aged about 49 yrs, Occ. C.A.
- 4) Kiran Satish Gidwani,
Aged about 44 years, Occ. : Business,
Both 3 and 4 R/o Plot No.383/A,
“Jayashree” Near Aaychit Mandir,
Lakdapool, Mahal, Nagpur-32.

..VERSUS..

RESPONDENTS :-

(Ori. Defendants)

- 1) Shailesh Ankush Dhanvijay, Aged about: 45 years, Occ. Service, R/o. A/1304, A Wing Cosmic Heights Co-op. Wadala East, Near IMAX Cinema, Mumbai.
- 2) Aatish Ankush Dhanvijay, Aged about: 44 yrs, Occ. Service, R/o. A/1304, A Wing Cosmic Heights Co-op. Wadala East, Near IMAX Cinema, Mumbai.

Mr.R.M. Bhangde, Advocate for Appellants.

Mr. A.M. Chandekar, Advocate for Respondents (Cross-objector).

WITH
APPEAL AGAINST ORDER NO.27 OF 2025

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Mr.R.M. Bhangde, Advocate for Appellants.
Mr. A.M. Chandekar, Advocate for Respondents.

CORAM : ROHIT W. JOSHI, J.

DATE : 26/02/2026

JUDGMENT :

CROSS-OBJECTION ST. NO.2187 OF 2026

1. The present cross-objection is filed by the defendants in Special Civil Suit No.549 of 2025 challenging order dated 09.07.2025 passed by the learned 6th Joint Civil Judge Senior Division, Nagpur, partly allowing application for grant of temporary injunction filed vide Exh.5. It is not in dispute that on 01.08.2022, the plaintiff Nos.1 and 2 and defendants had entered into an agreement of sale with respect to suit property which comprises of 5.21 H.R. of agricultural land situated at Village Bothali, Tah. Nagpur (Rural) & Dist. Nagpur, for a consideration of Rs.7.07 Crore. Dates stipulated for execution and registration of sale deed as per the agreement is 08.05.2025. However, vide letter (undated) which is served on plaintiffs on 10.05.2025, the defendants have terminated the agreement on the ground of delay in payment as enumerated in the agreement of sale, as also on the ground that, the plaintiff Nos.1 and 2 had entered into a further agreement of sale

with respect to suit property with plaintiff Nos.3 and 4. Upon receiving the notice of termination, the plaintiffs filed a suit for specific performance of contract which came to be registered as Special Civil Suit No.549 of 2025, *inter alia*, claiming declaration that termination of agreement is bad in law, specific performance of contract and delivery of possession of the suit property. The plaintiffs have referred to payments made by them to the defendants in paragraph-5 of the plaint. The fact that amount of Rs.4,47,00,000/- is received by the defendants from the plaintiffs is not in dispute. Likewise, it is also not in dispute that under an exchange deed dated 04.07.2023, the defendants have transferred 1 H.R. land out of the total land covered under the agreement in favour of the plaintiff No.1 against two residential apartments bearing Apartment Nos.601 and 603 in an apartment scheme named, "Ruchi Annex-3". The plaintiffs have stated that consideration of Rs.1,40,00,000/- is reduced from the total sale consideration payable in view of the said exchange deed.

2. Perusal of paragraph-6 of the termination notice issued by the defendants will indicate that according to the defendants also amount of Rs.1,40,00,000/- was to be adjusted against the consideration of aforesaid two apartments. It should also be stated

that the exchange deed is now challenged by the defendants by filing a separate suit being Special Civil Suit No.693 of 2026 which is filed on 05.02.2026.

3. Thus, *prima facie* at this stage, it can be said that out of the agreed sale consideration of Rs.7,07,00,000/-, the plaintiffs have paid a sum of Rs.5,87,00,000/- to the defendants. The suit for specific performance is filed in the aforesaid backdrop. The plaintiffs also claim that parties were contemplating transfer of one 5-BHK apartment in the aforesaid scheme against balance sale consideration. It must be stated that the prayer for specific performance offers two options to the defendants namely to accept a 5 BHK apartment in the building Ruchi Annex-3 or to accept the balance sale consideration of Rs.1,20,00,000/- in terms of agreement dated 08.12.2022.

4. The learned trial Court has held that plaintiffs have satisfied all the three ingredients for grant of temporary injunction and has accordingly passed order of temporary injunction restraining the defendants from creating any third party interest over the suit property or from claiming its nature till the final disposal of the suit.

5. Mr. Chandekar, learned Advocate for the Cross-

objector contends that the learned trial Court has failed to consider that the plaintiffs by not following the schedule of payment have committed breach of the agreement and as such, are not entitled for relief of specific performance in view of Section 16(b) of the Specific Relief Act, 1963. He further contends that the learned trial Court has not taken into consideration Section 55 of the Contract Act, 1872. Apart from this, a contention is raised that although title in the suit property is not transferred to the plaintiff No.1 and 2, they have unilaterally without any authority from the defendants entered into a further agreement with the plaintiff Nos.3 and 4 which also is an act committed in breach of the agreement. Mr. Chandekar, learned Advocate further argues that the agreement in question is not adequately stamped and therefore, it cannot be acted upon in view of the Section 34 of the Maharashtra Stamp Act, 1958. He further contends that the parties by their mutual conduct, varied the agreement by executing exchange deed under which two apartments were transferred to the defendants in lieu of 1 H.R. land out of the total 5.27 (5.02 H.R. land) and therefore the agreement is not enforceable.

6. As regards the first contention with respect to breach of agreement by failure to strictly adhere to schedule of payment, it

must be stated that, apart from the earnest money Rs.50,00,000/- which was paid on 08.12.2022 i.e. the date of execution of the agreement, the plaintiffs have paid further amount of Rs.3,97,00,000/- to the defendants from 25.09.2023 till 21.03.2025. The record indicates that prior to issuance of undated termination notice, which is served on plaintiffs on 10.05.2025, the defendants have not raised any objection with respect to the schedule of payment and have received amount from the plaintiffs from time to time till 21.03.2025.

7. The first contention with respect to Section 16 (b) of the Specific Performance Act and Section 55 of the Contract Act, is not worthy of acceptance for the purpose of determining *prima facie* case in view of the undisputed factual position that till issuance of termination notice, the defendants did not raise any objection with respect to the failure to agree with the schedule of payment. As regards the contention that the plaintiff Nos.1 and 2 in whose favour the agreement of sale dated 08.12.2022 is executed has committed breach of the agreement by entering into a further agreement with the plaintiff Nos.3 and 4, *prima facie* the said contention cannot be accepted in view of the following clause in the agreement of sale dated 08.12.2022.

“The vendor has also agreed to do the sale deed, in the name of purchasers/the name suggested by the purchasers...”

8. It must be stated that there is no dispute between the parties with respect to the execution of the agreement and contents thereof.

9. Apart from the aforesaid clause, the contention cannot be accepted at this stage, in view of Section 41 of the Contract Act and Section 15(b) of the Specific Relief Act. The defendants have expressly agreed that the sale deed pursuant to the agreement dated 08.12.2022 will be executed either in the name of the purchasers i.e. plaintiff Nos.1 and 2 or in the name of any persons suggested by them, who in the present case are plaintiff Nos.3 and 4.

10. The second contention with respect to breach of agreement on account of introducing the plaintiff Nos.3 and 4 also cannot be accepted at this stage when only a *prima facie* case is required to be considered.

11. The contention with respect to the deficit stamp duty is also liable to be rejected. Even assuming that the agreement is not adequately stamped, the same can be impounded at appropriate stage. These observations are without prejudice to contention of Mr. R.M. Bhangde, learned Advocate for the appellants that the

agreement is adequately stamped.

12. As regards the exchange deed, the contention of Mr. Chandekar, learned Advocate for the respondents/Cross-objector is that the parties have varied the agreed terms and therefore, the agreement of sale dated 08.12.2022 is not enforceable is also liable to be rejected, since the exchange deed is executed on 04.07.2023 and admittedly thereafter payments are received by the defendants from the plaintiffs till 15.03.2025.

13. In view of the aforesaid, it is difficult to take a different view of the matter with respect to *prima facie* then the one which is taken by the learned trial Court. As regards the other two stipulations for grant of temporary injunction, since the agreement of sale pertains to immovable property, monetary compensation will normally not be a substitute for specific performance. Therefore, the injury which is likely to be caused to the plaintiffs in the event of refusal of specific performance cannot be commenced in terms of money. As regards balance of convenience, it is *prima facie* appears that the plaintiffs have parted with 85% to 95% of the total sale consideration. There is a specific statement in the plaint that the plaintiffs are ready to deposit the balance sale consideration as and when directed by the learned trial Court. In view of the aforesaid, it

must be held that balance of convenience is heavily loaded in favour of the plaintiffs.

14. In view of the aforesaid, Cross-objection stands **dismissed**.

APPEAL AGAINST ORDER NO.27 OF 2025

15. The original plaintiffs have also challenged the order of temporary injunction passed by the learned trial Court to the extent of refusal of mandatory injunction by the learned trial Court. The contention of Mr. Bhangde, learned Advocate for the appellants / plaintiffs is that the plaintiffs have made payment of sale consideration to the defendants in the terms of the agreement and further that they are ready to deposit balance amount of Rs.1,20,00,000/- with this Court immediately. The learned Advocate contends that the agreement in question is entered into after the specific Relief Act, 1963 is amended and that after the amendment, grant of specific relief is no longer a matter of discretion but a vested right of the plaintiffs. He therefore contends that by way of mandatory injunction, directions to execute and register the sale deed subject to final outcome of the suit and for placing the plaintiffs in possession ought to have been granted by the learned trial Court.

16. The learned Advocate contends that the suit will take years together for adjudication, as a result of which the defendants will enjoy almost the entire sale consideration received from the plaintiffs in terms of agreement without the plaintiffs being able to reap benefit of the agreement.

17. Mr. Chandekar, opposes the prayer contending that no grounds for extraordinary relief are made out by the plaintiffs. Mr. Bhangde, has places reliance on judgments of this Court in the case of *Swashray Co-op. Housing Society Ltd. & Ors. ..vs.. Shanti Enterprises*, (in Commercial Arbitration Petition (L) No.10432/2023, decided on 03.11.2023) and in the case of *Evershine Builders Pvt. Ltd. ..vs.. Nina Bhagat and Ors*, (at Principal seat, decided on 20.10.2023). Both these judgments pertain to agreement for redevelopment of existing apartment scheme. This Court has held that individual members of housing society do not have right to oppose redevelopment agreement entered into by the concerned society. Having regard to the decision taken by the society and agreement made by the prospective purchaser/developer for redevelopment relief of mandatory injunction in the form of directions to the individual apartment owner/s to vacate the property and deliver possession thereof to the

builder/developer is granted. With respect, the ratio of the said cases cannot be applied to the facts of the present case where the individuals who have entered into agreement are opposing the specific performance of agreement. In the said cases, it is held that individual member of the Co-operative Housing Society does not have locus to oppose redevelopment.

18. Apart from the aforesaid decision, he also places reliance on judgment of the Delhi High in the case of *Ashok Rai ...vs.. Kailash Nath & Associates*¹, and contends that the plaintiffs should atleast be placed in possession of the suit property as Court appointed receiver. He contends that the defendants may play mischief and may part with the possession of the suit property in order to defeat the claim of the plaintiffs. Mr. Chandekar, strongly opposes the said request on the ground that there is no prayer for appointment of receiver.

19. It is almost undisputed that around 85%-90% of the sale consideration is received by the defendants. The defendants have terminated the agreement. It is necessary to protect the interest of plaintiffs by preserving the suit property till final disposal of the suit. Having regard to totality of the circumstances, in my

¹ 1998 SCC Online Del 457

considered opinion, the ends of justice will be met by modifying the order passed by the learned trial Court by directing that till final disposal of the suit, the defendants shall not create any third party interest over the suit property in any manner whatsoever and shall not part with possession of the suit property in favour of any third person or alter the nature of the suit property till final disposal of the suit. Apart from this, the plaintiffs and defendants will be in joint possession of the suit property as Court Receivers. However, in the event of threat to the property, plaintiffs and defendants can individually take appropriate measures for protection of the suit property and maintaining *status quo* with respect to the same without consent or concurrence of the other. The physical possession shall continue to remain with the defendants. The plaintiffs are directed to deposit the balance sale consideration of Rs.1,20,00,000/- with the learned trial Court on or before **30.03.2026**. The objection pertaining to the prayer is not accepted since the plaintiffs have sought larger relief of being placed in physical possession of suit property as against which lesser relief of joint possession as Court Receivers with defendants is granted with further direction that physical possession shall remain with defendants.

20. Appeal is **partly allowed** in the aforesaid terms.

21. At this stage, Mr. Chandekar, learned Advocate for the defendants makes a request to stay the present order for a period of four weeks since respondents intend to challenge present order before the Hon'ble Supreme Court. As noted above, the equities are strongly balanced in favour of the plaintiffs. In view of the aforesaid, request for grant of stay to the present order is **rejected**.

(ROHIT W. JOSHI, J.)

C.L. Dhakate