



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

WRIT PETITION NO.531 OF 2026

PETITIONERS
(Orig. Plaintiffs/D.Hrs.)

- :-** 1) Smt. Chhayabai Wd/o Tulsiram Fandi
Aged about 81 years, Occ. : Household,
2) Sanjay S/o Tulsiram Fandi (Dead)
Through LRs-
2(a) Smt. Durga Wd/o Sanjay Fandi
Aged about 35 years,
2(b) Ku. Yamini D/o Sanjay Fandi
Aged about 18 years, Student
3) Ratnamala D/o Tulsiram Fandi
Aged about 39 years, Occ.: Household,
4) Hemraj S/o Tulsiram Fandi
Aged about 38 years, Occ.: Agriculturist
5) Yogita D/o Tulsiram Fandi
Aged about 36 years, Occ.: Household,
6) Uttam S/o Lataruji Fandi
Aged about 70 years, Occ.: Agriculturist
All Petitioner are R/o. Sharda Chowk,
Mouda, Tah. Mouda, Dist. Nagpur.

..VERSUS..

RESPONDENT
(Orig. Deft./J,Dr.)

:- Deorao S/o Sitaram Vaidya
Aged about 83 years, Occ. Business &
Agriculturist, R/o. Near Jai Stambh,
Mouda, Tah. Mouda, Dist.-Nagpur.

Mr. Abhay Sambre, Advocate for Petitioners.
Mr. O.A. Ghare, Advocate for Respondent.

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

DATE : **21/01/2026**

ORAL JUDGMENT :

1. Heard finally with consent of learned counsel for the respective parties.

2. The present petition takes exception to the order dated 10.09.2025, passed by the learned Civil Judge Junior Division, Mouda, on application at Exhibits-65 and 74 in Regular Darkhast No.08 of 2013. The petitioners are the original plaintiffs who had filed a suit being Special Civil Suit No.1063 of 1997 *inter alia* contending that the defendant had entered into an agreement of sale with them with respect to the suit property, which is a saw mill situated at Mouda and that the defendant had not paid the consideration of Rs.2,00,000/- as per the agreement. The prayer in the suit was to direct the defendant to pay an amount of Rs.2,00,000/- and to get the sale deed executed from the plaintiff with respect to the suit property within a stipulated time frame or direct the defendant to deliver possession of the suit property to the plaintiff. The said suit came to be decided vide judgment and decree dated 04.01.2006. The learned trial Court has directed the defendant to pay a sum of Rs.2,00,000/- to the plaintiff with interest at the rate of 12% per annum from the date of institution of

suit i.e. 09.10.1997, till the date of payment, i.e. 30.04.2006. The decree further provides that in the event of failure on the part of the defendant to make payment, it will be open for the plaintiff to execute the decree. It is not in dispute that the defendant did not deposit the amount as directed by the learned trial Court within the stipulated time period. However, the defendant filed an application for permission of time and to deposit the amount vide M.A.N.R.J.E. No.48 of 2009, which came to be allowed vide order dated 23.09.2009.

3. It will also be pertinent to mention that the present petitioners/plaintiffs has also filed M.J.C. No.08 of 2012 under Section 28 of the Specific Relief Act, 1963, for rescission of agreement of sale dated 20.02.1984 executed between the parties. The said application was rejected by the learned trial Court vide order dated 26.06.2024 and Writ Petition No.4515 of 2024 filed by the present plaintiff challenging the said order came to be dismissed by this Court vide order dated 23.08.2024.

4. In this backdrop, the present petitioners filed an application vide Exh.65 in Regular Darkhast No.08 of 2013 for dismissal of the execution proceedings on account of failure on the part of the defendant to deposit the amount within the period

stipulated under the decree. The said application is rejected by the learned Executing Court vide impugned order dated 10.09.2025.

5. The fact that amount is not deposited within the stipulated period is not in dispute. However, the application under Section 28 for the Specific Relief Act, filed by the present petitioner was rejected by the learned trial Court and the said order is confirmed by this Court. In view of the above, the prayer for recession of contract on account of failure to deposit the amount within a stipulated period is rejected as the said order has assumed finality between the parties.

6. It is also not in dispute that the application filed by the defendant for seeking permission to deposit amount came to be allowed on 23.09.2009 i.e. after the time stipulated in the decree had lapsed. This order dated 23.09.2023 is also not challenged. The learned Executing Court has rejected the application at Exh.65 relying on the aforesaid two orders.

7. In the considered opinion of this Court, the learned Executing Court was fully justified in rejecting the application at Exhibit-65 which was filed seeking dismissal of execution proceeding on the ground that plaintiff did not deposit amount as per decree, in view of earlier order rejecting application for

recession of contract, which is confirmed by this Court as also order dated 23.09.2009 granting permission to deposit the amount. The order rejecting the application at Exh.65 therefore does not warrant any interference.

8. Another application came to be filed by the present petitioner vide Exh.74 *inter alia* contending that a defendant in a civil suit is not entitled to file execution proceeding and that the right to file execution proceeding is vested with the plaintiff alone. Perusal of the decree passed by the learned trial Court will demonstrate that the learned trial Court passed a decree for recovery of money in favour of the plaintiffs and also a decree in favour of the defendant directing execution of the sale deed in his favour by the plaintiffs. The term 'decree holder' is defined under Section 2(3) of the Code of Civil Procedure, 1908 to mean any person in whose favour a decree capable of execution is passed. The definition is not restricted to a plaintiff alone. In case any executable order is passed in favour of the defendant, the defendant can also enforce the decree by filing execution proceedings. In view of the aforesaid, the learned Executing Court has not committed any error in permitting the execution proceedings to continue at the behest of the original defendant.

9. In view of the aforesaid, the impugned orders do not warrant any interference. Writ Petition is accordingly **dismissed** with no order as to costs.

(ROHIT W. JOSHI, J.)

C.L. Dhakate