



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

WRIT PETITION NO. 3432 OF 2025

1. Pravin Navalchand Chaudhary, Aged 62 years, Occ: Business, R/o 1327, Deshpande Layout, Nakoda Palace, Nagpur-8.
2. Jayesh Pravin Choudhari, Aged 38 years, Occ: Business, R/o 1327, Deshpande Layout, Nakoda Palace, Nagpur-8.

PETITIONERS

VERSUS

1. Dipti Avinash Gandhe, Aged 42 years, Occ: Business, R/o Plot no.3, Ayodhya Nagar, Behind Sai Mandir, Near Deshpande Aata Chakki, Nagpur – 440024.
2. Ramesh Janakrao Gandhe, Aged 67 years, Occ: Business, R/o Plot no.3, Ayodhya Nagar, Behind Sai Mandir, Near Deshpande Aata Chakki, Nagpur – 440024.
3. Vijay Suresh Chandwani, Aged 28 years, Occ: Business, R/o Kailash Bhawan, Plot no.34, Opp. Lata Mangeshkar Garden, Surya Nagar, Nagpur – 440035.
4. Vipul Suresh Chandwani, Aged 30 years, Occ: Business, R/o Kailash Bhawan, Plot no.34, Opp. Lata Mangeshkar Garden, Surya Nagar, Nagpur – 440035.
5. Vijay Govindram Bhojwani, Aged 59 years, Occ: Business, R/o Plot no.512, Kalpna Nagar, Opp. W.C.L. Quarter, Near Power Grid Square, Nagpur – 440026.
6. Chandrabhan Gobindram Bhojwani, Aged 62 years, Occ: Business, R/o Plot no.512, Kalpna Nagar, Opp. W.C.L. Quarter, Near Power Grid Square, Nagpur-440026.
7. M/s Desh Videsh Sales, a partnership Firm through its partner Dipti Avinash Gandhe, having its Office address Plot no.3, Ayodhya Nagar, Behind Sai Mandir, Near Deshpande Aatachakki, Nagpur-440024.

RESPONDENTS

Shri N.B. Bargat, counsel for the petitioners.
Shri M. Anilkumar, counsel for the respondents.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE : MARCH 24, 2026

ORAL JUDGMENT

RULE. Rule made returnable forthwith. Heard finally with consent of the learned counsel for the parties.

2. The petitioners have taken exception to the order dated 14.01.2025 passed by the Appellate Court rejecting the application for temporary injunction in the pending appeal.

3. The petitioners are the original plaintiffs who had filed a suit bearing Regular Civil Suit no.46 of 2023 for declaration, permanent and perpetual injunction and damages. In the said suit, the defendants filed an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (for short, 'the Code') seeking rejection of the plaint on the ground that the defendants had become owners of the suit property on the basis of a Sale Certificate and further in view of pendency of the proceedings before the Debts Recovery Tribunal, Nagpur the suit was not maintainable. By order dated 01.08.2023, the application under Order VII Rule 11 of the Code was allowed. The petitioners filed Regular Civil Appeal No.202 of 2023 challenging the order of rejection of plaint alongwith a separate application for injunction at Exhibit 5 which came to be rejected by order dated 14.01.2025. This order is subjected to challenge by way of instant petition.

4. The respondents in the instant petition have raised an objection to the maintainability of the petition on the ground that the application for temporary injunction filed by the petitioners was not maintainable since the plaint itself was rejected and on this count the instant petition is not maintainable. In support of its submissions, the respondents placed reliance on the judgment of the Hon'ble Supreme Court in ***IEEE Mumbai Section Welfare Association Versus Global IEEE Institute for Engineers***

[**Special Leave to Appeal (Civil) No.7235 of 2025**], delivered on 27.05.2025.

5. On this preliminary issue, the learned counsel for the petitioners submitted that in the wake of a *prima-facie* case in favour of the petitioners based on the actual possession and challenge to the Sale Certificate, the application for temporary injunction was required to be entertained.

6. Although the parties have raised several contentions with regard to the merits of the matter about right of the plaintiffs and that of the defendants based on a Sale Certificate executed pursuant to an E-Auction, the issue of maintainability of the petition needs to be dealt with first. Undisputedly, the application for temporary injunction was filed in the appeal in which the challenge is raised to an order passed under Order VII Rule 11 of the Code by which the plaint was rejected. As such, it is clear that there is no plaint which is alive and until the plaint is revived-restored, there could be no question of granting any temporary injunction with respect to the suit property. The position of law in this regard is dealt with by the Hon'ble Supreme Court in the judgment in ***IEEE Mumbai Section Welfare Association*** (supra), of which paragraph 5 is reproduced below:-

“5. Having heard learned counsel for the appellant and learned senior counsel for the respondent, we observe that in a case where an appeal is filed by being aggrieved by the rejection of a plaint in exercise of powers under Order VII Rule 11 CPC, the High Court ought not to have granted an order of temporary injunction. We say so for the reason that the plaint itself has been rejected by the Commercial Court and the correctness or

otherwise of the said rejection is a matter at large before the High Court. When the plaint itself has been rejected, it cannot be said that the appeal filed against such an order is a continuation of a suit. It may be that in the commercial suit the respondent herein had the benefit of an interim injunction, but once the plaint has been rejected by the trial court i.e. the Commercial Court, in the instant case, until it is revived/restored, an order of temporary injunction cannot operate against the defendant in the suit, who is the respondent in the appeal filed against the rejection of the plaint. In other words, it is necessary that there ought to be a subsisting plaint in order to seek an order of temporary injunction.”

7. In view of the enunciation of law by the Hon'ble Supreme Court and applying it to the instant matter, it becomes clear that the temporary injunction application filed by the petitioners in the appeal which was a challenge to the order passed under Order VII Rule 11 of the Code was not maintainable. Apart from this, a perusal of the impugned order passed by the Appellate Court reveals that by considering the fact that the plaintiffs have failed to make out any *prima-facie* case for the purpose of injunction, the Court has refused to grant any temporary injunction. It has been observed that the suit property was sold by the Bank in E-Auction and therefore the plaintiffs had no rights with respect to the suit property. It is recorded that the plaintiffs have failed to repay the loan taken from the Bank and the resultant procedure of E-Auction was undertaken. As such, by considering the controversy involved, the Appellate Court has exercised its discretionary powers rejecting the application for temporary injunction.

8. In view of above mentioned factual and legal aspects, I am of the considered opinion that the application for temporary injunction which was filed in the appeal challenging the order of rejection of plaint was not maintainable in view of the fact that there is no plaint which was revived-restored. As such, the reliance placed by the respondents on the judgment of the Hon'ble Supreme Court in ***IEEE Mumbai Section Welfare Association*** (supra) is appropriate. The reasons recorded by the Appellate Court while passing the impugned order are not at all perverse warranting indulgence under Article 227 of the Constitution of India. I do not find any merits in the contentions canvassed by the petitioners and the petition is therefore dismissed with no order as to costs. Rule stands discharged.

(PRAFULLA S. KHUBALKAR, J.)