

MHNS010021592019 Exhibit No. : 14.



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IN THE COURT OF THE DISTRICT JUDGE-4 AT NASHIK.

(Before Sachin B. Bhansali)

REGULAR CIVIL APPEAL No. 208 OF 2019

1] Sandip Pundlik Bomble]
 Age : 34 Yrs., Occ. : Service]
]
 2] Sau. Manisha Sandip Bomble]
 Age : 29 Yrs., Occ. Housewife]
]
 Both R/o. 164, S.No. 36-A,]
 Seetasmruti, Khutwad Nagar,]
 Kamatwade, Nashik.]

Appellants
 (*Original Plffs.*)

Versus

1] Pravin Tulshiram Somaiyya]
 Age : 54 Yrs., Occ. : Business]
]
 2] Sau. Devyani Pravin Somaiyya]
 Age : 44 Yrs., Occ. : Housewife]
]
 Both R/o. Sahadeo Colony,]
 Pumping Station,]
 Gangapur Road, Nashik.]
]

Respondents
 (*Original Defts.*)

- 3] Manjit Singh Dhupar]
Age : 39 Yrs., Occ. : Business]
R/o. A-3, 1st Floor, Padmadarshan]
Apmt. Anandwalli, Nashik.]

Appeal under Section 96 of the Code of Civil Procedure, 1908, against the Judgment and decree dated 26.02.2018 passed by the Ld. 4th Joint Civil Judge Senior Division, Nashik in Special Civil Suit No. 470 of 2014.

Shri. Ramesh S. Shirsath, Advocate for appellants.
Shri. S.B. Kolhe, Advocate for respondent Nos 1 and 2.
Shri. A.S. Misar, Advocate for respondent No.3.

J U D G M E N T

(Delivered on this 20th February, 2026)

1. This appeal is directed against the judgment and decree passed by the learned 4th Joint Civil Judge Senior Division, Nashik, in Special Civil Suit No. 470 of 2014, dated 26.02.2018, whereby the learned trial court dismissed the prayer for specific performance of an agreement to sell, but decreed the suit in alternative for the refund of earnest money.

2. The Appellant (Original Plaintiff) is aggrieved by the denial of the main relief of specific performance.

3. Facts in Brief :

i) Description of the Property :

The landed property is situated at Survey No. 28/1/2/1, Tukdi, Taluka Nashik, District Nashik, Anandavalli, within the limits of Nashik Municipal Corporation,

admeasuring 0:32:39 hectares (3259 sq. m.). Padmadarshan Plaza Apartment stands thereon, with a built-up area of 1200 sq. m. The boundaries of the larger plot are as follows :

To East : Survey No. 28,
To West : Property of Shri Mashru,
To South : Survey No. 28, and
To North : Gangapur Road.

ii) The specific portion under claim is Flat No. A-3 (Flat No. 6 as per Corporation Building Plan), first floor, Building No. A, Padmadarshan Plaza Apartment, admeasuring 94.33 sq. m. (1015 sq. ft.), inclusive of furniture, fixtures, and fittings. Herein after it is termed as “*The Suit Flat*.” The boundaries of the suit flat are as follows :

To East : Open space,
To West : Staircase,
To South : Flat No. A-4, and
To North : Open space.

iii) The Suit Flat is owned by defendants No. 1 and 2. The Vendors appointed Mrs. Padma Vijay Parkhe as their agent to sell the Suit Flat. Upon the Plaintiffs’ approach through the agent, negotiations ensued between the Plaintiffs, the Vendors, and the agent, culminating in an oral agreement for sale on or about December 2012 at a total consideration of Rs. 23,00,000/- (Rupees Twenty-Three Lakhs only).

iv) The parties confirmed the transaction and executed a registered Agreement for Sale (साठे खत) on 29.12.2012 before the Deputy Registrar, Nashik-2, bearing Document No. 13449/2012. The Plaintiff paid Rs. 2,11,000/- (Rupees Two Lakhs Eleven Thousand only) to the Vendors vide cheque and cash. Key terms of the Agreement are :

- a] Sale consideration fixed at Rs. 23,00,000/- (Rupees Twenty-Three Lakhs only).
- b] Rs. 2,11,000/- paid as earnest money on execution.
- c] Balance Rs. 20,89,000/- (Rupees Twenty Lakhs Eighty-Nine Thousand only) payable within 3 months, by 19.03.2013.
- d] Vendors to deliver vacant possession upon execution of sale deed.
- e] Suit property declared free from encumbrances.
- f] Plaintiff to bear stamp duty and registration charges.
- g] Time bound till 19.03.2013; non-execution by Vendors renders Agreement subsisting, subject to specific performance.

v) The Plaintiffs duly complied with all conditions. To arrange the balance Rs. 20,89,000/-, the Plaintiffs applied for a home loan from HDFC Ltd., sanctioned for Rs. 14,00,000/- (Rupees Fourteen Lakhs only) on 10.01.2013. The remaining Rs. 6,89,000/- (Rupees Six Lakhs Eighty-Nine Thousand only) was arranged from the Plaintiff's father, Shri. Pundalik Sukaji Bombale.

vi) On 26.02.2013, the Plaintiff prepared the sale deed on Rs. 100/- stamp paper (Serial No. 119115, purchased from Nashik District Advocates Multi Co-op Society, Receipt No. 5350) and submitted it for registration at the Deputy Registrar, Nashik-5 (Data Entry No. 94558358291).

vii) Despite prior intimation, upon contacting Defendant No. 1 for execution, he falsely claimed to be out of station and later asserted tenancy in the suit property, postponing execution by one month. The Vendors repeatedly evaded execution with untenable excuses.

viii) On 11.03.2013, through Advocate Umesh Patel, the Vendors issued a notice to the Plaintiff, misrepresenting a security cheque of Rs. 6,00,000/- (Rupees Six Lakhs only) as payment, encashing it unilaterally. The Plaintiff replied on 21.03.2013, clarifying its security nature, leading to implied withdrawal of the notice.

ix) Fifteen days prior to filing, the Plaintiff visited the suit property and found Defendant No. 3 in occupation, claiming ownership via a sale deed from the Vendors (copy denied). Confronted, the Vendors admitted renting to Defendant No. 3, concealing the sale, thereby defrauding the Plaintiff. The Vendors thus breached the Agreement by conveying the suit property to Defendant No. 3 for higher consideration.

x) The Plaintiffs were ready, willing, and able to perform within the stipulated period, having secured finances expeditiously. No default lies with the Plaintiffs. The Vendors' breaches—evasion, fraudulent sale, and repudiation—constitute cause of action from 29.02.2013 onwards, continuing.

xi) The Plaintiffs are homeless, paying Rs. 8,000/- monthly rent (Rs. 1,52,000/- from March 2013 to October 2014). Current market value of equivalent property exceeds Rs. 35-40 lakhs. The Plaintiffs sought :

- a] Specific performance directing Vendors to execute and register sale deed in Plaintiff's favour, upon payment of balance Rs. 20,89,000/-;
- b] Possession of suit Flat;
- c] Mesne profits/rent at Rs. 8,000/- p.m. from 19.03.2013 ;
- d] Interest at 18% p.a. on Rs. 2,11,000/- from 29.12.2012;
- e] Costs; and
- f] Other reliefs.

4. Despite service of summons, the 1st & 2nd defendants (Vendors) failed to appear and were proceeded *ex-parte* vide order dated 21/01/2015 below Exh.1.

5. The 3rd defendant (Subsequent Purchaser) contested the suit by filing written statement (Exh.17), alleging that the plaintiff was not ready and willing, that the plaintiff committed delays, and that Defendant no.3 is a bona fide purchaser for

value without notice and claims dismissal of the plaintiff's suit.

6. To prove their claim, plaintiffs examined in all 04 witnesses mentioned below :

S.No.	Name of witness	Witness number	Exh.No.
01]	Sandip Pundlik Bomble	PW-1	Exh.24
02]	Deepraj Sanjay Lokhande	PW-2	Exh.35
03]	Prasanna Bhagirath Patil	Pw-3	Exh.38
04]	Sau. Padma Vijay Parakh	PW-4	Exh.41

7. In addition to oral evidence, plaintiffs also placed reliance upon following documentary evidence:

S.No.	Particulars of document	Proved through Witness no.	Exh./ Article no.
01]	RPAD Notice (With Not claimed endorsement)	PW-1	Exh.10
02]	RPAD Notice (With Not claimed endorsement)	PW-1	Exh.11
03]	Certified extract of stamp register	PW-1	Exh.36
04]	Agreement of sale	PW-1	Exh.43
05]	Loan Sanction Letter	PW-1	Exh.44
06]	Sale deed	-	Art.A
07]	Office copy of notice dated 11.93.2913	PW-1	Exh.45
08]	Notice reply dated 21/03/2012	PW-1	Exh.46
09]	Postal Acknowledgement of notice issued by plaintiff	PW-1	Exh.47

8. As against this, defendant no.3 (Subsequent purchaser) examined in all 02 witnesses mentioned below :

S.No.	Name of witness	Witness number	Exh.No.
01]	Manjeetsingh Dhupar (Subsequent Purchaser)	DW-1	Exh.52
02]	Pranav Dhanpal Karhare	DW-2	Exh64

9. In addition to oral evidence, the 3rd defendant also placed reliance upon following documentary evidence:

S.No.	Particulars of document	Proved through Witness no.	Exh./ Article no.
01]	Letter dated 20/02/2014 and 15/03/2014 issued by Advocate Milind Dhopavkar to Central Bank Housing Finance.	DW-2	Exh.67
02]	Sanction Letter dated 18/02/2014 issued by Central Bank Home Finance to Respondent No.3.	DW-2	Exh.68
03]	Verified copy of application for demand of loan.	DW-2	Exh.69
04]	Verified copy of receipt of Deed of Apartment.	DW-2	Exh.70
05]	Verified copy of declaration of Borrower.	DW-2	Exh.71
06]	Verified copy of deed of apartment dated 08/09/2009.	DW-2	Exh.72
07]	Extract of loan account.	DW-2	Exh.73

08]	Public notice issued in the daily newspaper Deshdoot dated 21/02/2014.	By court	Exh.86
09]	Public notice issued in daily news paper dated 31/07/2013	By court	Exh.87
10]	Certified copy of deed of apartment dated 12/03/2014.	By court	Exh.88

10. After evaluating evidence and material available on record and hearing contesting parties to the suit, the learned Trial Court denied main relief of specific performance holding that the plaintiff since execution of the agreement of sale dated 29.12.2012 till filing of the suit (11.11.2014) failed to issue a single notice to his vendors (1st & 2nd defendants) showing his readiness and willingness to perform his part of the contract by paying balance amount of cons of Rs. 20,89,000/- and thus, the sale deed may be executed. The learned trial court further held that the delay (on plaintiff's part) had brought about a situation where it would be inequitable to grant the relief of specific performance to the plaintiffs and thus granted alternative relief of refund of earned money of Rs.2,11,000/- along with interest @ 8% p.a. from the date of filing of the suit till its actual realisation.

11. Pertinently, the learned Trial Court held the Agreement to Sell was genuine. The Plaintiff failed to prove "readiness and willingness" to perform within the stipulated

time, constituting "delay and laches". Therefore, the discretionary relief of specific performance was denied, and only a refund of the earnest money with interest was granted.

12. I have heard the arguments of learned counsel for the appellants and learned counsel for respondent no.3. The appellants counsel also placed on record their written notes (Exh.13).

13. The appellant's counsel argued that respondents 1 and 2's non-appearance admits the claim. An agreement for sale was executed on 19/12/2012, registered on 29/12/2012, with completion by 19/03/2013. The appellant applied for a loan on 22/12/2012, sanctioned on 10/01/2013, and purchased a stamp on 26/02/2013, demonstrating readiness. Respondents 1 and 2 sold the property to respondent 3 for ₹35,00,000, breaching the agreement. The appellant seeks specific performance or compensation of ₹23,00,000. The lower court's decision is flawed; the appeal should be allowed, setting aside the judgment, with costs.

14. *Per contra*, the learned counsel for 3rd Respondent argued that the plaintiff failed to take steps to execute the sale deed within the stipulated time, and therefore, the sale in favour of 3rd Respondent is valid. The learned trial court has rightly appreciated the pleadings and evidence presented on record from both sides and rightly declined the main relief and granted alternate relief of refund of earnest money. Hence, the learned

counsel urged for dismissal of the appeal with costs.

15. Having heard and upon perusing the records and proceedings, following points arise for the determination and i record my findings with reasons to follow :

Points for Determination	Findings
01] Whether the plaintiffs have proved that defendants no.1 and 2 agreed to sell the suit flat to them for a consideration of Rs.23,00,000/- by an agreement to sell dated 19.12.2012 registered on 29.12.2012?	.. In the affirmative.
02] Whether the plaintiffs further have proved that they paid Rs.2,11,000/- to defendants no.1 and 2 towards earnest amount?	.. In the affirmative.
03] Whether the plaintiff was always ready and willing to perform his part of the contract?	.. In the negative.
04] Whether the delay in executing the sale deed constitutes "laches" justifying the denial of specific performance?	.. In the affirmative.
05] Whether the learned trial court was justified in declining the main relief of specific performance and granting alternative relief of refund of earnest money in favour of the appellant/ plaintiff ?	.. In the affirmative.

6] What order and decree? .. As per final order.

REASONS

As to points no.1 and 2 :

16. At the very outset, the plaintiffs specifically averred in the plaint and produced evidence through the testimonies of PW-1 Sandeep and PW-4 Mrs. Padma Parakh that plaintiffs with an intention to purchase flat no.4 / Suit Flat entered into an agreement with defendants no.1 and 2 on 19.12.2012 when both parties on certain terms and conditions agreed to purchase - sale the suit flat for a total consideration of Rs.23,00,000/-. The agreement was produced before the learned trial court and proved through PW-1's unchallenged testimony vide Exh.43.

17. Perusal shows that the said agreement (Exh.43) was executed between parties supra on 19.12.2012 and subsequently registered with Sub-Registrar's Office at Serial no. 13449 /2012 on 29.12.2012. The payment details are provided in Clause no.6 as below :

अ.क्र.	रक्कम रुपये.	तपशिल
01]	Rs.1,11,000/-	(अक्षरी रु. एक लाख अकरा हजार फक्त) लिहून घेणार यांनी लिहून देणार यांना दि. 30.11.2012 रोजी रोख स्वरूपात दिले. भरण्याबाबत तक्रार नाही.
02]	Rs.1,00,000/-	(अक्षरी रु एक लाख फक्त) लिहून देणार यांना लिहून घेणार यांनी आय. सी. आय. सी. आय बँक येथील दि. 19.12.2012 चे चेक अन्वये दिले.
03]	Rs.20,89,000/-	(अक्षरी रु. विस लाख एकोन्नवद हजार फक्त) लिहून देणार

		यांना लिहून घेणार यांनी आज पासून 3 महिन्यांचे आत वित्तीय संस्थे कडून कर्ज काढून द्यावयाचे आहे.
04]	Rs.23,00,000/-	मिळकतीची एकुण किंमत.

18. The terms and conditions enumerated in the agreement are explicitly clear and accurate. The same are reproduced hereunder :

- 7] सदरचे मिळकतीचा कबजा हा लिहून देणार यांना लिहून घेणार यांचेकडून संपूर्ण किंमत मिळाल्यानंतर खरेदीखताचे वेळेस द्यावयाचा आहे. असे उभयतांचे संमतीने ठरले आहे.
- 8] उपरोक्त व्यवहाराची मुदत उभयतांचे दरम्यान दि. 19.03.2013 पावेतो ठरली आहे. सदरचे मुदतीत लिहून देणार यांनी हस्तांतर पत्र करून द्यावयाची आहे. मात्र लिहून घेणार यांनी सदरचे मिळकतीचे खरेदीखत मुदतीत न केल्यास सदरची साठेखत हे रद्द समजले जाईल ही या साठेखतातील महत्वाची अट आहे [Emphasis supplied].
- 9] सदरचे साठेखताचा संपूर्ण खर्च म्हणजेच स्टॅम्प, नोंदणी फी, वकिल फी. टायपिंग, व इतर अनुषंगिक खर्च हा लिहून घेणार यांनीच केलेला व सोसलेला आहे. तसेच फरोक्त खरेदीखताचा खर्च देखील लिहून घेणार यांनीच करावयाचा आहे.

19. Thus, from Clause no.7 supra it stands crystallized that only upon receipt of entire amount of consideration from the plaintiffs' defendants no.1 and 2 and at the time of execution of the sale deed the possession of the suit flat was agreed to be delivered. Furthermore, as per Clause no.8; the agreed date for performance was 19.03.2013 with a specific stipulation that upon failure of plaintiffs to get the sale deed executed within stipulated time the said deed of sale (साठेखत) shall be deemed to

be cancelled. Now from this specific stipulation supra, it is evident that time for execution of the sale deed up to 19.03.2013 was essence of the contract (साढेखत).

20. The Hon'ble Bombay High Court in *M/S. Jasubhai Business Services vs State Of Maharashtra on 14 December, 2011* has held that as a general proposition of law, in the case of the sale of an immovable property, there is no assumption as to time being the essence of the contract. However, if parties intend to make time as an essence of the contract, it must be expressed in unequivocal language. Any extension of its performance must also be categorical and direct in nature.

21. In the instant case, the agreement (Exh.43) clause 8 unequivocally goes to prove that the time was an essence of the contract. In view of above discussion, it stands crystallized that the plaintiffs and defendants no.1 and 2 entered into contract of sale *qua* suit flat for a total of Rs.23,00,000/- and defendants no.1 and 2 accepted Rs.2,11,000/- from the plaintiffs as an earnest money. Hence, points no.1 and 2 are answered in affirmative.

As to points no.3 to 6:

22. Notably, in a suit for specific performance of a contract, the pivotal issue before the court is the plaintiffs' readiness and willingness to fulfill their contractual obligations. To succeed, the plaintiffs must not only plead but also provide cogent proof of their readiness and willingness. Failure to

establish either aspect disentitles the plaintiff to the relief of specific performance.

23. Before advertng to the pleadings and evidence in the matter and this being a suit for specific performance of the contract, it would be advantageous for me to consider the law on specific performance of contract as follows:

24. In the case of ***Pukhraj D. Jain Vs. G. Gopalkrishna, (2004) 7 SCC 251***, the Hon'ble Supreme Court has held as follows :

6. Section 16(C) of the Specific Relief Act lays down that specific performance of a contract cannot be enforced in favour of a person who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.

Explanation II to this sub-section provides that the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction. The requirement of this provision is that plaintiff must aver that he has always been ready and willing to perform the additional terms of the contract. Therefore not only there should be such an averment in the plaint but the surrounding circumstances must also indicate that the readiness and willingness continue from the date of the contract till the hearing of the suit. It is well settled that equitable remedy of specific performance cannot be had on the basis of pleadings which do not contain averments of readiness and willingness of the plaintiff to perform his contract in terms of Forms 47 and 48 of CPC [Emphasis supplied].

25. In a suit for specific performance of an agreement, the twin requirements of “readiness and willingness” under

Section 16(c) of the Specific Relief Act, 1963, constitute distinct and mandatory prerequisites for the plaintiff's success. "Readiness" pertains to the plaintiff's continuous financial capacity and ability to tender the agreed consideration, as affirmed by the Hon'ble Supreme Court in *P. D'Souza v. Shondrilo Naidu (2004) 6 SCC 1*, where it was held that the plaintiff must demonstrate pecuniary resources sufficient to perform their part of the contract without undue delay. "Willingness," on the other hand, encompasses the plaintiffs' steadfast intention, desire, and conduct in adhering to the contract's terms throughout its subsistence, a distinction elucidated in *Hukam Singh v. Tokha (2012) 11 SCC 635*, emphasizing the plaintiffs' averments and actions as reflective of such resolve.

26. Both elements must coexist continuously from the date of the agreement until the decree's execution, failing which the suit must fail. This position was reiterated in *B. Santoshamma v. D. Sarala (2020) 19 SCC 80*, wherein the Hon'ble Apex Court underscored that any interregnum lapse in either readiness or willingness disentitles the plaintiff to equitable relief.

27. Upon analyzing the legal position enunciated supra and to find out whether the plaintiffs have pleaded the readiness and willingness to perform their part of the contract, I have perused the averments in the plaint in Spl. Civil Suit no.470/2014. To prove their readiness and willingness, the

plaintiffs have made certain averments in paragraphs no.5 & 6 of the plaint, which are reproduced below :

Averments in Marathi	Tentative translations
5. वादी यांनी ठरलेल्या मुदतीत मिळकतीचे फरोक्त खरेदीखत करणे कामी व अटीचे पालन करणेसाठी तसेच प्र. वादी यांना राहिलेली रक्कम रु.20,89,000/- (अक्षरी रु. विस लाख एकोणनव्वद हजार मात्र) देणे कामी वित्तीय संस्था एच.डी.एफ.सी कारपोरेशन लि. यांचेकडे कर्ज प्रकरण मंजुरी साठी दाखल केले सदरचे प्रकरण दि. 10.01.2013 रोजी मंजूर करण्यात येवून वादी यांना रक्कम रु. 14,00,000/- (अक्षरी रु. चौदा लाख मात्र) मंजूर करण्यात आले. तसेच रक्कम रु.6,89,000/- (अक्षरी रु. सहा लाख एकोणनव्वद हजार मात्र) वादीचे जनकपिता श्री. पुंडलीक सुकाजी बोंबले हे देणार होते व तशी रक्कम प्र. वादी यांना देण्यासाठी तयार ठेवलेली होती.	5. The plaintiff has filed a loan case with the financial institution HDFC Corporation Ltd. for approval to execute the sale deed of the property within the stipulated period and to comply with the condition and to pay the remaining amount of Rs. 20,89,000/- (in words Rs. twenty lakh ninety-nine thousand only) to the defendants. The case was approved on 10.01.2013 and the plaintiffs were approved with an amount of Rs. 14,00,000/- (in words Rs. fourteen lakh only). Also, the amount of Rs. 6,89,000/- (in words Rs. six lakh eighty nine thousand only) was to be paid by the plaintiff's father, Mr. Pundalik Sukaji Bombale and the same amount was kept ready to be paid to the defendants.
6. वादी यांचे कडे रक्कम रु.20,89,000/- (अक्षरी रु. विस लाख एकोणनव्वद हजार मात्र). वादी नं. 1 व 2 यांना देणेसाठी तयार असल्याने वादी यांनी फरोक्त खरेदीखताचा दस्त दि. 26.02.2013 रोजी तयार केला त्याकरीता रक्कम रु. 100/- चा स्टॅम्प वादीचे नावाने खरेदी केला सदरचा स्टॅम्प नाशिक येथील दि. नाशिक डिस्ट्रीक्ट अडव्होकेट मल्टी को. ऑप सोसायटी नाशिक यांचे कडून खरेदी केला व सदरचे स्टॅम्प यास	6. The plaintiff has an amount of Rs. 20,89,000/- (in words Rs. twenty lakh ninety-nine thousand only). Since the plaintiff is ready to pay the amount to plaintiff no. 1 and 2, the plaintiff prepared a deed of sale on 26.02.2013 for which a stamp of Rs. 100/- was purchased in the name of the plaintiff. The said stamp was purchased from Nashik District Advocate Multi Co. Op Society Nashik and the said stamp was given serial no. 119115. The said stamp was purchased and the said stamp

अनुक्रम नं. 119115 देण्यात आला सदरचा स्टॅम्प खरेदी केला म्हणून सदरचे स्टॅम्प वेंडर यांनी रितसर पावती दिलेली आहे. व सदरचे पावतीस 5350 असा नंबर देण्यात आलेला आहे. व खरेदीखताचा दस्त वादीने तयार केलेला आहे. सदरचा दस्त नोदणीकृत करणे कामी मे. दुय्यम निबंधक साो नाशिक - 5 यांचे कडे डाटा एंट्री नं. 94558358291 अन्वये नोदणीसाठी दि. 26.02.2013 रोजी पाठविण्यात आला.	vendor has given a receipt in return. And the said receipt has been given number 5350. And the deed of sale has been prepared by the plaintiff. The said document is to be registered with the Deputy Registrar, Nashik-5, under data entry no. 94558358291 for registration sent on 26.02.2013.
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28. To prove that the plaintiffs were and are ready and willing to perform their part of the contract they examined in all 04 witnesses.

29. PW-1 Sandip's examination-in-chief largely echoes the plaint, but his cross-examination reveals he and his wife testified, with her not authorizing him via power of attorney. He earns ₹48,000/- gross and ₹27,000/-net monthly. Knowing defendants 1 and 2 since 2012 via Parakh Properties, he paid ₹11,000/- cash, ₹1 lakh cash, and ₹1 lakh cheque, with receipts available. No action was taken for 22 months post-agreement. He is unaware of defendant 3's 2005 agreement or ₹30 lakh loan, and defendant no.3 now possesses the property via 2014 purchase deed. He denied collusion, disputing allegations of a void transaction.

30. PW-2 Deepraj Lokhande, a junior clerk at the Sub-Registrar Office since 2006, testified about document registration procedures. He stated that a ₹100/- stamp on a purchase deed was purchased by Adv. Yogita Vidhate from Sandeep Pundalik Bombay (but not examined this purchaser), as per register entry (page 28, line 2). The stamp was sold on 26/02/2013 (No. 110115). He brought the register and filed a verified copy (Exh.36). During cross-examination, he stated that no one personally collected the stamp, and the certified copy doesn't mention the purpose or signature of the collector. Anyone can buy stamps in anyone's name, and incomplete documents receive remarks.

31. PW-3 Prasanna Bhagirath Patil, a Senior Manager at HDFC Ltd. since July 2007, testified that the plaintiff applied for a home loan on 22/12/1992, sanctioned for ₹14,00,000 on 10/01/2013, with 20-year EMI at 10.25% interest. He identified the loan approval officer's signature but couldn't recall the EMI amount. The original loan papers were discarded after three years; only a scanned copy remains. During cross-examination, he stated that the plaintiffs didn't provide property documents, and the loan wasn't disbursed. The disbursement process wasn't followed, and he had no knowledge about the loan proposal.

32. PW-4 Padma Vijay Nahar, a property agent, testified that she facilitated the sale of Flat No. 3, Padam Darshan Plaza Apartment, between the plaintiffs and defendants no. 1 and 2. The agreed price was ₹23,00,000, with the plaintiffs paying

₹2,11,000/- via deposit slip, ₹6,89,000/- in cash, and ₹14,00,000 via loan. Defendant No.1 allegedly deposited a ₹6,00,000/- security cheque without notice, which bounced. The plaintiffs discovered the property was sold to defendant No.3. During cross-examination, PW-4 stated she had a good relationship with the plaintiff, knew defendant No.1 through business, and wasn't aware of any public notice issued by the plaintiff. She denied allegations of fabricating evidence and claimed the loan was approved but not disbursed.

33. In contrast, defendant No.3 provided his testimony before the learned trial court. DW-1 Manjeet Singh Dhupar's examination in-chief was a verbatim reproduction of their written statement. However, during cross examination, he testified that he knew defendants 1 and 2 for about a year before purchasing the property in March 2015. He had title verification done and took a loan from Central Bank. He produced an agreement (with List Exh.54/6) detailing payments, including a ₹2 lakh cheque dated 22/8/2013. He claimed no prior dealings with defendants 1 and 2 before 22/8/2013. He denied knowledge of their earlier transaction with the plaintiffs or possessing a 17/02/2005 agreement. He stated he didn't know if a certified copy existed and couldn't recall submitting a title report to Central Bank. He denied giving false evidence.

34. Defendant No.3 examined one Pranav Dhanpal Karhade, who testified that he is in the employment with Cent Bank, Home Finance. He further testified about providing

Rs.30,00,000/- to defendant No.3 towards housing loan for purchase of the suit flat. He proved loan documents vide Exhs. 67 to 73. During the cross-examination, nothing incriminating was elicited to discard the version of this witness.

35. Thus, from the aforesaid pleadings and evidence it is crystallized that while the plaintiffs filed the suit within the limitation period, the evidence shows a delay of 22 months after the stipulated date (19.03.2013). As discussed supra, the time up to 19.03.2013 for execution of sale deed was essence of contract. Plaintiffs through the testimonies of PW-1 and PW-3 Prasanna Bhagirath Patil attempted to prove that the plaintiffs had been ready with the consideration amount of ₹14,00,000/- from the HDFC Ltd., and ₹6,89,000/- in cash but not provided the details of such cash.

36. Significantly, defendants No.1 and 2 issued plaintiffs with a notice calling upon them to make payment of ₹ 6,00,000/- as the cheque issued by them was dishonoured due to sufficiency of funds. The notice is produced and proved by the plaintiffs themselves vide Exh.45. Perusal shows that in discharge of legal liability, and for repayment of hand loan, the defendant Nos. 1 and 2 had issued the said notice.

37. Plaintiffs responded the aforementioned notice vide reply dated 21.03.2013 vide Exh.46. Perusal shows that the plaintiffs responded that the dishonoured cheque was given

towards security of the sale-purchase transaction of suit flat. Pertinently observations in Para-5 of the said notice, are relevant and therefore, the same are reproduced alongwith its tentative translation as under :

Averments in Marathi	Tentative translation
5. आमचे पक्षकार हे तुमचे पक्षकार यांना रक्कम रु.14,00,000/- (अक्षरी रु.चौदा लाख मात्र) बँकेचे मंजूर झालेले आहे ते घेवून व उर्वरित रक्कम रु.6,89,000/- (अक्षरी रु. सहा लाख एकोननव्वद हजार मात्र) स्विकारून खरेदीखत करून देण्याचे अंगिकारले आहे. तुम्ही 3 दिवसात आमचे पक्षकार यांना बँकेने तुमचे नावे काढलेला डिडी स्विकारून व रु.6,89,000/- (अक्षरी रु. सहा लाख एकोननव्वद हजार मात्र) स्विकारून खरेदीखत लिहून द्यावे असे तुम्हास या नोटीसीने सुचित करण्यात येत आहे. तसे करण्यास चुकल्यास तुमचे विरुद्ध योग्य ती कोर्ट कार्यवाही करणे भाग पडेल तसेच तुम्ही पाठविलेली नोटीस कायदेशिर नसल्याने ती मागे घेण्यात यावी या उलट तुम्ही कोर्ट कार्यवाही केल्यास होणा-या खर्चास व परिनामास तुमचे पक्षकार हे स्वतः जबाबदार रहातील यांची नीद घ्यावी तसेच या नोटीसीचा खर्च रु.5,000/- तुमच्यावर ठेवण्यात आलेला आहे. यांची नीद घ्यावी. कळावे हे नीटीस उत्तर.	<i>Our clients, your clients, have agreed to issue a sale deed by accepting the amount of Rs.14,00,000/- (Rs. Fourteen Lakhs in writing only) approved by the bank and the remaining amount of Rs.6,89,000/- (Rs. Six Lakhs Ninety One Thousand in writing only) within 3 days. You are hereby notified that you should accept the DD drawn in your name by the bank and execute a sale deed by accepting Rs.6,89,000/- (Rs. Six Lakhs Ninety One Thousand in writing only). Failure to do so will result in appropriate court action being taken against you and the notice sent by you being invalid and should be withdrawn. On the contrary, you are hereby informed that your clients will be responsible for the costs and consequences of any court action and the cost of this notice is Rs.5,000/-. They should be taken care of. The answer to the question should be known.</i>

38. A perusal of the draft sale deed (Exhibit-A) reveals that the stamp paper was purchased in the name of Advocate Yogini Vidhate. While the appellant's name appears as the purchaser through the said Advocate, the signature of the purchaser remains blank. This anomaly creates doubt in the mind of the Court regarding the true purchaser of the stamp and the person for whom it was procured. Consequently, the appellants' contention that the stamp was purchased on their behalf stands unproved even on the preponderance of probabilities.

39. It is pertinent to note that the appellants remained silent until the receipt of notice (Exhibit-45) from Respondent No. 1 through their Advocate, Umesh Patel. The appellants claim readiness and willingness to perform their part of the contract, asserting that Appellant No. 1, Sandip Bomble, made repeated attempts—either through personal meetings or telephonic conversations with Respondent No. 1—to secure execution of the sale deed in respect of the suit flat. Despite Respondents No. 1 and 2 protracting or denying execution for one reason or another, it is shocking and surprising that the appellants adopted a passive stance, allowing the stipulated time for execution to lapse without any sale deed being executed.

40. Notably, the suit was instituted on 11.11.2014, whereas the deed of apartment (Exh.88) in favour of

Respondent No. 3 was executed by Respondent Nos. 1 and 2 on 12/03/2014. Thus, the suit was filed nearly 11 years after the expiry of the agreed date for execution of the sale deed.

41. Respondent No. 3, in his testimony before the learned trial Court, candidly stated that he was a bona fide purchaser for value without notice. He had conducted due inquiries and published a public notice in the newspaper (Exh.86) on 21/02/2014 and 02/08/2013 vide Exh.87, inviting objections from any quarter within the stipulated time regarding the suit flat prior to his purchase. No objections, including from the appellants, were raised against the sale transaction between the respondents *inter-se*. The appellants' conduct in failing to object to the public notice and permitting the deed of apartment to proceed warrants an adverse inference that they were neither ready nor willing to perform their part of the contract.

42. In light of the aforesaid evidence, the learned trial Court rightly held that the appellants failed to prove their readiness and willingness to perform their part of the contract and answered Issue No. 3 in the negative. The available evidence and pleadings fall far short of the requirements under Form 42 appended to the Code of Civil Procedure, 1908. The appellants have thus failed to demonstrate that the discretion exercised by the learned trial Court was perverse or contrary to settled legal principles. I endorse the view taken by the learned

trial Court and hold that the appellants have neither adequately pleaded nor proved their readiness and willingness to perform the contract. I further hold that Respondent No. 3 is a bona fide purchaser for value without notice.

43. The appeal preferred by the appellants, along with the grounds urged therein, is devoid of merit and deserves dismissal with costs.

44. Although Respondent Nos. 1 and 2 filed no counter-appeal or cross-objection seeking refund of the earnest money of Rs.2,11,000/-, the learned trial Court nonetheless granted such relief. As an appellate Court, I cannot interfere with this aspect of the decree.

45. For the foregoing discussion, point No. 3 is answered in the negative, points no. 4 and 5 are answered in the affirmative and to answer point No.6, I proceed to pass the following order.

ORDER

- 1] The appeal stands dismissed with costs.
- 2] The judgment and decree dated 26.02.2018 passed in Special Civil Suit No. 470 of 2014 by the Ld. 4th Joint Civil Judge Senior Division, Nashik is hereby confirmed.

- 3] The record and proceedings of the learned trial court be transmitted to that court after appeal period is over.
- 4] Decree be drawn up accordingly.
- 5] Appeal is disposed in above terms.

(Dictated and pronounced in open Court.)

Date : 20/02/2026

(Sachin B. Bhansali)
District Judge-4, Nashik