

**IN THE COURT OF 5TH ADDITIONAL DISTRICT JUDGE,
GANDHINAGAR**

R. C. A. No. 50/2025

LALBHAI MANGALDAS PATEL

...APPELLANT

VERSUS

PATEL HARGOVANBHAI RAMDAS HATHIDAS

...RESPONDENT

Appearance:

Ms. B. B. Naik, Mr. R. A. Pandya, Ld. Adv. for Appellant.

Mr. M. S. Prajapati, Ld. Adv. for Respondent.

ORDER BELOW EX. 5

**Application for Stay of Final Judgment & Decree Dated
01.05.2025 passed in R.C.S. No. 32/2020**

01. Read the application. Heard the Ld. Advocates for the parties. Perused the documents and judgment and decree of the Ld. Trial Court.
02. The Ld. Advocate for the appellant (Ori. Plaintiff) has submitted that, being aggrieved and dis-satisfied with the judgment and decree passed in R.C.S. No. 32/2020, by Ld. Principal Civil Judge, Mansa, whereby the Ld. Trial Judge was pleased to dismissed the suit with the observation that the plaintiff has failed to show readiness and

willingness for performing his part in the suit for specific performance, the appellant (Original-Plaintiff) has preferred the present appeal and along with the appeal has preferred the present application Ex. 5, and prayed to stay the order of Ld. Trial Court on the ground that;

The judgment and decree passed by Ld. Trial Court is illegal and against the settled principle of law and there are all the chances that the appellant will succeed in appeal and therefore, if pending the appeal the implementation of judgment and decree passed by Ld. Trial Court is not stayed, there are all the chances that the Respondents (Original Defendants) may sale the disputed land, though the appellant has executed registered Agreement to Sale and paid huge amount of consideration. Further, the appellant (Original-Plaintiff) has stated that, the Ld. Trial Court has earlier granted Temporary Injunction, however, the suit is dismissed erroneously. Further, it is submitted that, the appellant is having prima-facie case and the concept of balance of convenience is in his favour and if the stay as prayed for is not granted, under that circumstances, he will suffer irreparable loss. Therefore, on the above grounds he prayed to allow the present application and grant relief as prayed for. Ld. Advocate for the plaintiff has also relied upon the judgment of Hon'ble Supreme Court in Mohammad Hanif Mohammad Ibrahim Patel Vs. Pallaviben Rajendra Kumar Patel & Ors., reported in 2025 LiveLaw (SC) 1138.

03. The notice was served upon the respondent and they have appeared through their Ld. Advocate and filed reply to the appeal and present application vide Ex. 9 and denied all the facts of the present application and submitted that, the order passed by the Ld. Trial Court is just and proper and does not require any interference and the Ld. Trial Court has rightly held that the appellant has not produced any iota of evidence and failed to show readiness and willingness for performing his part. Therefore, the present application filed for stay is required to be rejected with cost.
04. In view of the aforesaid arguments advanced by both the side, the factual matrix of the suit is such that, the plaintiff and defendant has executed one registered agreement to sale and the plaintiff has paid consideration and the sale deed was to be executed within two months. However, the defendant has failed to do so and the plaintiff has filed the suit for specific performance. The suit was dismissed by the Ld. Trial Court, with the observation that the plaintiff has failed to demonstrate readiness and willingness as provided in Sec. 16 (c) of the Specific Relief Act, 1963. This Court has perused the documentary evidence produced on record and judgment and decree passed by Ld. Trial Court. From the perusal of record as well as judgment & decree of Ld. Trial Court, it is crystal clear and undisputed that, the parties have executed registered agreement to sale and plaintiff has paid consideration, the

Ld. Trial Court has also held in affirmative that the parties have executed registered agreement to sale in the impugned judgment. So, on perusing the registered agreement to sale Ex. 29, it could be believed at this stage that, the appellant has prima facie case. The appellant has further argued that, he has paid huge amount of consideration and as the property is in the possession of respondent and if they part with the property or transfer or alienate the property, the appellant will suffer irreparable loss and balance of convenience is also in favour of the appellant, which is also sustainable. So far as, ready and willingness and the interim relief was granted in suit and the suit is dismissed erroneously and other contentions raised in the appeal, are concerned those are matter of arguments. Looking to the aforesaid facts and circumstances and the law set out in the catena of judgments, if there exists element of prima facie case, irreparable loss and balance of convenience the Court can protect the right of the party by exercising discretionary power to do the justice and grant the relief of equity. The ratio laid down in the judgment of **Hon'ble Supreme Court in Mohammad Hanif Mohammad Ibrahim Patel Vs. Pallaviben Rajendra Kumar Patel & Ors., reported in 2025 LiveLaw (SC) 1138**, relied upon by the appellant also support the arguments of the appellant that, though the suit is dismissed the appellant is entitle for the stay of the judgment and decree. The ratio as laid down in the aforesaid judgment that, all the three

elements to grant the relief are to be decided independently and the Appellate Court should not only look into the final outcome of the suit and an application seeking interim relief filed before the Appellate Court cannot be dismissed solely because the suit for specific performance stood dismissed. Hence, under the above circumstances the present stay application of the appellant deserve to be allowed, the following order is passed, in the larger interest of justice.

::- O R D E R -::

- 1) Present application Ex. 5 is allowed.
- 2) The implementation of impugned judgment and decree dated 01.05.2025 passed in R.C.S. No. 32/2020 below Ex. 69, by Ld. Principal Civil Judge, Mansa, is stayed and consequently, respondents are temporarily restrained from creating third party rights in the suit property in any manner, till final disposal of present appeal.

**Pronounced and Signed in Open Court today on this
13th Day of February, 2026.**

**Date: 13.02.2026.
Place: Gandhinagar.**

**(Dilip Pukhraj Purohit)
5th Addl. District Judge,
Gandhinagar.
GJ00928.**