

MHKO070008942013

**ORDER BELOW EXH.239 IN SPECIAL CIVIL
SUIT NO. 27/2013.**



Shri. MahammadHussain Athanikar.

Vs.

Shri. Bashir Bagwan.

The present application is filed by the defendants under Order 14 Rule 1 of the Code of Civil Procedure read with Article 89 and 90 of Chapter 6 of Civil Manual. The plaintiff has filed his say (Exh.240) and objected the application.

2. Heard both sides. Perused the record. Read the written argument (Exh.243) submitted by the defendant. The learned advocate for the defendants has submitted that in the present suit the issues are already framed (Exh.69). However, following additional issues are required to be framed.

1. Whether plaintiff is entitled to get vacant possession of suit property from defendant ?
2. Whether time is essence of contract ?
3. Whether the suit of plaintiff is within limitation ?
4. Whether the plaintiff's conduct is bonafide and is entitled to get relief of specific performance ?
5. To whom greater hardship will be caused ?
6. Without seeking declaration in respect of notice of defendant dated 24.09.2013 the plaintiff is entitled for the relief of specific performance ?

3. On the other hand, learned advocate for the plaintiff has submitted that the evidence of the plaintiff is already completed and evidence of the defendants is commenced. The necessary issues are

already framed. Therefore, at this stage of the suit the defendants cannot file an application to frame additional issues. However, as per Order 14 Rule 5, the additional issues can be framed at any time before passing the decree. Therefore, there is no merit in the contention of the plaintiff that at this stage of the proceeding the application to frame additional issues cannot be filed.

4. The learned advocate for the plaintiff has relied on S.G.M. Properties and Investments Pvt. Ltd., Mumbai v. Basantkumar Bilasrao Rungta and anr., 2020(2) Mh.L.J. 225, wherein the Hon'ble Bombay High Court has held that

Under Order 14 Rule 1 issues arises when a material preposition of fact or law is affirmed by one party and denied by the other. Material preposition are those prepositions of law or fact which a plaintiff must allege to show right to sue or a defendant must allege to constitute his defence. And each material preposition affirmed by one party and denied by the other shall form the subject of a distinct issue.

On the other hand, learned advocate for the defendants has relied on Subhadrabai w/o. Bhauraoji Thakre v. Sharad s/o. Gopal Bhoyar and ors., 2025(6) ALL MR 311, wherein the Hon'ble Bombay High Court has held that it is necessary to frame the issue which goes to the root of the case. Furthermore, he has relied on Fiza Developers and Inter-Trade P. Ltd. v. Amci (I) Pvt Ltd. And anr., (2009) AIR (SCW) 6395, wherein the Hon'ble Supreme Court has held that purpose of framing issue is to identify material preposition of facts or law disputed by the parties and determine the burden of proof.

5. In view of the ratio laid down in the cases (cited supra), it is necessary to consider whether in the present suit, the additional issues

are required to be framed or not. On perusal of the plaint, it appears that the plaintiff has filed the present suit for seeking specific performance of the contract as well as for seeking vacant possession of the suit property and alternatively for seeking recovery of earnest money. It means that the plaintiff has specifically sought the relief of possession of the suit property. However, the issue regarding the said prayer is not framed. Hence, it is just and proper to frame the issue regarding the entitlement of the plaintiff to seek possession of the suit property as prayed by the defendants.

6. Learned advocate for the defendants has further submitted that the defendants have specifically pleaded that the time is essence of contract. Furthermore, the suit is not filed within the period of limitation. Therefore, both the issues are required to be framed. On the other hand, learned advocate for the plaintiff has submitted that the defendants have not specifically pleaded the said facts. Furthermore, the disputed property is a immovable property. Therefore, it is not necessary to frame said issues. In support of his contention he has relied on Govind Prasad Chaturvedi v. Hari Dutt Shastri and anr., 1977 AIR 1005. In that case the Hon'ble Supreme Court has held that when a contract relates to sale of immovable property it will normally be presumed that the time is not essence of contract. It is further held in that case that in absence of specific pleading or issues raised before the Trial Court, the question whether the time is essence of contract or not cannot be raised before the Hon'ble High Court in appeal.

7. On perusal of record, it appears that in the plaint paragraph No.15 the plaintiff has averred that "time is not the essence of contract". On the other hand, defendant Nos.1 to 5 in Paragraph No.11

of their written statement have specifically alleged that the time is essence of contract. It is a material preposition of the present suit. Therefore, it is necessary to frame the said issue as prayed by the defendants. Furthermore, as per Section 3 of the Limitation Act, it is not mandatory to make specific pleading regarding the issue of limitation. The Court can frame and determine the said issue even if there is no specific pleading regarding the limitation. Hence, it is just and proper to frame the issue regarding the limitation as prayed by the defendants.

8. Learned advocate for the defendants has submitted that the defendants had cancelled the agreement to sell taken place between the plaintiff and the defendants and communicated the same to the plaintiff by issuing notice dated 24.09.2013. Therefore, it is obligatory on the plaintiff to challenge the said notice. On the other hand, learned advocate for the plaintiff has submitted that the defendants in their notice dated 24.09.2013, it is not specifically averred that the alleged agreement to sell was cancelled. Therefore, it is not necessary to frame the said issue. However, while framing the issues, it is necessary to consider the averments made in the plaint and the written statement. It is not necessary to determine the truthfulness of the averments of the parties. In the written statement the defendants in paragraph No.12 has averred that “वादीने सदर रकम स्वीकारण्यास नकार दिल्याने प्रतिवादींनी करार रद्द करून संचकार रकम परत घेण्याविषयी वादीस कळविले.” It means that the defendants have averred that the alleged agreement was cancelled. In such circumstances, in view of the ratio laid down in the cases R. Kandasamy (since dead) and ors. v. T. R. K. Sarawathy and anr., Civil Appeal No.3015 of 2013 decided on 21.11.2024 and I.S. Sikandar (D) By Lrs v. K. Subramani and others, (2013) 6 ALL WC 6364, it is legal and proper to frame the issue regarding the obligation to challenge the

alleged cancellation of the contract, as prayed by the defendants. However, it is necessary to make it clear that whether the alleged agreement was validly cancelled or not? will be determine after conclusion of the trial.

9. The defendants have also prayed to frame issue regarding the conduct of the plaintiff and regarding the greater hardship. In support of the said contention learned advocate for the defendants has relied on **Sangita Sinha v. Bhawana Bhardwaj and others, 2025 AIR (SC) 1806.** However, on perusal of written statement of the defendants, it does not appear that they have specifically averred about the greater hardship. They have also not pleaded any specific contention due to which they will cause greater hardship. Therefore, it is not necessary to frame the said issue. Moreover, the issue regarding the bonafideness of conduct of the plaintiff can be considered while deciding the issue of willingness of the plaintiff to perform the contract as well as while deciding his entitlement of specific performance. Therefore, it is not necessary to frame such separate issue.

10. In view of above discussion, it is clear that the only above mentioned additional issues are required to be framed. However, it is not necessary to frame suggested additional issue Nos.4 and 5. Therefore, the application is deserves to be partly allowed. In the result, I pass following order.

ORDER

1. The application (Exh.239) is partly allowed and the following additional issues are framed.

3-A. Whether the time is essence of contract ?

3-B. Whether the present suit is instituted within the period of limitation ?

3-C. Whether it is mandatory for the plaintiff to seek declaration in respect of notice of the defendants dated 24.09.2013 and alleged termination of agreement ?

4-A. Whether the plaintiff is entitled to get vacant possession of suit property from the defendants, as prayed ?

2. Parties at liberty to adduce evidence on the additional issues, if any.

Date : 10.06.2026.

(**P.A.Patil**)
Jt. Civil Judge Senior Division,
Jaysingpur.