

MHRG170018172023



**ORDER BELOW EXH.01**  
**COMMERCIAL SUIT NO.06/2023**  
**RAJENDRA MADHUKAR JOSHI OWNER CHATTANYA**  
**BUILDERS AND DEVELOPERS - V/S- SHANUBAI VASANT**  
**VASKAR AND OTHERS**  
**( PASSED ON 15<sup>th</sup> DAY OF FEBRUARY, 2025)**

1. The plaintiff filed present suit against defendants No.1 to 11 for specific performance of agreement to lease Dated 09.01.2023 and injunction.
  
2. Respondents No.1 to 7 appeared through their advocate Shri.K.K. Gondhali but failed to file their reply. Respondents No.8 to 11 failed to appear despite service of notice, hence this petition is heard ex-parte against them.
  
3. On perusal of the averment of the plaint, it is noticed that the suit is relating to specific performance of the agreement in between the developer and farmers. The said transaction was not intended for commercial dispute. On that count this court has raised the query to the learned advocate of the plaintiff as to the return of plaint for presentation to proper

court since it is cognizable by civil court.

4. Points for the determination and my findings thereon for the reasons stated below;

<b>SR. NO.</b>	<b>POINTS</b>	<b>FINDINGS</b>
I.	Whether grounds are justified to return the plaint for presentation before proper court ?	Yes.
II.	What Order ?	The application is Allowed.

### **REASONS**

5. Perused application, say filed. Heard learned advocate Shri.S.M.Lad for plaintiff.

### **AS TO POINTS NO. I AND II :**

6. The plaintiff filed present suit for specific performance of the agreement and injunction against defendants No.1 to 11. The description of the suit property is given in para No.1 of the plaint. The total area of the suit property plot No.22, Sector-6, area 340 sqmtr. The defendants

No.1 to 7 are the owner of the suit property. The plaintiff is in the business of builders and developers for the development of the land. Defendants No.1 to 7 were owners of the land survey No.18/5, 18/4 and 14/4 situated at village Kundevahal, Tal-Panvel, Dist-Raigad. The office of CIDCO acquired the said property and assigned suit property by virtue of scheme floated vide 22.5 %.

7. The defendants No.1 to 7 and Vithabai Shantaram Mhatre have entered into agreement with plaintiff on 04.08.2015 in lieu of consideration for assignment of lease hold rights. The consideration was agreed Rs.1,70,00,000/-. On the day of agreement amount of Rs.12,00,000/- parted to them. The terms of the agreement are incorporated as mentioned in the para. 6 of the plaint. The owner Smt. Vithabai Shantaram Mhatre expired and defendant No.1 to 7 are legal heirs. Then subsequently plaintiff parted amount of Rs.65,45,000/- as on date from time to time as per the schedule mentioned in the plaint. The plaintiff was and is ready and willing to perform part performance. Defendants No.1 to 7 have not complied the terms and conditions of the agreement, despite notice addressed to them. Hence this suit for specific performance of contract and for injunction.

8. According to the plaintiff, the averments of the agreement are in respect of commercial transaction. The suit property is to be alienated after obtaining permission of non-agriculture and then construction of the commercial premises and its sale is the subject of the agreement to sale. Thus according to the plaintiff, the transaction between the parties by virtue of agreement to sale is of commercial nature and the commercial court has jurisdiction to try and entertain the suit.

9. At the outset, on the face of record from the averments of plaint, the transaction by virtue of agreement to sale for specific performance of contract to alienate the property in order to carry out further development upon the suit property is not the commercial transaction within the ambit of Section 2(1)(c)(vii) of the Act. The present suit is of purely civil nature, hence this court lacks jurisdiction to entertain it.

10. At this stage, it is relevant to cite the observation of **Hon'ble Apex Court in the case of Ambalal Sarabhai Enterprises Ltd. V/s. K.S.Infraspac LLP and Anr, 2019 ALL SCR 2334** wherein it is held that "*It appears that the trial court has proceeded under the footing that the parties to the suit more particularly, the appellant-plaintiff seems to be carrying on business as Estate Agent and to manage land, building, etc. and the very object as enumerated in*

*Memorandum and Articles of Association of the appellant-plaintiff company established that the property in question are being used exclusively in trade or commerce rather in the business of the plaintiff. As rightly pointed out by the High Court there is nothing on record to show that at the time when agreement to sell came to be executed in 2012, the property was being exclusively used in trade and commerce so as to bring dispute within the ambit of sub-clause (vii) of Section 2(1)(c) of the Act. Merely because, the property is likely to be used in relation to trade and commerce, the same cannot be the ground to attract the jurisdiction of the Commercial Court."*

11. Per contra, learned advocate of plaintiff relied on the observation of **Hon'ble Bombay High Court in the case of Vaijanath Dayanand Kale V/s. Nerkar Properties LLP 2021 (3), MLJ 202** wherein it is observed relying upon the above observation of Apex Court in the case of Ambalal(Supra) and held that *the dispute between the parties arises under an agreement by which the original defendants purportedly agreed to transfer their development rights for construction of a building to plaintiffs in consideration of later sharing the development potential. This agreement on the face of it, is prima facie a construction contract, it transfer development rights by way of construction of a building and sale of premises therein in the certain stated portion as between the parties.*

*Thus it is a commercial dispute.*

12. At this stage, it is significant to mention the object of the Commercial Courts Act, 2015 - "*The object and purpose of the establishment of Commercial Courts, Commercial Divisions and Commercial Appellate Divisions of the High Court is to ensure that the cases involved in commercial disputes are disposed of expeditiously, fairly and at reasonable cost to the litigants. Keeping in view the object and purpose of the establishment of the Commercial Courts and fast tracking procedure provided under the Act, the statutory provisions of the Act and the words incorporated thereon are to be meaningfully interpreted for quick disposal of commercial litigations so as to benefit the litigants especially those who are engaged in trade and commerce which in turn will further economic growth of the country.*"

13. In the light of this Object of the Act, on perusal of the averments of the plaint coupled with the clauses of the agreement to sale, apparently transaction is of agreement to sale of the suit property. Then in that eventuality, looking to the relief coupled with nature of pleading, it is for the commercial court to look it into whether it is touching to the commercial dispute.

14. Hon'ble Apex Court in the supra cited case observed that merely because property is likely to be used in relation to trade and commerce, the same cannot be the ground to attract the jurisdiction of the commercial court. Thus the observation of Hon'ble Apex Court has application to the facts of present case. The observations cited by learned advocate of plaintiff in the case of Vaijanath Kale (Supra), differs with factual matrix hence can not be applied to the fact of present case.

15. Herein this case, the transaction of agreement to sale in respect of agriculture land and conversion of agriculture into non-agriculture for the purpose of sale of the premises is not touching to the commercial dispute and the commercial transaction within definition of Section 2(1)(c)(vii) of the Act. The issue by virtue of this suit based on agreement to sale of the suit property is cognizable by Civil Court. Thus the commercial court lacks jurisdiction to try and entertain the said dispute. The grounds mentioned to return the plaint are well founded. I answer Point No. I in the affirmative.

16. On returning the plaint by virtue of Order VII Rule 10A of the Code, it is for the court to intimate to the plaintiff and upon such intimation, it is for the plaintiff to make an application to the court specifying the court in which he proposes to present the plaint after its return and praying the

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court to fix the date for the appearance of the parties in the said court and request that the notice of the date so fixed may be given to him and to the defendant. With this observation, I pass following order ;

**ORDER**

1)	The plaint be returned to the plaintiff vide Order VII Rule 10 of the Code of Civil Procedure.
2)	The proceeding be listed for further compliance on behalf of plaintiff vide Order VII Rule 10A of the Code of Civil Procedure on 25.02.2025.

Panvel,  
Date :- 15.02.2025

( K.G. Paldewar )  
District Judge-2, Panvel.

Arguments heard on	20 <sup>th</sup> Day of December, 2024, 03 <sup>rd</sup> and 15 <sup>th</sup> Day of February, 2025
Judgment/order delivered on	15 <sup>th</sup> Day of February, 2025
Dictated on	15 <sup>th</sup> Day of February, 2025
Transcribed on	15 <sup>th</sup> Day of February, 2025
Checked and signed on	15 <sup>th</sup> Day of February, 2025

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## CERTIFICATE

I affirm that the contents of this PDF file  
Judgment/Order is same and as per the original  
Judgment/Order.

Name of the Stenographer	: K. N. Lokhande
Name of the Court	: Additional Sessions court, Panvel
Date of Judgment/Order	: 15.02.2025
Judgment/Order signed on	: 15.02.2025
Presiding Officer	: K.G. Paldewar
Judgment/Order uploaded on	: 15.02.2025