

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SECOND APPEAL NO. 364 of 2026**

With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2026
In R/SECOND APPEAL NO. 364 of 2026

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LALABHAI MANGALDAS PATEL

Versus
HARGOVANBHAI RAMDAS HATHIDAS PATEL

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Appearance:

JAYSHREE S. SONI(19600) for the Appellant(s) No. 1

MS. MANISHIKA(19493) for the Appellant(s) No. 1

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CORAM: HONOURABLE MR. JUSTICE MAULIK J.SHELAT

Date : 30/06/2026

ORAL ORDER

1. Heard Ms. Manishika, learned advocate for the appellant.

2. Ms. Manishika, learned advocate would submit that neither the Trial Court nor the Appellate Court has considered the documentary evidence including the financial status of the appellant - plaintiff while arriving at a conclusion that the plaintiff was not ready and willing to perform his part of the contract.

3. It is submitted that at the relevant point of time, the plaintiff had paid substantial part of sale consideration and the balance was to be paid at the time of

execution/registration of the sale deed which could not be registered due to bank loan.

4. Ms. Manishika, learned advocate would submit that the Courts below have committed a serious error in law by arriving at a finding which are contrary to the evidence on record.

5. Having heard Ms. Manishika, learned counsel for the appellant, *prima facie*, the Courts below appears to have not discussed the documentary evidence which are submitted on record and arrived at a conclusion that the plaintiff was not ready and willing to perform his part of the contract despite the fact that the plaintiff had substantially paid the sale consideration to the respondent – defendant.

6. Accordingly, the matter requires consideration. Admit on the following substantial questions of law:

1. Whether the learned Courts below committed a substantial error of law in construing the terms

and conditions of the registered Banakhat dated 12.09.2019 by holding that the entire obligation concerning discharge of the existing encumbrance and completion of the transaction rested exclusively upon the purchaser, without examining the corresponding obligations undertaken by the vendor under the same agreement?

2. Whether the findings recorded regarding readiness and willingness suffer from misapplication of Section 16(c) of the Specific Relief Act, 1963, inasmuch as the learned Courts below assessed the conduct of the purchaser in isolation while overlooking the documents produced at Exhibit-41 and the reciprocal obligations and conduct of the vendor?

3. Whether the learned Courts below failed to appreciate the true scope and effect of Sections 51 to 54 of the Indian Contract Act governing reciprocal promises and thereby recorded findings contrary to settled principles of contractual performance?

4. Whether the findings recorded by the Courts below are vitiated by erroneous interpretation of

the contractual clauses relating to encumbrance, marketable title and obligations of the parties and therefore constitute substantial questions of law within the meaning of Section 100 of the Code of Civil Procedure, 1908?

5. Whether the learned Courts below adopted an incorrect legal standard while examining readiness, willingness and financial capacity and thereby failed to apply the principles laid down by the Hon'ble Supreme Court in relation to Section 16(c) of the Specific Relief Act, 1963?

6. Whether the judgments and decrees impugned herein are sustainable in law when the findings recorded therein are founded upon misconstruction of a registered contractual document and incorrect application of settled legal principles governing specific performance of contracts?

ORDER IN CIVIL APPLICATION NO. 1 OF 2026:

Issue **Rule** returnable on **24.08.2026**.

SHAHANAZ

(MAULIK J.SHELAT,J)