2026 INSC 853

REPORTABLE

IN THE SUPREME COURT OF INDIA
EXTRA-ORDINARY APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO.17699 OF 2026

NAZIM SHAIKH HASAN .... PETITIONER

VERSUS

NASIR MUSHTAQ SHAIKH AND OTHERS .... RESPONDENTS

J U D G M E N T

PRASHANT KUMAR MISHRA, J.

1) The present Special Leave Petition calls in question the judgment dated 01.04.2026 passed by the High Court of Judicature at Bombay in Civil Revision Application No.280/2024, whereby the High Court dismissed the revision application of the petitioner and upheld the judgment and order of the First Appellate Court which affirmed the order of the Small Causes Court whereby the petitioner was directed to vacate and handover the suit premises to the respondents' predecessor – Jainbi Mushtaq Shaikh.

2) For the proper disposal of the Special Leave Petition, the parties are being referred by their position in Civil Suit No.384/2010.

FACTUAL MATRIX

3) Shorn of unnecessary details, the facts lay thus: the respondents' predecessor - Jainbi Mushtaq Shaikh owned a shop on the ground floor of the building admeasuring 200 sq.ft bearing House No.3031, S.No.51, Mitha

Nagar, in front of Vishwakarma Building, Kondhwa Khurd, Pune[1]. Admittedly, the suit premises was let to the petitioner/defendant at a monthly rent of Rs.1500/-. While the tenancy was subsisting, the original plaintiff agreed to sell the suit premises to the petitioner/defendant, consequently, this culminated into an agreement to sell dated 21.09.2004. Pursuant to the stipulations laid in the agreement to sell, the petitioner/defendant paid Rs.40,000/- out of the total consideration of Rs.1,90,000/- and the residual consideration of Rs.1,50,000/- was to be paid within three months.

4) As per the original plaintiff's assertion, the petitioner/defendant failed to comply with the stipulations inhering from the agreement to sell, leading to non-fruition of the sale. As a corollary, the petitioner/defendant continued as a tenant in the suit premises.

5) Subsequently, the original plaintiff alleging default of rent by the petitioner/defendant, change in the use of the suit premises, coupled with an express *bona fide* need, filed a civil suit being Civil Suit No.384/2010 seeking possession of the suit premises. The petitioner/defendant resisted the suit *inter alia* on the ground that the landlord-tenant relationship ended upon the execution of the agreement to sell. Further, it was pled by the petitioner/defendant that he paid Rs.90,000/- out of the total consideration and was ready to pay the balance consideration to the original plaintiff.

[1] Hereinafter referred to as the "Suit premises"

6) The Small Causes Court after examination of oral and documentary evidence, *vide* judgment dated 19.09.2015, upheld the *bona fide* requirement of the original plaintiff and held that the landlord and tenant relation subsisted even after the execution of the agreement to sell. Predicating upon the aforesaid reasoning, the suit was decreed in favour of the original plaintiff, and the petitioner/defendant was directed to handover the possession of the suit premises. The petitioner/defendant's appeal challenging the Small Causes Court's decision was also dismissed by the First Appellate Court *vide* judgment dated 24.11.2023.

7) Being aggrieved, the petitioner/defendant filed Civil Revision Application No.280/2024 challenging the decisions of the Small Causes Court and the First Appellate Court. The High Court *vide* the impugned judgement and order dated 01.04.2026 dismissed the revision application preferred by the petitioner/defendant.

8) Taking exception to the judgement passed by the High Court, the petitioner/defendant is now seeking refuge of this Court in reversing the concurrent findings rendered.

ANALYSIS

9) Heard the learned counsel for the petitioner/defendant and perused the material on record.

10) The question inhering from the present *lis* is whether on the execution of the agreement to sell by the landlord in favour of the tenant, upon receiving part consideration, the *inter se* relationship of landlord-tenant ceases and fresh rights and obligations flow from the agreement to sell.

11) Contending in affirmative to the question posed, the learned counsel for the petitioner/defendant placed reliance on a judgment rendered by this Court in ***R. Kanthimathi and Another v. Beatrice Xavier (Mrs.)***[2]**,** wherein this Court was dealing with a similar question concerning the *inter se* rights and jural relationship between the landlord and the tenant after an agreement to sell has been executed and a substantial amount of consideration was paid by the tenant. The germane observations elucidated therein read thus:

> "**4.** As aforesaid, the question for consideration is, whether the status of tenant as such changes on the execution of an agreement of sale with the landlord. It is relevant at this junction first to examine the terms of the agreement of sale. The relevant portions of the agreement of sale record the following:
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> > "I, the aforesaid, Mrs Beatrice Xavier hereby agree out of my own free will, to sell, convey and transfer the property to you Mrs R. Kanthimathi, wife of Mr S. Ramaswami, 435 Trichy Road, Coimbatore for a mutually agreed sale consideration of Rs. 25,000.
> >
> > I shall be proceeding to Coimbatore and shall execute the sale deed and present the same for admission and registration before the registration authority, accepting and acknowledge payment of the balance of consideration of Rs. 5000 (Rupees five thousand only) at the time of registration *and* ***shall complete the transaction of sale and conveyance as the property demised has already been surrendered to your possession.***"
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> **5.** Submission for the tenant is after entering into the agreement, the landlady accepted Rs. 20,000 confirming delivery of possession in this context which already constitutes the clear intent of the landlady of entering into a new relationship with the tenant under it. On the other hand, learned counsel for the respondent submits that the words "already been surrendered" therein, only refer to the existing possession of the tenant and nothing more. So far as this submission for the respondent is concerned we have no

[2] (2000) 9 SCC 339

> hesitation to reject the same. The reference of the words "already been surrendered" has been incorporated with consciousness. This is to be construed in the background of the landlady having received a major amount of sale consideration and as normally, if a substantial sum is received by the seller, the purchaser is put in possession of the property hence to fall in the same lines the said words were used to confirm this possession in this context. There could be no other reason to record therein as such. Even if it be said to refer to the possession as a tenant the reassertion in the agreement of sale is only for the purpose of denoting possession given in pursuance of this agreement of sale.
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> **6.** Any jural relationship between two persons could be created through agreement and similarly could be changed through agreement subject to the limitations under the law. Earlier when the appellants were inducted into tenancy it only means both agreed that their relationship was to be that of landlord and tenant. Later when the landlord decided to sell this property to the tenant and the tenant agreed by entering into agreement, they by their positive act changed their relationship as purchaser and seller. When the seller-landlord accepts the sum he actually acts under this agreement. This acceptance preceded by agreement of sale changes their relationship. This is how they intended. Once accepting such a change, their relationship of landlord-tenant ceases."
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> (emphasis supplied)

12) On a careful perusal of the above adjudication, it is evident that the agreement to sell executed therein contained an express stipulation that the demised property had already been surrendered to the possession of the tenant, which was consciously incorporated to indicate the willingness of the landlord to effect a change in the jural relationship. The intention of the parties was clearly discernible from the terms of the agreement to sell itself. It is equally significant that such willingness flowed from the fact that a substantial part of the consideration Rs.20,000/- out of Rs.25,000/- had already been paid by the tenant, leaving only a balance of Rs.5,000/- to be paid at the time of registration. The decision in ***R. Kanthimathi*** (supra) was thus one rendered entirely on its own peculiar facts, turning on the specific language employed in the agreement to sell and the near-complete payment of consideration thereunder.

13) However, the instant *lis* presents us with a materially different stand with respect to the agreement to sell executed herein. The relevant recitals of the agreement to sell read thus :

> "1. The Seller has agreed to sale the above Shop to the Purchasers for the price of Rs.1,90,000/- (Rupees One Lakh and Ninety Thousand only) and today the Purchasers paid an amount of Rs.40,000/- in cash to the Seller and the Seller hereby acknowledges the receipt thereof.
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> 2. The Purchasers promised that the balance amounts of Rs.1,50,000/- (Rupees one Lakh and Fifty Thousand only) will be paid within the period of three months from today.
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> 3. The Purchasers has agreed to give the balance Loan amount as soon as the loan will be sanctioned by his Banks.
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> 4. The Purchasers hereby confirms that if the said loan will not be sanctioned within the above period then this agreement stands cancelled and the Seller will refund Rs.40,000/- to the Purchasers and the Purchasers will have to handover the possession of the Shop back to the Purchasers as it was in the previous condition."

14) A plain reading of the aforesaid recitals makes it evident that the agreement to sell executed in the present case contains no stipulation indicating that the possession of the petitioner/defendant thereafter would be referable to the agreement to sell, nor does it provide for cessation of the obligation to pay rent or otherwise evince an intention to alter the subsisting landlord-tenant relationship. The marked distinction between the terms of the present agreement to sell and those considered in ***R. Kanthimathi*** (supra) necessitates an examination of whether the tenancy stood determined in law by way of either express or implied surrender under Section 111 of the Transfer of Property Act, 1882[3].

15) It is relevant to note that Section 111 of the TP Act contemplates different modes by which a lease may be determined. Section 111(e) deals with express surrender, whereas Section 111(f) deals with implied surrender.

16) The concept of surrender, as contemplated under Sections 111(e) and 111(f) of the TP Act was succinctly explained by this Court in ***Shah Mathuradas Maganlal & Co. v. Nagappa Shankarappa Malage and Others[4]****,* wherein it was observed that surrender involves yielding up of the lessee's interest to the lessor by mutual agreement. In case of implied surrender, the intention of the parties has to be gathered from the circumstances and conduct which demonstrate that the earlier relationship could no longer subsist. The relevant observation reads as follows:

> "**19.** A surrender under clauses (*e*) and (*f*) of Section 111 of the Transfer of Property Act, is an yielding up of the term of the lessee's interest to him who has the immediate reversion or the lessor's interest. It takes effect like a contract by mutual consent on the lessor's acceptance of the act of the lessee. The lessee cannot, therefore, surrender unless the term is vested in him; and the surrender must be to a person in whom the immediate reversion expectant on the term is vested. Implied surrender by operation of law occurs by the creation of a new relationship, or by relinquishment of possession. If the lessee accepts a new lease that in itself is a surrender. Surrender can also be implied from the consent of the parties or from such facts as the relinquishment of possession by the lessee and taking over possession by the lessor. Relinquishment of possession operates as an implied surrender. There must be a taking of possession, not necessarily a physical taking, but something amounting to a virtual taking of possession. Whether this has occurred is a question of fact. In the present case if the mortgagor was not able to redeem the appellant

[3] For short, 'TP Act'
[4] (1976) 3 SCC 660

> mortgagee was to enjoy the property in accordance with the terms of the mortgage and also to sell the property for recovery of debts. This feature shows that the appellant surrendered the tenancy from November 7, 1953."

17) A similar view on the enunciation of law on surrender as crystallised in ***Shah Mathuradas Maganlal & Co.*** (supra) was elaborated by this Court in ***Vayyaeti Srinivasarao v. Gaineedi Jagajyothi***[5], wherein, while considering an analogous question concerning an agreement to sell executed between a landlord and tenant, this Court undertook a comprehensive examination of the concepts of express surrender, implied surrender and the consequences flowing therefrom under Section 111 of the TP Act. The relevant observations read thus:

> "**5.3.** The expression "express surrender" means the lessee yields his interest under the lease to the lessor by mutual agreement between them. In other words, express surrender means giving up of the interest in the premises under the lease to the lessor by mutual agreement between the lessor and the lessee. Express surrender necessitates that the lessee has given up possession of the holding. Surrender need not be in writing nor by a registered deed. However, if there is an abatement of rent, it should be only by a registered instrument for it effects a variation in the contract of tenancy. The effect of surrender under clause (e) of Section 111 of the Act is the determination of the lease.
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> **5.4.** Clause (f) of Section 111 of the Act deals with the rule of implied surrender. Implied surrender is by operation of law and it can occur by - i) **the creation of a new relationship of lease, or ii) relinquishment of possession i.e., there is yielding of possession by the lessee and taking over of possession by the lessor. It is created by the acceptance of, and not by the mere agreement for a new relation which, in effect, estops the lessee from setting up the old one. Implied surrender of tenancy can be established by the conduct of the parties and from attending circumstances**. Implied surrender is by the operation of law and takes place in spite of the intention of the parties. It may come into being in a number of ways, e.g., by acceptance of a new lease, or by unequivocal giving up of possession by the lessee as a lessee, or by re-letting to another person by the landlord, or by accepting of a sub-tenant as his tenant by the landlord.
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> **5.5. Where the agreement to sell entered into by the parties clearly states that from the date mentioned in the**

[5] 2026 SCC OnLine SC 84

> **agreement, the tenant in possession of the property intended to be sold under the agreement shall not be liable to pay any rent and shall alone be in charge of any damage caused to the property in question, it would imply a surrender of rights as a tenant vide B. Paramashivaiah v. M.K. Shankar Prasad, AIR 2009 Kar 88**.
>
> **5.6**. **A surrender by operation of law determines the lease and extinguishes the rights of the lessee in respect of the property surrendered, from the date of the surrender and the estate vests immediately in the lessor. The term "surrender by operation of law" is used to describe all those cases where the law implies a surrender from unequivocal conduct of both the parties which is inconsistent with the continuance of the existing tenancy.**
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> **5.7.** There is a distinction between an express and implied surrender inasmuch as while express surrender is a matter of intention of the parties, implied surrender is by implication of the law. An implied surrender is the act of the law and takes place independently of and in some cases even in spite of the intention of the parties."
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> (emphasis supplied)

18) This Court in ***Vayyaeti Srinivasarao*** (supra) further considered the interplay between Section 53A of the TP Act and the continuance of tenancy subsequent to the agreement to sell. It was observed that Section 53A operates as a shield for a transferee who has taken possession pursuant to a contract of transfer, or who continues in possession in part performance thereof and has done some act in furtherance of the contract, thereby debarring the transferor from enforcing any right in respect of such property. Significantly, this Court categorically held that the continuous possession of a tenant in the suit property even after entering into an agreement to sell would not by itself amount to part performance so as to put the tenant in possession pursuant to the agreement to sell. It is only where the tenant is inducted into possession for the first time subsequent to the contract that it would constitute strong evidence of possession changing hands pursuant to the contract.

19) It is also trite law that an agreement to sell, by itself, does not confer any title or interest in the property in favour of the purchaser, and a beneficial reference in this regard may be made to the judgment of this Court in ***Suraj Lamp and Industries Private Limited (2) Through Director v. State of Haryana and Another***[6] wherein this Court held as follows :

> "**16.** Section 54 of the TP Act makes it clear that a contract of sale, that is, an agreement of sale does not, of itself, create any interest in or charge on such property. This Court in Narandas Karsondas v. S.A. Kamtam [(1977) 3 SCC 247] observed: (SCC pp. 254-55, paras 32-33 & 37)
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> > "32. A contract of sale does not of itself create any interest in, or charge on, the property. This is expressly declared in Section 54 of the Transfer of Property Act. (See Ram Baran Prasad v. Ram Mohit Hazra [AIR 1967 SC 744 : (1967) 1 SCR 293] .) The fiduciary character of the personal obligation created by a contract for sale is recognised in Section 3 of the Specific Relief Act, 1963, and in Section 91 of the Trusts Act. The personal obligation created by a contract of sale is described in Section 40 of the Transfer of Property Act as an obligation arising out of contract and annexed to the ownership of property, but not amounting to an interest or easement therein.
> >
> > 33. In India, the word 'transfer' is defined with reference to the word 'convey'. … The word 'conveys' in Section 5 of the Transfer of Property Act is used in the wider sense of conveying ownership.
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> > 37. … that only on execution of conveyance, ownership passes from one party to another…."
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> **17.** In *Rambhau Namdeo Gajre* v. *Narayan Bapuji Dhotra* [(2004) 8 SCC 614] this Court held: (SCC p. 619, para 10)
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> > "*10.* Protection provided under Section 53-A of the Act to the proposed transferee is a shield only against the transferor. It disentitles the transferor from disturbing the possession of the proposed transferee **who is put in possession in pursuance to such an agreement**. It has nothing to do with the ownership of the proposed transferor who remains full owner of the property till it is legally conveyed by executing a registered sale deed in favour of the transferee. Such a

[6] (2012) 1 SCC 656

> right to protect possession against the proposed vendor cannot be pressed into service against a third party."
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> **18. It is thus clear that a transfer of immovable property by way of sale can only be by a deed of conveyance (sale deed). In the absence of a deed of conveyance (duly stamped and registered as required by law), no right, title or interest in an immovable property can be transferred.**
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> **19.** Any contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of Sections 54 and 55 of the TP Act and will not confer any title nor transfer any interest in an immovable property (except to the limited right granted under Section 53-A of the TP Act). **According to the TP Act, an agreement of sale, whether with possession or without possession, is not a conveyance.** Section 54 of the TP Act enacts that sale of immovable property can be made only by a registered instrument and an agreement of sale does not create any interest or charge on its subject-matter."
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> (emphasis supplied)

20) The ratio flowing from the aforesaid pronouncements, read conjointly, can be distilled to the following propositions:

(i) the mere execution of an agreement to sell between a landlord and tenant does not *ipso facto* bring about a determination of the subsisting tenancy;

(ii) it is only when the terms of the agreement or the unequivocal conduct of the parties, inconsistent with the continuance of the existing tenancy, disclose either an express or implied surrender within the meaning of Section 111(e) or (f) of the TP Act, that the lease can be said to have been determined;

(iii) the continuous possession of a tenant even after the execution of an agreement to sell does not amount to part performance under Section 53A of the TP Act unless such possession is shown to be directly relatable to and flowing from the agreement to sell; and

(iv) any agreement to sell, not being a registered deed of conveyance, does not by itself confer any title or interest in the property.

21) Applying the aforesaid principles to the *lis* at hand, neither the terms of the agreement to sell nor the conduct of the parties disclose any express or implied surrender within the meaning of Section 111(e) or (f) of the TP Act. The mere execution of the agreement to sell coupled with payment of Rs.40,000/- out of the agreed consideration of Rs.1,90,000/-, cannot be treated as determining the tenancy.

22) The terms of the agreement to sell itself lend further reinforcement to this conclusion. Clause 4 of the agreement to sell expressly stipulates that in the event the loan of the petitioner/defendant is not sanctioned within the stipulated period, the agreement would stand cancelled and the petitioner/defendant would be required to hand over possession of the shop back *"as it was in the previous condition."* This recital is wholly consistent with the continuance of the tenancy and, in fact, proceeds on the clear premise that the existing possession of the petitioner/defendant was referable to the tenancy and not to the agreement to sell. Far from evidencing a change in the jural relationship, this demonstrates that the parties themselves contemplated a reversion to the *status quo ante* upon the failure of the sale.

23) Also, the reliance placed by the petitioner/defendant on ***Arjunlal Bhatt Mall Gothani and Others v. Girish Chandra Dutta and Another***[7]

[7] (1973) 2 SCC 197

is equally misplaced. In that case, upon execution of the agreement to sell, the earlier eviction proceedings were withdrawn and the agreement itself exclusively governed the parties' rights and obligations, there being no stipulation for payment of rent or interest during the subsistence of the agreement. The present agreement to sell contains no comparable indication that the tenancy stood substituted by a new jural relationship. On the contrary, Clause 4 of the agreement to sell provides for cancellation of the agreement and restoration of possession in accordance with the existing arrangement.

24) At this juncture, it is also apposite to turn to the contention of the petitioner/defendant, that his possession subsequent to the agreement to sell was that of a prospective purchaser under Section 53A of the TP Act. This submission, however, is *sans* merit. This Court in ***D.S. Parvathamma v. A. Srinivasan***[8] laid down the foundational principle governing such a situation, holding that when a person already in possession of the property in some other capacity enters into a contract to purchase the property, to confer the benefit of protecting possession under the plea of part performance, his act effective from that day must be consistent with the contract alleged and cannot be referred to the preceding title, and that having entered into possession as a tenant and having continued to remain in possession in that capacity, a tenant cannot be heard to say that by reason of the agreement to sell his possession was no longer that of a tenant. Tested on the touchstone of the aforesaid principle, the

[8] (2003) 4 SCC 705

petitioner/defendant having been in possession as a tenant prior to the execution of the agreement to sell and having neither alleged nor established that his possession as lessee ceased, and commenced as that of a transferee under the agreement to sell, his conduct throughout including continued occupation without any disavowal of his character as a tenant is wholly inconsistent with the plea of part performance.

25) Even assuming *arguendo* that the factual requirements for invoking Section 53A stood satisfied, the petitioner/defendant's plea is independently foreclosed by the statutory mandate contained in Section 17(1A) of the Registration Act, 1908[9]. Section 17 of the Registration Act was amended with effect from 24.09.2001 by the introduction of sub-section (1A) therein, which provides that documents containing contracts to transfer for consideration any immovable property for the purpose of Section 53A of the TP Act shall be registered if they have been executed on or after the commencement of the Registration and Other Related Laws (Amendment) Act, 2001, and if such documents are not so registered, they shall have no effect for the purposes of Section 53A. The agreement to sell in the present case was executed on 21.09.2004, i.e., well after the coming into force of the said amendment. The agreement to sell, being admittedly unregistered, can have no effect for the purposes of Section 53A by virtue of the express mandate of Section 17(1A) of the Registration Act, as reaffirmed by this Court in ***Ameer Minhaj v. Dierdre Elizabeth (Wright) Issar and Others***[10]. The petitioner/defendant is, therefore, disentitled from claiming the

[9] For short, 'the Registration Act'
[10] (2018) 7 SCC 639.

protection of Section 53A on this ground as well. The High Court was thus entirely correct in holding that the benefit of Section 53A is unavailable to the petitioner/defendant.

26) We also can't be oblivious of the fact that the petitioner/defendant has chosen not to institute a suit for specific performance. This conduct on the part of the petitioner/defendant further militates against the plea that the jural relationship between the parties had transformed from that of landlord-tenant to vendor-vendee upon the execution of the agreement to sell.

27) Lastly, the learned counsel for the petitioner/defendant advanced two submissions before this Court. First, it was contended that upon execution of the agreement to sell, the jural relationship between the parties stood altered from that of landlord and tenant to that of vendor and vendee, thereby excluding the jurisdiction of the Small Causes Court. Secondly, it was urged that the agreement to sell ought to have been impounded on account of insufficient stamp duty and non-registration before being considered by the Court. In our opinion, neither submission merits acceptance. The first contention proceeds on an erroneous assumption that the mere execution of the agreement to sell determined the tenancy, a contention which already stands negatived as discussed in the preceding paragraphs hereinabove. Equally, the second contention is of no avail since even assuming that the agreement to sell were to be impounded and rendered admissible in evidence upon payment of the requisite duty and penalty, such exercise would not cure the absence of registration nor enable the petitioner/defendant to invoke Section 53A of the TP Act in view of Section 17(1A) of the Registration Act.

28) In view of the foregoing, we find no infirmity in the impugned judgments of the Courts below warranting interference.

29) The present Special Leave Petition is *sans* merit and, accordingly, the same stands dismissed.

..J.
(PRASHANT KUMAR MISHRA)

..J.
(N.V. ANJARIA)

NEW DELHI;
AUGUST 13, 2026.