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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 539 OF 2025
WITH
INTERIM APPLICATION NO. 12256 of 2025

Mantra Huizen LLP Thr. Its Partner Mantra
Prop.and Develop.pvt.ltd.thr. Dir.rohitg. Gupta ...Appellant
Versus
Shri. Ananda Lakshman Balwadkar And Others ...Respondents

Mr. S.C.Wakankar, for Appellant.

Mr. Radhikesh Uttarwar (Through V.C.), for Respondent.

CORAM: AARTI SATHE, J.

DATE: 21 SEPTEMBER 2026

P.C.

1. This Appeal from Order takes exception to the order dated 25th June 2025 (hereinafter referred to as the “impugned order”) passed by the learned 6th Joint Civil Judge, Senior Division, Pune (hereinafter referred to as the “Trial Court”), below Exhibit 5 in Special Civil Suit No. 495 of 2025, whereby the application seeking an interim injunction against the Respondents (Original Defendants) came to be rejected.

2. The primary ground of challenge in the present Appeal from Order is that since the Respondent Nos. 1 to 19 had acknowledged receipt of an amount of Rs. 3,00,00,000/- towards security deposit, and a document was executed on the same date along with a Power of Attorney in favour of the Appellant (Original Plaintiff),

the learned Trial Court ought to have granted the injunction as sought.

3. Briefly, the facts are as follows:

i) The Appellant instituted Special Civil Suit No. 495 of 2025 seeking specific performance of the Development Agreement dated 10th February 2022 (hereinafter referred to as the “Development Agreement”) and the Power of Attorney dated 17th February 2022, allegedly executed in their favour. The Appellant also sought a declaration in respect of the alleged agreement dated 6th November 2024 executed by Respondent Nos. 1 to 19 in favour of Respondent No. 20.

ii) The aforesaid suit was instituted in relation to a registered partition amongst the members of the Balwadkar family, pursuant to which the property bearing Survey No. 43/2, admeasuring approximately 70 R out of the total land admeasuring 1 H 40 R (hereinafter referred to as the “suit property”), fell to the share of Mr. Ananda Lakshman Balwadkar, Mr. Namdeo Ramchandra Balwadkar, and Mr. Dnyanoba Ramchandra Balwadkar, who are Respondent Nos. 1, 10, and 15, respectively. The said persons are the Kartas of their respective Hindu undivided families (HUFs).

iii) It is the Appellant's contention that, as it was not possible for the Respondents to develop the suit property themselves, they entrusted the development rights in respect thereof to Respondent No. 1 under a registered Development Agreement. It was thereafter agreed that the suit property would be given to the Appellant for development upon payment of a consideration of Rs.

3,00,00,000/- by way of security deposit against construction of approximately 49,500 sq. ft. of saleable built-up area.

iv) It is the Appellant's contention that, on 10th February 2022, the Appellant paid a sum of Rs. 3,00,00,000/- to the Respondents by way of a security deposit, and on the same date, the Development Agreement was executed between the parties.

v) It is further the Appellant's contention that Respondent No. 1 signed and affixed his thumb impression on the Power of Attorney dated 17th February 2022 and the Development Agreement dated 10th February 2022, in his capacity as the holder of Power of Attorney of Respondent Nos. 10 and 15. The said Power of Attorney was thereafter registered on 17th February 2022 in the office of the Sub-Registrar.

vi) However, on 3rd February 2024, Respondent Nos. 1 to 19, through their advocate, issued a notice to the Appellant, purporting to terminate the Power of Attorney dated 17th February 2022. Thereafter, Respondent Nos. 1 to 19 executed two Sale Deeds dated 6th November 2024 in favour of Respondent No. 20.

vii) It is the Appellant's case that, being aggrieved by the subsequent acts of the Respondents, particularly the execution of the Sale Deeds dated 6th November 2024, the Appellant filed an application seeking an interim injunction restraining the Respondents from creating any third-party rights in respect of the suit property. The said application came to be rejected by the Trial Court by the impugned order dated 25th June 2025, whereby the relief of interim injunction was refused. Being aggrieved by the said impugned order, the Appellant has preferred

the present Appeal from Order.

4. Learned counsel Mr. S.C. Wakankar, appeared on behalf of the Appellant, and Mr. Radhikesh Uttarwar appeared on behalf of the Respondent No. 20 through video conference.

5. Learned counsel appearing on behalf of the Appellant submitted that the impugned order has been passed without properly appreciating the facts of the case and the documents placed on record. It was contended that considering that there was no dispute regarding the payment of Rs. 3,00,00,000/- by the Appellant to Respondent Nos. 1 to 19 towards security deposit, the Development Agreement dated 10th February 2022 ought to have been specifically enforced in favour of the Appellant.

6. Learned counsel on behalf of the Appellant further submitted that the finding recorded by the Trial Court that the Development Agreement could not be specifically enforced on the ground that no date was mentioned in the title clause of the said agreement and that there was also no date mentioned below the signatures of the parties or at the foot of the document to establish the date of its execution is erroneous. According to the learned counsel, the said finding was recorded without considering the fact that the Development Agreement was executed on the very same day on which the cheque for Rs. 3,00,00,000/- was handed over by the Appellant towards the security deposit, i.e., on 10th February 2022.

7. Learned counsel on behalf of Appellant further submitted that the Development Agreement and the Power of Attorney dated 17th February 2022

were required to be read conjointly. The Power of Attorney was executed on 17th February 2022 and, therefore, considering the said documents together, the Development Agreement constituted a concluded contract, in respect of which the Appellant was entitled to seek specific performance.

8. He further submitted that the Development Agreement contained specific and definite terms, including the manner in which the consideration was to be paid to the Respondents. It was contended that, since the sum of Rs. 3,00,00,000/- had already been paid by the Appellant by way of security deposit, it could not be contended that there was no consideration paid by the Appellant under the Development Agreement.

9. He also submitted that the termination of the Development Agreement was erroneous and unsustainable, as the period stipulated therein for development of the suit property had not expired. According to the learned counsel, the Development Agreement contemplated a period of 60 months for development. He therefore submitted that, since the stipulated period had not expired, the termination of the Development Agreement by the Respondents was itself bad in law and could not have been acted upon.

10. He further submitted that the learned Trial Court had erred in holding that the Development Agreement did not specify the area as required under the guidelines of the Real Estate Regulatory Authority (RERA). He submitted that paragraph 3.2(a) of the Development Agreement specifically mentioned the area as required. It was therefore contended that the learned Trial Court had failed to consider these material aspects of the matter and had consequently arrived at an

erroneous *prima facie* finding while rejecting the Appellant's application for interim injunction.

11. Learned counsel on behalf of Appellant further submitted that the learned Trial Court failed to appreciate that there was privity of contract between the Appellant and Respondent No. 20, inasmuch as Respondent No. 20 made their claim through Respondent Nos. 1 to 19, from whom they had acquired rights under the Sale Deeds dated 6th November 2024.

12. He further submitted that the Development Agreement was not merely a construction agreement or a works contract, and therefore, was capable of being specifically enforced. It was contended that in the facts and circumstances of the present case, Respondent No. 20 could not be regarded as a bona fide purchaser for value without notice, particularly when Respondent No. 20 had not caused any public notice to be issued inviting objections prior to entering into the transaction with Respondent Nos. 1 to 19 under the Sale Deeds dated 6th November 2024.

13. Learned counsel on behalf of the Appellant further submitted that Respondent No. 20 had not even conducted a search of the relevant documents before entering into the transaction dated 6th November 2024. He submitted that the fact that Respondent No. 20 had issued caveats against the Appellant even prior to the institution of the suit clearly indicated that Respondent No. 20 had knowledge of the transaction between the Appellant and Respondent Nos. 1 to 19.

14. He further submitted that the Appellant could not complete the project, as its implementation was dependent upon the vacation of the stay order passed in Writ Petition No. 10053 of 2009. According to the learned counsel, the

development of the suit property could proceed only after amalgamation and joint measurement of the properties and sanction of a composite plan. He therefore submitted that the impugned order ought to be set aside, as the learned Trial Court had erred in rejecting the Appellant's application for interim injunction.

15. Learned counsel on behalf the Appellant has further relied on following decisions to advance his contentions:-

- i. Sushil Kumar Agarwal Vs. Meenakshi Sadhu and Others¹
- ii. R. Hemalatha Vs. Kashthuri²
- iii. Nirav Deepak Modi Vs. Najoo Behram Bhiwandiwalla and Ors.³
- iv. A.A. Estates P.Ltd. Vs. Kher Nagar Sukhsadan Co-operative Housing Society Ltd. And Others⁴
- v. Rahul Ganesh Mehta & Ors. Vs. Narayan Ganpat Gaikwad & Ors⁵

16. *Per contra*, learned counsel appearing on behalf of Respondent No. 20 submitted that the impugned order is a well-reasoned order and does not warrant any interference, having regard to the nature of the dispute involved in the present case. He drew the attention of the Court to the prayers contained in the plaint in Special Civil Suit No. 495 of 2025, particularly prayer clauses (B) and (C), and contended that the Development Agreement, the specific performance of which was sought by the Appellant, was not an executed Development Agreement, but

¹ (2019) 2 SCC 241

² (2023) 10 SCC 725

³ AIR 2012 Bombay 50

⁴ 2025 SCC OnLine SC 2579

⁵ Appeal from Order No.548/2024 (Bombay)

merely a draft agreement. According to the learned counsel, this was evident from the prayers in the plaint itself, wherein the Appellant had sought registration of the said Development Agreement. The English translation of the relevant prayers in the aforesaid plaint is reproduced below:-

B) An order and decree be passed directing Defendant Nos. 1 to 19 to comply with the terms and conditions of the Development Agreement and Power of Attorney and to execute and get registered the Development Agreement and Power of Attorney in favor of the Plaintiff.

B) In the event Defendant Nos. 1 to 19 fail or express inability to execute and get registered the Development Agreement and Power of Attorney as mentioned above, an order be passed appointing the Nazir as the Court Commissioner to execute and get registered the Development Agreement and Power of Attorney in respect of the suit property in favor of the Plaintiff, on behalf of the Defendants.

17. He therefore submitted that once this was the position, it could not be contended on behalf of the Appellant that the Development Agreement constituted a concluded contract. He further submitted that the prayers in the plaint themselves sought the appointment of a Court Commissioner in respect of the said Development Agreement, which, according to him, further demonstrated that the Development Agreement was not an executed document.

18. He further submitted that, in paragraph No. 5 of the plaint, the Appellant itself had stated that the suit property could not be developed. According to learned counsel on behalf of Respondent No. 20, this statement by itself demonstrated that the Appellant was not in a position to perform their part of the contractual obligations under the Development Agreement. He submitted that since amalgamation of the premises/suit property had not taken place, the Appellant was not in a position to undertake development of the suit property.

19. He further submitted that the Development Agreement was undated and

had not been duly stamped. He therefore contended that no enforceable rights had crystallized in favour of the Appellant, so as to entitle them to seek specific performance of the Development Agreement, or a consequential injunction in respect thereof.

20. He also submitted that the amount of Rs. 3,00,00,000/- was paid merely as a refundable security deposit, and by itself could not be construed as consideration conferring any right upon the Appellant to seek specific performance or consequential interim relief in respect of the Development Agreement.

21. Learned counsel further submitted that the Development Agreement did not bear any date of execution, and that the Power of Attorney dated 17th February 2022 was limited to the registration of the executable agreement. According to him, this Power of Attorney could not be relied upon in the present case, since the Development Agreement itself had not been executed.

22. He further submitted that the Appellant had taken no steps to act upon or enforce the Development Agreement, and that Special Civil Suit No. 495 of 2025 came to be instituted only after Respondent Nos. 1 to 19 entered into a transaction with Respondent No. 20 on 6th November 2024. He therefore submitted that the interim injunction had rightly been refused to the Appellant.

23. Lastly, learned counsel on behalf of Respondent No. 20 submitted that the Appellant did not fall within the exceptions carved out by the Hon'ble Supreme Court in Sushil Kumar Agarwal (supra) and, therefore, was not entitled to seek specific performance of the Development Agreement or consequential interim

relief thereto.

24. Heard learned counsel appearing on behalf of the parties. At the core of the dispute in the present matter is the Development Agreement alleged to have been entered into between the Appellant and Respondent Nos. 1 to 19 for the development of the suit property. It therefore becomes necessary to examine the said Development Agreement.

25. Upon perusal of the Development Agreement, it is noted that the same is an undated and unregistered document. It is also not the case of the Appellant that the said document has been duly stamped. In view of the aforesaid position, this Court is of the view that the Trial Court, while considering the interim application, has rightly examined whether the Development Agreement is an executable document, and whether it constitutes a concluded contract. The absence of an essential ingredient, namely, the date of execution, coupled with the other deficiencies in the document, *prima facie* render the same incapable of enforcement.

26. This Court is further in agreement with the finding of the Trial Court that the Development Agreement is an unstamped document. It is not a case where there is merely a deficit in payment of stamp duty. Rather, no stamp duty whatsoever appears to have been paid in respect of the said Development Agreement. Further, the document does not bear the signatures of any witnesses.

27. In the considered view of this Court, the aforesaid circumstances constitute material considerations with regard to the nature and enforceability of the document, and *prima facie* indicate that the Development Agreement is not an

executable document. Consequently, the finding of the Trial Court in refusing to grant an interim injunction on the basis of the said Development Agreement does not warrant interference.

28. This Court is also in agreement with the finding of the Trial Court that the sum of Rs. 3,00,00,000/- paid by the Appellant was in the nature of a refundable security deposit, and could not, in the circumstances, be treated as consideration under the Development Agreement, particularly since the said amount was refundable upon completion of the work. The amount was primarily intended as security for due performance by the Appellant of the obligations contemplated under the Development Agreement. Accordingly, this Court is in agreement with the view taken by the Trial Court that the said amount cannot *prima facie* be treated as consideration so as to confer any enforceable right upon the Appellant to seek specific performance of the Development Agreement or any consequential interim relief.

29. In view of the aforesaid findings, no enforceable right appears to have crystallized in favour of the Appellant on the basis of the Development Agreement so as to entitle the Appellant to seek specific performance thereof and any consequential interim injunction.

30. This Court is further of the view that Section 14 of the Specific Relief Act, 1963 (hereinafter referred to as “the said Act”), sets out the categories of contracts which cannot be specifically enforced. Section 14 of the Specific Relief Act, 1963, is reproduced hereinbelow:-

14. Contracts not specifically enforceable.—The following contracts cannot be specifically enforced, namely:—

(a) where a party to the contract has obtained substituted performance of contract in accordance with the provisions of section 20;

(b) a contract, the performance of which involves the performance of a continuous duty which the court cannot supervise;

(c) a contract which is so dependent on the personal qualifications of the parties that the court cannot enforce specific performance of its material terms; and

(d) a contract which is in its nature determinable

31. On a plain reading of the aforesaid provision, it is clear that the facts of the present case fall within clause (b) of Section 14, which provides that a contract, the performance of which involves the performance of a continuous duty which the Court cannot supervise, cannot be specifically enforced.

32. In the facts of the present case, the Development Agreement specifically contemplated that the parties would obtain permissions from the competent planning authority and that the lands could be amalgamated and subdivided, apart from obtaining various other permissions necessary for commencing the development of the suit property. The performance of the obligations contemplated under the Development Agreement would therefore involve a continuous course of action, the supervision of which, in the considered view of this Court, would not be feasible for the Court.

33. In view thereof, specific performance of the Development Agreement cannot be granted in favour of the Appellant in the facts and circumstances of the present case.

34. I am therefore in agreement with the submission advanced on behalf of

Respondent No. 20 that the reliance placed by learned counsel on behalf of the Appellant on the judgment in Sushil Kumar Agarwal (supra) would not assist the Appellant in the facts of the present case. The exceptions carved out in the said judgment for granting specific performance in favour of a developer are not attracted in the present case, and the requisite conditions for invoking such exceptions have not been established by the Appellant. The relevant paragraphs of the aforesaid decision are reproduced below:-

24.3. In order to determine the exact nature of the agreement signed between the parties, the intent of the parties has to be construed by reading the agreement as a whole in order to determine whether it is an agreement simpliciter for construction or an agreement that also creates an interest for the builder in the property. Where under a development agreement, the developer has an interest in land, it would be difficult to hold that such an agreement is not capable of being specifically enforced; and

24.4. A decree for specific performance of a contract to build will be made if the following conditions are fulfilled:

24.4.1. the work of construction should be described in the contract in a sufficiently precise manner in order for the court to determine the exact nature of the building or work;

24.4.2. the plaintiff must have a substantial interest in the performance of the contract and the interest should be of such a nature that compensation in money for non-performance of the contract is not an adequate relief; and

24.4.3. the defendant should have, by virtue of the agreement, obtained possession of the whole or any part of the land on which the building is to be constructed or other work is to be executed.

35. In the facts of the present case, none of the aforesaid exceptions have been fulfilled by the Appellant, and further, as held by me in the preceding paragraphs, the Development Agreement itself is a document which is not executable, and therefore, the specific performance and consequent injunction thereof cannot be granted. I am therefore of the view that the learned Trial Court has in no way erred in not granting injunction to the Appellant.

36. The reliance of learned counsel on behalf of the Appellant on the case of R. Hemalatha Vs. Kashthuri (supra) would not be apposite to the facts of the present case, inasmuch as the same does not deal with specific performance of an unregistered document, and it only holds that as per proviso to Section 49 of the Registration Act, 1908, an unregistered document affecting immovable property and required to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 or as evidence of any collateral transaction not required to be effected by registered instrument.

37. It was specifically held therein that the proviso to Section 49 of the Registration Act, 1908 was inserted by Act 21 of 1929. Subsequently, Section 17(1-A) came to be inserted by Act 48 of 2001 with effect from 24th September 2001, and by virtue thereof, documents containing contracts to transfer for consideration any immovable property for the purpose of Section 53-A of the Transfer of Property Act, 1882 was made compulsory to be registered if were executed on or after 2001. Further, where such documents were not registered after such commencement, they would have no effect for the purposes of Section 53-A of the Transfer of Property Act, 1882.

38. It is in these circumstances that the Court held that such an unregistered document could be received in evidence in a suit for specific performance. However, the said principle would not apply to the facts of the present case, inasmuch as the Development Agreement in the present case is not only unregistered, but is also undated and unstamped. In any event, the decision in

R. Hemalatha Vs. Kashthuri (supra) would not be applicable to the facts and circumstances of the present case.

39. Insofar as the reliance placed by learned counsel for the Appellant on the decision in Rahul Ganesh Mehta & Ors. Vs. Narayan Ganpat Gaikwad & Ors (supra) is concerned, the said decision was rendered in a materially different factual context. In that case, the Trial Court had accepted the execution of the Development Agreement between the plaintiffs and the defendants. That is not the position in the present case, where the very execution and enforceability of the Development Agreement are in dispute.

40. Once it is held that, in the facts of the present case, the Development Agreement itself was not an executable document, the question of granting specific performance thereof would not arise. Consequently, the factual circumstances considered in Rahul Ganesh Mehta & Ors. Vs. Narayan Ganpat Gaikwad & Ors (supra) would have no application to the present case. Insofar as the reliance placed by learned counsel for the Appellant on the decision in A. A. Estates Pvt. Ltd. (supra), the said decision was rendered in a materially different factual context and, therefore, would not be applicable to the facts of the present case.

41. Learned counsel for the Appellant relied upon the aforesaid decision to contend that a registered document could not be unilaterally cancelled and that any such cancellation would have to be effected by a competent Civil Court. However, in the facts of the present case, the Development Agreement itself was not a registered document. Consequently, the principle relied upon by the Appellant in A. A. Estates Pvt. Ltd. (supra) has no application to the present case.

42. I am, therefore, of the view that, in the present case, the Trial Court has rightly passed the impugned order, which does not warrant interference.

43. I am further of the view that applying the principles of Wander Ltd. Vs. Antox India (P) Ltd.⁶, while considering an application under Order XXXIX Rules 1 and 2 of the CPC, the Appellate Court would not ordinarily interfere with the exercise of discretion by the Court of first instance or substitute its own discretion, except where such discretion has been exercised or has been shown to have been exercised arbitrarily, or capriciously, or perversely, or where the Court has ignored the settled principles of law regulating grant or refusal of interlocutory injunctions, the facts of the present case do not warrant any interference with the impugned order of the learned Trial Court, as the impugned order is a well-reasoned and well-considered order.

44. Considering the aforesaid facts and the settled position of law, I am of the view that the impugned order has been passed after duly appreciating the facts and the applicable law. The view taken by the learned Trial Court is a plausible view and does not warrant interference by this Court in its appellate jurisdiction.

45. In view thereof, the Appeal from Order fails and is accordingly dismissed. The learned Trial Court is directed to dispose of suit expeditiously. No costs.

46. In view of the dismissal of the Appeal from Order, pending Interim Application(s), if any do not survive and are accordingly disposed of.

(AARTI SATHE, J.)

⁶ 1990 Supp SCC 727