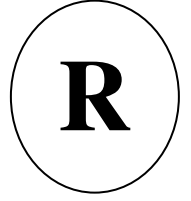


IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF DECEMBER, 2024

BEFORE

THE HON'BLE MR. JUSTICE H.P. SANDESH



REGULAR FIRST APPEAL NO.2457/2024 (INJ)

C/W

MISCELLANEOUS FIRST APPEAL NO.5580/2017 (CPC)

IN R.F.A. NO.2457/2024:

BETWEEN:

M/S. H.M. INFRA TECH PVT. LTD.,
(EARLIER KNOWN AS H.M.ESTATES AND PROPERTIES)
PARTNERSHIP FIRM,
NO.14, H.M.GENEVA HOUSE,
CUNNINGHAM ROAD, BANGALORE,
REPRESENTED BY ITS PARTNER
H.J.SIWANI S/O J.K.SIWANI
AGED ABOUT 65 YEARS.

... APPELLANT

(BY SRI UDAYA HOLLA, SENIOR COUNSEL FOR
SRI VIVEK HOLLA, ADVOCATE)

AND:

1 . H.M.TAMBORINE APARTMENTS
OWNERS ASSOCIATION,
NO.364, JARAGANAHALLI
KANAKAPURA MAIN ROAD
BANGALORE-560 078
REPRESENTED BY ITS PRESIDENT
HAROON SIIDIQUI,
MAJOR.

- 2 . SRI UMA MAHESH
MAJOR,
R/AT APARTMENT HARMONY 403,
H.M.TAMBORINE APARTMETNS
OWNERS ASSOCIATION
NO.364, JARAGANAHALLI
KANAKAPURA MAIN ROAD
BANGALORE-560 078.
- 3 . PIYUSH AGARWAL
APARTMENTY SYMPHONY 704,
H.M.TAMBORINE APARTMETNS
OWNERS ASSOCIATION,
NO.364, JARAGANAHALLI
KANAKAPURA MAIN ROAD
BANGALORE-560 078.
- 4 . HEMENDRA SINGH
APARTMENT SYMPHONY 803,
H.M. TAMBORINE APARTMETNS
OWNERS ASSOCIATION
NO.364, JARAGANAHALLI
KANAKAPURA MAIN ROAD
BANGALORE-560 078.
- 5 . PRADEEP RAO
APARTMENT SYMPHONY 803,
H.M.TAMBORINE APARTMENTS
OWNERS ASSOCIATION,
NO.364, JARAGANAHALLI
KANAKAPURA MAIN ROAD
BANGALORE-560 078.
- 6 . DWAIPYAN DAS
APARTMENT SYMPHONY 901,
H.M.TAMBORINE APARTMENTS
OWNERS ASSOCIATION
NO.364, JARAGANAHALLI

KANAKAPURA MAIN ROAD
BANGALORE-560 078.

... RESPONDENTS

(BY SRI D.R.RAVISHANKAR, SENIOR COUNSEL FOR
SRI RAMA RAMACHANDRA IYER &
SRI. P.V.MIRANDRA KUMAR, ADVOCATES FOR C/R1)

THIS R.F.A. IS FILED UNDER SECTION 96 OF CPC,
AGAINST THE ORDER DATED 19.10.2024 PASSED ON I.A.NO.10
IN O.S.NO.8454/2016 ON THE FILE OF THE XL ADDITIONAL
CITY CIVIL AND SESSIONS JUDGE, BENGALURU, ALLOWING THE
I.A.NO.10 FILED UNDER ORDER 7 RULE 11 R/W SECTION 151
OF CPC, 1908 AND UNDER SECTION 79 OF THE REAL ESTATE
(REGULATION AND DEVELOPMENT) ACT, 2016, FOR REJECTION
OF PLAINT AND ETC.

IN M.F.A. NO.5580/2017:

BETWEEN:

H.M.TAMBOURINE APARTMENTS
OWNERS' ASSOCIATION,
NO.364, JARAGANAHALLI,
KANAKAPURA MAIN ROAD,
BENGALURU
REP. BY ITS PRESIDENT - PRADEEP RAO
S/O LATE SRI M.V.RAO,
AGED ABOUT 45 YEARS
RESIDING AT NO.S-404,
H.M.TAMBOURINE,
KANAKAPURA MAIN ROAD,
JARAGANAHALLI,
J.P.NAGAR 6TH PHASE
BANGALORE-560 078.

... APPELLANT

(BY SRI D.R.RAVISHANKAR, SENIOR COUNSEL FOR
SRI RAMA RAMACHANDRA IYER, ADVOCATE)

AND:

- 1 . M/S. H.M.INFRA TECH PRIVATE LIMITED,
(EARLIER KNOWN AS H.M.ESTATES AND PROPERITES)
PARTNERSHIP FIRM,
NO.14, H.M.GENEVA HOUSE,
CUNNINGHAM ROAD,
BENGALURU-560 001
REPRESENTED BY ITS PARTNER
H.J.SIWANI S/O J.K.SIWANI
AGED ABOUT 55 YEARS
- 2 . SRI UMA MAHESH
MAJOR IN AGE,
R/AT APARTMENT HARMONY 403,
H.M.TAMBOURINE APARTMENTS
OWNERS' ASSOCIATION,
NO.364, JARAGANAHALLI,
KANAKAPURA MAIN ROAD,
BENGALURU-560 078.
- 3 . SRI PIYUSH AGARWAL
MAJOR IN AGE,
R/AT APARTMENT SYMPHONY 704,
H.M.TAMBOURINE APARTMENTS
OWNERS' ASSOCIATION,
NO.364, JARAGANAHALLI,
KANAKAPURA MAIN ROAD,
BENGALURU-560 078.
- 4 . SRI HEMENDRA SINGH
MAJOR IN AGE,
R/AT APARTMENT SYMPHONY 803,
H.M.TAMBOURINE APARTMENTS
OWNERS' ASSOCIATION,
NO.364, JARAGANAHALLI,
KANAKAPURA MAIN ROAD,
BENGALURU-560 078.

5 . SRI PRADEEP RAO
S/O LATE SRI M V RAO,
AGED ABOUT 45 YEARS
R/AT APARTMENT SYMPHONY 404,
H.M.TAMBOURINE APARTMENTS
OWNERS' ASSOCIATION,
NO.364, JARAGANAHALLI,
KANAKAPURA MAIN ROAD,
BENGALURU-560 078

6 . SRI DWAIPAYAN DAS
MAJOR IN AGE,
R/AT APARTMENT MELODY 901,
H.M.TAMBOURINE APARTMENTS
OWNERS' ASSOCIATION,
NO.364, JARAGANAHALLI,
KANAKAPURA MAIN ROAD,
BENGALURU-560 078.

... RESPONDENTS

(BY SRI V.B.SHIVAKUMAR, ADVOCATE FOR R1;
VIDE ORDER DATED 08.08.2017,
NOTICE TO R2 TO R5 ID DISPENSED WITH;
R6 – SERVED AND UNREPRESENTED)

THIS M.F.A. IS FILED UNDER ORDER 43 RULE 1(r) OF CPC,
AGAINST THE ORDER DATED 22.04.2017 PASSED ON I.A.NO 1,
2, 3 IN O.S.NO.8454/2016 ON THE FILE OF THE XL ADDITIONAL
CITY CIVIL AND SESSIONS JUDGE, BENGALURU (CCH-41),
ALLOWING I.A.NO.1 FILED UNDER ORDER XXXIX RULE 1 AND 2
R/W SECTION 151 OF CPC, DISMISSING THE I.A.NO.2 UNDER
ORDER XXXIX RULE 4 R/W SECTION 151 OF CPC, DISMISSING
THE I.A.NO.3 UNDER ORDER XXXIX RULE 1 AND 2 R/W
SECTION 151 OF CPC AND ETC.

THESE APPEALS HAVING BEEN HEARD AND RESERVED
FOR JUDGMENT ON 05.12.2024 THIS DAY, THE COURT
PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH

CAV JUDGMENT

The R.F.A.No.2457/2024 is filed challenging the order dated 19.10.2024 passed on I.A.No.10 filed under Order VII Rule 11 read with Section 151 of CPC in O.S.No.8454/2016 by the XL Additional City Civil and Sessions Judge, Bengaluru City. The M.F.A.No.5580/2017 is filed challenging the order dated 22.04.2017 passed in O.S.No.8454/2016 by the XL Additional City Civil and Sessions Judge, Bengaluru City.

2. Heard the learned counsel appearing for the respective parties.

3. The factual matrix of the case of the plaintiff/appellant before the Trial Court is that the appellant is a builder of repute, entered into a joint development agreement dated 19.08.2003 with the owner of the property bearing Bommanahalli Town Municipal khatha No.364, Sy.No.28 of Jaraganahalli village, Kankapura Road, Uttarahalli hobli, Bengaluru South Taluk, Ward No.186, measuring totally 3 acres

18 guntas which is morefully described in the schedule property. It is also the case of the plaintiff that on 21.07.2003, the appellant obtained sanction of a building plan from BDA for construction of multi storied residential flats/apartments, comprising of several building/blocks which are interconnected. The appellant developed and constructed 4 blocks of residential units under the name and style M/s. H M Tambourine and postponed construction of the remaining blocks to a future date. The appellant in order to construct in the area kept apart in the front of the schedule property for future development as provided in the brochure and earmarked for future development in the schedule property obtained a modified sanction plan from the relevant authority in terms with the Karnataka Town and Country Planning Act on 24.06.2016. The appellant accordingly commenced construction in November 2016. In December 2016, when substantial progress was achieved by the appellant, the defendants abruptly began interfering with the construction of the new residential apartments and made illegal threats claiming that they would prevent the future occupiers of the new residential apartments. Though the appellant appraised the

defendants that as per law and factually, they have no right to interfere and obstruction, continued the obstruction. Hence, constrained to file a suit for the relief of bare injunction. It is also contended that temporary injunction was granted and the same is questioned before this Court and the same was confirmed by this Court vide order 22.04.2017 and vacated the interim order of status quo granted on 08.08.2017 and order of this Court passed in W.P.No.20615/2017 are consistent with each other and permitted to put up the construction. It is contend that in the meanwhile, an application under Order VII Rule 11 of CPC was filed for rejection of the plaint and the said application was allowed by the Trial Court hence, the appellant is before this Court in this appeal.

4. The learned counsel for the appellant in this appeal would vehemently contend that the Trial Court committed an error in not noticing that when this Court as well as the Apex Court time and again held that ouster of jurisdiction of Civil Courts have to be strictly construed and that in the instant case, the authority under Real Estate (Development and Regulation)

Act, 2016 has no jurisdiction or competence to go into the issues involved in the suit. It is further vehemently contend that the Trial Court committed an error in relying upon Section 79 of the Act to hold that the suit is not maintainable ignoring the fact that Section 79 bars jurisdiction of the Civil Courts only in respect of matters over which the authority constituted under the Act has taken action or intends to take action pursuant to the power conferred by or under the Act. In the instant case, the authority has no power, competence or jurisdiction to restrain the respondents from interfering with the construction of residential apartments in the area earmarked for future development in the schedule property. The counsel would vehemently contend that the Trial Court failed to notice that the RERA Act came into force only on 01.05.2017 whereas the present suit was filed on 14.12.2016 and the Act not being retrospective, Section 79 is not applicable and there was no express bar under Section 9 of CPC to seek the relief of bare injunction. The Trial Court wholly erred in not noticing that a party is bound by the contract entered into and cannot resile therefrom and misunderstood and misconstrued Section 14 of the Act which specifies that the

proposed project shall be developed and completed by the promoter in accordance with the sanction plans.

5. The counsel would vehemently contend that the Trial Court in paragraph 13 grossly erred in framing the first point for consideration as to whether the present dispute comes under the ambit of Section 14 of RERA Act and ought not to have framed the said point for consideration. The counsel also would vehemently contend that the Trial Court erroneously held that there is violation of Section 14 as the builder has not obtained the consent of the residents of the apartment for the modified sanction plan. The finding that the modified sanction plan is contrary to Section 14 of RERA Act is also contrary to the finding of this Court in the judgment rendered in W.P.No.17375/2017 dismissing the writ petition filed by the respondent challenging the modified sanction plan. The observation made by the Trial Court is erroneous and the Court cannot consider disputed question of fact and the Apex Court held that no amount of evidence or merits of the controversy can be examined at the stage of decision of the application under Order VII Rule 11 of

CPC. The Trial Court fails to take note of the provision of Order VII Rule 11 of CPC and it is only the averments in the plaint that need to be looked into while deciding the said application. The Trial Court grossly erred in allowing the application filed under Order VII Rule 11 of CPC. Hence, it requires interference of this Court.

6. The learned counsel for the appellant in his arguments relied upon the documents which have been produced before the Trial Court i.e., the sale deed dated 26.05.2005 and photographs to show that the construction was almost completed in additional blocks. The counsel also brought to notice of this Court the contents of the plaint wherein specifically pleaded in a suit for bare injunction regarding interference and cause of action arose on 09.12.2016 and scope of the suit is only for bare injunction. The counsel also would vehemently contend that the Trial Court earlier disposed the application of temporary injunction and the same was questioned before this Court in MFA No.5580/2017 wherein, the order of the trial court is affirmed by this Court. The counsel also relied upon

the order passed by this Court in W.P.No.17375/2017 wherein challenge is made with regard to the modified sanction plan and the said fact was discussed in detail and dismissed the writ petition and also made it clear that it is clarified that the dismissal of the writ petition will not come in the way of the petitioners agitating their rights in respect of the property where the apartment complex is situated before the Civil Court and if they succeed in the same and if it has a bearing on the new building being constructed, they are at liberty to take action in accordance with law.

7. The counsel also brought to notice of this Court the application filed in I.A.No.10 wherein a prayer is sought to reject the plaint invoking Order VII Rule 11 read with Section 151 of CPC and Section 79 of the Real Estate (Regulation and Development) Act, 2016. The counsel referring this application also would vehemently contend that the defence of the defendants cannot be considered by the trial court and only the court has to consider the averments made in the plaint. The counsel also brought to notice of this Court the objections filed

before the trial court. The counsel would vehemently contend that when an application is filed under Order VII Rule 11 of CPC, the trial court ought to have considered the same within the provisions of Order VII Rule 11 of CPC, but, it traveled beyond its jurisdiction.

8. The counsel for the appellant in support of his arguments relied upon the judgment reported in **(2007) 14 SCC 183** in the case of **C NATRAJAN vs ASHIM BAI AND ANOTHER** and brought to notice of this Court paragraphs 8 and 9 wherein it is held that only the averments in the plaint could be considered and not the defence taken into account at the time of consideration of the application filed under Order VII Rule 11 of CPC. The question as to whether a suit is barred by limitation or not would, therefore, depend upon the facts and circumstances of each case and also held that the defence cannot be considered.

9. The counsel also relied upon the judgment reported in **2023 SCC ONLINE SC 1612** in the case of **ELDECO HOUSING AND INDUSTRIES LIMITED vs ASHOK**

VIDYARTHI AND OTHERS and brought to notice of this court paragraph 17 wherein it is held that no amount of evidence or merits of the controversy can be examined at the stage of consideration of the application under Order VII Rule 11 of CPC. The counsel also brought to notice of this Court paragraph 26 wherein also it is held that the documents produced by the defendant cannot be considered at the time of consideration of application under Order VII Rule 11 of CPC.

10. The counsel also relied upon the judgment reported in **AIR 1966 SC 1718** in the case of **ABDUL WAHEED KHAN vs BHAWANI AND OTHERS** and brought to notice of this court paragraph 9 wherein also the Apex Court discussed with regard to ouster of jurisdiction of Civil Court has to be construed strictly.

11. The counsel also relied upon the judgment reported in **AIR 1965 SC 1288** in the case of **CENTRAL BANK OF INDIA LTD., AMRITSAR vs HARTFORD FIRE INSURANCE CO., LTD.**, wherein it is held that it is the duty of the court to

give effect to the bargain of the parties according to their intention.

12. The counsel also relied upon the judgment reported in **(2007) 4 SCC 697** in the case of **FOOD CORPORATION OF INDIA vs CHANDU CONSTRUCTION AND ANOTHER** and brought to notice of this court paragraphs 12 and 13 wherein it is held that the Contract Act does not enable a party to a contract to ignore the express covenants thereof, and to claim payment of consideration for performance of the contract at rates different from the stipulated rates, on sine vague plea of equity. In paragraph 13, it discussed that the parties to decide their disputes according to law and so is bound to follow and apply the law, and if he does not, he can be set right by the court provided his error appears on the face of the award.

13. The counsel also relied upon the judgment passed in **W.P.No.55494/2013** decided on **16.05.2023** between **SMT. MALATHI vs STATE OF KARNATAKA AND OTHERS** and brought to notice of this Court paragraphs 1, 4, 7, 11 and 12

with regard to correctness of the modified industrial layout plan and also interpretation of Section 21 of the General Clauses Act.

14. The counsel also relied upon the judgment reported in **ILR 1988 KAR 1946** in the case of **SMT. LAKSHMIDEVAMMA vs K CHINNA REDDY AND OTHERS** and contend that even interim order which has become final acts as res-judicata since already writ court comes to a conclusion while dismissing the writ petition when challenge was made with regard to modified plan, res-judicata applies even at subsequent stages of the same proceedings as held in the judgment reported in **(2013) 15 SCC 665** in the case of **ERACH BOMAN KHAVAR vs TUKARAM SHRIDHAR BHAT AND ANOTHER.**

15. Per contra, the learned counsel appearing for the respondents would vehemently contend that the trial court taking into note of the material on record rightly comes to the conclusion that total area of the land available is 1,50,282 square feet and already 242 flats are constructed and sold the area to the extent of 1,15,509 square feet and remaining land is only 34,717 square feet. It is also contend that the modified

sanctioned plan is sought with BDA for 1,15,509 square feet which they are constructed and now, around 100 apartments are constructed and remaining **maximum land would be 90,000 square feet which amounts to 1,76,380 square feet** and the trial court in detail discussed with regard to Section 14 of the Act. The counsel also brought to notice of this Court the proviso under Section 3, 4, 7 and 14 of the RERA Act and also brought to the notice of this Court the explanation II - allottees consent is necessary and the matter is pending before the RERA authority for revocation and suit is also filed for the relief of bare injunction simplicitor. The trial court in detail discussed the grounds for allowing the application filed under Order VII Rule 11 of CPC and rightly comes to the conclusion that the suit cannot be continued.

16. The learned counsel for the respondents also filed an application under Order 41 Rule 27 of CPC seeking permission of this Court for production of additional documents which have not been relied upon before the Trial Court i.e., the copy of the order dated 05.01.2024 passed by the BDA under RTI application filed

along with the documents and copy of the order dated 07.11.2015 passed by the Government of Karnataka and contend that these documents are necessary for adjudication of this appeal.

17. The learned counsel for the respondents in support of his arguments relied upon the judgment reported in **(2021) 18 SCC 1** in the case of **NEWTECH PROMOTERS AND DEVELOPERS PVT LTD vs STATE OF UTTAR PRADESH AND OTHERS** and brought to notice of this court the discussions made in paragraphs 45 and 46 and so also 54 regarding the scheme of the Act 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At the same time, it will apply after getting the on-going projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016. The issue that whether the Act 2016 is

retrospective or retroactive in its operation and what will be the legal consequences has been discussed.

18. The learned counsel also relied upon the judgment reported in **(2020) 7 SCC 366** in the case of **DAHIBEN vs ARVINDBHAI KALYANJI BHANUSALI (GARJA) DEAD THROUGH LEGAL REPRESENTATIVES AND OTHERS** and brought to notice of this court the discussion made with regard to Order VII Rule 11 of CPC, mandatory in nature that the court bound to reject the plaint if any of the grounds specified are made out and the court has to find whether plaint discloses real cause of action or illusory cause of action created by clever drafting.

19. The learned counsel also relied upon the judgment reported in **(2021) 10 SCC 1** in the case of **SUPERTECH LIMITED vs EMERALD COURT OWNER RESIDENT WELFARE ASSOCIATION AND OTHERS** and referring this judgment, the counsel brought to notice of this court the discussions made in the judgment with regard to the collusion and illegal construction and also discussion was made with regard to the consent of the

RWA and also the conclusion with regard to the violation of contract and also proceeding as against the sanction plan and brought to notice of this court paragraph 96 where it is held that when an attempt to argue building blocks is not defined under the bye-laws and according to the discussion made by the Apex Court, discussed the judgment reported in **2014 SCC ONLINE ALL 14817** in the case of **EMERALD COURT OWNER RESIDENT WELFARE ASSOCIATION vs STATE OF U.P.'s** case when the argument was canvassed and brought to notice of this court paragraph 97 with regard to interpretation with regard to the building blocks inconsistency in fact in the argument of the appellant while arguing the case and also brought to notice of this court paragraph 107.2 - the purpose of prescribing a minimum distance requirement between two buildings is to prevent transmission of fire for safe escape during calamities, minimum ventilation, and to receive natural daylight, to avoid transmission of fire, safe escape and rescue and construction is made in clear violation of the sanctioned plan. The counsel referring these judgments would vehemently contend that the trial court in detail taken note of the scope of Section 14, 71 and

79 of the RERA Act and rightly comes to the conclusion that the plaint is liable to be rejected. Hence, it does not require any interference.

20. In reply to the arguments, the learned counsel for the appellant would vehemently contend that the application filed under Order 41 Rule 27 of CPC by the respondents has no relevance to consider this appeal. The very contention that plan was illegal and the said fact was already considered in the writ petition and the same was dismissed and res-judicata applies to agitate the very same ground. The counsel would vehemently contend that injunction was granted and permitted to put up construction and constructed 10 floors building as per the plan and not more than that.

21. The M.F.A.No.5580/2017 is filed challenging the order passed by the Trial Court by the defendant wherein an injunction is granted restraining the defendant in any way interfering with the construction of the residential apartments building in the area earmarked for the future developments in the suit schedule property residential apartments (HM

Tambourine), comprised in Bommanahalli Town Municipal Khata No.364, Sy.No.28 of Jaraganahalli village, Kanakapura Road, Uttarahalli holbi, Bengaluru South Taluk, Ward No.186 and the same is resisted by the defendants by filing an application under Order 39 Rule 4 of CPC contending that the suit is filed without the land owner namely M/s Pedigree Construction Private Limited, being not a party, the suit is liable to be dismissed for non-joinder of necessary party. The plaintiff is not entitled for any relief as sought. The entrance of the suit schedule property has a security camera which records the entry of visitors and on perusal of the entire video data, it is evident and clear that none of the defendants came to the site when the plaintiff itself not present and denied all the allegations made in the application regarding interference and causing obstruction.

22. Having heard the learned counsel appearing for the respective parties and also on perusal of the principles laid down in the judgments referred supra and perusal of the material on record, the points that would arise for consideration of this court are:

1. Whether the trial court committed an error in allowing the application filed under Order VII Rule 11 of CPC in coming to the conclusion that Section 79 of RERA Act pressed into service?
2. Whether Miscellaneous First Appeal is to be considered along with this Regular First Appeal?
3. What order?

Point No.1:

23. Having heard the learned counsel appearing for the respective parties and also on perusal of the material available on record, it discloses that admittedly, the suit is filed for the relief of bare injunction. At this juncture, this Court would like to refer the prayer made in the plaint which reads as follows:

“Wherefore, the plaintiff respectfully prays, that this honourable Court be pleased to pass a judgment and decree against the defendants by an order of permanent injunction as follows:

1. Restraining the defendants their agents, men or anybody under or through them from in any way

interfering with the construction of the residential apartments building in the area earmarked for the future developments in the schedule property

2. Or from interfering with connecting services to the existing infrastructure
3. Or from interfering with the usage of common amenities and facilities by the occupants of the new residential apartments
4. Or from interfering with the usage of entry and exit ramps, drive way, open spaces/car parks and
5. grant such other relief/s as this honourable Court deems fit, in the circumstances of the case, including the costs of the proceedings, in the ends of justice."

24. Having perused the plaint averments, it discloses that the suit is filed only for the relief of bare injunction. While considering the application filed under Order VII Rule 11 of CPC, the court has to take note of the averments made in the plaint and not the defence taken by the defendants. Having considered the averments made in the plaint, it is specifically pleaded while seeking the relief of permanent injunction regarding modified sanctioned plan dated 24.06.2016 to construct residential apartments in the area earmarked for future development in the schedule property and sanctioned plan at Document No.5 is produced before the trial court. Apart from

that in paragraph 4 of the plaint, it is categorically stated that when they started the work of the new residential apartments in the schedule property, to the shock and surprise of the plaintiff, the defendant abruptly appeared near the schedule property on 09.12.2016 and made illegal threats to prevent the plaintiff from beginning the construction work. In the plaint, specific averments are made with regard to the interference and causing of obstruction and cause of action is also mentioned as 09.12.2016. When the averments are made in the plaint with regard to the interference is concerned, the relief is sought only for permanent injunction, thus, the scope and ambit of the suit has to be taken note of by the court.

25. The counsel for the appellant also relied upon the judgment in the case of **C NATRAJAN** referred supra wherein the Apex Court categorically taken note of with regard to the fact that the application for rejection of the plaint can be filed if the allegations made in the plaint even if given face value and taken to be correct in their entirety appear to be barred by any law. The question as to whether a suit is barred by limitation or not

would, therefore, depend upon the facts and circumstances of each case and also held that for the said purpose, only the averments made in the plaint are relevant. At this stage, the court would not be entitled to consider the case of the defence. In paragraph 9, the Apex Court held that applicability of one or the other provisions of the Limitation Act per se cannot be decisive for the purpose of determining the question as to whether the suit is barred under one or the other article contained in the Schedule appended to the Limitation Act.

26. The judgment relied upon by the counsel for the appellant is in the case of **ELDECO HOUSING AND INDUSTRIES LIMITED** referred supra and brought to notice of this Court paragraphs 17 and 26. While discussing the principles laid down in that judgment referred the judgment in the case of **KAMALA vs K T ESHWARA SA** and held that only the averments in the plaint would be relevant. For this purpose, there cannot be any addition or subtraction. No amount of evidence can be looked into. The issue on merits of the matter would not be within the realm of the Court at that stage and the

Court at that stage would not consider any evidence or enter a disputed question of fact of law. In paragraph 26 also discussed the scope and ambit of Order VII Rule 11 of CPC and the documents which have been referred by the respondent in support of his plea for rejection of the plaint, cannot be considered at this stage as these are not part of the record with the Court filed along with the plaint and no amount of evidence or merits of the controversy can be examined at the state of decision of the application under Order VII Rule 11 of CPC. Hence, it is clear that court has to take note of the documents which have been filed along with the plaint and no amount of evidence or merits of the controversy can be examined at the state of decision of the application under Order VII Rule 11 of CPC.

27. Having considered the principles laid down in the judgments referred supra, it discloses that the reasoning assigned by the trial court is erroneous and the Trial Court fails to take note of the scope and ambit of Order VII Rule 11 of CPC and comes to a conclusion that the defence which have been

raised discussing Section 14 as well as 71 and 79 of RERA Act and same is nothing but a defence and documents which have been relied by the defendant cannot be looked into while considering the application filed under Order VII Rule 11 of CPC.

28. No doubt, the counsel for the appellant and also the counsel for the respondents have relied upon the judgment with regard to the inter se agreement between the parties and work was taken up and those materials cannot be looked into while considering the application filed under Order VII Rule 11 of CPC and Order VII Rule 11 (d) of the Code has limited scope and it must be shown that the suit is barred under any law, such a conclusion must be drawn from the averments made in the plaint and not based on the defence and the application for rejection of the plaint may be filed on more than one ground specified in various sub-clauses but there must be clear finding to that effect must be arrived at what would be relevant for invoking Order VII Rule 11 that is averments made in the plaint and for that purpose there cannot be any addition or subtraction. When relief is sought for the relief of bare

injunction,, purely it should be on the averments made in the plaint and not on the defence of the defendant.

29. The other contention of the respondent that there is a clear violation and the construction is not in terms of the modified sanction plan. Admittedly, the very same contention was raised while filing the writ petition questioning the sanction plan and this court rejected the said contention while considering the issue in a writ petition in **W.P.No.17375/2017** (referred supra) is very clear that challenge is made with regard to the modified sanction plan and the said fact was discussed in detail and dismissed the writ petition and also made it clear that it is clarified that the dismissal of the writ petition will not come in the way of the petitioners agitating their rights in respect of the property where the apartment complex is situated before the Civil Court and if they succeed in the same and if it has a bearing on the new building being constructed, they are at liberty to take action in accordance with law. Hence, the observation made by this Court in the said writ petition is also very clear that a liberty was given to take action in accordance

with law and that does not mean that they have to approach the Court by filing an application under Order VII Rule 11 of CPC. Hence, the Trial Court committed an error in taking into note of prayer sought to reject the plaint invoking Order VII Rule 11 read with Section 151 of CPC and invoked Section 79 of the RERA Act and defence of the defendant cannot be considered by the Trial Court and the Court has to consider only the averments made in the plaint. the Trial Court ought not to have taken note of Sections 14, 71 and 79 of RERA Act when the relief is sought only for permanent injunction and the scope and ambit of the suit is whether there is an interference or not and if any such violation in construction of the building, an appropriate proceedings has to be initiated but not filing an application under Order VII Rule 11 of CPC seeking the relief for rejection of the plaint.

30. No doubt, the respondent counsel also relied upon the judgment of **NEWTECH PROMOTERS AND DEVELOPERS PVT. LTD.**, referred supra regarding its application is retroactive in character. The contention of the appellant's counsel that RERA

Act came into force in the year 2017 but the suit was filed in the year 2016. Admittedly, the suit was filed in 2016 that means before introducing of the RERA Act. The counsel also relied upon the judgment of **DAHIBEN's** case referred supra. No doubt, the Apex Court while considering the application filed under Order VII Rule 11 of CPC held that the same is mandate in nature and the Court has to find whether plaint discloses real cause of action or illusory cause of action created by clever drafting. But in the suit, it is specifically pleaded the cause of action and date of interference and hence, there is no question of clever drafting has held in the said judgment. The counsel also relied upon the judgment of **SUPERTECH LIMITED** referred supra and the same is also with regard to the illegal construction is concerned and violation of contract and proceeding against the sanction plan and brought to notice of this Court paragraph 96 wherein held that when an attempt to argue that the phrase "building blocks" is not defined under the bye-laws. According to the discussion made by the Apex Court referring the judgment of **EMERALD COURT OWNER RESIDENT WELFARE ASSOCIATION** referred supra, brought to notice of this Court

the purpose of prescribing a minimum distance requirement between two buildings is to prevent transmission of fire for safe escape during calamities, minimum ventilation, and to receive natural daylight, to avoid transmission of fire, safe escape and rescue and construction is made in clear violation of the sanctioned plan. This Court in the writ petition referred supra already held that the course open to the defendant only to make endeavour to proceed in accordance with law and the scope and ambit of Trial Court is only to examine any interference since suit is only for injunction simplicitor.

31. This Court already pointed that the scope of Order VII Rule 11 is very limited and the Court has to look into the averments of the plaint not the defence and even if such violation, Order VII Rule 11 of CPC cannot be pressed into when scope and ambit is very limited. When such being the material available on record, the Trial Court committed an error in proceeding to invoke Order VII Rule 11 and rejecting the plaint and failed to take note of scope and ambit of Order VII Rule 11 of CPC as well as relief sought in the suit that is for only

permanent injunction and same is injunction for simplicitor in view of narration made in the plaint with regard to the interference and whether cause of action has been pleaded or not and whether the plaint averments constitute for filing a suit for bare injunction, ought to have taken note of and instead of that elaborate discussion was made regarding Sections 14, 71 and 79 of RERA Act. Defence of the defendant cannot be looked into and the Trial Court lost sight of scope of Order VII Rule 11 of CPC and settled principles as held by the Apex Court as well as this Court in several judgments. Thus, the Trial Court committed an error in allowing the application filed under Order VII Rule 11 of CPC and it requires interference of this Court. Accordingly, the above point is answered as affirmative.

Point no.2

32. The miscellaneous first appeal is de-linked to consider the same separately since the order impugned is set aside and as a result, the suit will continue and the same does not become infructuous.

Point No.3:

33. In view of the discussions made above, I pass the following:

ORDER

The Regular First Appeal is allowed.

The impugned order dated 19.10.2024 passed on I.A.No. 10 filed under Order VII Rule 11 read with Section 151 of CPC in O.S.No.8454/2016 is set aside.

The Trial Court is directed to proceed with the suit in accordance with law within the scope of the suit.

Registry is directed to de-link M.F.A.No.5580/2017 from R.F.A.No.2457/2024 and the said M.F.A.No.5580/2017 has to be considered separately on merits.

Sd/-
(H.P. SANDESH)
JUDGE

SN