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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 834 OF 2026

Harilal Talkshi Shah

...Appellant

Versus

M/s. Gada Enterprise And Others

...Respondent(s)

with

INTERIM APPLICATION NO. 6280 OF 2026

IN

APPEAL FROM ORDER NO. 834 OF 2026

Harilal Talkshi Shah

...Appellant

Versus

M/s. Gada Enterprise And Others

...Respondents

Bhutekar And Associates

Ms. Prachi Khandge a/w. Ms. Sejal Singh i/b. Bhutekar & Associates,
for Appellant.

Mr. Mayur Khandeparkar a/w. Mr. Rohan Savant i/b. Yogesh Adhia, for
Respondent Nos. 1 and 2.

Mr. Shanay Shah, a/w. Mr. Dhiren Durante a/w. Ms. Riya Vasa a/w. Mr. Vyomesh
Warunjikar i/b. Lexicon Law Partners, Respondent Nos. 9 to 12.

Ms. Neeta Jadhav i/b. Ms. Komal Punjabi, for Respondent – BMC.

CORAM: AARTI SATHE, J.

DATE: 28 SEPTEMBER 2026

P.C.

1. The present Appeal from Order has been filed under Order XLIII Rule
1(r) read with Section 104 of the Code of Civil Procedure, 1908 ("CPC"),

impugning the order dated 21st May 2026 (hereinafter referred to as the “impugned order”) passed by the learned Bombay City Civil Court (hereinafter referred to as the “Trial Court”), in SC Suit No. 5170 of 2024. By the impugned order, the learned Trial Court refused to grant an injunction restraining Respondent Nos. 1 and 2 and Respondent Nos. 9 to 12 from carrying out any construction on the property bearing CTS No. 55, 55/1 to 55/18 totally admeasuring 3267 sq. yards of Village Magathane at S.V. Road, Borivali (W), Mumbai-400092 (hereinafter referred to as the “suit property”) and from creating any third-party rights, title, interest, or encumbrances in respect thereof.

2. Briefly, the facts are as follows:

- i) On 14th September 1962, an Indenture of Lease (hereinafter referred to as the “said Lease Deed”) was executed between Hansraj Kapadia and Shrimati Veermati Hansraj Kapadia (hereinafter collectively referred to as “the Lessors”) and Mr. Jayantilal Motilal Mehta (hereinafter referred to as “the Lessee”). The said Lease Deed was registered with the Office of the Sub-Registrar of Assurances at Bandra under Serial No. 288 of 1963, in Book No. 1, on 7th February 1963. By and under the said Lease Deed, the suit property was leased out by the Lessors unto the Lessee for a term of 99 years.
- ii) The said Lease Deed contained, *inter alia*, a covenant permitting the Lessee, Mr. Jayantilal Motilal Mehta, to construct a building or buildings upon the suit property, at a total cost not exceeding Rs. 1,00,000/-.
- iii) On 20th April 1971, an Indenture of Assignment (hereinafter referred to as the “said Assignment Deed”) was executed between the Lessee and Mr. Ladhilbai

Devji, Mr. Talakshi Devji, and Mr. Nemichand Devji (hereinafter referred to as “the Assignees”). The said Assignment Deed was registered with the Sub-Registrar of Assurances at Bandra under Serial No. BND-714-1971. By and under the said Assignment Deed, the Lessee agreed to assign and transfer in favour of the Assignees his leasehold rights, title and interest in respect of the suit property, for a consideration of Rs. 1,10,000/-.

iv) On 22nd November 2002, an unregistered Agreement was executed between the Appellant and his family members and Respondent No. 1 in respect of the suit property.

v) On 5th February 2005, the Appellant and his family members, through their Advocates, addressed a notice to Respondent No. 1, *inter alia* stating that out of the total consideration of Rs.26,00,000/- payable by Respondent No. 1 under the said Agreement, only an amount of Rs. 13,00,000/- had been paid. By the said notice, the Appellant, along with his family members purported to terminate, cancel and revoke the Agreement dated 22nd November 2002.

vi) In furtherance of and pursuant to the termination of the said Agreement, the Appellant contended that the earnest money of Rs. 5,00,000/- stood forfeited and, accordingly, called upon Respondent Nos. 1 and 2 to collect the balance amount of Rs.8,00,000/- within one month from the date of service of the said notice.

vii) By the said notice, the Appellant further cancelled and revoked the Power of Attorney executed in pursuance of the Agreement dated 22nd November 2002. The said notice further recorded that in the event Respondent Nos. 1 and 2 failed

to comply with the requisite conditions contained therein within a period of one month from the date of service of the notice, the said Agreement would stand terminated, and the entire amount paid thereunder would stand forfeited.

viii) On 26th December 2006, an Indenture of Conveyance was executed between Mr. Shantikumar Hansraj Kapadia and Mr. Jitendra Hansraj Kapadia and Respondent No. 2 in his capacity as a director of Respondent No. 1 for the suit property. The said Indenture of Conveyance was registered with the Sub-Registrar of Assurances under Serial No. BDR-5-10111-2006.

ix) On 9th November 2015, the Appellant and the other family members, through their Advocate, addressed a notice to Respondent No. 1, *inter alia* alleging that since January 2015 the Appellant had been calling upon Respondent Nos. 1 and 2 to pay and clear all outstanding amounts, together with interest thereon at the rate of 18% per annum. It was further alleged in the said notice that the suit property could not be conveyed in favour of Respondent Nos. 1 and 2, as the Appellant and the other family members were the lessees in respect of the suit property pursuant to the Assignment Deed dated 20th April 1971. It was further stated that the unregistered Agreement dated 22nd November 2002 stood terminated.

x) On 7th December 2016, the Appellant instituted Commercial Suit No. 280 of 2016 before this Court and filed Notice of Motion No. 32 of 2017 therein against Respondent Nos. 1 and 2, *inter alia* seeking an order restraining Respondent Nos. 1 and 2 from creating any third-party rights in respect of the suit property, along with other consequential reliefs.

xi) By an order dated 8th February 2017, this Court recorded the submission made on behalf of the Appellant that in view of the early date assigned for hearing of the said Notice of Motion, the Appellant was not pressing for ad-interim relief at that stage.

xii) On 31st March 2023, a Development Agreement was executed between Respondent No. 1 and Respondent No. 9, through its partners, namely, Mr. Bhagwanji Manji Hedpara (Respondent No. 10), and Mr. Nitesh Bhagwanji Hedpara (Respondent No. 11). The said Development Agreement was registered with the Sub-Registrar of Assurances at Borivali under Serial No. BRL-2-4803-2023. By and under the said Development Agreement, Respondent No. 9 acquired development rights in respect of all that piece and parcel of land admeasuring 1,909.70 square meters or thereabouts, bearing CTS Nos. 55/A and 55/C, corresponding to Survey No. 164 and Survey No. 3, Hissa No. 1, situated at Village Magathane, Taluka Borivali, Mumbai Suburban District.

xiii) On 11th November 2023, Respondent No. 8, being the Municipal Corporation of Greater Mumbai ("MCGM"), issued an amended Intimation of Disapproval ("IOD") bearing No. CHE/A-5078/BP(WS)/AR/IOD/I/Amend in favour of Respondent No. 9.

xiv) On 28th February 2024, in view of the revision in the pecuniary jurisdiction, the aforesaid Commercial Suit No. 280 of 2016 was transferred to the City Civil Court, Mazgaon and was renumbered as Commercial Suit No. 80 of 2024. In the aforesaid said suit, the Appellant filed Chamber Summons No. 699 of 2024 *inter alia* seeking to implead Respondent Nos. 9 to 12 as parties thereto and to restrain

them from carrying out any construction on the suit property and/or creating any third-party rights, title or interest therein. The Appellant pressed for ad-interim reliefs in the said Chamber Summons, however, the Court did not grant the same.

xv) On 5th April 2024, the Appellant filed Notice of Motion No. 1372 of 2024, *inter alia* seeking an order restraining the Respondents from proceeding with any construction on the suit property and/or from creating any third-party rights, title or interest therein.

xvi) On 15th April 2024, the Chamber Summons No. 699 of 2024 came up for hearing and was argued on behalf of the Appellant. During the course of the hearing, Respondent Nos. 1 and 2 raised objections as to the maintainability of the suit before the Court, contending that the dispute did not constitute a “commercial dispute” within the meaning of the Commercial Courts Act, 2015. It is the contention of the Respondents that, on 26th April 2024, the Appellant sought an order of status quo before the Court, however, no such relief was granted.

xvii) On 30th April 2024, the Appellant filed Writ Petition No. 2787 of 2024 against the Respondents, *inter alia* seeking cancellation and/or setting aside of the IOD dated 11th August 2023 and the Commencement Certificate (“C.C.”) dated 10th October 2023, as well as injunctive reliefs substantially similar to those sought in the Chamber Summons No. 699 of 2024 and Notice of Motion No. 1372 of 2024.

xviii) Thereafter, Respondent Nos. 1 and 2 filed Notice of Motion No. 1505 of 2024 in Commercial Suit No. 80 of 2024, challenging the maintainability of the suit before the Commercial Court on the ground that the dispute was not a

“commercial dispute” within the meaning of the Commercial Courts Act, 2015. The said Notice of Motion came to be allowed, pursuant to which the Plaint, along with the records of other proceedings, were returned to the Appellant, with liberty to present the same before the Bombay City Civil Court, Main Branch, having appropriate jurisdiction.

xix) On 14th May 2024, this Court dismissed Writ Petition No. 2787 of 2024 on the ground that the reliefs sought therein were substantially the same as the reliefs already sought by the Appellant in the Commercial Suit No. 80 of 2024.

xx) Thereafter, sometime in June 2024, upon Commercial Suit No. 80 of 2024 being transferred to the Bombay City Civil Court, Main Branch and being renumbered as Suit No. 5170 of 2024, the Appellant sought to press for ad-interim reliefs. However, by order dated 18th June 2024 the Trial Court observed that since the matter was then placed for filing of the reply on behalf of Respondent Nos. 1 and 2, it would not be appropriate to grant ad-interim relief at that stage.

xxi) Thereafter, on 20th June 2024, the Appellant filed Writ Petition No. 8878 of 2024 challenging the roznama order dated 18th June 2024 and once again seeking ad-interim reliefs restraining Respondent Nos. 9 to 12 from carrying out any construction on the suit property and/or creating any third-party rights, title or interest therein.

xxii) By an order dated 21st June 2024, this Court dismissed Writ Petition No. 8878 of 2024. While doing so, this Court observed that the reliefs sought by the Appellant in the suit and the Chamber Summons arose out of an assignment of lease which, according to the Court, dated back to the year 2002, and that granting

any order at that stage, after the passage of several years, would be prejudicial to the rights and interests of the Respondents. It was further clarified that the proposed development was to be undertaken by Respondent Nos. 9 to 12 and that the said development would affect 56 tenants who were in occupation of the suit property.

xxiii) On 3rd July 2024, the Appellant filed Notice of Motion No. 2683 of 2024 against Respondent No. 8 seeking the cancellation and/or revocation of the IOD and the Commencement Certificate ("C.C.") issued in respect of the suit property.

xxiv) Respondent Nos. 1 and 2 thereafter filed Notice of Motion No. 2347 of 2024 seeking rejection of the Plaint filed by the Appellant under Order VII Rule 11 of the CPC. Respondent Nos. 1 and 2 also filed an application at Exhibit 12 seeking that the aforesaid Notice of Motion be heard and decided prior to consideration of any application for ad-interim reliefs.

xxv) The Appellant once again pressed for ad-interim reliefs in Notice of Motion No. 2683 of 2024. However, the learned Trial Court by order dated 18th July 2024 declined to grant such reliefs in view of the pendency of the application at Exhibit 12 filed by Respondent Nos. 1 and 2.

xxvi) Thereafter, further proceedings ensued between the parties. Being aggrieved by the roznama order dated 18th July 2024 passed by the learned Trial Court, the Appellant preferred Appeal from Order No. 1 of 2025 before this Court.

xxvii) By an order dated 6th January 2025, this Court observed that, in the event Notice of Motion No. 2347 of 2024 filed by Respondent Nos. 1 and 2 and the Notice of Motion No. 2683 of 2024 filed by the Appellant were not heard by the

learned Trial Court on or before 30th January 2025, this Court would proceed to hear the Appeal from Order preferred by the Appellant.

xxviii) On 30th January 2025, the learned Trial Court allowed Notice of Motion No. 2347 of 2024 filed by Respondent Nos. 1 and 2. Thereafter, the Appellant commenced the hearing of the second Notice of Motion filed by the Appellant before the learned City Civil Court.

xxix) The Appellant thereafter withdrew the earlier Chamber Summons and filed Chamber Summons No. 647 of 2025, seeking to implead Respondent Nos. 9 to 12 as party Defendants to the suit. The said Chamber Summons came to be allowed, pursuant to which Respondent Nos. 9 to 12 were impleaded as parties to the suit.

xxx) On 28th April 2025, the Appellant filed Notice of Motion No. 2479 of 2025 seeking an order restraining Respondent Nos. 9 to 12 from proceeding with any construction on the suit property and/or from creating any third-party rights, title, or interest therein.

xxxi) During the aforesaid period, the earlier Notices of Motion filed by the respective parties were also being heard and considered by the learned Trial Court.

xxxii) Respondent Nos. 1 and 2 filed their reply in Notice of Motion No. 2479 of 2025. Further, an additional affidavit was also filed by the Appellant in the said Notice of Motion, with Respondent Nos. 9 to 12 filing a reply thereto.

xxxiii) Thereafter the Appellant filed an application seeking ad-interim reliefs, wherein by order dated 10th June 2025 the Trial Court adjourned the matter to 3rd July 2025 for arguments.

xxxiv) Being aggrieved by the roznama order dated 10th June 2025, the Appellant preferred Appeal from Order (L) No. 20400 of 2025 before this Court. The said Appeal from Order is presently pending adjudication.

xxxv) Thereafter, the matter adjourned to 3rd July 2025 was once again adjourned to 14th July 2025 by a roznama order of even date, and being aggrieved by the aforesaid adjournment, the Appellant preferred a further Appeal from Order (L) No. 2364 of 2025 before this Court. The said Appeal from Order came to be dismissed by this Court by the order dated 2nd September 2025.

xxxvi) Notice of Motion No. 2479 of 2025 was thereafter finally heard by the learned Trial Court. By its order dated 21st May 2026, i.e., the impugned order, the learned Trial Court was pleased to reject the reliefs sought by the Appellant in the said Notice of Motion, including the prayer for an injunction restraining the Respondents from proceeding with construction on the suit property and/or from creating any third-party rights, title or interest therein.

xxxvii) Being aggrieved by and dissatisfied with the impugned order, the Appellant has preferred the present Appeal from Order under Order XLIII Rule 1(r) of the CPC, seeking that the impugned order be set aside and the interim reliefs sought by the Appellant be granted.

3. Learned counsel Ms. Prachi Khandge, along with Ms. Sejal Singh, instructed by Bhutekar & Associates, appeared on behalf of Appellant, Mr. Mayur

Khandeparkar, along with Mr. Rohan Savant, appeared on behalf of Respondent Nos. 1 and 2, Mr. Shanay Shah, along with Mr. Dhiren Durante, Ms. Riya Vasa, and Mr. Vyomesh Warunjikar appeared on behalf of Respondent Nos. 9 to 12, and Ms. Neeta Jadhav, appeared on behalf of Respondent No. 8.

4. Learned Counsel appearing on behalf of the Appellant submitted that the impugned order passed by the learned Trial Court suffers from serious infirmities, and that the learned Trial Court failed to appreciate that, if the reliefs sought by the Appellant in the aforesaid Notice of Motion were not granted, the Appellant would suffer irreparable loss and prejudice to his rights in respect of the suit property.

5. She further submitted that, once it was admitted that the leasehold rights of the Appellant were subsisting and binding upon the Respondents, Respondent Nos. 1 and 2 had no right or authority to deal with, alienate, encumber or otherwise create any third-party rights in respect of the suit property until determination of the said leasehold rights. She submitted that the alleged Conveyance Deed dated 26th December 2006 could not confer any right, title or interest upon Respondent Nos. 1 and 2 in contravention to the subsisting leasehold rights of the Appellant.

6. Learned Counsel further submitted that the Conveyance Deed itself specifically recorded and/or acknowledged the leasehold rights claimed by the Appellant in respect of the suit property. In view thereof, it was submitted that the learned Trial Court erred in failing to appreciate the effect of the said acknowledgment and in refusing to grant an injunction restraining the

Respondents from creating any third-party rights, title or interest in respect of the suit property.

7. Learned Counsel further submitted that the Agreement dated 22nd November 2002 was an unregistered document, and that the same had been terminated by the Appellant in the year 2005 itself. She submitted that the termination was affected on account of the Respondent Nos. 1 and 2's failure to comply with the terms and conditions of the said Agreement and, in particular, their failure to pay the balance consideration stipulated thereunder.

8. Learned Counsel further submitted that the Appellant had not transferred or assigned his leasehold rights in favour of Respondent Nos. 1 and 2, and that the said rights had, according to the Appellant, been unlawfully appropriated by the Respondents. She submitted that Permanent Alternate Accommodation Agreements (PAAAs) had thereafter been entered into with the tenants in purported derogation of the rights of the Appellant and in breach of the conditions governing the suit property.

9. Learned Counsel submitted that, the Agreement dated 22nd November 2002, being an unregistered document, the same did not create or confer any right, title, or interest in respect of the suit property in favour of Respondent Nos. 1 and 2. Consequently, it was submitted that Respondent Nos. 1 and 2 could not rely upon the said Agreement to assert any right or entitlement in respect of the suit property.

10. Learned Counsel submitted that the fundamental issue arising in the present proceedings was whether Respondent Nos. 1 and 2, who claimed to have

reversionary rights in respect of the suit property, could, without the consent of the lessee under a subsisting lease, proceed with the development of the suit property and create third-party rights therein, thereby prejudicing the rights of the Appellant.

11. Learned Counsel further submitted that Respondent Nos. 1 and 2 could not invoke the doctrine of part performance or claim the benefit of Section 53A of the Transfer of Property Act, 1882 (hereinafter referred to as the “Act of 1882”) on the basis of the Agreement dated 22nd November 2002. She submitted that the Respondents had failed to take the requisite steps towards performance of the said Agreement, and had neither demonstrated their readiness, nor their willingness to perform their obligations thereunder. She further submitted that the cheques issued by the Respondents towards payment of the balance consideration had been dishonoured. On these grounds, it was submitted that the Respondents could not claim the protection of Section 53A of the Act of 1882.

12. Learned Counsel further submitted that the IOD had been sanctioned for development of the building on the basis of the Conveyance Deed dated 26th December 2006 which, according to the Appellant, conferred upon Respondent Nos. 1 and 2 only reversionary rights in respect of the suit property. She submitted that the said Conveyance Deed did not confer upon Respondent Nos. 1 and 2 any right, title or interest in respect of the buildings constructed on the suit property.

13. She also submitted that Respondent Nos. 9 to 12 derived their alleged development rights from Respondent Nos. 1 and 2. Since, according to the Appellant, Respondent Nos. 1 and 2 themselves had no subsisting right, title or

interest enabling them to undertake development of the suit property or to create third-party rights therein, the rights claimed by Respondent Nos. 9 to 12 were also incapable of being sustained.

14. Learned Counsel therefore submitted that the impugned order passed by the learned Trial Court warranted interference and ought to be set aside. She submitted that the balance of convenience was in favour of the Appellant, as permitting further construction and/or creation of third-party rights in respect of the suit property during the pendency of proceedings would cause serious prejudice to the Appellant and would substantially alter the nature and character of the subject-matter of the dispute.

15. *Per contra*, learned Counsel appearing on behalf of the Respondents submitted that the impugned order passed by the learned Trial Court suffers from no infirmity and has been passed after duly considering the chequered and litigious history between the parties.

16. It was submitted that the Agreement dated 22nd November 2002 expressly authorised Respondent No. 1 to enter upon the suit property, negotiate with the tenants and occupants thereof, obtain possession from them, demolish the existing structures, undertake construction and sell the units proposed to be constructed thereon. He submitted that the said Agreement further contemplated the surrender and/or extinguishment of the tenancies and that the benefits arising therefrom were expressly intended to enure to the benefit of Respondent No. 1.

17. Learned counsel further submitted that an irrevocable Power of Attorney had also been executed in favour of Respondent No. 1 pursuant to the said

Agreement. According to the Respondents, since the surrender and/or extinguishment of the tenancies was expressly contemplated to enure to the benefit of Respondent No. 1, the transaction constituted a clear case of attornment of the existing tenancies in favour of Respondent No. 1.

18. It was further submitted that the precise nature and extent of the rights, if any, created in favour of Respondent Nos. 1 and 2 under the Agreement dated 22nd November 2002 are matters which would necessarily require adjudication at the trial of the suit. He submitted that the rival claims of the parties in respect of the said Agreement, the leasehold rights, and the alleged development rights could not be conclusively determined at the interlocutory stage. It was therefore submitted that the disputed questions concerning the nature and extent of the rights claimed by Respondent Nos. 1 and 2 could not, at this stage, constitute a sufficient basis for granting an injunction against them, particularly when the issues were yet to be adjudicated upon in the pending suit.

19. It was further submitted that Respondent Nos. 1 and 2 were, at all material times, ready and willing to perform their obligations under the Agreement dated 22nd November 2002. He submitted that this was evident from the fact that, after the purported termination of the said Agreement by the Appellant on 5th February 2005, Respondent Nos. 1 and 2 disputed the alleged termination by their communication dated 14th February 2005. Thereafter, by their communication dated 18th March 2005, Respondent Nos. 1 and 2 expressly stated that they were ready and willing to pay the balance consideration payable to the Appellant.

20. He further submitted that drafts of the proposed Assignment Deed were exchanged between the parties, and that Respondent Nos. 1 and 2 had, throughout, reiterated their readiness and willingness to pay the balance consideration to the Appellant together with interest at the rate of 18% per annum. He therefore submitted that the contention of the Appellant that there had been no part performance within the meaning of Section 53A of the Act of 1882, was erroneous and was liable to be rejected.

21. Learned counsel further submitted that the Appellant could not seek any relief against Respondent Nos. 1 and 2 in respect of the suit property, having regard to the proviso to Section 49 of the Registration Act, 1908, which, according to him, permits an unregistered agreement to be relied upon in a suit for specific performance. He submitted that the Agreement dated 22nd November 2002 was coupled with a Power of Attorney and, therefore, constituted an agency coupled with an interest in favour of Respondent Nos. 1 and 2. According to him, such agency was irrevocable in view of Section 202 of the Indian Contract Act, 1872.

22. Learned Counsel further submitted that Respondent Nos. 1 and 2 had acted upon the Agreement dated 22nd November 2002 and had entered into negotiations with the tenants, demolished the existing building, and taken steps towards obtaining sanction for the redevelopment plans. He further brought to the attention of this Court that the redevelopment had progressed substantially and that an Occupation Certificate (OC) had already been obtained in respect of the buildings constructed on the suit property.

23. He further submitted that the Plaint filed by the Appellant before the learned Trial Court suffered from suppression of material facts and documents. He submitted that the Appellant had failed to place the complete and relevant factual and documentary record before the learned Trial Court and this Court. According to the Respondents, such suppression was material to the adjudication of the interim reliefs sought by the Appellant and demonstrated that the Appellant had not approached the learned Trial Court or this Court with complete candour.

24. Learned Counsel further submitted that registered PAAAs had already been executed with the tenants in the years 2011 and 2012. He submitted that, by August 2014, all 56 tenants had vacated the suit property and had handed over possession thereof to Respondent No. 1, thereby enabling Respondent No. 1 to undertake demolition of the existing structures and commence the proposed redevelopment. He submitted that the demolition and redevelopment activities were thereafter commenced upon receipt of the requisite IOD. He therefore submitted that the Respondents had, for several years, acted upon the rights claimed by them under the Agreement dated 22nd November 2002 and had undertaken substantial steps towards redevelopment of the suit property.

25. It was further submitted that, by its order dated 8th February 2017, this Court had fixed the earlier Notices of Motion filed by the Appellant for final hearing. He submitted that, despite having the opportunity to seek ad-interim reliefs at that stage, the Appellant had expressly stated that, in view of the early date fixed for hearing, the Appellant was not pressing for ad-interim relief. He therefore submitted that there was no operative order or injunction restraining Respondent

Nos. 1 and 2 from proceeding with the redevelopment of the suit property. According to him, the Appellant, having elected not to press for ad-interim relief at the relevant stage and having permitted the redevelopment process to proceed thereafter, could not, after the passage of several years and substantial progress in the redevelopment, seek an injunction restraining the Respondents from proceeding with the same.

26. Learned Counsel further submitted that, by its order dated 2nd September 2025, this Court had dismissed the earlier Appeal from Order (L) No. 2364 of 2025, recording that the earlier orders refusing ad-interim reliefs had not been challenged, and declining to interfere at that stage while the concerned Notice of Motion remained pending adjudication. It was therefore submitted that the learned Trial Court, while passing the impugned order dated 21st May 2026, had duly considered the entire factual and procedural history of the matter, including the various orders passed in the proceedings and the conduct of the parties over the years.

27. It was particularly submitted that the learned Trial Court had taken into consideration the fact that all four buildings forming part of the redevelopment were at an advanced stage of construction and were nearing completion, and that all 56 tenants and/or purchasers were awaiting possession of their respective premises. He further submitted that Respondent Nos. 1 and 2 had already invested several crores of rupees towards the development and construction of the aforesaid buildings. He submitted that, in these circumstances, granting an injunction at this stage would cause serious prejudice to the Respondents and adversely affect the

rights and interests of the tenants and purchasers who were awaiting possession. He accordingly submitted that the impugned order did not suffer from any infirmity warranting interference in the present Appeal from Order and that the reliefs sought by the Appellant were rightly declined by the learned Trial Court. He therefore submitted that, having regard to the aforesaid facts and circumstances, the learned Trial Court had rightly concluded that the grant of an injunction at this stage would cause irreparable harm, prejudice and injury to the Respondents and other persons affected by the redevelopment, and had accordingly rightly declined to grant the injunction sought by the Appellant.

28. Learned Counsel submitted that, at the highest, the substantive claim of the Appellant was in respect of the balance consideration allegedly payable under the Agreement dated 22nd November 2002. He submitted that Respondent Nos. 1 and 2 had, throughout, remained ready and willing to pay the alleged balance consideration to the Appellant, and continued to remain ready and willing to make such payment even as on date.

29. Learned Counsel further submitted that, having regard to the fact that the construction of the redevelopment project had been substantially completed and that the tenants had already been rehabilitated, no interim relief could now be granted in favour of the Appellant which would have the effect of restraining or interfering with the completed redevelopment. He therefore submitted that the Appellant had failed to make out any case warranting interference with the impugned order and that the present Appeal from Order ought to be dismissed.

30. Learned Counsel appearing on behalf of Respondent Nos. 9 to 12 adopted and supported the submissions advanced on behalf of Respondent Nos. 1 and 2. He submitted that Respondent Nos. 9 to 12 had acquired development rights in respect of the suit property by virtue of the registered Development Agreement dated 31st March 2023. He further submitted that, insofar as the status of the redevelopment project and construction of the buildings on the suit property was concerned, the project had been completed and a Full OC bearing No. CHE/A-5078/BP(WS)/AR/OC/1/NEW had been issued for the same on 7th August 2026.

31. Learned Counsel for Respondent Nos. 9 to 12 further submitted that the Appellant had deliberately suppressed the material fact that even prior to the execution of the Agreement dated 22nd November 2002, there were 56 tenants occupying the suit property, who were required to be rehabilitated as part of the redevelopment. He submitted that Respondent Nos. 9 to 12 had incurred substantial expenditure towards the rehabilitation of the said 56 tenants, amounting to more than Rs. 5 crores, and had further incurred expenditure of approximately Rs.58 crores towards the construction and development of the buildings on the suit property. He therefore submitted that, having regard to the substantial progress and completion of the redevelopment project, the rehabilitation of the 56 tenants and the substantial expenditure incurred by Respondent Nos. 9 to 12, the grant of any interim injunction at this stage would cause serious prejudice to Respondent Nos. 9 to 12 and to the persons whose rights and interests were connected with the completed redevelopment.

32. He further submitted that, upon receipt of the Full OC, the 56 rehabilitated tenants had been handed over possession of their respective premises. It was submitted that insofar as the free-sale component of the redevelopment was concerned, out of the 51 saleable units, 42 units had already been sold, and, out of the said 42 units, possession of 29 units had already been handed over to the respective purchasers. He therefore submitted that the redevelopment project had substantially progressed, and that substantial rights had accrued in favour of the rehabilitated tenants and third-party purchasers. He submitted that these facts had been duly taken into consideration by the learned Trial Court while passing the impugned order.

33. Learned Counsel for Respondent Nos. 9 to 12 accordingly submitted that the learned Trial Court had rightly exercised its discretion in refusing to grant an injunction against the Respondents and that, in view of the subsequent completion of the redevelopment and the rights already created in favour of the tenants and purchasers, no interference with the impugned order was warranted.

34. He further submitted that the Appellant had deliberately failed and neglected to disclose various letters addressed by the Appellant to the tenants and to Respondent Nos. 1 and 2 during the period between 2008 and 2013. He submitted that the said conduct of the Appellant had been expressly noticed and taken into consideration by the learned Trial Court in the impugned order. He therefore submitted that in view of the aforesaid suppression of material correspondence and documents, the Appellant had not approached the learned Trial Court with complete candour and was therefore not entitled to the equitable

and discretionary relief of injunction. He submitted that the learned Trial Court had rightly taken the said conduct into consideration while refusing to grant interim relief in favour of the Appellant.

35. Learned Counsel for Respondent Nos. 9 to 12 further submitted that the relief sought by the Appellant in the present proceedings was, in substance, a monetary claim arising out of the alleged non-payment of the balance consideration under the Agreement dated 22nd November 2002. He submitted that the Appellant had, at all material times, been aware of the proposed redevelopment of the suit property and the rehabilitation of the tenants and had corresponded with the concerned tenants as well as Respondent Nos. 1 and 2 in that regard. He therefore submitted that the Appellant, having remained conscious of and participated in correspondence concerning the proposed redevelopment for several years, could not, at this stage and after substantial completion of the redevelopment, seek an injunction which would adversely affect the rights of the tenants and third-party purchasers.

36. Learned Counsel on behalf of Respondent Nos. 9 to 12 further placed reliance upon the order dated 21st June 2024 passed by this Court in Writ Petition No. 8878 of 2024. He submitted that, in the said order, this Court had made observations concerning the nature of the proceedings instituted by the Appellant and had described the suit as an “extortionist plea” on the part of the Appellant.

The relevant paragraph of the aforesaid order is reproduced below:

4. The Writ Petition impugns ad-interim order dated 18.06.2024 passed by the learned Bombay City Civil Court in Chamber Summons No.1199 of 2024 in Suit No.5170 of 2024. The order is appended at Exhibit-G, page No.362 of the Writ Petition.

5. Plaintiff who is Writ Petitioner before me tendered a registered copy of Chamber Summons before Trial Court on 18.06.2024 and pressed for ad-interim relief in terms of prayer clauses (c) and (d) of the Chamber Summons. The matter was fixed for reply on behalf of Defendants on that date. Defendant Nos.1 and 2 took time to file Affidavit-in-Reply. Considering that suit is filed in the year 2016, such a course of action as suggested by Plaintiff cannot be permitted by any Court so as to grant ad-interim relief without reply from the Defendants. This is clearly expressed in the order dated 18.06.2024 and I do not see any reason as to why I should interfere with the same on the insistence of Plaintiff. I have heard Mr. Bhutekar, learned Advocate for Petitioner at length; Ms. Kani, learned Advocate for Respondent Nos.1 and 2 and Ms. Magoo, learned Advocate for Respondent Nos.9 to 12.

6. The facts are delineated in the pleadings and for brevity, I do not wish to reiterate them over here. After hearing learned Advocates appearing for the respective parties, I am clearly of the prima facie opinion that filing of the Suit in the year 2016 as also present Chamber Summons seeking embargo on the construction which is carried out by

Respondent Nos.9 to 12 is nothing but an extortionist plea on the part of the Plaintiff. Since Plaintiff is claiming to secure and hold his right by virtue of an Agreement of Assignment of lease which was executed with Defendant No.1 as far back as in 2002. Such a plea at this stage in 2023 / 2024 is clearly prejudicial to the rights of Defendants after so many years.

37. He submitted that the aforesaid observations, read with the subsequent conduct of the Appellant and the substantial progress made in the redevelopment, supported the case of the Respondents that no interim injunction ought to be granted at this stage. He therefore submitted that no interference was required in the impugned order of the learned Trial Court.

ANALYSIS & FINDINGS

38. I have heard learned counsel on behalf of the parties and perused the papers and proceedings and the impugned order passed by the learned Trial Court.

39. It is an undisputed position that, during the pendency of the present dispute, redevelopment of the buildings on the suit property has been undertaken, and that a Full OC dated 7th August 2026 has been issued in respect of the said buildings. In view of the aforesaid subsequent development, the purpose of granting an injunction at this stage restraining the Respondents from creating

third-party rights in respect of the buildings constructed on the suit property would, in my view, be rendered nugatory. The learned Trial Court has rightly taken into consideration the aforesaid circumstances while passing the impugned order dated 21st May 2026.

40. I am also of the view that in the facts and circumstances of the present case, the conduct of the Appellant reflects a continued pursuit of litigation in respect of the subject matter of the dispute. I am further in agreement with the observations made by this Court in its order dated 21st June 2024 passed in Writ Petition No. 8878 of 2024, wherein this Court observed that the proceedings being tenaciously pursued by the Appellant were, in substance, an attempt to secure the monetary claim allegedly arising under the Agreement dated 22nd November 2002.

41. I am further of the view that the learned Trial Court has rightly considered the unregistered Agreement dated 22nd November 2002, and upon examination thereof, correctly observed that the Appellants had themselves authorized Respondent Nos. 1 and 2 to enter upon and take possession of the suit property, and to negotiate and/or deal with the tenants for obtaining vacant possession of the premises. The record further indicates that possession of the suit property was handed over by the Appellant to Respondent Nos. 1 and 2 pursuant to the said unregistered Agreement. In furtherance thereof, Respondent Nos. 1 and 2 entered into a Conveyance Deed dated 26th December 2006 with the original owners, which dealt with the leasehold rights claimed by the Appellants in respect of the suit property.

42. Therefore, this cannot be regarded as a case where the Appellants were unaware of the aforesaid Conveyance Deed. On the contrary, having regard to the relevant clauses of the unregistered Agreement dated 22nd November 2002, and in particular Clause 2 thereof, it is clear that the Appellants had authorized Respondent Nos. 1 and 2 to deal with the tenancy rights and to negotiate with the tenants for obtaining vacant possession of the suit premises. The terms of the said Agreement, particularly Clause 2 thereof, accordingly indicate that the Appellants had attorned the tenancy rights in favour of Respondent Nos. 1 and 2. Clause 2 of the aforesaid agreement is reproduced below.

2. The Assignors have declared that a structure standing thereon are fully occupied by the tenants/occupants as per the list thereof hereto annexed and the Assignors have agreed to assign and sell the said property to the Assignees subject to the existing tenancies/occupancies and the Assignors shall pending completion of the sale shall not transfer any tenancy or occupancy and if any tenancy or occupancy is surrendered and/or extinguished, the same shall enure, to the benefit of the Assignees.

(emphasis supplied)

43. Once that position is accepted, and having regard to the fact that Respondent Nos. 1 and 2 had, pursuant to the aforesaid Agreement, made part payment of Rs. 13,00,000/- to the Appellant, I am of the view that the submission advanced by learned Counsel appearing on behalf of Respondent Nos. 1 and 2 that they are entitled to protection under Section 53A of the Act of 1882, deserves to be accepted. Section 53A of the Act of 1882 is reproduced below:-

53A. Where any person contracts to transfer for consideration any immoveable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty, and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract, and the transferee has performed or is willing to perform his part of the contract, then, 10[* * *] where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefore by the law for the time being in force, the transferor or any person

claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract:

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.

44. The conditions as contemplated in the said section are:-

- i) The contract must be by any person to transfer for consideration any immovable property in writing and signed by him or on his behalf, from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty.
- ii) The transferee has, in part performance of the contract, taken possession of the property and continues to be in possession in part performance of the contract.
- iii) The transferee has done some act in furtherance of the contract.
- iv) The transferee has performed or is willing to perform his part of the contract.

45. It is only upon satisfaction of all the aforesaid conditions that where there is an instrument of transfer and the transfer has not been completed in the manner prescribed by the law for the time being in force, the transferor, or any person claiming under him, is debarred from enforcing against the transferee, or any person claiming under him, any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract. In the facts of the present case, all the aforesaid conditions have been fulfilled, considering that under the unregistered agreement dated 22nd November 2002, the Appellant had put Respondent Nos. 1 and 2 in possession of the suit property, part consideration of Rs. 13,00,000/- was paid by respondent Nos. 1 and 2 to the appellant, the Conveyance Deed dated 22nd

December 2006 had been entered into by the Respondent Nos. 1 and 2 with the original owners, and further the Respondent Nos. 1 and 2 are in possession of the suit property on which development of the buildings has taken place .

46. Therefore, in my view, the conditions contemplated under Section 53A of the Act of 1882 stand fulfilled. Consequently, the Appellant, being the transferor, cannot enforce against Respondent Nos. 1 and 2, as transferee, any right in respect of the suit property, including seeking the grant of an injunctive relief.

47. I am further of the view that the learned Trial Court has rightly taken into consideration the facts and circumstances of the case, including the prevailing status of the construction and redevelopment of the buildings on the suit property. The learned Trial Court has recorded a categorical finding that the construction of all four buildings was at the verge of completion, and that the same were required to be handed over to the concerned tenants and purchasers in October 2026, in accordance with the timeline stipulated under the guidelines of the Real Estate Regulatory Authority (RERA).

48. Further, Respondent Nos. 9 to 12, with whom Respondent Nos. 1 and 2 had entered into the Development Agreement dated 31st March 2023, have incurred substantial expenditure running into several crores of rupees towards the construction and development of the buildings on the suit property and towards the payment of rent and other rehabilitation-related expenses in respect of the 56 tenants. It has also been brought to the attention of this Court that the OC in respect of the aforesaid buildings has been issued. Pursuant thereto, possession of the respective premises has been handed over to all 56 rehabilitated tenants.

Further, insofar as the free-sale component is concerned, out of the 51 saleable units, 42 units have already been sold, and possession of 29 of the said units has already been handed over to the respective purchasers.

49. In view of the aforesaid subsequent developments, substantial rights have already accrued in favour of the rehabilitated tenants and third-party purchasers, and the redevelopment project has substantially progressed. This Court is, therefore, of the view that the learned Trial Court, upon appreciation of the aforesaid facts and circumstances, has rightly refused to grant the injunction sought by the Appellant. Granting such relief at this stage would, in effect, amount to turning back the clock in respect of a right which the Appellant now seeks to assert, notwithstanding the substantial progress and completion of the redevelopment and the rights that have accrued pursuant thereto.

50. This Court is further of the view that the relief sought by the Appellant is, in substance, more in the nature of a monetary claim arising from the alleged rights under the Agreement dated 22nd November 2002, rather than a case warranting the grant of the injunctive relief sought before the learned Trial Court.

51. It is also to be noted that in earlier rounds of litigation also, this Court has refused to grant any ad-interim relief to the Appellant, and consistent attempts are being made by the Appellant to stall a project which has already been completed. This Court is therefore of the view that this Appeal from Order, ought to be dismissed and further, the issue of leasehold rights of the Appellant would be rightly determined at the stage of trial as correctly held by the learned Trial Court.

52. In view of the aforesaid, I am of the view that no interference is called for in the order of the learned Trial Court, and the same is a well-reasoned order which does not require interference at this stage. The learned Trial Court has rightly followed the parameters as mandated under Order XXXIX, Rules 1 and 2 of the CPC to hold that the Appellant had not made out a *prima facie* case, and that the balance of convenience squarely lay in favor of Respondent Nos 1 to 2 and Respondent Nos. 9 to 12, as well as the tenant purchasers who were waiting for possession of the said flats, and the granting of injunction would cause irreparable loss to them. I am therefore of the view that the view taken by the learned Trial Court was a plausible view, and the same cannot be substituted by this court in its appellate jurisdiction.

53. I am further of the view that applying the principles of Wander Ltd. v. Antox India (P) Ltd.¹, 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, and the facts of the present case do not warrant any interference with the impugned order of the Trial Court, as the impugned order is a well-reasoned and well-considered order.

54. Considering the aforesaid facts and the settled position of law, I am of the

¹ 1990 Supp SCC 727

view that the impugned order has been passed after duly appreciating the facts and the applicable law. The view taken by the Trial Court is a plausible view and does not warrant interference by this Court in its appellate jurisdiction.

55. In view thereof, the Appeal from Order fails and is accordingly dismissed. The learned Trial Court is directed to dispose of the suit expeditiously. There shall be no order as to costs.

56. 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.)