

JYOTI
RAJESH
MANE

Digitally signed by
JYOTI RAJESH
MANE
Date: 2026.09.23
19:42:27 +0530

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 760 OF 2026
WITH
INTERIM APPLICATION NO. 5882 OF 2026

Sachin Omprakash Agrawal

...Appellant

Versus

Mr. Jaideep Kunverji Rathod and others

...Respondents

Mr. Karl Tamboly a/w Mr. Viraj Parikh a/w Ms. Annesa Leema, a/w

Mr. Dharmesh S. Jain i/b Mr. Anil T. Agrawal, for the Appellant.

Mr. Vishal P. a/w Mr. Jayash Mestry, for Respondent Nos. 1, 2(a) and 3.

Mr. Rohit Sakhadeo, for Respondent No. 5.

Mr. Shlok Parekh i/b Mr. Rohan Munj, for Respondent Nos. 6, 6a, 6b to 7.

CORAM: AARTI SATHE, J.

DATE: 16 SEPTEMBER 2026

P.C.

1. The present Appeal from Order has been preferred under Order XLIII Rule 1(r) of the Code of Civil Procedure, 1908 ("CPC"), challenging the order dated 8th July 2026 ("impugned order") passed by the learned 4th Joint Civil Judge, Senior Division, Belapur, Navi Mumbai ("Trial Court"), below Exhibit 122 in Special Civil Suit No. 924 of 2023, formerly numbered as Suit No. 240 of 2016. By the impugned order, the Trial Court rejected the Appellant's application for temporary injunction seeking to restrain Respondent Nos. 1 to 3 from creating any

third-party rights in respect of Plot No. 44, Sector 15, Ghansoli, Navi Mumbai (“suit property”).

2. Briefly, the facts are as follows:

- i) On 10th January 2007, Respondent No. 3 assigned to Respondent No. 4 all her rights, title, and interest in the suit property, which was to be allotted to her under the 12.5% Gaothan Expansion Scheme of Respondent No. 5- CIDCO for a consideration of Rs.11,00,000. Respondent No. 5- CIDCO allotted the aforesaid land to Respondent Nos. 1 to 3 in lieu of ancestral land acquired for creation of Navi Mumbai.
- ii) Respondent No. 1 and father of Respondent Nos. 2A to 2C assigned their entitlements under the same scheme to Respondent No. 4 for a consideration of Rs.24,50,000 on 20th April 2007.
- iii) On 4th August 2007 and 26th March 2008, by two agreements of even date, Respondent No. 4 agreed to sell, transfer, and assign to the Appellant all the rights, benefit, and interest she had so acquired in respect of a plot at Ghansoli admeasuring approximately 2,000 sq. meters, including the suit property.
- iv) On 27th February 2009, Respondent No. 5-CIDCO, issued a common Letter of Intent (“LOI”) in favour of the predecessors-in-title of Respondent Nos. 1 to 3, agreeing to allot to them collectively the amalgamated developed Plot No. 44, Sector 15, Ghansoli, admeasuring 500 square metres. Thereafter, on 18th June 2013, Respondent Nos. 1 to 3, as parties of the First Part, and Respondent No. 4, as the party of the Third Part and confirming party, executed in favour of the

Appellant an Agreement for Transfer of Leasehold Rights (hereinafter referred to as “the Agreement of 2013”) in respect of the suit property.

v) The total consideration under the Agreement of 2013 was Rs. 1,09,00,000/-, out of which an amount of Rs. 68,00,000/- was recorded on the face of the instrument as having been paid. Respondent Nos. 1 and 2 acknowledged receipt of Rs. 33,00,000/-, while Respondent No. 3 acknowledged receipt of Rs. 15,00,000/-. A further amount of Rs. 20,00,000/- was paid by the Appellant at the time of execution by way of Cheque Nos. 29497 and 29498, each for Rs. 5,00,000/-, and Cheque No. 29508 for Rs. 10,00,000/-, all dated 18th June 2013 and drawn on IDBI Bank, in favour of the aforesaid Respondents.

vi) It is the Appellant’s contention that the balance consideration of Rs.41,00,000/-, payable under Clause 2 of the Agreement of 2013, was to become due only upon the occurrence of two specified future events. The first event was the execution of the Agreement of Lease in respect of the said plot between Respondent No.5- CIDCO and Respondent Nos. 1 to 3, who were parties of the First Part. It is further contended that an amount of Rs. 21,00,000/- became due upon the registration of the Tripartite Lease in respect of the said plot between Respondent No.5-CIDCO, Respondent Nos. 1 to 3 as parties of the First Part, and the party of the Second Part i.e. the Appellant.

vii) The Appellant further contends that the obligation to facilitate and complete the transfer rested upon the Respondents. Under Clause 3 of the Agreement of 2013, Respondent No. 4 was required to produce Respondent Nos. 1 to 3 before the office of Respondent No. 5, whenever required by the Appellant,

and to ensure their presence for the purpose of executing and signing the necessary agreements and documents.

viii) Further, under Clause 8 of the Agreement of 2013, Respondent Nos. 1 to 4 were required to obtain from Respondent No. 5-CIDCO the LOI, allotment letter and confirmation letter, and thereafter execute the Agreement of Lease with Respondent No. 5-CIDCO at the earliest possible opportunity.

3. Between the year 2007 and 2017, Respondent No. 5- CIDCO did not allot any plots under the 12.5% Gaothan Expansion Scheme in Thane District. It is the Appellant's contention that, pursuant to its internal policy decisions, Respondent No. 5-CIDCO had suspended the operation of the scheme and the execution of the corresponding Agreements of Lease during the said period.

4. Accordingly, the Appellant contends that the Agreement of Lease between Respondent No. 5-CIDCO and Respondent Nos. 1 to 3, upon which the transfer of the suit property and payment of the next instalment of consideration by the Appellant were dependent, could not have been executed during the aforesaid period.

5. Sometime in April 2016, the Appellant became aware that Respondent Nos. 1 to 3 were dealing with the suit property and apprehended that they were likely to dispose of the same in favour of third parties.

6. It is the Appellant's contention that, upon approaching the aforesaid Respondents, the Appellant's requests were met with resistance. The Respondents allegedly demanded enhanced consideration and threatened to sell or otherwise transfer the suit property in favour of third parties.

7. In April 2016 itself, the Appellant instituted Special Civil Suit No. 240 of 2016 before the learned Civil Judge, Senior Division, Thane, seeking specific performance of the Agreement of 2013. The Appellant also filed an application for temporary injunction at Exhibit-5. By order dated 14th December 2016, the Trial Court rejected the said application at Exhibit-5. The Appellant being aggrieved by the aforesaid order dated 14th December 2016, filed Appeal from Order No. 371 of 2018 in this Court.

8. Thereafter, on 17th February 2017, this Court, by an order of even date, declined to continue the status quo that had been granted by the Trial Court. This Court observed that the plot in question was entirely under the control of Respondent No. 5- CIDCO and that, since Respondent No. 5- CIDCO was not a party to the suit, the contention that Respondent Nos. 1 to 3 would take steps to create third-party rights in respect of the said plot could not be accepted.

9. The relevant portion of the order dated 17th February 2017 passed by this Court is reproduced hereinbelow:

“1. Not on board. Taken on board.

2. This Civil Application is moved seeking continuation of status quo which was granted by the Trial Court which it is stated, would come to an end today. Considering the nature of the dispute and reliefs as sought by the applicant before the Trial Court it is quite clear that the plot in question is a plot which is completely under the control of CIDCO. The CIDCO not being a party to the suit, the contention that Defendant Nos.1 to 3 would take steps to create third party rights in respect of the plot cannot be accepted. The plot in question is admittedly a lease hold plot an allotment of which is made under the 12.5 percent scheme of the CIDCO.

3. In these circumstances, I am not impressed with the submissions as made on behalf of the applicant that, the status quo deserves to be continued. This also considering the observations made by the Trial Judge in the impugned order. Accordingly, no ad-interim relief can be granted and a prayer to that effect is rejected.

4. Appeal along with the Civil Application to be listed as per CMIS.”

10. Sometime in September 2017, Respondent No. 1 submitted an application to Respondent No. 5- CIDCO seeking allotment of a separate plot. The said application was rejected by Respondent No. 5- CIDCO on the ground that subdivision of the suit property might not be feasible or that the resulting plots might not be buildable.

11. However, in April 2018, the Appellant came to know that Respondent No. 1 had applied to Respondent No. 5- CIDCO for subdivision of the suit property into three separate plots, to be allotted individually to Respondent Nos. 1 to 3. The Appellant further learnt that Respondent Nos. 2 and 3 had joined Respondent No. 1 in making the said request.

12. On 7th April 2018 and 9th April 2018, the Appellant addressed letters of the respective dates to the Chief Land Survey Officer of Respondent No. 5- CIDCO, requesting that the suit property not be bifurcated or subdivided during the pendency of the suit. On 9th April 2018, the Appellant also filed an application under the Right to Information Act, 2005, seeking information as to whether any of such application for subdivision of the suit property had been made.

13. By letters dated 19th April 2018 and 18th May 2018, Respondent No. 5- CIDCO replied to the aforesaid communications, stating that a No Objection Certificate (“NOC”) from the concerned plot holders was required. Respondent No. 5- CIDCO further stated that, since Respondent Nos. 1 to 3 had declined to provide the requisite NOC, the information sought by the Appellant could not be

furnished. Thereafter, on 1st October 2018, this Court disposed of Appeal from Order No. 371 of 2018 along with Civil Application No. 481 of 2018. This Court held that, at that stage, instead of interfering with the impugned order passed by the learned Civil Judge, Senior Division, Thane, it would be appropriate to relegate the parties to proceed with the hearing of the suit itself. The relevant portion of the order dated 1st October 2018 is reproduced hereinbelow:

- “ 1] Heard learned counsel for the appellant and respondents
- 2] This appeal is preferred against the order dated 14.12.2016, passed by the Joint Civil Judge Senior Division, Thane, thereby rejecting application for temporary injunction.
- 3] In the appeal also, relief of maintaining status-quo has been specifically rejected by this Court as per order dated 17th February, 2017.
- 4] In view thereof, at this stage instead of interfering in the impugned order passed by the trial Court, it would be appropriate to relegate the parties to proceed with the hearing of the suit itself. Hence Appeal stands disposed off.
- 5] In view of disposal of Appeal itself, pending Civil Application therein becomes infructuous and the same is disposed off accordingly.”

14. On 29th March 2019, the Appellant filed a further application before learned Civil Judge, Senior Division, Thane for temporary injunction at Exhibit-61, apprehending that Respondent No. 5- CIDCO might act upon the applications for amalgamation and bifurcation of the suit property.

15. On 18th April 2019, the learned Civil Judge, Senior Division, Thane rejected the said application, observing that there was no absolute bar against filing a second application for temporary injunction, particularly where such application was necessitated by a change in circumstances, however, since the Appellant had failed to prove by affidavit or otherwise that the suit property was in danger of being separated, there was no prima facie case to grant the relief of injunction. The order dated 18th April 2019 passed by the learned Civil Judge, Senior Division, Thane is reproduced hereinbelow:

“1) Initially, this application was decided on 16.04.2019. However, in view of application filed at Exh. 66 by learned advocate for the plaintiff, an another opportunity was given to the learned advocate for the plaintiff to submit his argument on this application at length. Accordingly, heard learned advocate Shri. Agashe for the plaintiff at length. Today also learned advocate for defendant no. 1 to 3 are absent on repeated calls.

2) In his argument, learned advocate for the plaintiff has invited my attention towards plaintiff's pleadings as well as written statement filed by defendant no. 3 at Exh. 40 and written statement filed by defendant no. 4 at Exh.30. He has submitted that none of the defendant has taken pain to contest this application. Though previous application of Exh. 5, filed by the plaintiff for the temporary injunction is rejected, as there is change of circumstances, this successive application seeking the same relief is tenable.

3) It is further submitted on behalf of the plaintiff that if the temporary injunction is not granted and the application filed by defendant no. 1 to 3 for separating suit property into plots is allowed by CIDCO, the very purpose of filing of this suit will be frustrated. Today, plaintiff has submitted document with the list of Exh. 68, which is copy of Award passed by Special Land Acquisition Officer, Metro Center (III), Thane, copy of application preferred by the defendant no. 1 to 3 to the CIDCO dated 1st October 2008 for amalgamation of the suit property and copy of application preferred by the defendant no. 1 to the CIDCO dated 11th September 2017 for bifurcation of the suit property. Considering these documents, learned advocate for the plaintiff has prayed to grant this application to protect the interest of plaintiff, by submitting that as plaintiff has paid crores of rupees by cheque to defendant no. 1 to 3 as mentioned in agreement for sale dated 18.06.2013 appended at page no. 30 of documents enlisted with Exh. 3, if this application is not allowed, plaintiff will suffer an irreparable loss.

4) Considering these submissions and pleadings of the plaintiff and the documents on record, following points arise before me for determination of this application and I have recorded my findings thereon with the reasons given there below.

Sr. No.	Points	Findings
1	Whether the plaintiff has a prima facie case to grant temporary injunction as prayed?	<u>No.</u>
2	Whether the balance of convenience lies in favour of the plaintiff?	<u>No.</u>
3	Whether the plaintiff will suffer irreparable loss in the event of not granting temporary injunction?	<u>No.</u>
4	What order?	<u>Application is rejected as per final order.</u>

: REASONS :

As to points no. 1 to 3 collectively:

5) Filing of this second application for temporary injunction is never a bar and

obviously this application can be filed due to change of circumstances. What needs to be decided is the merit of the application. Needless to say that it can be decided on the basis of documents filed on record. Order XXXIX Rule 1 of the Code of Civil Procedure provides cases in which temporary injunction may be granted. The wording of clause 1 provides that wherein in any suit it is proved by affidavit or otherwise, ... etc. Thus, it is crystal clear that to get the relief of temporary injunction, it needs to be proved by affidavit or otherwise that the property in dispute is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold etc. At this stage, to prove his contention, plaintiff has relied on the document submitted with Exh. 68.

6) Out of them copy of application preferred by the defendant no. 1 to 3 to the CIDCO dated 1st October 2008 for amalgamation of the suit property is not helpful to the plaintiff as it is 11 years old. What learned advocate for the plaintiff has brought to the notice of this Court is that as per the said application, defendant no. 1, 3 and father of defendant no. 3 has specified portion of their respective share in the suit property. According to him, if the said portion is separated, purpose of filing this suit will be frustrated. Plaintiff has also relied on the copy of application preferred by defendant no. 1 to the CIDCO dated 11th September 2017 for bifurcation of the suit property. Nothing is on record to show that any step is taken by CIDCO to bifurcate the suit property. Needless to say that this application is filed prior to 1 year and 7 months and obviously is not helpful to the plaintiff to show that at present the suit property is in danger of separation.

7) It needs to say that while deciding an application of Exh. 5, the predecessor of this Court, has been pleased to observe that without intervention of the CIDCO, the relief claimed by the plaintiff cannot be granted. It is admitted position that till date, CIDCO is not added as a defendant in the present suit. If the CIDCO would be a defendant to this litigation, plaintiff would have been in position to get the current status of the suit property. However, plaintiff has not opted to add the CIDCO as a defendant to this suit.

8) In spite of receiving the letter dated 18/05/2018 from CIDCO, plaintiff has filed present application on 29/03/2019 i.e. after the period of 10 months, which itself shows that there is no danger of bifurcation to the suit property. With this view this court has held that plaintiff has not proved by affidavit or otherwise that the suit property is in danger of being separated. As the application is devoid of merits, there is no *prima facie* case to grant the relief prayed. Result of this discussion is there is no balance of convenience in favour of the plaintiff and refusal to grant the relief of temporary injunction will not cause irreparable loss to the plaintiff. With this view, to conclude, I answer points no. 1 to 3 collectively in the negative and proceed to pass the following order

Order

- 1) Application is rejected.
- 2) Costs in main cause.”

16. On 3rd August 2019, pursuant to an application filed by the Appellant at Exhibit-69, Trial Court, in exercise of its powers under Order I Rule 10 of the CPC, impleaded Respondent No. 5- CIDCO as Defendant No. 5 in the suit. The

Trial Court, also permitted the consequential amendment of the plaint under Order VI Rule 17 of the CPC. Respondent No. 5- CIDCO thereafter filed its written statement in the suit.

17. Thereafter, on 9th October 2022, Respondent Nos. 1 to 3 applied to Respondent No. 5- CIDCO for grant of lease in respect of the suit property. On 2nd November 2022, Respondent No. 5- CIDCO allotted suit property to Respondent Nos. 1 to 3 by issuing a Letter of Allotment under the 12.5% Gaothan Expansion Scheme.

18. It is the Appellant's contention that Respondent Nos. 1 to 4 were required to obtain the aforesaid Letter of Allotment at a much earlier stage, i.e., in 2013, and that the same was obtained only in 2022, approximately nine years later.

19. On 3rd November 2022, Respondent Nos. 1 to 3 paid Respondent No. 5- CIDCO the entire consideration payable in respect of the suit property, amounting to Rs. 1,41,00,286/-, which included a lease premium of Rs. 34,479/-.

20. On 5th November 2022, Respondent No. 5- CIDCO conducted the survey of the suit property, prepared the demarcation plan, and delivered possession of the said property to Respondent Nos. 1 to 3.

21. It is the Appellant's contention that only in the year 2026, it came to the knowledge of the Appellant about the aforesaid allotment and delivery of possession in favour of Respondent Nos. 1 to 3.

22. Subsequently, on 29th May 2026, an Agreement to Lease in respect of the suit property was registered with the Joint Sub-Registrar, Thane No. 6, as

Document No. THN6-8753-2026. It is the Appellant's contention that execution and registration of the Agreement to Lease was an obligation which Respondent Nos. 1 to 4 were required to undertake pursuant to Clause 8 of the Agreement of 2013, and that the same ought to have been completed sometime in 2013.

23. On 2nd June 2026, a public notice was published in the newspaper *Jan Khulasa*, stating that the suit property had been allotted to Shri Jitendra Devendra Mudnur and two others. The notice further called upon any person claiming any right, title, interest or claim in respect of the suit property to notify the Advocate in writing within 15 days, failing which the proposed sale transaction would be completed.

24. Thereafter, on 12th June 2026, the Appellant, by an application at Exhibit-121, sought to amend the plaint so as to bring on record the aforesaid Agreement to Lease and public notice, along with consequential prayers. The Appellant also filed a list of documents, producing, *inter alia*, the Agreement to Lease, the public notice published in *Jan Khulasa*, and the report published in the *Times of India*.

25. The Appellant also filed an application at Exhibit-122 under Order XXXIX Rules 1 and 2 of the CPC, seeking a temporary injunction restraining the Respondents from creating any third-party rights in respect of the suit property. The Appellant further sought an injunction restraining Respondent Nos. 1 to 3 and 5 from executing any tripartite agreement pursuant to the Agreement to Lease. However, by the impugned order, the Trial Court rejected the application at Exhibit-122 and declined to grant the injunction sought by the Appellant. It is against the said impugned order that the present Appeal from Order has been

preferred.

26. Heard Mr. Karl Tamboly along with Mr. Viraj Parikh, Ms. Annesa Leema, Mr. Dharmesh S. Jain instructed by Mr. Anil T. Agrawal, appeared on behalf of the Appellant. Mr. Vishal P. along with Mr. Jayesh Mestry, appeared on behalf of Respondent Nos. 1, 2(a) and 3. Mr. Rohit Sakhadeo, appeared on behalf of Respondent No. 5 and Mr. Shlok Parekh instructed by Mr. Rohan Munj, appeared for Respondent Nos. 6, 6a, 6b to 7

27. Learned counsel appearing on behalf of the Appellant submitted that the Trial Court erred in passing the impugned order and failed to appreciate that the application at Exhibit-122 was necessitated by subsequent and material developments, namely, the execution and registration of the Agreement to Lease dated 29th May 2026 in favour of Respondent Nos. 1 to 3 and the threatened alienation of the suit property, as reflected in the public notice dated 2nd June 2026.

28. He further submitted that the Trial Court failed to appreciate that the application at Exhibit-122 was not a repetition of the earlier application filed at Exhibit-5 but was based upon a fresh cause of action arising from subsequent events. In particular, Respondent No. 5- CIDCO had conferred leasehold rights in respect of the suit property upon Respondent Nos. 1 to 3, and the Respondents had thereafter taken steps towards creating third-party rights in respect of the suit property.

29. He further submitted that the Trial Court erred in holding that the subsequent events did not materially alter the Appellant's position and that the issues arising therefrom had already been considered while deciding the earlier

application at Exhibit-5. According to the learned counsel appearing on behalf of the Appellant, in view of the subsequent material developments, the Appellant was entitled to seek a fresh temporary injunction, and the refusal to grant such injunction was therefore erroneous.

30. He submitted that the earlier order dated 14th December 2016 passed by the Trial Court, which was challenged in this Court by an Appeal from Order No. 371 of 2018, was disposed of in view of the fact that Respondent No. 5-CIDCO was not a party therein, and hence the parties were relegated to proceed with the suit without affirming the Trial Court's findings on merit.

31. He further submitted that in interlocutory relief, the question of res-judicata would not apply, inasmuch as, there were new circumstances which had come to light.

32. He also submitted that the new circumstances which had come to light compelling the Appellants to file the Exhibit-122 application arose on account of the fact that the Agreement of Lease had been executed on 29th May 2026 and further that concrete third party alienation had arisen by public notice dated 2nd June 2026. These facts warrant the grant of injunction against Respondents, and they were not facts which were subject matter of any adjudication in the earlier proceedings, and hence the earlier proceedings could not be construed to mean that the same relief was being sought by the Appellant by the present Exhibit-122 application. He further submitted that the Appellant was always ready and willing to perform his obligations under the Agreement of 2013 and considering that

already a part amount had been paid by the Appellant to the Respondents the other part had to be paid only upon the execution of lease deeds in favour of the Respondents which had happened very recently. It was therefore the argument made by learned counsel for the Appellant that the Trial Court had failed to appreciate the clauses in the Agreement of 2013 and erroneously held that the Appellant was not willing to perform their obligations under the aforesaid agreement. It is therefore his submission that the impugned order has been passed without considering the relevant circumstances and therefore ought to be interfered with. He has further sought to place reliance upon the decision of this Court in **Prakash Gobindram Ahuja vs. Ganesh Pandharinath Dhonde**¹ to contend that mere pendency of a *lis* does not prevent the Trial Court from granting injunction inasmuch as, the Doctrine of *Lis Pendens* only renders a transfer *pendente lite* subservient to the result of the suit. It was his submission that third party rights could be created during the pendency of a *lis*, and therefore, in agreements where specific performance was sought to be made, as in the present case, the injunction had to be granted in favour of the Appellants. The submissions made by learned counsel on behalf of the Appellants can be summarized as below: -

i. The Trial Court held that a second application for temporary injunction is maintainable where subsequent events materially alter the circumstances that were prevailing when the earlier application was decided. The error lies in treating the earlier interlocutory finding on readiness and willingness as a continuing adverse premise, notwithstanding that the said finding was neither

¹ 2016 SCC OnLine Bom 8884

a final adjudication nor affirmed on merits in the subsequent appellate proceedings.

ii. The Trial Court further erred in holding that the alleged deficiency in readiness and willingness continued to subsist. In doing so, it placed particular reliance upon the absence of steps taken by the Appellant between 2022 and 2026. This overlooks the Appellant's specific case supported by the record, that the 2022 allotment, payment and delivery of possession were not disclosed to him, and that he learnt of the relevant documents only in 2026. The absence of action in relation to an event which was not shown to be within the Appellant's knowledge could not constitute evidence of unwillingness to perform. The Trial Court further erred in failing to appreciate that the Respondents cannot be permitted to take advantage of their own wrong. Having acted in breach of the Agreement of 2013 dealing with the suit property thereafter, and having continued to suppress material developments from the Appellant, the Respondents cannot be permitted to rely upon these very circumstances to resist enforcement of the contractual bargain by the Appellant.

iii. The Trial Court also failed to sufficiently consider the contractual structure of the Agreement of 2013, under which the balance consideration was linked to specified lease-related events and material steps for obtaining the Respondent No.5- CIDCO documentation and execution of the lease being undertaken by the Respondents. The question of readiness and willingness therefore could not be determined merely by counting the years in which the Appellant had not taken an independent steps, without considering whether the

contractual events giving rise to the remaining obligations had occurred and whether the Appellant was responsible for the intervening delay.

iv. The above error assumes greater significance because the factual position in 2026 is materially different from that prevailing when Exhibit-5 application was decided. The suit property had been allotted, payment had been made, possession had been delivered, the Agreement to Lease had been registered and, most significantly, a public notice had been issued announcing a proposed third-party sale.

v. Finally, the Trial Court erred in treating Section 52 of the Transfer of Property Act, 1882 (hereinafter referred to as “Act of 1882”) as an adequate answer to the Appellant's prayer for interim protection. *Lis pendens* regulates the effect of a pendente lite transfer and does not restrain the transfer itself. It therefore cannot, by itself, displace the question whether the subject matter of a pending specific-performance suit ought to be preserved where a concrete third-party transaction is threatened. The Trial Court failed to appreciate that in the facts of the present case, permitting the proposed transaction pursuant to the public notice would enable the purchasers to further develop the land and create multiple rights in individual units in favour of other third parties, rendering the relief sought in the suit virtually infructuous and permitting the parties to disregard the sanctity of contracts with impunity, to the detriment of the rule of law.

vi. The Agreement of 2013 records a total consideration of Rs. 1,09,00,000/-, of which Rs. 68,00,000/- was recorded as paid. Respondent Nos. 1 and 2 admitted receipt of Rs. 33,00,000/-, and Respondent No. 3 admitted receipt

of Rs. 15,00,000/-. A further amount of Rs. 20,00,000/- was paid upon execution through three cheques dated 18th June 2013, which the instrument records as having been “accepted ... and has been received by them.”

vii. The balance consideration of Rs. 41,00,000/- was expressly structured under Clause 2 of the Agreement of 2013. An amount of Rs. 20,00,000/- was payable “at the time when the Agreement of lease in respect of the said plot is executed between Respondent No.5-CIDCO and the First Party”, while Rs. 21,00,000/- was payable “at the time when the tripartite lease agreement in respect of the said plot is registered between Respondent No.5-CIDCO, the First Party and the Party of the Second Part”.

viii. The contractual machinery necessary for completion of the transaction was correspondingly placed upon the Respondents. Under Clause 3 of the Agreement of 2013, Respondent No. 4 was required to produce Respondent Nos. 1 to 3 before Respondent No. 5-CIDCO and keep them present for execution of the necessary documentation. Under Clause 8 of the Agreement of 2013, Respondent Nos. 1 to 4 were required to obtain the LOI, Allotment Letter and confirmation letter and to execute the Agreement of Lease with Respondent No.5-CIDCO “as early as possible”.

ix. The above provisions are material because the completion of the transaction contemplated intervening acts and documentation concerning Respondent No. 5- CIDCO and obligations undertaken by the relevant Respondents. The balance consideration was not simply an immediately payable lump sum, independent of those events.

x. The record establishes that between 2007 and 2017, Respondent No. 5–CIDCO made no allotment of plots under the 12.5% Gaothan Expansion Scheme in Thane District and had, pursuant to its internal policy decisions, suspended execution of lease agreements under the Scheme. Consequently, the lease between Respondent No.5- CIDCO and Respondent Nos. 1 to 3, upon which both the transfer of the Suit Property and the next instalment of consideration payable by the Appellant depended, “could not be executed during that period”. Thus. the period during which the contractual machinery could not progress because the relevant Respondent No.5- CIDCO process had not occurred cannot be treated as a period during which the Appellant abandoned or failed to pursue the Agreement of 2013.

xi. The finding that the Appellant failed to establish continuous readiness and willingness proceeds substantially from the absence of identified steps between 2017 and 2022. The approach does not adequately account for the contractual events upon which the balance consideration was payable, the obligations undertaken by the Respondents in relation to Respondent No. 5- CIDCO, the Appellant's documented efforts in 2018 to ascertain the status of the suit property, and the subsequent discovery of the 2022 allotment and related documents only in 2026.

xii. Under the Agreement of 2013, the obligation to secure the lease from Respondent No. 5- CIDCO lay on the Party of the First Part (Respondent Nos. 1 to 3) and the Party of the Third Part (Respondent No. 4). That was not the obligation on the Appellant.

xiii. The previous interlocutory proceedings do not constitute a final adjudication of the Appellant's substantive entitlement to specific performance or permanently foreclose consideration of subsequent circumstances.

xiv. The Trial Court erred in treating Section 52 of the Act of 1882 as sufficient answer to the Appellant's prayer for interim protection. In **Prakash Gobindram Ahuja** (supra), this Court explained that Section 52 of the Act of 1882 and an injunction operate in distinct fields, and that Section 52 of the Act of 1882 does not prohibit a *pendente lite* transfer, it rather makes such transfer subject to the result of the suit. An injunction, on the other hand, directly restrains the prohibited act and carries consequences of penalty and contempt for breach. The Court further held that the protection afforded by an interim injunction is "much more and far effective" than that under Section 52 of the Act of 1882. Thus, the existence of *lis pendens* cannot, by itself, justify refusal of an injunction.

33. *Per contra*, learned counsels on behalf of the Respondent Nos. 1 to 3 submitted that the impugned order is a well-reasoned order and does not require any interference inasmuch as, in the facts of the present case the subject matter of dispute has gone through two rounds of litigation earlier and the Trial Court has on earlier occasions refused injunction to the Appellant. It is also his submission that the Trial Court has correctly appreciated the facts and also has rightly held that as the Appellant themselves have not performed their obligations and did not show any readiness and willingness to perform their contractual obligations under the Agreement of 2013, the injunction ought not to be granted to the Appellant. It is further his submission that in fact the Respondents have complied with all the

conditions imposed by the Respondents No.5- CIDCO and the LOI was granted in their favour somewhere in the year 2022 followed by the execution of lease deed and even post that the Appellant had not taken any steps to comply with their part of the obligations and remained inactive thereafter and hence there is no foreseeable threat or irreparable loss which the Appellant can plead now for the purposes of seeking injunction.

34. It is, further, his submission that, in the earlier round of proceedings, the Trial Court had rejected the Appellant's application for temporary injunction on the ground that the Appellant had failed to perform its obligations under the Agreement of 2013. Consequently, according to the learned counsel on behalf of the Respondent Nos. 1 to 3, specific performance of the Agreement of 2013 could not be sought, since the Appellant itself was in breach of his contractual obligations. He further submitted that, under the Agreement of 2013, the obligation to perform the requisite acts was upon the Appellant, and that the Appellant had failed to discharge such obligations in the facts of the present case.

35. He therefore submitted that the Appellant was, in effect, seeking to re-agitate issues which had already been considered and decided in the earlier proceedings and had attained finality. According to the learned counsel on behalf of Respondent Nos. 1 to 3, this circumstance was required to be taken into consideration while adjudicating the present dispute and determining whether the Appellant was entitled to the temporary injunction sought at Exhibit-122.

36. Learned counsel on behalf of Respondent Nos. 1 to 3 sought to place reliance upon the decision of *Hope Plantations Limited v. Taluk Land Board*,

*Peermade and Another*² contending that, once an issue concerning a lease has attained finality, a subsequent proceeding on the same grounds would not be maintainable.

37. He submitted that, in the facts of the present case, apart from the execution of the lease deed by Respondent No. 5- CIDCO pursuant to the LOI issued in 2022, there were no new facts or circumstances brought on record. He therefore contended that the principle of *res judicata* would apply to the present case and that the Trial Court was justified in refusing to grant an injunction in favour of the Appellant.

38. He also placed reliance upon the decisions in *Wander Ltd. v. Antox India (P) Ltd.*³ and *Mohammad Mehtab Khan and Others v. Khushnuma Ibrahim Khan and Others*⁴, in support of his submission regarding the limited scope of interference by an Appellate Court with an order passed by the Trial Court on an interlocutory application. The submissions made by learned counsel on behalf of Respondent Nos. 1 to 3 are summarized below: -

i. The Trial Court, by order dated 14th December 2016 rejected the Appellant's first application for temporary injunction on the specific finding that the Appellant had failed to make out a *prima facie* case of readiness and willingness. That order was carried in Appeal from Order No. 371 of 2018 before this Court, which was disposed of by an order dated 1st October 2018.

ii. The *lis* between the parties regarding readiness and willingness was

2 (1999) 5 SCC 590

3 1990 (Supp) SCC 727

4 (2013) 9 SCC 221

already adjudicated and had attained finality by the first interim order dated 14th December 2016 and further by the disposal of Appeal from Order No. 371 of 2018 against the said order, by an order dated 1st October 2018 passed by this Court.

iii. Once the issue on readiness and willingness was determined by the first order of the Trial Court, the Appellant was estopped from re-agitating the same in any application in the suit or in the present Appeal from Order. Nevertheless, without prejudice, the Trial Court in the impugned order, while declining to grant any interim relief, has *inter alia* observed that the Appellant had failed to establish continuous readiness and willingness, and that the same constituted one principal reason for declining equitable relief even in the earlier interim application.

iv. Further, the English translation of the Agreement of 2013 tendered by the Appellant during the course of arguments is not a correct and genuine transaction. On a perusal of the same, it appears to be an explanation of its interpretation from the Appellant's perspective and hence the same be discarded.

v. On a holistic reading of the Agreement of 2013, it is apparent that the Appellant and/or Respondent No. 4 were required to take necessary steps to ensure that the suit property was allotted to the Respondents No. 1 to 3, including payment of necessary charges, premium, etc. for the same. The Trial Court in the impugned order has observed that Appellant has not produced any contemporaneous material indicating any positive steps taken by him from the period between the years 2017 to 2022 for securing allotment of the suit property or for performing the contractual obligations cast upon him under the Agreement

of 2013.

39. Further, the contentions advanced by learned counsel on behalf of Respondent Nos. 6, 6a, 6b to 7, who are the prospective buyers can also be summarized as follows: -

i. The suit was originally filed in the year 2016. Subsequently, the Appellant filed an amended plaint in the suit in June 2026 along with an application for temporary injunction on the ground of changes in factual circumstances.

ii. Whilst the application has been sought to be introduced on the ground of public notice issued by the Advocate for Respondent Nos. 6, 6a, 6b to 7, the Appellant has not made any averments either in the amended plaint or in the application against the Respondent Nos. 6, 6a, 6b to 7. Moreover, Respondent Nos. 6, 6a, 6b to 7 have neither been made party to the suit, nor has the Appellant prayed for any reliefs against Respondent Nos. 6, 6a, 6b to 7.

iii. The Appellant for the very first-time impleaded Respondents No. 6, 6a, 6b to 7 as parties in the present Appeal from Order and sought reliefs in terms of temporary injunction against Respondent Nos. 6, 6a, 6b to 7. Thus, the Appellant is seeking relief against the Respondent Nos. 6, 6a, 6b to 7, without making them a party in Special Civil Suit No. 924 of 2023 and affording them an opportunity to defend their case. In these circumstances, no injunction order be passed as against Respondent Nos. 6, 6a, 6b to 7, as they were not parties in Special Civil Suit No. 924 of 2023.

40. Learned counsel appearing on behalf of Respondent No. 5- CIDCO sought to place reliance upon the written statement filed by them before the Trial Court in the suit proceedings.

41. He submitted that the Agreement of Lease dated 29th May 2026 executed in favour of Respondent Nos. 1 to 3 merely confers leasehold rights in respect of the suit property and does not vest ownership rights in the said Respondents. Consequently, according to learned counsel, the said Respondents would not, by virtue of the Agreement to Lease, acquire any right to sell or otherwise transfer the suit property in favour of any third party.

42. He therefore submitted that the Appellant's apprehension that Respondent Nos. 1 to 3 would create third-party rights in respect of the suit property was unfounded. He further submitted that the suit property had not been bifurcated; and in fact Respondent No.5- CIDCO had permitted the amalgamation of the property in favour of Respondent Nos. 1 to 3 pursuant to the application made by their predecessors-in-title. In view thereof, he submitted that the Appellant was not entitled to the temporary injunction sought, and that the Trial Court had therefore rightly passed the impugned order rejecting the application at Exhibit-122.

43. I have heard learned counsel on behalf of the parties.

44. At the outset, the dispute in the present matter revolves around the Agreement of 2013 executed between the Appellant and Respondent Nos. 1 to 3, pursuant to which the parties assumed reciprocal contractual obligations and were

required to perform their respective obligations in accordance with the terms and conditions stipulated therein.

45. On a holistic reading of the Agreement of 2013, it is evident that the Appellant was required to perform the contractual obligations stipulated therein. It is an admitted position that the Appellant has paid a sum of Rs. 68,00,000/- to Respondent Nos. 1 to 3. However, after making the aforesaid payment, the Appellant has neither paid the balance consideration nor performed the other obligations required under the Agreement of 2013. Therefore, the Appellant's contention that he did not pay the balance consideration to the Respondent as it was conditional on specified future events ought to be rejected inasmuch as, there were the reciprocal obligations stipulated in the Agreement of 2013 which the Appellant had failed to perform. Hence, the Appellant's attempt to put the entire onus on the Respondents to perform their contractual obligation without acknowledging his part of the contractual obligation goes to show that the Appellant was not ready and willing to perform his obligation under the Agreement of 2013. This in my view, has rightly weighed in the mind of the Trial Court for non-grant of injunction on two occasions. The Appellant's contention that the delay in completing the transaction was not on account of the Appellant's conduct but there were events which took place in the interregnum which delayed it are facts that need to be considered at the trial stage. Further the fact as to why the Appellant did not pay the balance consideration and the sequence of events which showed that the Appellant was always willing and ready to perform its obligations would also have to be examined at the trial stage. That does not give

rise to a case of granting injunction, where on a prima facie view, the Trial Court has rightly held that it was evident that the Appellant had failed to show its continuous readiness and willingness to perform its obligations under the Agreement of 2013.

46. In these circumstances, when the Appellant itself has failed to perform its part of the contractual obligations, in my view, the Trial Court was justified in concluding that the Appellant could not seek specific performance of the Agreement of 2013 without first demonstrating compliance with its own contractual obligations.

47. I am also of the view that the Trial Court rightly relied upon its earlier order passed below Exhibit-5 dated 14th December 2016, wherein a finding was recorded that the Appellant had failed to establish its continuous readiness and willingness to perform its obligations under the Agreement of 2013 forming the subject matter of the suit. The said finding constituted one of the principal grounds on which the injunction sought by the Appellant was refused. Consequently, the subsequent events, namely, Respondent No. 5- CIDCO granting the lease in favour of Respondent Nos. 1 to 3 on 29th May 2026 and the subsequent impleadment of Respondent No. 5- CIDCO as a party to the suit, cannot, in my view, be construed as constituting fresh grounds entitling the Appellant to seek the injunction as presently prayed for.

48. The very crux of non-grant of injunction in the earlier round of proceedings also was the unwillingness and the non-readiness of the Appellant to perform their contractual obligation.

49. It is also pertinent to note that the earlier order of the Trial Court dated 14th December 2016, which was challenged before this Court by way of an Appeal from Order No. 371 of 2018, was also not interfered with. This Court, while disposing of the said appeal, considered it appropriate to relegate the parties to the Trial Court for proceeding with the hearing of the suit itself.

50. Thus, this Court had an earlier occasion to consider the issue of temporary injunction in the proceedings arising from the same suit. In such circumstances, seeking an injunction again on substantially similar grounds, particularly when the Appellant has not demonstrated performance of its own contractual obligations, would, in my view, not be justified. The present attempt of the Appellant to seek an injunction on such grounds cannot therefore be accepted.

51. I am further of the view that, even on the earlier occasion, the Appellant did not approach the Trial Court for an injunction immediately after the relevant developments. Respondent No. 5- CIDCO had issued the LOI in 2009 in favour of the predecessors-in-title of Respondent Nos. 1 to 3, agreeing to allot to them collectively the amalgamated suit property. However, the Appellant approached the Trial Court only in 2016.

52. Similarly, even in the present round of proceedings, Respondent No. 5- CIDCO had delivered possession of the suit property to Respondent Nos. 1 to 3 in 2022. The Appellant, however, approached the Trial Court only in 2026, after the Agreement to Lease had been executed and registered for the purpose of completing the leasehold rights of Respondent Nos. 1 to 3 in respect of the suit property. The Appellant has once again sought substantially similar injunctive relief

from the Trial Court.

53. The publication of the public notice dated 2nd June 2026 is also a further step towards completing the title and leasehold rights of Respondent Nos. 1 to 3, particularly in view of the possession of the suit property having already been delivered to them by Respondent No. 5- CIDCO in 2022. These facts also to my mind cannot be considered as facts which materially alter the position of the Appellant in respect of the suit property as the Appellant has not performed their part of the contractual obligations and further the possession of the suit property was granted to the Respondent Nos. 1 to 3 in 2022. All the further steps were in continuation of perfecting the title of the Respondents

54. I am, therefore, of the view that the Trial Court has committed no error in refusing to grant the injunction sought by the Appellant. The Appellant, having failed to seek appropriate relief at earlier stages despite being aware of material developments concerning the suit property, cannot, at this stage, contend that the likely creation of third-party rights by Respondent Nos. 1 to 3 would cause irreparable injury or loss. Consequently, the balance of convenience also does not lie in favour of the Appellant.

55. I am, therefore, in agreement with the reliance placed by learned counsel appearing on behalf of Respondent Nos. 1 to 3 upon the decision in *Hope Plantations* (supra), in support of the proposition that once a *lis* has attained finality, the same issue cannot thereafter be re-agitated by the parties in subsequent proceedings. The relevant paragraphs in the case of *Hope Plantations* (supra) are reproduced below:

“26. It is settled law that the principles of estoppel and res judicata are based on public policy and justice. Doctrine of res judicata is often treated as a branch of the law of estoppel though these two doctrines differ in some essential particulars. Rule of res judicata prevents the parties to a judicial determination from litigating the same question over again even though the determination may even be demonstrably wrong. When the proceedings have attained finality, parties are bound by the judgment and are estopped from questioning it. They cannot litigate again on the same cause of action nor can they litigate any issue which was necessary for decision in the earlier litigation. These two aspects are "cause of action estoppel" and "issue estoppel". These two terms are of common law origin. Again, once an issue has been finally determined, parties cannot subsequently in the same suit advance arguments or adduce further evidence directed to showing that the issue was wrongly determined. Their only remedy is to approach the higher forum if available. The determination of the issue between the parties gives rise to, as noted above, an issue estoppel. It operates in any subsequent proceedings in the same suit in which the issue had been determined. It also operates in subsequent suits between the same parties in which the same issue arises. Section 11 of the Code of Civil Procedure contains provisions of res judicata but these are not exhaustive of the general doctrine of res judicata. Legal principles of estoppel and res judicata are equally applicable in proceedings before administrative authorities as they are based on public policy and justice.”

(emphasis supplied)

56. In the facts of the present case, substantially similar relief had been sought by the Appellant in the earlier proceedings. The continuing inaction and alleged failure on the part of the Appellant to perform its contractual obligations were circumstances considered by the Trial Court in its earlier order dated 14th December 2016 while refusing to grant the injunction.

57. The subsequent events upon which the Appellant now seeks to rely in support of the present application for injunction are, in substance, steps undertaken by Respondent No. 5- CIDCO towards completing and perfecting the leasehold rights of Respondent Nos. 1 to 3 in respect of the suit property. In themselves, these subsequent developments do not, in my view, warrant the grant of an injunction in favour of the Appellant, particularly when the Appellant has admittedly not performed its contractual obligations since 2013.

58. The finding of the Trial Court, therefore, that the continuance of the *lis* would protect the Appellant even if Respondent Nos. 1 to 3 were to create third-party rights is a correct finding and requires no interference.

59. The reliance placed by learned counsel on behalf of the Appellant on the case of **Prakash Gobindram Ahuja** (supra) to contend that Section 52 of the Act of 1882 does not prohibit a *pendent lite* transfer, it makes such transfer subject to the result of the suit, is not a sufficient protection/answer to refuse injunction, inasmuch as, Section 52 of the Act of 1882, and injunction operate in distinct fields would not be applicable to the present facts of the case. This in view of the fact that the Trial Court has not refused injunction only on the ground of Section 52 of the Act of 1882 protection, but has independently on the basis of appreciation of facts and evidence come to a prima facie view that an injunction would not be warranted in the facts of the case. It is not a case where only provisions of Section 52 of the Act of 1882 have been considered and the mandate of Order XXXIX, Rules 1 and 2 of the CPC has not been followed by the Trial Court before refusing to grant injunction. Therefore, the argument of the learned counsel on behalf of the Appellant on this issue deserves to be rejected.

60. I am further of the view that applying the principles of ***Wander Ltd. and Anr.*** (supra), 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 would apply in the facts of the present case and does not warrant any interference with the impugned order of the Trial Court as the impugned order is a well-reasoned and well-considered order. The same has been upheld in the case of *Mohammad Mehtab Khan and Others (supra)*. The relevant paragraphs of the aforesaid decision are reproduced below:

"18. There is yet another dimension to the issues arising in the present appeal. The interim relief granted to the plaintiffs by the appellate Bench of the High Court in the present case is a mandatory direction to hand over possession to the plaintiffs. Grant of mandatory interim relief requires the highest degree of satisfaction of the court; much higher than a case involving grant of prohibitory injunction. It is, indeed, a rare power, the governing principles whereof would hardly require a reiteration inasmuch as the same which had been evolved by this Court in *Dorab Cawasji Warden v. Coomi Sorab Warden* (1990) 2 SCC 117 has come to be firmly embedded in our jurisprudence.

19. Paras 16 and 17 of the judgment in *Dorab Cawasji Warden** extracted below, may be usefully remembered in this regard: (SCC pp. 126-27)

"16. The relief of interlocutory mandatory injunctions are thus granted generally to preserve or restore the status quo of the last non-contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. But since the granting of such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm, courts have evolved certain guidelines. Generally stated these guidelines are:

- (1) The plaintiff has a strong case for trial. That is, it shall be of higher standard than a prima facie case that is normally required for a prohibitory injunction.
- (2) It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.
- (3) The balance of convenience is in favour of the one seeking such relief.

17. Being essentially an equitable relief, the grant or refusal of an interlocutory mandatory injunction shall ultimately rest in the sound judicial discretion of the court to be exercised in the light of the facts and circumstances in each case. Though the above guidelines are neither exhaustive nor complete or absolute rules, and there may be exceptional circumstances needing action, applying them as prerequisite for the grant or refusal of such injunctions would be a sound exercise of a judicial discretion."

20. In a situation where the learned trial court on a consideration of the respective cases of the parties and the documents laid before it was of the view that the entitlement of the plaintiffs to an order of interim mandatory injunction was in serious doubt, the appellate court could not have interfered with the exercise of discretion by the learned trial Judge unless such exercise was found to be palpably incorrect or untenable. The reasons that weighed with the learned trial Judge, as already noticed, according to us, do not indicate that the view taken is not a possible view. The appellate court, therefore, should not have substituted its views in the matter merely on the ground that in its opinion the facts of the case call for a different conclusion. Such an exercise is not the correct parameter for exercise of jurisdiction while hearing an appeal against a discretionary order. While we must not be understood to have said that the appellate court was wrong in its conclusions what is sought to be emphasised is that as long as the view of the trial court was a possible view the appellate court should not have interfered with the same following the virtually settled principles of law in this regard as laid down by this Court in *Wander Ltd. v. Antox India (P) Ltd.*

(emphasis supplied)

61. 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 Trial Court is a plausible view and does not warrant interference by this Court in its appellate jurisdiction.

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

63. Interim Application(s), if any, also stands disposed of.

(AARTI SATHE, J.)