

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

APPEAL FROM ORDER NO.35 OF 2014

- 1) Rajan Kantilal Vora,
Age-62 years, Occu:Business,
Residing at: 4, Balganpati Apartment,
Eduljee Road, Charai,
Thane (West) 400 601,
- 2) Jayshree Rajan Vora,
Age-60 years, Occu:Business,
Residing at: 4, Balganpati Apartment,
Eduljee Road, Charai,
Thane (West) 400 601.

...APPELLANTS
(Orig. Plaintiffs)

VERSUS

- 1) M/s. Pelican Paints Limited,
C/o-Snowcem Paints India Limited,
Having its registered office at
Killick Estate, Baji Palaskar Marg,
Chandivali, Opp. Chandivali Studio,
Mumbai - 400 072,
- 2) Shri Pramod s/o Dattaram Rasam,
Age-50 years, Occu:Director,
Residing at Room No.5,
Shri Niwas Colony, J.B. Nagar,
Andheri (East),
Mumbai-400 059,

- 3) Shri Dhiren Pranolal Pandya,
Age-Adult, Occu:Director,
Residing at 201, 2nd Floor,
A-1, Manek Apartment,
Chhatrapati Shivaji Marg,
Dahisar (East),
Mumbai - 400 068,
- 4) Shri Hariprasad Manmohan Adka,
Age-Adult, Occu:Director,
Residing at A-302,
Kailas Krishna Sthal,
Near Western Highway,
Mira Road East, Thane,
- 5) Maharashtra Industrial Development
Corporation, A Corporation
constituted under the Maharashtra
Industrial Development Act, 1961,
Through its Authorised Representative
and having its Regional Office at
Udyog Shakti, MIDC Industrial Area,
Near Satyam Cinema, Railway Station Road,
Aurangabad - 431005,
- 6) Sanjay Kashinath Shete,
Age-Adult, Occu:Director,
Kasba Peth, Pathardi,
Ahmednagar - 414001,
- 7) Prashant Ramchandra Jawale,
Age-Adult, Director,
Datta Nagar, Near Moheka College,
Kalamb, District-Osmanabad - 413501,
Presently residing at: Flat No.9,
Gangotri Niwas, Jallannagar,
Railway Station, Aurangabad - 431001,

- 8) Balasaheb Bhanudas Nakhate,
Age-Adult, Occu:Director,
R/o-Kalam amba, Taluka-Kaij,
District-Beed - 431 123
- 9) Shrinivas Damodar Shingare,
Age-Adult, Occu:Director,
1.19, Jadhav Galli, Dharur (Shahar),
District-Beed - 431124,

...RESPONDENTS**(Ori. Defendant Nos.1 to 9)**

...

Mr. A.A. Yadkikar Advocate for Appellants.
None present for Respondent Nos.2 to 4
(served in Appeal From Order No.6 of 2014).
Respondent No.3 not served
Mr. G.S. Khaire Advocate h/f. Mr. S.S.
Dande Advocate for Respondent No.5.
Mr. A.G. Talhar Advocate for Respondent
Nos.1, 6, 7, 8 and 9.

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WITH**APPEAL FROM ORDER NO.6 OF 2014**

- 1) Sanjay Kashinath Shete,
Age-32 years, Occu:Business,
R/o- Kasba Peth, Pathardi,
Ahmednagar,
(Orig. Defendant No.6)
- 2) Prashant Ramchandra Jawale,
Age-41 years, Occu:Business,
Datta Nagar, Near Moheka College,
Kalamb, District-Osmanabad - 413501,
Presently residing at: Flat No.9,
Gangotri Niwas, Jallannagar,
Railway Station, Aurangabad,
(Orig. Defendant No.7)

- 3) M/s. Pelican Paints Limited,
C/o-Snowcem Paints India Limited,
Having its registered office at
Killick Estate, Baji Palaskar Marg,
Chandivali, Opp. Chandivali Studio,
Mumbai,
Present Address: B-21/2, M.I.D.C.,
Paithan, Tq-Paithan, Dist-Aurangabad,
(Orig. Defendant No.1)
- 4) Balasaheb Bhanudas Nakhate,
Age-35 years, Occu:Business,
R/o-Kalam Amba, Taluka-Kaij,
District-Beed,
(Orig. Defendant No.8)
- 5) Shrinivas Damodar Shingare,
Age-41 years, Occu:Business,
1-19, Jadhav Galli, Dharur (Shahar),
District-Beed. **(Orig. Defendant No.9)**

...APPELLANTS

VERSUS

- 1) Rajan Kantilal Vora,
Age-62 years, Occu:Business,
R/o-4, Balganpati Apartment,
Eduljee Road, Charai, Thane (W),
(Orig. Plaintiff No.1)
- 2) Jayshree Rajan Vora,
Age-60 years, Occu:Business,
R/o-4, Balganpati Apartment,
Eduljee Road, Charai, Thane (W),
(Orig. Plaintiff No.2)
- 3) Shri Pramod s/o Dattaram Rasam,
Age-50 years, Occu:Business,
R/o- Room No.5, Shri Niwas Colony,
J.B. Nagar, Andheri (E), Mumbai,
(Orig. Defendant No.2)

- 4) [Shri Dhiren Pranlal Pandya,
Age-Adult, Occu:Director,
Residing at 201, 2nd Floor,
A-1, Manek Apartment,
Chhatrapati Shivaji Marg,
Dahisar (East),
Mumbai - 400 068],
(deleted as per Court's order
dated 27.06.2014)

(Orig. Defendant No.3)

- 5) Shri Hariprasad Manmohan Adka,
Age-Adult, Occu:Business,
R/o-A-302, Kailas Krishna Sthal,
Near Western Highway,
Mira Road East, Thane,

(Orig. Defendant No.4)

- 6) Maharashtra Industrial Development
Corporation, A Corporation
constituted under the Maharashtra
Industrial Development Act, 1961,
Through its Authorised Representative
and having its Regional Office at
Udyog Shakti, MIDC Industrial Area,
Near Satyam Cinema, Railway Station Road,
Aurangabad.

(Orig. Defendant No.5)

...RESPONDENTS

...

Mr. A.G. Talhar Advocate for Appellants.
Mr. A.A. Yadkikar Advocate for Respondent
Nos.1 and 2.

None present for Respondent Nos.3 and 5
though served.

Respondent No.4 deleted vide Court's
Order dated 27.06.2014.

Mr. G.S. Khaire Advocate h/f. Mr. S.S.
Dande Advocate for Respondent No.6.

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CORAM: A.I.S. CHEEMA, J.

DATE OF RESERVING JUDGMENT : 9TH FEBRUARY, 2015.

DATE OF PRONOUNCING JUDGMENT: 13TH FEBRUARY, 2015.

JUDGMENT :

1. These Appeals From Order arise from order dated 20th December 2013 passed by 3rd Joint Civil Judge, Senior Division, Aurangabad in Special Civil Suit No.191 of 2013. Parties as arrayed in the Appeal From Order No.35 of 2014 are in same order as in the original Suit. The Appellants in Appeal From Order No.35 of 2014 are the original Plaintiffs and Respondents are Defendant Nos.1 to 9. I will refer to them accordingly as Plaintiffs and Defendants.

2. The Suit has been filed with reference to two properties referred as "suit property". The properties are (1) Plot bearing No.B-21/2 and (2) Plot bearing No.B-21 situated at M.I.D.C. Paithan.

Plaintiffs filed Suit on 29th July 2013 against Defendants claiming specific performance of transfer of lease interest by Defendant No.1, the Company in favour of the Plaintiffs and perpetual injunction against Defendant Nos. 1 to 4 and 6 to 9 from alienating, transferring, disposing or creating third party rights over the suit property. Permanent injunction is sought against Defendant No.5 from making the changes in their record with respect to right, title, interest of the suit property to the prejudice of the Plaintiffs. The trial Court, after hearing Exhibit 5, Application for temporary injunction filed by the Plaintiffs, restrained Defendant Nos.1 to 4 and 6 to 9 from disturbing the possession of Plaintiffs over Plot No.B-21/2 till disposal of the Suit and Defendant Nos.6 to 9 were directed to remove their locks put over the sheds of suit property B-21/2. Defendant No.5, M.I.D.C. was restrained from making changes in their record regarding right, title, interest of the suit

property B-21 till disposal of the Suit. The reasonings recorded shows that the Court did not pass orders regarding the other Plot No.B-21 in favour of the Plaintiffs. Thus, Appeal From Order No.35 of 2014 has been filed by original Plaintiffs claiming that they were entitled to temporary injunction even regarding Plot No.B-21, while the original Defendant Nos. 6 to 9 have filed Appeal From Order No.6 of 2014 against the temporary injunction passed against them. Defendant No.1, the Company has also been arrayed as the Appellant.

3. Brief reference needs to be made to the dispute:

(A). The Special Civil Suit has been filed by the Plaintiffs referring to the plots in dispute, wherein it has been claimed that Defendant No.1 had the lease hold rights obtained from the Defendant No.5 and around 1995 Defendant No.1

stopped manufacturing activities and the Manager of Defendant No.1 was showing the property to prospective lessees/investors. As such, Plaintiffs contacted the Defendant No.1. Defendant No.1 agreed to sell, assign, and transfer its lease interest in the suit property in favour of Plaintiffs for which Memorandum of Understanding (for short "MOU") was executed on 20th March, 2007. Before the document was executed, possession of the suit property was handed over to the Plaintiffs on 1st March 2007. Plaintiffs have been in possession of the suit property since then. They have been running their business from the suit property. Plaintiffs produced necessary documents to show their possession. The Plaintiffs claim that they have been running business in the name of their different entities, namely, Rockchem Products, Darshan Enterprises, Rockfibres and Nodules.

(B). The MOU was signed by Defendant No.2 on

behalf of Defendant No.1 Company. The Plaint gives details of the various cheques and also some cash payments made towards consideration for transfer of lease hold rights. According to Plaintiffs, inspite of payment of Rupees Twelve Lakhs and the Plaintiffs being ready and willing to pay the balance amount, the Defendant No.1 or its directors were not interested in performing their part of contract. The Plaintiffs have been paying necessary water taxes, electricity charges and charges towards maintenance and it is important that final lease should be executed in favour of Plaintiffs to enable them to get their names recorded with Defendant No.5 M.I.D.C. Plaintiffs learnt that Defendant No.1 was trying to transfer suit properties to third party and thus notice was issued on 20th March 2013. On 7th June 2013, Defendant Nos. 6 to 9 illegally and forcibly went to the suit premises, threatened watchman and took photographs. Plaintiffs learnt from Internet that Defendant Nos.6 to 9 have been inducted as

additional directors. The Plaint refers to correspondence entered into by the Plaintiffs and the Plaintiffs giving public notice regarding their MOU.

4. In the Suit, with pleadings as above, the Plaintiffs filed temporary injunction application to protect their possession. Defendant No.2 filed say opposing the suit. This Defendant claimed that as per the MOU, the amount of Rupees Nine Lakhs was not paid within stipulated period and it was paid belatedly on 14th August 2007. According to him, the cause of action arose on 15th August 2007 and the period of limitation for the suit expired on 14th August 2010 and and Suit suffered from laches and was barred by law of limitation. It is admitted that Defendant No.1 has taken the suit property from Defendant No.5 M.I.D.C. on lease of 95 years. The execution of MOU between Defendant No.1 and Plaintiffs is not disputed but it is claimed that in the MOU time was essence of

contract. This Defendant claimed that on receipt of earnest money of Rupees Three Lakhs from the Plaintiffs, on execution of MOU Defendant No.1 in good faith, subject to compliance of terms and conditions under the said lease deed such as obtaining permission of M.I.D.C. and getting the property transferred in the name of the Plaintiffs, the Plaintiffs were put in possession. The Defendant claimed that no pre-emptive right was created in favour of Plaintiffs and after execution of MOU, the Plaintiffs are holding over the suit property without there being any valid authority in their favour. The entire payment of Rupees Twelve Lakhs made by the Plaintiffs, has been credited to the account of Defendant No.1. This Defendant claimed that Plaintiffs failed to comply with their part of contract. On 10th December 2012 Defendant No.1 in good faith had co-operated with Plaintiffs to execute authority letter in favour of Plaintiff No.1 and his son Chirag authorizing them to sign necessary

documents to submit to Central/State Government or other authorities in respect of the suit properties. This Defendant claims that he has resigned since 26th March, 2013. According to him, no prima facie case has been made out by Plaintiffs to grant relief as sought.

5. The Defendant No.4, another director at the relevant time, also filed say in the trial Court. He has also opposed the temporary injunction application. He claimed that he has also ceased to be director of Defendant No.1 since 26th March 2013 but according to him he was non executive director and had no personal knowledge about the suit transactions. On receipt of legal notice dated 20th March 2013, he verified and came to know about the MOU. He has adopted the averments made by Defendant No.2 in his say. He denies that Plaintiffs were ready and willing to perform their part of obligations under the MOU. It is stated that the Plaintiffs have been in

possession since 1st March 2007 and so their apprehension of interference/obstruction was false. He claims that no prima facie case was made out for injunction.

6. Defendant Nos. 6 to 9 (hereafter referred as "contesting Defendants") also filed say opposing the temporary injunction application. Various disputes have been raised. According to them, Suit is barred by limitation. The Suit is based on documents which stipulated time as essence of contract and thus the Suit was not in limitation. The MOU was insufficiently stamped and unregistered and could not be relied upon for deciding the reliefs. The Plaintiffs were not entitled to injunction as claimed. There was no privity of contract between Defendant No.5 and Plaintiffs. Defendant No.1 is registered company. Defendant Nos.2 to 4 are no more directors since 26th March 2013 and Defendant Nos.6 to 9 are the only directors and additional directors. Defendant

No.1 is lawful lessee of Defendant No.5. These Defendants denied the MOU claiming that it was not entered into by Defendant No.1 and that it is a false document. There was unholy alliance between the Plaintiffs and Defendant No.2 with intention to grab the property of Defendant No.1. The MOU does not bear seal of Defendant No.1. Defendant Nos.3 and 4 did not take active role in Defendant No.1 Company and Defendant No.2 and Plaintiffs conspired to cheat Defendant No.1. In Para 8 of the say filed by these Defendants, they deny that Plaintiffs are enjoying the possession of the suit property. According to them, Defendant No.2 merely allowed Plaintiffs to use the Defendant No.1's shed temporarily of which now misuse is being done by the Plaintiffs to lay the present false Suit. There is no official company record of transaction between Defendant No.1 and Plaintiffs. As far as state of affair of existing situation over suit plots, there are four sheds on the suit plots. One shed is in B-21 and three sheds are in B-21/2.

From these sheds, one shed in plot B-21 and one shed in B-21/2 are in locked position having locks of both Plaintiffs and Defendant No.1. There is open un-constructed shed in B-21/2 in addition to three working sheds. Chirag Vora, son of Plaintiffs has an industrial unit in Plot No.B-22. Defendant No.2 had allowed the Plaintiffs to use the said sheds for storing scrap materials of the said business carried over in Plot No.B-22. Since these Defendants came in picture, the above state of affairs continues and they did not disturb it. Probably some scrap material is still lying inside sheds in the plot. In the further say these Defendants denies the claim of Plaintiffs and also deny possession of the Plaintiffs. According to them, the Plaintiffs were allowed to use one of the shed of Defendant No.1 Company in Plot No.B-21 for some time and the Plaintiffs used the same and thereafter abandoned the same since about a year and so the portions bear locks of Plaintiffs and Defendant No.1 Company. These Defendants denied

the contentions of the Plaintiffs made vide another application that their machinery is lying in the suit property. They want the application to be rejected.

7. The trial Court, after considering the rival claims and arguments, found that for grant of injunction material consideration was, whether the Plaintiffs are in possession of the suit property or not. Referring to MOU and the pleadings of Defendant Nos. 2 to 4, it found that they admitted that Plaintiffs are in possession. With reference to Defendant Nos. 6 to 9, trial Court referred to the pleadings of these Defendants to say that they also admitted the possession of the Plaintiffs but in another form by stating that Plaintiffs were allowed to use just one shed out of the four. Reference was made to the electricity bills, water charges bills, cess receipts of Grampanchayat produced with Exhibit 4 and Exhibit 75. Trial Court noted that

these documents were produced by Plaintiffs and it was prima facie presumed that the charges were paid by the Plaintiffs. The trial Court observed that cumulative effect of the documents shows that since 1st March 2007 till filing of the suit (on 29th July 2013) the possession of the suit property was not with the Defendants at any point of time. The trial Court, however, then referred to some documents on record to observe that copy of certificate of VAT issued to firm Rockfibres and Nodules mentioned Chirag Rajan Vora as sole proprietor. It referred to another document by Superintendent Central Excise and Customs addressed to Chirag Rajan Vora referring to MOU dated 20th March 2007 to say that it was not clear as to which plot he was referring, B-21 or B-21/2. Reference is also made to another document between Plaintiff No.2 and her son Chirag Rajan Vora. Referring to these documents, the trial Court observed that part of the suit property, namely, Plot No.B-21 was in possession of Chirag Vora and

not the Plaintiffs. In view of such observations, the trial Court passed orders only regarding Plot No.B-21/2 which it held to be in possession of the Plaintiffs and did not pass any orders regarding Plot No.B-21.

8. The Plaintiffs filed Appeal From Order No.35 of 2014 claiming that they were entitled to injunction even as regards Plot No.B-21. They have tendered affidavit of Chirag Vora to claim that both the plots have been in possession of the Plaintiffs since 1st March 2007 in view of the MOU and that the Plaintiffs and Chirag stay together and have various sole proprietorship entities for the convenience of record and management. Although entity of Rockfibres and Nodules is registered as sole proprietor by him, however his parents are jointly managing the said firm with him.

9. Original Defendant Nos.6 to 9 have filed Appeal From Order No.6 of 2014 reiterating the

claims made in the trial Court to insist that grant of temporary injunction against them even for the part of the property was not correct.

10. The Points for Consideration are:

(1) Whether the impugned order passed by the trial Court is correct, legal and proper?

(2) Whether it is necessary to modify the order?

(3) Whether prima facie case is made out by Plaintiffs to claim temporary injunction for both the plots of suit property?

(4) Whether balance of convenience is in favour of the Plaintiffs?

(5) Whether Plaintiffs would suffer irreparable injury if temporary injunction is not granted regarding both the plots of suit property?

11. Counsel for Respondent No.5 left matter to Court to decide. Other counsel for both sides have referred to various documents from the record of the trial Court which have been filed along with Civil Application No.2451 of 2014 in Appeal From Order No.35 of 2014. Both the counsel referred to documents at various pages in the said compilation. I will refer to those documents by their page numbers in the said compilation.

12. It has been argued by the learned counsel for Defendant Nos.6 to 9 that the injunction order for part of the property passed against Defendant Nos.6 to 9 should not have been passed. According to the counsel, the trial Court did not discuss all the documents which were filed. The objections regarding the MOU were not considered. The counsel claimed that Defendants had filed certain documents to show their possession. He referred to Form 32 of Defendant Nos.6 to 9 (Page Nos. 239 - 244) to claim that Defendant Nos. 6 to 9 had

become directors since 25th March 2013. He also claimed that these Defendants have paid process fee to M.I.D.C. on 22nd August 2013 (Page No.263) and had also filed application for transfer (Page No.265). Document was referred at Page No.275 to claim that Defendant No.6 had become additional director as per this document. According to the counsel, the documents at Page Nos. 279 and 280 show that these Defendants had received purchase orders at the address of Defendant No.1 which was of B-21/2, M.I.D.C. According to the learned counsel, this shows that these Defendants were in possession of the suit property. According to the counsel, these documents were not discussed by the trial Court. Reference was also made to statement of watchman Arjun to police (Page No.349) to show that watchman told to police that in his presence locks were not put. The counsel referred to document at Page No.231 which was agreement between M.I.D.C. and Rockfibres and Nodules to show that the son of the Plaintiffs was having

business in nearby plot No.B-22. The counsel submitted that the observations of the trial Court in Para 8 of its order were wrong that the contesting Defendant Nos. 6 to 9 had accepted the possession of the Plaintiffs. The counsel argued that the certificate of registration of VAT (Page No.321) showed Chirag Vora as the proprietor of Rockfibres and Nodules with the additional address of additional place of business shown as Plot No.B-21 and B-21/2. He claims that Plaintiffs are not in possession of the suit properties. It has been argued, in alternative, that the orders passed by the trial Court be maintained till Suit is decided and the Suit may be expedited.

13. Per contra, the learned counsel for original Plaintiffs submitted that the pleadings show that the execution of MOU is not in dispute. The details on record indicate that the Plaintiffs have parted with huge amounts in favour of Defendant No.1. The Defendant Nos. 6 to 9 became

directors only on 25th March 2013. They have no knowledge of earlier developments. The counsel referred to the authority letter issued by Defendant No.1 through Defendant No.2 (Page No.84) to submit that the authority letter was given by the Defendant No.1 Company to the Plaintiff No.1 and Chirag Vora to move the Central and State authorities etc. with reference to Plot Nos. B-21 and B-21/2. The document is dated 10th December 2012 and thus according to counsel, it cannot be said that the suit was barred by limitation. The counsel referred to documents (Page Nos. 113 to 120) to claim that electricity and various other charges as well as charges to M.I.D.C. were paid by the Plaintiffs. The documents regarding tax to Grampanchayat (Page Nos. 122 - 124) were referred to show that even the same was paid by the Plaintiffs. Referring to list of documents filed in trial Court (Page No.282) the counsel submitted that there were 36 documents which clearly disclose the possession of the Plaintiffs on suit

properties. It has been argued that the documents at Page Nos. 385 to 388 show that the Plaintiffs had taken insurance policies for the various machineries, the locations of which machineries were shown in Plot Nos. B-21 and B-21/2. According to the counsel, there was no reason for the Plaintiffs to pay such insurance premiums for the machineries if they were not in possession of these properties. According to him, Plaint Para 5 clearly showed that the unit of Rockfibre and Nodules was unit of the Plaintiffs and trial Court did not notice these pleadings and wrongly diverted itself so as to decline injunction for Plot No.B-21. The counsel submitted that Plot Nos. B-21 and B-21/2 are in one compound while Plot No.B-22 which is not suit property, is nearby in another compound which has been taken from M.I.D.C. for Rockfibre and Nodules. The trial Court did not properly appreciate the documents and held that Chirag Vora is in possession of B-21. In the trial Court, there were no pleadings

that Chirag Vora was independently in possession of B-21 and there were no arguments also of any of the parties in this regard but trial Court suddenly in the order, observed that Plot No.B-21 was in possession of Chirag Vora and rejected the claim for that part of the property. The counsel submitted that pleadings of the Plaintiffs were clear and the Plaintiffs are in possession of both the suit plots and the unit of Chirag Vora is also managed by the Plaintiffs.

. It has been further argued by learned counsel for Plaintiffs that Defendant Nos.6 and 7 were in fact employees of the Plaintiffs which can be seen from the visiting card of Chirag Vora and Defendant No.6 (Page No.391) and the agreement of Chirag Vora with M.I.D.C. (Page No.232) where the stamp paper was purchased by Defendant No.7. According to the counsel, taking advantage of the information they had that formal lease is yet to be executed, the Defendant Nos.6 and 7 managed to

buy shares of Defendant No.1 and are now trying to disturb possession of the Plaintiffs. The counsel claimed that the Suit was filed on 21st July 2013 and notice was issued on 31st July 2013 returnable on 22nd August 2013. Before the said date, Defendant Nos.6 to 9 high handedly entered the suit property in the absence of the Plaintiffs and threatened the watchman and they put locks on 12th August 2013, regarding which the watchman filed affidavit (Page No.145) and the Plaintiff No.1 who was at Thane, immediately sent e-mail complaint (Page No.148). The counsel argued that on the date of Suit, the Plaintiffs were in possession is clear from the say which was filed by Defendant No.2 as well as Defendant No.4 and even Defendant Nos.6 to 9. According to him, when Defendant Nos. 6 to 9 say that there are locks of Plaintiffs on the suit sheds, it shows acceptance that the Plaintiffs are in possession. The subsequent act of these contesting Defendants forcibly putting locks, will not change the situation. The counsel

argued that the documents referred to by the learned counsel for contesting Defendants of Form 32 and their filing documents with M.I.D.C. for processing fee, do not show their possession. According to the counsel, the purchase orders referred to by the counsel for contesting Defendants are fabricated documents. Those documents do not show that any supply was made by Defendant No.1 from suit property. Referring to the document of application filed to M.I.D.C. (Page No.265), the counsel submitted that this document purports to have been filed on 7th May 2013 and is signed by Defendant No.2 although on 7th May 2013 the Defendant No.2 was no more director. Thus, according to the counsel, the claim of contesting Defendants that there was unholy alliance between Defendant No.2 and Plaintiffs has no substance.

14. The counsel for Plaintiffs further referred to compensation paid by Plaintiff No.1 to

an employee who got injured on duty (Page No.376) to show that Plaintiff No.1 was shown as the person in favour of whom the document was executed by the injured employee and Plaintiff No.1 was shown as having a business of Rockfibre and Nodules in B-21, 21/2 of M.I.D.C., Paithan. According to counsel, it is clear that the business of Rockfibre and Nodules in both the suit plots was being managed by the Plaintiff No.1. Reference is also made to another document at Page No.303 where for R.K. Group of Companies, Plaintiff No.1 is shown as the proprietor even for Rockfibre and Nodules. The counsel argued that Chirag Vora was proprietor on record but the actual management and conducting of the business was by Plaintiff No.1. Referring to document at Page No.310, the counsel submitted that it was an agreement between mother and son for the purpose of management of business for address proof, for VAT it was executed and this by itself does not mean that Chirag Vora was put in any exclusive

possession. The document is referred at Page No.142 to claim that the machineries of Plaintiffs are lying in Plot No.B-21. The counsel argued that the Plaintiffs have taken insurance policies for these machineries which have been filed and the machineries are blocked in Plot No.B-21 and thus according to the counsel, injunction orders need to be passed in favour of the Plaintiffs even for Plot No.B-21. According to him, the Plaintiffs will suffer irreparable injury if the injunction order is not passed in their favour and balance of convenience is in favour of the Plaintiffs.

15. The counsel for Plaintiffs submitted that the objections raised by the contesting Defendants that the Memorandum of Understanding was not registered or was not duly stamped or was required to be impounded, are matters which can be looked into at the time of trial when the document is required to be tendered in evidence and at the stage of temporary injunction, it is not necessary

to go into those details. Reliance is placed on the case of **Sanjay Shrikishnji Somani and another vs. Vishnupant Shankarrao Shahane, reported in 2007(6) A.I.R. Bom. R-72.**

16. Although the learned counsel for contesting Respondents has taken me through the documents with regard to Respondent Nos.6 to 9 becoming directors and they moving the M.I.D.C. to pay process fee for transfer, I find that there is no substance in his submission that these documents by themselves are proof of actual physical possession of the suit properties. The purchase orders claimed to have been received by the contesting Respondents Dated 5th August 2013 and 7th September 2013 (Page Nos.279 and 280) also are not documents which will prove that these Defendants are in physical possession of the suit property. No doubt, in the documents address of Defendant No.1 is shown as that of the suit property but this is not proof of either receipt

of such orders at the address of suit property nor does it prove physical possession of the Respondent Nos.6 to 9. The learned counsel for Plaintiffs has rightly referred to the various documents relating to payment of electricity bills, water charges, tax to Grampanchayat which have been filed by the Plaintiffs to show that these documents show that the Plaintiffs are in possession of the suit properties. In fact the trial Court in Para 7 of the order, relied on these documents to come to the conclusion that the Defendants failed to prove that they were in possession of the suit property after 1st March 2007.

17. The trial Court in Para 8 and 9 of its orders, referred to documents in order to observe that possession of Plot No.B-21 was with Chirag Rajan Vora. The document referred by trial Court at Exhibit 75(4) certificate of VAT registration (Page No.321) shows name of Chirag Rajan Vora for

the business of Rockfibre and Nodules with principal address of Thane, while address of additional place of business is shown as not merely B-21 (as is referred to by the trial Court) but also B-21/2. The document of Superintendent of Central Excise and Customs referred to by the trial Court (Page No.381) was a letter addressed to Chirag Vora to explain as to which plot out of B-21 and B-21/2 he had taken on rent. The declaration-cum-agreement by Plaintiff No.2 that her son Chirag Vora (Page No.310) is that the plots B-21 and B-21/2 are jointly held by her along with the Plaintiff No.1 and that she was entering into rent agreement with Chirag Vora for Plot No.B-21. The trial Court could not have referred to these documents in isolation ignoring the pleadings of the Plaintiffs in the Plaint Para 5 that the Plaintiffs were running their business in the name of different entities namely, Rockchem Products, Darshan Enterprises, Rockfibres and Nodules. The trial Court referred to above

documents ignoring other documents which were on record and which are pointed out by the learned counsel for Plaintiffs like the agreement entered into by Plaintiff No.1 with employee of Rockfibre and Nodules paying compensation in 2012 to settle compensation for injured employee. Counsel for Plaintiffs pointed out photograph at Page No.384 showing the Plaintiff No.1 handing over the compensation to the employee. The counsel is rightly submitting that the Plaintiffs had taken out the insurance policies for the machineries which were in both the suit plots and these documents were also produced by the Plaintiffs. The counsel for Plaintiffs is right in submitting that it shows that Plaintiffs are managing the businesses which are run from the suit property. I thus find that the trial Court, after having concluded that the Defendants were not in possession of suit property since 1st March 2007 and after accepting the case of the Plaintiffs based on the voluminous documents produced by them

that they were in possession of the Plot No.B-21/2, wrongly ignored passing orders with reference to Plot No.B-21 on the reasoning that some of the documents showed that Chirag Rajan Vora was proprietor of Rockfibre and Nodules and that Chirag Vora was in possession. It is not a finding that Chirag Vora was in exclusive possession. There are various documents showing that the Plaintiffs were managing the business even which was on the name of Chirag Rajan Vora.

18. The counsel for Plaintiffs is submitting that on 29th July 2013 when the suit was filed, the Plaintiffs were in possession and only after the notices were issued, contesting Respondents forcibly went and put their locks over and above the locks of the Plaintiffs. Counsel for contesting Defendants referred to the statement of the watchman given to police (Page No.349) that locks were not put in his presence. However, statement to police under Section 161 of Cr.P.C.

has specific use as contemplated in Section 162 of Cr.P.C. at the time of trial. The counsel for Plaintiffs is rightly relying on the affidavit of the watchman Arjunrao (Page No.145) that on 12th August 2013 the contesting Defendants forcibly entered the suit premises and caused damage as well as put locks over the existing locks. In the say filed by Defendant Nos.6 to 9, they accept that locks over the locks of Plaintiffs have been put. Of course, they want to say that those locks which have been put are of Defendant No.1. The Plaintiffs are able to show that after the notices were issued, there has been an attempt to disturb the possession of the Plaintiffs.

19. Defendant No.2 accepted that before MOU was executed, possession of suit property was handed over to the Plaintiffs. The dispute whether or not Plaintiffs were ready and willing, would be matter of trial. Defendant No.4 adopted the say of Defendant No.2. Although the learned counsel for

contesting Defendants is submitting that the trial Court wrongly appreciated the pleadings of these Defendants to observe that the admission was in other form, I find substance in the argument of learned counsel for Plaintiffs that pleadings of even contesting Defendants do indicate possession of Plaintiffs in suit property. Although these Defendants deny the pleadings of the Plaintiffs that they are in possession, in the say Para 8 (Page No.208 read with 222) these Defendants stated that Defendant No.2 had allowed Plaintiffs to use shed of Defendant No.1. They claimed that out of one shed on B-21 and three sheds on B-21/2, one each is in locked position having locks of both, Plaintiffs and Defendant No.1. One open unconstructed shed is stated to be in B-21/2 in addition to three working sheds. These Defendants have filed say that son of Plaintiffs, Chirag has industrial unit at Plot No.B-22 and that Defendant No.2 had allowed the Plaintiffs to use the said "sheds" for storing scrap material of the said

business which was being carried over in Plot No.B-22. The say of Defendant Nos.2 and 4 clearly accepted possession of the Plaintiffs. The half hearted denial of Defendant Nos.6 to 9 in the face of voluminous documents in favour of Plaintiffs, has no substance.

20. I find substance in the submissions made by Counsel for Plaintiffs. Prima facie, the Plaintiffs clearly make out a case for temporary injunction till pendency of the Suit for both the plots which are forming the suit property. The impugned order of the trial Court is correct, legal and proper as far as grant of temporary injunction for Plot No.B-21/2 but the same requires to be modified as the temporary injunction should have been granted even for Plot No.B-21. Thus the Order needs to be modified. The Plaintiffs have proved prima facie case and the balance of convenience is in favour of the Plaintiffs and it is necessary to protect their

possession till Suit is decided. Clearly the machinery of Plaintiffs is in the suit property and there is substance in the submissions of the learned counsel for Plaintiffs that the machinery is stuck and the Plaintiffs are facing problems in their business which was being run from the suit property and it would be in the interest of justice that temporary injunction should be granted. The contesting Defendants although they have become directors on 25th March 2013, have not been able to show that they were actually doing business in any part of the suit property or that they had physical possession of any part of the suit property when they became directors. When the earlier directors accept handing over of possession to the Plaintiffs as per the MOU, continuity of the possession has to be presumed. Even otherwise, there are documents to show that on the date of Suit, Plaintiffs were in possession of the suit plots which are suit property.

21. Learned counsel for contesting Defendants, when the arguments were over of both the sides, reiterated that the orders of the trial Court be maintained as they are and the suit may be expedited. I do not think that those orders can be maintained as they are. The same need to be modified. As regards the request to expedite the Suit, without having details as to the volume of pendency in the concerned Court, it will not be appropriate to expedite the Suit of 2013 at the cost of older matters.

22. In Appeal From Order No.6 of 2014 original Defendant Nos.2 and 4 were served but remained absent. In Appeal From Order No.6 of 2014, the original Defendant No.3 was not served and was deleted by the Appellants. In Appeal From Order No.35 of 2014 Respondent No.3 (original Defendant No.3) has not been served with notice and thus in the final order, I am not modifying the trial Court order as far as regards Defendant

No.3 is concerned. The said order will continue to apply to Defendant No.3 in its present form.

23. For the reasons stated above, I proceed to pass following order:

O R D E R

(I) Appeal From Order No.35 of 2014 is allowed with costs.

(II) The impugned order of the trial Court passed below Exhibit 5 in Special Civil Suit No.191 of 2013, dated 20th December 2013 is modified as regards Defendant Nos. 1, 2, 4 to 9 as under:

(A) The Defendant Nos.1, 2 and 4 as well as 6 to 9 and their agents, servants, assignees, representatives or anybody acting on their behalf, are

restrained from causing obstruction to the possession of the Plaintiffs over the suit property - Plot No.B-21/2 as well as Plot No.B-21 till disposal of the suit.

(B) The Defendant Nos.6 to 9 shall remove their lock/locks put over the sheds of suit property - Plot No.B-21/2 as well as Plot No.B-21 immediately.

(C) The Defendant No.5 is restrained from causing change in its record with respect to the right, title, interest of the suit property Plot No.B-21/2 as well as Plot No.B-21, till disposal of the suit.

(III) Appeal From Order No.6 of 2014 is dismissed with costs.

(IV) Observations made in this Judgment regarding Pleadings and Documents are prima-facie and shall not weigh while deciding suit on merits.

[A.I.S. CHEEMA, J.]

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