

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**COMMERCIAL APPEAL (L) NO.561 OF 2018
IN
NOTICE OF MOTION No.1939 of 2018
IN
SUIT NO.1190 OF 2018**

Shailesh Nagindas Shah and others	..Appellants
Versus	
Rubi Ventures Pvt. Ltd. & others	..Respondents

**WITH
NOTICE OF MOTION (L) NO.1342 OF 2018
IN
COMMERCIAL APPEAL (L) NO.561 OF 2018
IN
NOTICE OF MOTION NO.1939 of 2018
IN
SUIT NO.1190 OF 2018**

Shailesh Nagindas Shah and others	..Applicants
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IN THE MATTER BETWEEN

Shailesh Nagindas Shah and others	..Appellants
Versus	
Rubi Ventures Pvt. Ltd. & others	..Respondents

**AND
COMMERCIAL APPEAL (L) NO.562 OF 2018
IN
NOTICE OF MOTION NO.1149 of 2018
IN
SUIT NO.1177 OF 2018**

Shailesh Nagindas Shah and others ..Appellants
Versus
Rameshchandra Hiralal Shah and others ..Respondents

WITH
NOTICE OF MOTION (L) NO.1345 OF 2018
IN
COMMERCIAL APPEAL (L) NO.562 OF 2018
IN
NOTICE OF MOTION NO.1149 of 2018
IN
SUIT NO.1177 OF 2018

Shailesh Nagindas Shah and others ..Applicants

IN THE MATTER BETWEEN

Shailesh Nagindas Shah and others ..Appellants
Versus
Rameshchandra Hiralal Shah and others ..Respondents

AND
COMMERCIAL APPEAL (L) NO.563 OF 2018
IN
NOTICE OF MOTION NO.1323 of 2018
IN
SUIT NO.1197 OF 2018

Shailesh Nagindas Shah and others ..Appellants
Versus
Shah Steel Impex Private Limited & others ..Respondents

WITH
NOTICE OF MOTION (L) NO.1344 OF 2018
IN
COMMERCIAL APPEAL (L) NO.563 OF 2018
IN
NOTICE OF MOTION NO.1323 of 2018

IN
SUIT NO.1197 OF 2018

Shailesh Nagindas Shah and others ..Applicants

IN THE MATTER BETWEEN

Shailesh Nagindas Shah and others ..Appellants
Versus

Shah Steel Impex Private Limited & others ..Respondents

AND
COMMERCIAL APPEAL (L) NO.564 OF 2018
IN
NOTICE OF MOTION NO.1948 of 2018
IN
SUIT NO.1179 OF 2018

Shailesh Nagindas Shah and others ..Appellants
Versus

Sanjay Rasiklal Shah and others ..Respondents

WITH
NOTICE OF MOTION (L) NO.1346 OF 2018
IN
COMMERCIAL APPEAL (L) NO.564 OF 2018
IN
NOTICE OF MOTION NO.1148 of 2018
IN
SUIT NO.1179 OF 2018

Shailesh Nagindas Shah and others ..Applicants

IN THE MATTER BETWEEN

Shailesh Nagindas Shah and others ..Appellants
Versus

Sanjay Rasiklal Shah and others ..Respondents

AND
COMMERCIAL APPEAL (L) NO.565 OF 2018
IN
NOTICE OF MOTION NO.1945 of 2018
IN
SUIT NO.1194 OF 2018

Shailesh Nagindas Shah and others ..Appellants
Versus
Haldiram Foods International Private
Limited and others ..Respondents

WITH
NOTICE OF MOTION (L) NO.1347 OF 2018
IN
COMMERCIAL APPEAL (L) NO.565 OF 2018
IN
NOTICE OF MOTION NO.1945 of 2018
IN
SUIT NO.1194 OF 2018

Shailesh Nagindas Shah and others ..Applicants

IN THE MATTER BETWEEN

Shailesh Nagindas Shah and others ..Appellants
Versus
Haldiram Foods International Private
Limited and others ..Respondents

AND
COMMERCIAL APPEAL (L) NO.566 OF 2018
IN
NOTICE OF MOTION (L) NO.1137 of 2018
IN
SUIT NO.1278 OF 2018

Shailesh Nagindas Shah and others	..Appellants
Versus	
Dordawala Family Trust & others	..Respondents

WITH
NOTICE OF MOTION (L) NO.1348 OF 2018
IN
COMMERCIAL APPEAL (L) NO.566 OF 2018
IN
NOTICE OF MOTION (L) NO.1137 of 2018
IN
SUIT NO.1278 OF 2018

Shailesh Nagindas Shah and others	..Applicants
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IN THE MATTER BETWEEN

Shailesh Nagindas Shah and others	..Appellants
Versus	
Dordawala Family Trust & Ors.	..Respondents

AND
COMMERCIAL APPEAL (L) NO.567 OF 2018
IN
NOTICE OF MOTION NO.1950 of 2018
IN
SUIT NO.1178 OF 2018

Shailesh Nagindas Shah and others	..Appellants
Versus	
Mallinath Share & Stock Private Limited & Ors.	..Respondents

WITH
NOTICE OF MOTION (L) NO.1350 OF 2018
IN
COMMERCIAL APPEAL (L) NO.567 OF 2018

IN
NOTICE OF MOTION NO.1950 of 2018
IN
SUIT NO.1178 OF 2018

Shailesh Nagindas Shah and others ..Applicants

IN THE MATTER BETWEEN

Shailesh Nagindas Shah and others ..Appellants

Versus

Mallinath Share & Stock Private
Limited & Ors.

..Respondents

Mr. Pravin Samdani, Senior Advocate a/w Mr. Aniruddha Joshi, Ms. Krishna Raja I/by M/s. LJ Law, Advocate for the Appellants in COMAPL No.561 of 2018.

Mr. Aniruddha Joshi a/w Ms. Krishna Raja I/by M/s. LJ Law, Advocate for the Appellants in COMAPL NO.564 of 2017 & COMAPL No.562 of 2018.

Ms. Krishna Raja I/by M/s. LJ Law, Advocate for the Appellants in COMAPL NO.566 of 2018.

Ms. Krishna Raja a/w Ms. Kanizz Munjee I/by M/s. LJ law, Advocate for the Appellants in COMAPL No.565 of 2018, COMAPL No.567 of 2018 & COMAPL NO.563 of 2018.

Dr. Milind Sathe, Senior Advocate a/w Mr. Sharan Jagtiani, Mr. Saket Mone, Mr. Vishesh Kalra, Mr Subit Chakrabarti & Ms. Neha Joshi I/by M/s. Vidhi Partners, Advocate for Respondent No.1 in NMCAL No.1348 of 2018.

Mr. Sharan Jagtiani, Mr. Saket Mone, Mr. Vishesh Kalra, Mr. Subit Chakrabarti & Ms. Neha Joshi I/by M/s. Vidhi

Partners, Advocate for Respondent No.1 in NMCAL No.1342 of 2018.

Ms. Sheetal Shah I/by M/s. Mehta & Girdharlal, Advocate for Respondent Nos.1 to 3 in COMAPL NO.564 of 2018 & for Respondent No.1 in COMAPL NO.562 of 2018, COMAPL No.563 of 2017 & COMAPL No.567 of 2018.

Mr. Abhishek Prabhu, Advocate for Respondent No.1 in NMCAL No.1342 of 2018.

Mr. Kailas Surve I/by Mr. Amit Sheth, Advocate for Respondent No.3 in COMAPL No.561 of 2018, COMAPL No.562 of 2018, COMAPL No.563 of 2018, COMAPL No.564 of 2018, COMAPL No.565 of 2018, COMAPL No.566 of 2018 & COMAPL No.567 of 2018.

Mr. Sandeep Maurya, Advocate for Respondent No.4 in COMAPL No.561 of 2018, COMAPL No.562 of 2018, COMAPL NO.563 of 2018, COMAPL No.564 of 2018, COMAPL No.565 of 2018, COMAPL No.566 of 2018 & COMAPL No.567 of 2018.

Mr. Prateek Seksaria a/w Mr. Shlok Parekh, Ms. Komal Khushalani I/by M/s. Crawford Bayley & Co., Advocate for Respondent No.1 in COMAPL No.565 of 2018.

Ms. Dhruvi M. Kapadia a/w Mr. R. Y. Sirsikar, Advocate for Respondents- MCGM.

CORAM : B. R. GAVAI &

RIYAZ I. CHAGLA, JJ.

DATE : 21st DECEMBER 2018

P.C.

1] Vide the order passed in Commercial Appeal No.534 of 2018 alongwith other connected Appeals, after

prima-facie observing that the orders impugned in the Petition were not sustainable, inasmuch as, no reasons were given in support of the orders impugned, we have observed thus :-

“10] However, since the learned Single Judge vide order dated 9th August 2018, has himself granted liberty to move before him for modification of the order dated 18th July 2018, which liberty has been invoked by the Appellants, we request the learned Single Judge to consider the application of the Appellants for modification of the orders.

11] We clarify that, if the learned Single Judge is not in a position to give fulfilled hearing, we would consider the request of the Appellants for restricting injunction only insofar as the claim of the damages made by the Plaintiffs in the plaint.

12] Needless to state that if the Appellants are in a position to point out the properties which are unencumbered and which are worth more than 35 crores, the learned Single Judge would take into consideration that aspect of the matter for restricting the order of injunction. The Appeals stand disposed of in the aforesaid terms.”

2] We had passed the aforesaid order, since the application for modification of the order was pending and the Appellants had bonafidely submitted that some of the property owned by them alongwith the property of Defendant Nos.2 and 3 was sufficient to meet even the inflated claim of

the Plaintiffs. We had therefore requested learned Single Judge to at least consider the limited aspect of restricting injunction, only insofar as claim of the damages made by the Plaintiffs is concerned. However, the learned Single Judge has passed an order dated 17th December 2018, which reads thus :-

“1 This requires full fledged hearing. Pleadings are completed.

2 Therefore, notice of motion to be listed for final hearing on 8th January 2019.”

3] We do not want to speak about the judicial propriety. However, when the Appellate Court expects the Trial Court to do something, at least what is expected is, that the observations made by the Division Bench are given due weightage. However, since the learned Single Judge himself has now directed the motion to be kept for final hearing on 8th January 2019, we do expect that the learned Single Judge would hear the motion as ordered by him.

4] The affidavit is filed by Shailesh Nagindas Shah –

Appellant No.1, alongwith details of the properties, which are jointly owned by Defendant Nos.1 to 7. However, insofar as the properties at Sr. No.1 and Sr. No.6 in EXHIBIT “A”, there is dispute as to whether the property is unencumbered or not. As such, if the properties at Sr. No.1 and Sr. No.6 are deleted from the list, the amount would be around Rs.19 crores. It is further submitted that insofar as the value of Unit Nos.101 and 102 owned by Defendant Nos.4 and 7 in the suit building is concerned, the same is around Rs.38,43,00,000/-. He submits that even if the mortgage worth Rs.11 crores is reduced, still the property would be worth Rs.27 crores.

5] As such the total security, which the Appellants are willing to offer would come to around Rs.45 crores, which according to the Appellants is sufficient to meet the claim of the Plaintiffs.

6] Prima-facie, even according to valuation of the claim of the Plaintiffs is concerned, though for giving lesser area than one promised, is around Rs.34,01,10,164/- the

claim including damages has been worked out to around Rs.57,87,33,379/-. Assuming for a moment that the claim of the Plaintiffs is granted in entirety, it is not the present Appellants who would be only liable to make the payments. Some liabilities would also come to the share of other Defendants. In that view of the matter, in the peculiar facts and circumstances of the case, we find that it will be in the interest of justice that blanket order of injunction granted by the learned Trial Judge needs to be quashed and set aside and modified by the following order :-

ORDER

The Appeals are therefore disposed of in the following terms :-

- I] EXHIBIT “A” to the affidavit of Shailesh Nagindas Shah dated 21st December 2018 shall be treated as a part of this order.
- II] There shall be injunction restraining all the Defendants from creating any third party

rights or dealing with the said property in any manner in the properties listed at EXHIBIT “A” until further orders are passed by the learned Single Judge.

III] There shall also be further injunction in the similar manner insofar as the fixed deposit receipts mentioned in paragraph 10(b) are concerned.

IV] We further direct the present Appellants not to create any further third party rights or deal with in any manner with Unit Nos. 101 and 102 of the suit property until further orders are passed by the learned Single Judge.

V] Save and except, what is stated herein-above, the impugned orders passed by the learned Single Judge insofar as the present Appellants are concerned, the same are quashed and set aside.

7] Needless to state that orders of injunction against the Defendants, who have not filed Appeal shall continue to operate.

8] Further needless to state that we have not observed anything on merits of the matter, but taking into consideration peculiar facts and circumstances of the case and approach of the learned Single Judge in the present matter.

9] The learned Single Judge before whom the motion would be kept for hearing, shall decide the same uninfluenced by any of the observations made herein-above.

[RIYAZ I. CHAGLA, J.]

[B. R. GAVAI, J.]