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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO. 20240 OF 2022
IN
SECOND APPEAL NO. 741 OF 2015**

Siddharam Virpakshappa Bhusanure & Anr. ...Applicants
Versus
Chandrakant Shivlingappa Hippargi ...Respondent

Ms. Shruti Tulpule, for the Applicants.

Mr. A. B. Tajane a/w. Ms. Kavita P. Shinde, for the Respondent.

**CORAM : MADHAV J. JAMDAR, J.
DATED : 26th JULY 2023**

P.C. :

1. This Interim Application is taken out seeking prayer to modify order dated 26th August 2016 passed in Civil Application No.1594 of 2015 in Second Appeal No.741 of 2015 and for permitting the Applicants to create a charge on the suit property in favour of a banking institution to the extent of Rs.10,29,250/- for the purpose of depositing said amount in this Court pending the final hearing of the Second

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Appeal No.741 of 2015.

2. The Applicants are the original Respondents/Defendants. The original Appellants/Plaintiffs filed Special Civil Suit No.69 of 2009 seeking specific performance of agreement of sale dated 17th March 2008. The said suit was decreed by the learned Trial Court by Judgment and Decree dated 27th November 2013. The learned First Appellate Court set aside the decree to the extent of granting specific performance, however, alternative prayer of the Plaintiff for the refund of the earnest amount was granted and directed that Defendants i.e. present Applicants/Respondents to pay amount of Rs.5,75,000/- together with interest at the rate of 6% per annum from the date of the suit till actual realization of the entire amount to the Plaintiff.

3. A learned Single Judge by order dated 13th October 2015 admitted the Second Appeal on the substantial question of law framed therein. In the Civil Application No.1594 of 2015 filed in Second Appeal, the learned Single Judge by order dated 13th October 2015 issued notice to the Respondent and directed that till next date Respondent/Defendant is restrained from an order of injunction from creating any third party right, title and interest with respect to the suit

property. A learned Single Judge by further order dated 26th August 2016 recorded that although Respondents are served, none appeared for the Respondents and therefore, allowed the Civil Application No.1594 of 2015 in terms of order dated 13th October 2015.

4. The present Interim Application is taken out for modification of said order dated 26th August 2016 on the ground that on 26th August 2016, learned Advocate engaged by them failed to appear in the matter. It is also stated that learned Advocate thereafter passed away on 30th November 2019. There is substance in the said contention. I have passed detailed order dated 26th July 2023 in Interim Application No.20326 of 2022 in Second Appeal (ST) No.11934 of 2022 recording said aspect.

5. Ms. Shruti Tulpule, learned counsel appearing for the Applicants also raised certain contentions with respect to the merits of the matter. However, the record shows that suit was inter alia filed for specific performance. Learned Trial Court granted the decree of specific performance and learned First Appellate Court although set aside decree of granting specific performance directed refund of earnest amount with interest.

6. The Second Appeal was admitted on the substantial question of law framed in order dated 13th October 2015. The order of injunction passed by this Court directing the Respondent, not to create third party interest till the disposal of the Appeal. If the said order is modified and ultimately Second Appeal is allowed then the original Appellants will suffer irreparable harm, loss and injury. Therefore, no case is made out for modification of the said order dated 26th August 2016 passed in Civil Application No.1594 of 2015 in Second Appeal No.741 of 2015.

7. Accordingly, the Interim Application is dismissed however, with no order as to costs.

[MADHAV J. JAMDAR, J.]