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

APPEAL FROM ORDER NO. 854 OF 2022

Smt. Rakmabai Baliram Patil & Ors. ... Appellant
Versus
Ravi Waman Mhatre & Ors. ... Respondents

**WITH
APPEAL FROM ORDER NO. 2 OF 2021**

M/s. Vighnaharta Enterprises (partnership Firm) ... Appellant
Versus
Ravi Waman Mhatre & Ors. ... Respondents

**WITH
CONT. PETITION NO. 63 OF 2022**

Ravi Waman Mhatre & Ors. ... Petitioners
Versus
M/s. Vighnaharta Enterprises (partnership Firm) ... Respondents

**WITH
CONT. PETITION NO. 252 OF 2021**

Ravi Waman Mhatre & Ors. ... Petitioners
Versus
Smt. Rakmabai Baliram Patil ... Respondents

**WITH
INTERIM APPLICATION NO. 17743 OF 2022
IN
APPEAL FROM ORDER NO. 854 OF 2022**

Smt. Rakmabai Baliram Patil & Ors. ... Petitioners
Versus
Ravi Waman Mhatre & Ors. ... Respondents

Mr. Vijay Patil i/b. Mr Vivek Rane for Appellants in AO No. 854 of 2022

Mr. A. Y. Sakhare, Senior Advocate i/b Kalpesh Patil for Appellant in AO No. 2 of 2021.

Ms. M. S. Bane, AGP for State.

Mr. N. V. Walawalkar, Senior Advocate a/w A. S. Rao & Mr. Prashant Kamble for Respondent AO 854 of 2022 & AO 2 of 2021 and for Petitioner in CP No. 63 of 2022 and CP No. 252 of 2021.

CORAM: M. S. KARNIK, J
RESERVED ON: 17th NOVEMBER 2022
PRONOUNCED ON: 4th MAY 2023 - (THROUGH V.V.)

ORDER

1. The challenge in this Appeal from Order is to an order dated 18.12.2020 passed by the Civil Judge, Senior Division. Appellants in AO No. 2 of 2021 are original Defendant nos. 2 to 4. The Appellants in AO No. 854 of 2022 are the original plaintiffs. Appeal from Order No. 854 of 2022 is filed by the original plaintiffs challenging the very same impugned order. The interest of the appellants is common. The contest is between the appellants in both the Appeal from Orders on one side and the respondent no.1-defendant no.1 on the other.

2. The plaintiff nos. 1 to 25 (present respondent nos.2 to 26) filed a suit for declaration, avoidance and cancellation of contract and injunction. The details of the suit properties are mentioned in the plaint. The plaintiffs entered into Development agreement with the defendant no.1 on 22.12.2007 and executed Confirmation Deed, Power of Attorney on 16.01.2010 with respect to the suit properties

mentioned in serial nos. 1 to 4 in the suit. An unregistered Memorandum of Understanding (MoU) dated 15.12.2010 was entered between the plaintiffs and the defendant no.1 in respect of the properties mentioned at serial nos. 5 to 11 in the plaint.

3. The plaintiffs executed registered Developments agreements with defendant no.2-firm on 16.10.2014 with regard to property at serial no. 65 (serial no.9). Another Development agreement with regard to serial no.73/9A and survey no. 72/1 (admeasuring 5300 square metres), at serial nos. 10 and 11 with defendant no.2-firm came to be executed. The plaintiffs on 16.10.2014, executed registered agreement of sale in favour of defendant nos. 3 and 4 in respect of property survey no. 72/1 (admeasuring 1600 square metres) at serial no. 10 in the plaint.

4. It is the case of the plaintiffs that despite the Development agreement in favour of defendant no.1 and despite verbal assurance of defendant no.1 that he shall commence with development of suit property nos. 1 to 4, nothing was done, no development activities were carried out between the period December 2007 till 2014. It is the case of the plaintiffs that the defendant no.1 has fraudulently included in the suit agreement, certain properties owned by the plaintiffs i.e. nos. 9 to 12 with survey no. 65, 73/1, 73/9A and 73/4, which were not intended nor agreed to be given for the development.

It is the case that the Development agreement was delayed and according to the plaintiffs, the defendant no.1 had no intention to develop the suit properties.

5. Sometime in 2014, the plaintiff being in monetary need, decided to develop their property nos. 9 to 11 (survey nos. 65, 73/1 and 73/9A) and agreed to grant development right of suit properties nos. 9 to 11 to defendant nos. 2 to 4. Thereafter, Development agreement registered on 16.10.2014 was executed by the plaintiff in favour of defendant no.2 M/s. Vighnaharta Enterprises and granted development rights in respect of suit property no. 9 together with Power of Attorney dated 16.10.2014 in favour of the partner of defendant no.2-firm. Agreement of sale dated 16.10.2014 was also entered in respect of the suit property no. 10 by the petitioners in favour of defendant no.2. The possession of the suit property nos. 9 to 11 was handed over to the defendant nos., 2 to 4. It is averred that the plaintiffs had discussion with defendant no.1 for settlement since 2014 and even offered to return the amount of Rs. 60 Lakhs, which they had received pursuant to the deposit of the suit agreement the plaintiff had with the defendant no. 1. That the defendant no.1 came to the suit properties on 27.09.2015 and threatened to take forcible possession of the suit properties. The plaintiffs as an abundant caution terminated the Development agreement dated 13.02.2007 and the Power of Attorney executed by Advocate's notice dated

09.02.2015. The suit is therefore filed for declaring the agreements entered into between the plaintiffs and defendant no.1, and suit agreements/development agreements/Power of Attorneys/MoU stated validly terminated/cancelled and the same are not binding on the plaintiffs.

6. The suit was filed on 18.02.2015. The present respondent no.1- original defendant no.1 filed an application for injunction restraining the plaintiffs and defendant nos. 2 to 4 from proceeding with the construction of the suit property and from creating any third party right/interest in any manner whatsoever and from also changing the nature of the suit property. The said application was filed on 08.08.2019. The trial Court by an order dated 18.12.2020, allowed the injunction application filed by the defendant no.1 restraining the plaintiffs, defendant nos. 2 to 4 from making and/or proceeding with the construction of the suit properties till disposal of the suit. Further injunction regarding creating third party interest in the suit properties or changing the nature of the suit properties till disposal of the suit was granted.

7. Learned Senior Advocate Shri Sakhre appearing on behalf of the appellants submitted that though the suit was filed in 2015, the application exhibit 40 for injunction came to be filed by the

defendant no.1 only in 2019. The following are the submissions of Shri Sakhare :

“4. That the Ld. Trial Court has erred in applying the principles of Prima facie case, balance of convenience, irreparable loss caused to the Appellants due to the grant of injunction and failed to consider the conduct of the party seeking relief of temporary injunction. That the injunction being an equitable relief the discretion to grant such relief should be exercised only when the conduct of the party is free from blame.

5. It is well settled that, when construction has been made on a land, which is of considerable magnitude, and when the Defendant No.1 is not facing any substantial injury, no order of injunction ought to have been granted. Also, the Plaintiffs have voluntarily deposited amount of Rs 60,00,000/- on 02.05.2015, before the Trial Court towards refundable security Deposit.

6. That the Appellants have carried out construction on the property bearing Survey No. 65, since 20.03.2019, after obtaining all the necessary permissions from the authorities concerned. The Total sanctioned Plan is of Ground + 16 floors. The Appellants have constructed 9 Floors till December 2020. (The Appellants have completed slab work upto 14 slabs and upto 9 Floors internal and external plaster work). The Appellants have incurred expenses to the tune of six crores towards the construction of the said building. Therefore, the balance of convenience is in favour of the Appellants.

7. The Appellants submit that, Appellants have sold flats to 10 purchasers out of which 3 flat buyers have entered into agreement to sale with the Appellant Firm. The

Petitioner project is registered with Maharashtra Real Estate Regulatory Authority, vide registration No. P51700020930. The said registration is valid for period commencing from 23.05.2019 and ending with 30/03/2023.

8. That refusal of injunction, would not cause substantial injury to the Defendant No.1, in as much as the loss or injury if any caused to the Defendant No.1 can be compensated in damages.

9. That the Defendant No.1 was aware of the Development agreements as well as the Agreement to sale entered by the Plaintiffs with the Defendants No.2 to 4 in the month of February 2015. In spite, thereof no efforts were made by the Defendant No. 1 seeking enforcement of his alleged rights as against the Plaintiffs.

10. That since the year 2007, the Defendant No.1 has not addressed a single notice or letter to the Plaintiffs, thereby calling upon the Plaintiffs to full fill their part of contract, till filing of the suit by the Plaintiffs. No steps have been taken by the Defendant No.1, to act in furtherance of suit agreements-I and II. The Defendant No.1 was a silent spectator for over a period of 7 years and was neither ready or willing to develop the suit properties.

11. That the Defendant No.1 has not sought specific performance of the both the suit agreements till date. The reliefs sought for by the Defendant No.1, in the counter claim is for declaration and injunction only.

12. That the Defendant No. 1 has filed counter claim on 11.06.2015. No application seeking temporary injunction was filed with the Counter claim. Though the Defendant

No.1 avers in the W.S, that attempt made in Feb 2015 to start construction activity. The Defendant No.1 filed Application below Exh 40, dated 08.08.2019, seeking grant of injunction as against the Plaintiffs and Defendants No. 2 to 4. The Defendant No.1 did not pray for ad-interim reliefs pending the injunction application. During the said period the Appellants were carrying out construction openly to the knowledge of the Defendant No.1. The Ld. Trial Court was pleased to allow the Application below Exh 40 vide order dated 18.12.2020, thereby restraining the Plaintiffs, Defendant No.1 and Defendants No. 2 to 4 from raising construction and creating third party rights in respect of the said property.

13. That the Appellants have placed reliance upon the judgment of the Hon'ble Supreme Court in the case of Sushil Agarwal vs Meenakshi Sadhu and Ors, (2019) 2 SCC 241, wherein the provisions of provisions of section 14(3)(c)(i) of Specific Relief Act, 1963 are discussed. The Appellants rely on paragraphs 22,26,27 of the said judgment.

14. That the Defendants No.2 to 4 have entered into registered Development agreement in respect of property bearing Survey No. 65 with the Plaintiffs. The said Defendants have paid an amount of Rs 20,00,000/- and security deposit towards consideration. The Defendants No. 2 to 4, would suffer irreparable loss due to the injunction granted.

15. Therefore, due to the unexplained delay and conduct of the Defendant No.1, the Defendant No.1 is not entitled for equitable relief of temporary injunction.

16. That the Ld Trial Court has failed to consider that, MOU i.e Suit Agreement No.2, is an unregistered

document and not a concluded contract. The said agreement is not enforceable in law and therefore no relief of injunction could have been granted on basis of said MOU.”

8. Learned Senior Advocate Shri Sakhare, relied upon the decision of the Supreme Court in the case of **ECE Industries Limited (2) vs. S. P. Real Estate Developers Private Limited & anr.**¹, specially paragraphs 26 and 27 and contends that when construction has been made on a land, which is of considerable magnitude, and when the plaintiff shall not face any substantial injury, the Court will not, as a matter of course, pass an order of injunction against the other party restraining the other party from raising any construction on the suit property till the disposal of the suit.

9. Shri Shakare also relied on the decision of the Supreme Court in the case of Mandali Ranganna v. T. Ra,achandra² (paragraphs 18, 22 and 23) to draw the attention of this Court about the factors which the Court will have to take into consideration while considering the application for grant of injunction.

¹ (2009) 12 SCC 776

² (2008) 11 SCC 1

10. The learned Counsel for the plaintiffs (appellants) in AO No. 854/2022) supported and adopted the arguments canvassed by learned Senior Advocate Shri Sakhare.

11. Shri Walawalkar, learned Senior Counsel appearing for respondent no.1-original defendant no.1, opposed the appeals. He argued in support of the impugned order. Following are the submissions and as extracted from the written submissions filed on behalf of defendant no.1 :

“WRITTEN SUBMISSIONS ON BEHALF OF DEFENDANT NO.1 TO OPPOSE APPEALS BY PLAINTIFFS AND BY DEFENDANT NO. 2 TO 4.

1. Defendant No. 1 filed Counter Claim in Plaintiffs suit, and is in the position of a plaintiff, and was within his right to apply for interim injunction.

2. In plaintiffs suit, prayers are for a declaration that Agreement No. 1 Development Agreement dated 22.12.2007, Power of Attorney dated 16.01.2010 and suit agreement No.2 Memorandum of Understanding dated 15.12.2010 to be validly terminated and cancelled and for a decree that the same are not binding upon the Plaintiffs and/or the suit properties or any part thereof and for other reliefs of permanent injunctions. So if this suit is dismissed, agreements will continue to bind the plaintiffs. Defendant No. 1 filed written statement with counter claim. The prayers in Defendant No. 1's Counter Claim are for a declaration that both the deeds dated 22.12.2007 and agreement dated 16.01.2010 as also agreement dated

15.12.2010 - agreement 2, are subsisting and it is binding on plaintiffs and defendants to fulfil the terms and conditions of the same. He has further prayed that all the three agreements between Plaintiffs and Defendants No.2 to 4 are illegal and that they are not binding on Defendant No.2. He also prayed that it was the responsibility of the Plaintiffs to get the suit lands measured and to reconcile the areas mentioned in the agreements.

3. It is argued that defendant No.1 filed his Written Statement and Counter Claim on 11.06.2015, and filed application for Interim Injunction on 08.08.2019, and that this conduct on the part of Defendant No.1 of delay in applying for Interim injunction disentitles him to get discretionary relief. It is clear from the facts on record that plans submitted by Defendants No.2 to 4 were sanctioned on 20.03.2019 and, when he found construction activity on the land, he applied for interim injunction.

4. Thus there is no delay for applying for interim injunction. The construction made by the defendants during the pendency of the suit and application was a risk run by defendants No. 2 to 4 as a business risk, and they cannot now rely on the amounts invested in the construction to plead irreparable injury if the order granting interim injunction was to be passed. If this construction is not to be reckoned, then both defendant No.1 on the one hand and defendants No.2 to 4 are on the same footing and Lower Court is right in ignoring monetary investment in the construction while considering and comparing irreparable injury to both of them.

5. Moreover the Lower court has rightly observed that such order is necessary to avoid multiplicity of

proceedings and to avoid hardships to innocent or bonafide purchasers of the flats. The construction during pendency of application for interim injunction and even after the order is placed before the court as fait accompli.

6. The conduct of Plaintiffs in entering into agreement with Defendant No.1 and also with Defendant No.2 to 4 relating to the same properties is highly objectionable. In this background, Defendants No.2 to 4 do not deserve any sympathy in respect of construction carried out during the pendency of the application for interim injunction, which was a business risk taken by them, and to make it fait accompli.

7. Moreover, these Defendants No.2 to 4, who carried out further construction of 8 to 14 floors even after interim injunction disentitles Defendants No.2 to 4 to any interim relief of stay of interim injunction granted by the lower court by considering all the facts on record. In fact interim stay is a discretionary relief and more so when order of Interim injunction is to be stayed. Even plaintiffs have disentitled themselves to such discretionary relief of stay of discretionary relief of interim injunction which was granted by the lower court by a well considered judgement and order as they, as owners should have prevailed upon Defendants No.2 to 4 to stop further construction after the order of interim injunction was passed.

8. The deposit of the amount of Rs.60,00,000/- into Court will not improve the dishonest conduct of the plaintiffs, in entering into agreements with different persons about the same properties.

9. The Judgment of the Supreme Court reported in (2019) 2 SCC 241 is not applicable to the facts of the present case, as that was a case of simple building

contract, whereby Defendant owner wanted the plaintiff a building contractor to construct a house for him on payment of his costs and charges, without creating any interest in the property Supreme Court found that because the conditions in Section 14(3)(c) (I) and (ii) were not satisfied plaintiff contractor was not entitled to decree of specific performance.

10. In our case, it is a development agreement, not simple contract for construction of building for the owner and different considerations will apply. This agreement is not determinable in its nature like agreement to create license or such similar cases.

11. From present notices, and replies it is clear that at one point of time many of the plaintiffs admitted that 2nd agreement was with respect to all the plots mentioned therein. It is by way of an afterthought that the plaintiffs are denying even the reply given by the plaintiffs to the notice given by Honey hatcheries to them engaging an advocate in which they admitted that all the lands mentioned in 2nd agreement were agreed to be sold to Defendant. Then it becomes a matter of evidence, when Plaintiffs will be cross examined by Defendant No. 1 about the said reply admitting at the trial and lower court has therefore rightly protected the suit property and ordered preservation of status quo again lower court has rightly observed that the plaintiffs have not pleaded how the alleged fraud was played on them by Defendant No. 1 when 2nd Agreement was executed. Moreover, the order of trial court is not and is not shown to be perverse in any manner. On the contrary it has observed rightly that to avoid multiplicity of proceedings and to prevent the sufferings of or hardship to the bona fide innocent purchasers, such an interim injunction is necessary.

12. Then most important aspect of the matter is dishonest termination of agreements with Defendant No. 1 by the plaintiffs. The time of performance was appointed by agreements, i.e. after the plaintiffs make out a clear and marketable title. The Trial Court is right in holding that it is not open to the plaintiffs to blame defendant No.1 for not taking steps to perform the agreements. In fact it was only on the Tahsildar's orders dated 11.03.2016, 25.01.2018 and order by Collector dated 21.02.2018 that the time to perform agreement for Defendant No.1 would commence, but plaintiffs terminated the agreements by notice dated 09.02.2015 in unholy haste because of agreements dtd. 16.10.2014 with Defendants No.2 to 4.

13. Moreover the objections of Plaintiffs and Defendants No.2 to 4 to agreements with Defendant No. 1 on the ground that they are MOU is not sustainable in law. When even oral agreement is specifically enforceable, written MOU is also held to be enforceable, and there is no impediment in its enforcement. Agreement to enter into further agreement is also enforceable.

14. Moreover as laid down in Sushil kumar case MOU is to be read as a whole. The final agreement is to be entered into on the same terms and conditions and the period is five years after making out clear title. The terms are certain, the consideration is certain and hence there is no hurdle in holding the said MOU agreement to be binding on the plaintiffs.

15. Wandar V/s. Antox India, when the discretionary order is passed by the Trial Court, Appeal Court must be slow to interfere except when such order is illegal or perverse. Here it is a well considered judgment and this Hon 'ble Court may appreciate that this is not a fit case to Interfere with it in favour or at the instance of Plaintiffs

who have chosen to receive monies from both the parties, Defendant No. 1 and Defendants No.2 to 4, and also in favour of Defendants No.2 to 4 who are guilty of violation of order of Interim injunction passed by the trial court.

16. As per their own case, on the next day of the order under challenge. Defendants No.2 to 4 say that the advocate for Defendants No.2 to 4 gave an undertaking to the court such an undertaking was not in accordance with the order of the court. Then as per Defendants No.2 to 4's case, they gave an undertaking but the same is not found in the record of the court therefore now they have filed an affidavit to say that such an undertaking was filed by them in record of the Trial court. This conduct again disentitles defendants No.2 to 4 to any discretionary relief from this court.

17. Moreover there is no interim or ad-interim relief in favour of appellants since 18.12.2020, or in any event from 1st March, 2021 and no effort or attempt by appellants to move the courts for ad-interim reliefs.

18. In the affidavit of Appellant No.2, dt. 15th December 2021, in para 7 made a bold statement that they have sold 10 flats and out of which they entered into agreement with 3 buyers, except the statement no documents produced on record, till today.”

12. Heard learned Counsel. I have perused the photographs of the building and the construction.

13. The plaintiffs had executed Development agreement, Power of Attorney, Memorandum of Understanding (MoU) in favour of the

defendant no.1 for development of the suit properties in the year 2007. Pursuant thereto, there was a Confirmation Deed of the year 2010 and Power of Attorney executed in favour of the defendant no.1 on 16.01.2010. It is the case of the plaintiffs that the defendant no.1 did not take any steps to develop the suit property. An amount of Rs. 60 Lakhs was paid by the defendant no.1 to the plaintiffs. It is the contention that some of the properties are included for development by the defendant no.1 fraudulently. Till 2014, there was no development and therefore the Development agreements/agreement of sale was executed in favour of defendant nos. 2 to 4. By way of abundant caution, notice was issued terminating and revoking the Development agreements and other agreements which the plaintiffs had executed in favour of defendant no.1. The plaintiffs issued an Advocate's notice in 2015. Since the defendant no.1 was obstructing the plaintiffs, the suit was filed for declaration and injunction. The development of the property commenced in 2019. The application exhibit-40, was filed by the defendant no.1 for injunction on 08.08.2019. It is an admitted fact that nine storeys are constructed by the defendant no.2. Shri Walawalkar was at pains to point out that in breach of the orders, the defendant no.2 proceeded with the construction and have constructed 10th to 14th floor in defiance of the orders of the Court. It is submitted that such a conduct disentitles

the defendant no.2 from seeking any equitable reliefs and on this ground itself, the present appeals should be dismissed.

14. There is no dispute that the plaintiffs are the owners of the suit property. The plaintiffs had executed Development agreement/Power of Attorneys for development of the property in favour of the defendant no.1. From 2007 to 2015, there are no construction activities. The plaintiffs entered into the Development agreement with the defendant nos. 2 to 4 and after the plans were sanctioned, the construction commenced in 2019. The application for injunction was moved by the defendant no.1 only on 08.08.2019. The justification provided by learned Counsel Shri Walawalkar is that there was no reason to file any application for injunction as the suit was pending and it is only after noticing that there was some construction activity going on that the application came to be filed.

15. No doubt, a counter claim has been filed by the defendant no.1. However, factually, there was no development in the property from 2007 till 2015 and thereafter also pursuant to the filing of the suit, no application was filed by the defendant no.1 for injunction. The defendant nos. 2 to 4 constructed nine floors which, admittedly, was not in breach of any orders passed by the Court. The sanctioned plans are for 16 floors. Third party rights have been created in respect of some of the flats and considerable amount has been spent

by defendant no.2 in the development work. To restrain further construction at such a juncture will not enure in anybody's interest. The Supreme Court in **ECE Industries Limited (2)** (supra) in paragraph nos. 26, 27 and 28 has observed thus :

“26. It is well settled that when construction has been made on a land, which is of considerable magnitude, and when the plaintiff shall not face any substantial injury, if no order of injunction is granted because of payment/deposit of the entire amount payable by the defendant to the plaintiff under the agreement, though belatedly, we are of the view that the Court will not, as a matter of course, pass an order of injunction against the other party restraining the other party from raising any construction on the suit property till the disposal of the suit.

27. If ultimately, the suit filed by the appellant-plaintiff is decreed, he can be compensated in damages or the respondent-defendants may be directed to pull down the construction and deliver vacant possession to the appellant-plaintiff when no equity can be claimed for such construction by the respondent-defendants.

28. On the other hand, in our view, if at this stage, an order of injunction is granted against the respondent-defendants from proceeding with further construction in the suit property, it will undoubtedly destroy the constructions already made by the respondent-defendants and the respondent-defendants will suffer irreparable loss and injury for not allowing them to make construction on the suit property.”

16. So far as proceeding with the construction in breach of the injunction orders from ten storeys to 14 storeys is concerned, Contempt Petition have been filed and the same shall be obviously taken to its logical conclusion. The appellants will face the consequences. I do find some merit in the submissions of learned Senior Advocate Shri Sakhare that unless the entire building is completed, the flat purchasers in whose favour third party interest have been created, will not be able to effectively utilise the premises as facilities for the beneficial enjoyment of the suit flat will not be in place. The appellants submitted that the building is being constructed in accordance with the sanctioned plans. If the suit of the plaintiffs is dismissed and the counter claim is to be allowed, it is always open for the defendant no.1 to seek appropriate reliefs including that of pulling down the building. The defendant nos. 2 to 4 are proceeding with the construction at their own risk and learned Senior Advocate for the defendant nos. 2 to 4 stated that they will not claim any equities. The plaintiffs as well will not claim any equities. The plaintiffs have further submitted that they are willing to refund the amount of Rs.60 Lakhs which they had received from the defendant no.1 pursuant to the execution of the Development agreement in 2007. The impugned order to a limited extent, calls for interference.

17. In my opinion, the appeals can be partly allowed and the following order will meet the ends of justice :

ORDER

(i) The plaintiffs and the defendant nos. 2 to 4 are permitted to complete the construction of the building Ground plus 16 floors on property bearing Gat No. 65, situated within the limits of village Mathardi, Diva, District Thane.

(ii) The defendant nos. 2 to 4 are permitted to create third party rights in the flats upto 9th floor of the said building.

(iii) Defendant nos. 2 to 4 shall not create any third party right constructed above the 9th floor during the pendency of the suit.

(iv) The plaintiffs and defendant nos. 2 to 4 shall file an affidavit within a period of four weeks disclosing the interest created by them, in respect of ten flats situated in the said building constructed on survey no. 65 together with relevant documents.

(v) Defendants shall be at liberty to file appropriate proceedings in the trial Court for violation of the order of the interim injunction passed by the trial Court below exhibit-49 by

constructing additional floors (10th to 14th floors) out of the 16 floors of the said building on survey no, 65.

(vi) The appellants shall not claim any equities for anything done under this order.

(vii) Except the building in survey no.65, the impugned order passed by the trial Court will operate as regards rest of the suit properties during the pendency of the suit unless otherwise modified by the trial Court.

(viii) The prospective flat purchasers shall be informed about the pending suit as well as the injunction orders and shall incorporate such a clause in the agreement entered into between them that such third party interest is created subject to the orders in the suit.

18. The Appeal from Orders are disposed of in the above terms. No costs

19. Civil Applications are disposed of. It is clarified that the Contempt Petition may proceed in its own merits.

20. At this stage, after the order is pronounced, it is brought to my notice that in a collateral writ petition filed before the Division Bench

by one Mr. Amit Patkar, who is not a party to the present proceedings, a restraint order has been passed in Writ Petition no. 13600 of 2022. Obviously, the parties are bound to abide by the orders passed by the competent Court.

M. S. KARNIK, J

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