

Prajakta Vartak

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

**APPEAL FROM ORDER NO. 878 OF 2016
WITH
CIVIL APPLICATION NO. 1088 OF 2016**

M/s. Vishal Enterprises through Partners ..Appellants
Vs.
Shri Kalpesh Jethalal Palan & Ors. ..Respondents

Mr. R. D. Soni i/b. Ram & Company for Appellants.
Mr. Kishor Tembe for Respondent No.4.
Mr. Rohit Sukhdeo i/b. Mr. Pushkar Nagpurkar for Respondent Nos.6 to
8.

**CORAM : G.S. KULKARNI, J.
DATE : JANUARY 18, 2023**

P.C.:

1. Heard Mr. Soni, learned counsel for the appellants, Mr. Tembe, learned counsel for respondent no.4 and Mr. Sukhdeo, learned counsel for respondent nos.6 to 8.

2. The order impugned in this appeal is an order dated 12 July, 2016 passed by the learned Joint Civil Judge, Senior Division, Panvel, whereby an application as filed by the appellants/plaintiffs below Exhibit 5 in Special Civil Suit No. 611 of 2011 has been rejected.

3. This appeal was filed on 20 August, 2016. Perusal of the record indicates that there was no interim protection which was granted by this Court. It appears that the case as asserted by the appellants in support of the application below Exhibit 5 was on the basis of an agreement dated 21 July, 2008. All the prayers in Exhibit 5 were for temporary injunction.

4. It also appears from the record that there was a subsequent contract between the appellants and respondent no.1 being a contract dated 08 August, 2008. Mr. Soni, learned counsel for the appellants would submit that the appellants have a case to assert their rights under the said agreement dated 08 August, 2008. On perusal of the impugned order, although there is a reference made to the said new contract dated 08 August, 2008, the learned trial Judge has observed that the said contract extinguished the earlier contract dated 21 July, 2008 and the right to claim specific performance in respect of the earlier contract dated 21 July, 2008. In my opinion, this would not preclude the appellants/ plaintiffs from asserting any specific contention under the contract dated 08 August, 2008 which was also subject matter of the pleadings before the Court.

5. In the aforesaid circumstances, in my opinion, it is appropriate that the appeal itself is disposed of with liberty to the appellants to make an

appropriate application in the suit, if the appellants so desire to assert their contentions under the contract dated 08 August, 2008. If such an application is made, the same be decided on its own merits and without being influenced by the impugned orders. No interference is called for in the impugned order.

6. All contentions of the parties in the suit are expressly kept open.
7. Disposed of in the above terms. No costs.
8. Civil application would not survive. It is accordingly disposed of.

[G.S. KULKARNI, J.]