

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

**SECOND APPEAL (STAMP) NO.3119 OF 2024
WITH
INTERIM APPLICATION NO.1444 OF 2024
IN
SECOND APPEAL (STAMP) NO.3119 OF 2024**

Vikram Trimbak Pawar

...Appellant

Versus

Technocrat Construction through its
proprietor

Pradip Manohar Kondnani.

...Respondents

....

Mr. S.S. Kulkarni *with Mr. Rahul Kashid i/b. Mr. R.S. Gangawane
for the Appellant.*

Mr. Kuldeep U. Nikam *for the Respondents.*

CORAM : SANDEEP V. MARNE, J.

Reserved on : 16 APRIL 2024

Pronounced on : 22 APRIL 2024

JUDGMENT :-

1. Appellant has filed this appeal challenging the Decree dated 16 August 2023 passed by the District Judge, Pune, dismissing Regular Civil Appeal No.164 of 2021 and confirming the Judgment and Decree dated 15 January 2021 passed by the Civil Judge, Senior Division in Special Summary Suit No.235 of 2019. The Trial Court has decreed Special Summary Suit No.235 of 2019 instituted by Plaintiff/Respondent and has directed Appellant-Defendant to pay to Plaintiff amount of Rs. 30,00,000/-

alongwith simple interest @ 6% from the date of filing of the Suit till realization.

2. Briefly stated, facts of the case are that Respondent-Plaintiff is engaged in the business of construction and he has constructed building by name 'Balram Building 'A' at Survey No.11/1/35-37-38, Ambegaon Taluka-Haveli, District-Pune. By an Agreement for Sale dated 23 November 2016, Flat No.302 measuring 784 sq.ft. was agreed to be purchased by Appellant-Defendant. As per the agreement, consideration for purchase of the flat was agreed at Rs. 34,50,000/- and Defendant paid amount of Rs. 2,00,000/- to Plaintiff by cheque. It was agreed that the balance amount of consideration of Rs. 32,50,000/- would be paid within one month from the date of execution of the Agreement. Defendant paid total amount of Rs.7,50,000/- to Plaintiff in pursuance of the Agreement. Plaintiff claims that Defendant failed to pay an amount of Rs. 27,00,000/- towards balance amount of consideration. That further amount of Rs. 3,00,000/- was due and payable towards MSEB and development charges. This is how according to Plaintiff, amount of Rs.30,00,000/- was due and payable by Defendant under Agreement dated 23 November 2016.

3. The Plaintiff therefore instituted Special Summary Suit No. 235 of 2019 in the Court of Civil Judge, Senior Division, Pune for recovery of amount of Rs. 37,36,000/-, comprising of Rs. 30,00,000/- towards balance amount of consideration, Rs. 7,20,000/- towards interest and Rs. 15,000/- towards notice charges. Plaintiff alleged in the Plaint that Flat No.302 was ready for possession and without paying the entire amount of consideration under the Agreement, Defendant forcibly took possession of

the suit flat in the year 2017. That despite sending notices dated 15 December 2017 and 4 June 2018, Defendant failed to pay balance amount of consideration.

4. Defendant appeared in the Suit and filed application at Exhibit-18A seeking leave to defend. In his application, the Defendant contended that the building constructed by Plaintiff is unauthorised and that the Municipal Corporation has issued notices for its demolition. Defendant contended that the entire amount of consideration is already paid by him to Plaintiff from time to time in cash as well as by cheque. Defendant claimed that he paid amount of Rs. 25,00,000/- to Plaintiff in cash. The application filed by Defendant seeking leave to defend was opposed by Plaintiff by filing reply. The Trial Court passed order dated 20 October 2020 on application at Exhibit-18A and allowed the same. Defendant was granted leave to defend subject to the condition of depositing amount of Rs.10,00,000/- within 30 days. It was made clear that if Defendant failed to deposit the amount, Plaintiff shall be entitled to judgment forthwith.

5. The Defendant failed to deposit amount of Rs.10,00,000/- in the Trial Court as per order dated 20 October 2020. The Trial Court therefore proceeded to decree the Suit on 15 January 2021 in absence of any defence by Defendant. The Trial Court rejected Plaintiff's prayer for interest @ 9% and accordingly decree for amount of Rs. 7,20,000/- towards interest was declined. Plaintiff was also denied notice charges. The Trial Court accordingly directed Defendants to pay to Plaintiffs Rs. 30,00,000/- alongwith simple interest @ 6% from the date of filing of the suit till realization.

6. Aggrieved by the decree dated 15 January 2021, Defendants filed Regular Civil Appeal No.164 of 2021 before the first Appellate Court. In his memo of Appeal, Appellants specifically raised a ground that conditional leave granted by the Trial Court was erroneous. Appellant also prayed for stay of the decree during pendency of the appeal. The first Appellate Court passed order dated 5 January 2022 allowing the application for stay filed by Appellant at Exhibit-5. The first Appellate Court stayed operation and execution of the decree of the Trial Court on condition of Appellant depositing Rs. 20,00,000/- within one month. It appears that Appellant filed application at Exhibit 21 seeking extension of time for depositing amount of Rs.5,00,000/-. He deposited amount of Rs. 15,00,000/- in the first Appellate Court and he was granted further time of one month by order dated 5 February 2022 for depositing balance amount of Rs. 5,00,000/-. It appears that Appellant deposited the balance amount of Rs. 5,00,000/- as well in the first Appellate Court and filed pursis to that effect on 1 April 2022. Appellant also filed application under Order XLI Rule 27 of the Code of Civil Procedure, 1908 seeking permission to produce additional documents, which was opposed by Plaintiff. When the application came before the first Appellate Court on 2 August 2023, both parties agreed for decision on application for adducing additional evidence at the time of hearing of the appeal.

7. The first Appellate Court thereafter proceeded to dismiss Regular Civil Appeal No.164 of 2021 filed by Defendant by Judgment and Decree dated 16 August 2023. With dismissal of the appeal, the application for

leading additional evidence under Order XLI Rule 27 of the Civil Procedure Code was also rejected.

8. On application made by the Appellant, stay order dated 5 January 2022 was extended by the first Appellate Court till 31 October 2023. Plaintiff filed application dated 16 December 2023 for execution of the decree. Appellant/Defendant has filed the present second appeal after some delay, which has been condoned by this Court by order dated 16 April 2024. When the appeal came up for admission, this Court proceeded to admit the same by Order dated 16 April 2024 by formulating following substantial questions of law :-

“i) If Defendant fails to challenge order of conditional leave and lets the suit to be decreed in absence of his defence, can he challenge the order of grant of conditional leave in the substantive Appeal filed against the decree?

ii) Whether in the light of deposit of amount of Rs.20 lakhs by Appellant in pursuance of order passed by the First Appellate Court, the suit could have been remanded by holding that there was compliance with the condition on which leave to defend was granted?

iii) Whether the suit deserves to be remanded in the light of deposit of amount of Rs.20 lakhs by Appellant as against condition for deposit of amount of Rs.10 lakhs by the Trial Court?”

9. Mr. Kulkarni, the learned counsel appearing for Appellant would submit that the first Appellate Court has erred in dismissing his Appeal by erroneously holding that during the course of hearing of the Appeal, Appellant was not ready to comply with the conditional order of deposit of

Rs.10,00,000/- . He would submit that while recording such erroneous finding, the first Appellate Court has ignored the fact that Appellant had already deposited Rs.20,00,000/- before the Appellate Court towards compliance of the order dated 5 January 2022. That thus the finding recoded by the first Appellate Court in para-10 of its judgment is perverse. He would submit that the first Appellate Court ought to have remanded the suit once the condition imposed by the Trial Court for granting leave to defend was complied by the Appellant at the Appellate stage. He would submit that in the substantive Appeal filed challenging the decree of the Trial Court, Appellant is entitled to challenge the order imposing condition for grant of leave. That the first Appellate Court has erroneously held that Defendant has not challenged the order of conditional leave to defend. He would invite my attention to ground clause (f) of the Memo of Appeal filed before the first Appellate Court, in which correctness of the order imposing condition for grant of leave was challenged before the first Appellate Court.

10. In any case, according to Mr. Kulkarni, once double the amount was already deposited by the Appellant before the first Appellate Court, the suit ought to have been remanded with a view to enable Defendant to lead evidence. That such course of action has been approved by the Apex Court in its judgment in *Wada Arun Asbestos Private Limited V/s. Gujarat Water Supply and Sewerage Board* (2009) 2 SCC 432. Mr. Kulkarni would further submit that in absence of any evidence being produced by Defendant, the first Appellate Court has considered merits of the contention of payment of Rs.25,00,000/- to Plaintiff in cash. Mr. Kulkarni would submit that the building 'Balraj' is unauthorisedly constructed by Plaintiff on common amenity space and by forging permission for non-agricultural use of the land. That Pune Municipal Corporation has already issued notices for demolition of the building. That

in such circumstances, Defendant cannot be forced to pay consideration for purchase of flat, which is illegal. That Plaintiff wants to run away with the money without fulfilling his obligations of ensuring that all necessary permissions are procured in respect of the building. He would submit that an application for leading additional evidence was filed before the first Appellate Court under the provisions of Order XLI Rule 27 of the Code, which has been erroneously rejected. He would however submit that instead of leading additional evidence before the first Appellate Court, it would be appropriate that the suit is remanded for fresh trial by granting opportunity to Defendant to defend the suit by filing Written Statement and by leading additional evidence.

11. *Per-contra*, Mr. Nikam the learned counsel appearing for the Respondent-Plaintiff would oppose the Appeal and support the orders passed by the Trial and the first Appellate Court. He would submit that Appellant-Defendant has been careless in defending the suit. That he failed to comply with the order granting conditional leave and allowed the Trial Court to decree the suit. That there was time gap of three long months between 20 October 2020 till 15 January 2021 during which Defendant failed to deposit amount of Rs.10,00,000/- before the Trial Court. That he did not even comply with the order of the first Appellate Court by depositing amount of Rs.20,00,000/- within the stipulated time. That therefore the belated payment made before the first Appellate Court for grant of stay to the Decree cannot be construed as compliance with the order passed by the Trial Court. That the deposit of Rs.20,00,000/- is made by Defendant before the first Appellate Court, not for the purpose of grant of leave to defend, but the said deposit was made for stay of decree passed by the Trial Court.

12. Mr. Nikam would then highlight the conduct of the Defendant in forcibly occupying the flat without paying consideration of the same. That an amount of Rs.30,00,000/- is due and payable under the agreement and by paying paltry sum of Rs.7,50,000/-, Defendant has been occupying the flat since the year 2017. That such conduct on the part of Defendant is sufficient for denying any relief to him. That Defendant is intentionally playing delay tactics with a view to enjoy the possession of the flat without payment of consideration to Plaintiff. That the present Appeal is also filed out of malafide intention to defeat Plaintiff's lawful claim. Mr. Nikam would distinguish the judgment of the Apex Court in ***Wada Arun Asbestos Private Limited*** by submitting that in case before the Apex Court, some justification was offered for failure to deposit the amount towards grant of conditional leave. That in the present case, there was absolutely no justification for failure to deposit the amount of Rs.10,00,000/-, subject to which, leave to defend was granted. Mr. Nikam would pray for dismissal of the suit.

13. I have considered the submissions canvassed by the learned counsel appearing for the parties and I have gone through the judgments of the Trial and the first Appellate Court as well as the documents placed on record alongwith the compilation. The two broad issues that arise for consideration are about permissibility to challenge the order of conditional leave to defend in a substantive Appeal challenging the decree and consideration of deposit made before the first Appellate Court towards compliance of Trial Court's condition for granting leave to defend.

14. So far as the first point is concerned, it appears from ground clause (F) in the Memo of Appeal filed before the first Appellate Court that Defendant raised a specific ground that imposition of condition of deposit

for grant of leave was erroneous. Ground clause (F) in the Memo of Appeal reads thus:

F. It was an error to allow the said Application filed at Exh.18A i.e. Application for leave to defend on condition. The said Application filed at Exh.18A i.e. the Application for leave to defend ought to have been allowed unconditionally.

15. The first Appellate Court appears to have recorded contradictory findings in para-10 of the judgment about challenge raised by Defendant to the order granting conditional leave to defend. The Appellate Court has held that “*admittedly the Defendant has not challenged the said order till the date*”. However, at the same time, the first Appellate Court has also gone into the issue of correctness of the condition imposed by the Trial Court while granting leave to defend. It is held “*In these circumstances, the condition imposed while allowing an application leave to defend is justified. Thus, Ld. Trial Court has not committed any error in stipulating such condition while allowing the application for leave to defend. Hence, the said order cannot be interfered with during the trial of the present Appeal.*” The above two findings recorded by the first Appellate Court appear to be contradictory. However, the said findings do indicate that the first Appellate Court has apparently proceeded on a principle that condition imposed while granting leave to defend can be challenged even in substantive Appeal filed against the Decree in the suit. This aspect is also clear from the judgment of the Apex Court in ***Wada Arun Asbestos Private Limited*** to which reference is made in latter portion of the judgment, while dealing with second issue. In my view, therefore if the Defendant fails to challenge the order granting conditional leave and allows the Trial Court to pass the Decree in absence of defence, it is permissible for such Defendant to challenge the order granting conditional leave to defend in a substantive Appeal filed against the decree in the suit.

16. So far as the second issue about remand of the suit on account of deposit of amount of Rs.20,00,000/- by the Appellant before the First Appellate Court is concerned, it appears that the first Appellate Court has rejected the said prayer of the Appellant by recording following reasons in para-10 of its judgment :

Admittedly, the conditional order passed by the Ld. Trial Court while allowing an application leave to defend has not been complied with by the defendant. Even, during the course of hearing of the present appeal, the defendant is not ready to comply the said order and it is the contention of the appellant/defendant that the Ld. Trial Court ought to have allowed the said application unconditionally.

17. Thus, the first Appellate Court has erroneously assumed that Defendant was not willing to comply with the order for deposit of Rs.10,00,000/- for grant of leave to defend. While doing so, the first Appellate Court has ignored the fact that he had deposited amount of Rs.20,00,000/- towards compliance with Orders dated 5 January 2022 and 5 February 2022. This aspect is completely glossed over by the first Appellate Court while recording erroneous finding in para-10 of its judgment that Defendant was not ready to comply with the order of the Trial Court for deposit of Rs.10,00,000/- ‘*even at the time of hearing of the Appeal*’. Thus, the above quoted findings recorded by the first Appellate Court are perverse and are liable to be set aside.

18. The next issue for consideration is whether the deposit made by the Appellant before the first Appellate Court, for seeking stay of the decree of the Trial Court, can be considered as compliance with the condition imposed by the Trial Court for grant of leave to defend. In ***Wada Arun Asbestos Private Limited***, the Apex Court has had somewhat similar

fact situation. In case before the Apex Court, in a Summary Suit filed by the Plaintiff therein, the Trial Court granted conditional leave to defend on offering security deposit of 50% amount of the suit claim. Such security was not offered by Defendant therein and the condition was not complied with. The Trial Court proceeded to decree the suit. Defendant filed Appeal before the High Court. When possibility was being explored for settling the disputes between the parties, Defendant therein presented cheque of Rs.15,50,000/- which the High Court directed the Trial Court to encash and stay the execution proceedings. While deciding the Appeal, the High Court took note of the submission made on behalf of the Defendant that huge amount of Rs.10,59,168/- was to be deposited towards compliance with the condition imposed by the Trial Court and that before the amount could be deposited, the Trial Court decreed the suit. The High Court, however, took into consideration the fact that 50% of the suit amount was already deposited before the Trial Court and that the defendant was desirous of raising certain defences. Therefore, the High Court proceeded to set aside the decree granted in favour of Plaintiff and remanded the suit for trial before the Trial Court with a direction that the amount already deposited by Defendant under the directions of the High Court shall be deemed to be the amount deposited under leave granted by the Trial Court. In Appeal, the Apex Court has endorsed the course of action adopted by the High Court. The Apex Court has held in paras-11, 13, 15, 17, 19, 22 and 26 as under :

11. Indisputably, an appeal was preferred against the decree and not against the order dated 3.3.2004 granting conditional leave in favour of the respondent. Indisputably again, the said condition was not complied with. The question which, therefore, arises for consideration is as to whether in the aforementioned situation, the respondent could raise a contention that it was a fit case where unconditional leave should have been granted.

13. Whether leave is granted unconditionally or upon terms, in view of the aforementioned provision in a case of this nature for all intent and purport, stand on the same footing. However, it is well settled that the defence in the suit should not be considered to be a mere 'moonshine' ruse or sham. Ordinarily, the court shall grant leave to defend the suit in favour of the defendant in terms of the first proviso appended thereto.

15. Where a conditional leave is granted and the conditions therefor are not complied with, a judgment in favour of the plaintiff can be passed. It is not in dispute that the first appeal was maintainable. Where a decree is appealed from, any error, defect or irregularity in any order affecting the decision of the case may be set forth as a ground of objection in the memorandum of appeal as envisaged under Section 105 of the Code of Civil Procedure.

17. But if a right of appeal from the decree is conceded to a defendant, in our opinion, he cannot be denied a right to challenge an order which was subject to revision in his memorandum of appeal filed from the decree ultimately passed.

19. This Court again in *M/s. Mechalec Engineers & Manufacturers v. M/s. Basic Equipment Corporation* [AIR 1977 SC 577] reiterated the following principles laid down in respect of grant of leave in a summary suit by Das J. in *Sm. Kiranmoyee Dassi v. Dr. J. Chatterjee* [(1945) 49 CWN 249] :

“(a) If the defendant satisfies the court that he has a good defence to the claim on its merits the plaintiff is not entitled to leave to sign judgment and the defendant is entitled to unconditional leave to defend.

(b) If the defendant raises a triable issue indicating that he has a fair or bona fide or reasonable defence although not a positively good defence the plaintiff is not entitled to sign judgment and the defendant is entitled to unconditional leave to defend.

(c) If the defendant discloses such facts as may be deemed sufficient to entitle him to defend, that is to say, although the affidavit does not positively and immediately make it clear that he has a defence, yet, shews such a state of facts as leads to the inference that at the trial of the action he may be able to establish a defence to the plaintiff's claim the plaintiff is not

entitled to judgment and the defendant is entitled to leave to defend but in such a case the court may in its discretion impose conditions as to the time or mode of trial but not as to payment into court or furnishing security.

(d) If the defendant has no defence or the defence set-up is illusory or sham or practically moonshine then ordinarily the plaintiff is entitled to leave to sign judgment and the defendant is not entitled to leave to defend.

(e) If the defendant has no defence or the defence is illusory or sham or practically moonshine then although ordinarily the plaintiff is entitled to leave to sign judgment, the court may protect the plaintiff by only allowing the defence to proceed if the amount claimed is paid into court or otherwise secured and give leave to the defendant on such condition, and thereby show mercy to the defendant by enabling him to try to prove a defence.”

It was opined that the case did not fall within clause (e) and unconditional leave should have been granted.

22. A statutory right conferred on a litigant cannot ordinarily be taken away. A civil revision application might have been maintainable as against the order dated 27.11.2002 granting conditional leave. The said remedy was also available where leave to defend a suit is refused. Leave to defend a suit, as noticed hereinbefore, should ordinarily be granted. It was, therefore, permissible for the defendant to raise the said contention in the appeal although it had asked for time to comply with the conditions.

26. Keeping in view the facts and circumstances of this case, we are of the opinion that it is not a fit case where the impugned judgment of the High Court should be interfered with. This appeal is dismissed accordingly. However, in the facts and circumstances of this case, there shall be no order as to costs.

19. Thus, in *Wada Arun Asbestos Private Limited* the Apex Court has held that if a right to Appeal from Decree is conceded to a Defendant, he cannot be denied right to challenge the order which could be subject to revision by raising a ground in the memorandum of appeal filed against the main decree. Thus, though the order granted by the Trial Court was

revisable and no revision was filed, the Apex Court held that the condition imposed while granting leave to defend could also be challenged before the High Court in substantive Appeal.

20. In my view, therefore both the questions formulated in the present Second Appeal are squarely covered by the judgment of the Apex Court in *Wada Arun Asbestos Private Limited*.

21. Before I record my answers to the questions of law formulated while admitting the Appeal, it would be necessary to take into consideration the submissions canvassed by Mr. Nikam that the conduct of Appellant/Defendant has been such that no relief can be granted to him. The admitted position is that the Appellant agreed to purchase Flat No.302, admeasuring 784 sq.ft in Balraj building 'A' for total consideration of Rs.34,50,000/- in addition to further payment of Rs.3,00,000/- towards MSEB charges and development charges. Thus, under the Agreement, total amount due and payable by the Defendant to the Plaintiff is Rs.37,50,000/-. It appears that the Defendant has paid to Plaintiff by way of cheque only Rs.7,50,000/-. Though Defendant claims payment of further amount of Rs.25,00,000/- in cash, this is something which needs to be established by him before the Trial Court. As of now, there is no material to draw inference that Rs. 25,00,000/- is also paid by the Defendant to Plaintiff. However, Defendant has taken possession of the flat in the year 2017 and has been residing therein since then. It is Plaintiff's case that by paying paltry sum of Rs.7,50,000/-, Defendant is enjoying possession of the flat for last seven long years. Defendant does not dispute that he has taken over possession of the flat and has been residing therein. If this is the position, till the Defendant establishes his defences in respect of alleged unauthorised construction by Plaintiff, he cannot be permitted to occupy flat free of cost. Defendant has already deposited an amount of

Rs.20,00,000/- before the first Appellate Court. Payment of consideration of Rs.7,50,000/- by him to Plaintiff is admitted. Thus, the amount of Rs.7,50,000/- out of total dues of Rs. 37,50,000/- are already cleared. Since I am inclined to remand the suit for trial after grant of opportunity to Defendant to file Written Statement and to lead evidence, it is necessary that the Defendant deposits further amount before the Trial Court atleast on account of use and occupation of the flat by him since the year 2017. If Defendant ultimately succeeds in proving that Plaintiff is not entailed to recover the amount claimed by him, the Trial Court would pass necessary orders adjusting the deposits made before it. However, till Defendant fails to prove his defences, he cannot be permitted to occupy the flat free of cost. Defendant wants to raise a defence that the building in which the flat is constructed is unauthorised. He may raise such defence before the Trial Court and the Trial Court will examine effect of such defence on Defendant's liability to pay the amount of consideration, which he is liable to pay under the Agreement for Sale. It must be noted here that Plaintiff had shown willingness to refund the amount received from Defendant alongwith interest, if Defendant is not willing to complete the purchase transaction on the alleged ground that the building is unauthorised. However during the course of hearing of the Appeal, Defendant did not accept the said offer and it appears that he is desirous of owing and occupying the concerned flat. This is yet another reason why he must be made liable to deposit further amount before the Trial Court, atleast towards use and occupation of the flat since the year 2017. In my view, it would be appropriate that in addition to the amount of Rs.20,00,000/- already deposited by Appellant/Defendant before the first Appellate Court, further amount of Rs.5,00,000/- needs be deposited by him as a condition precedent for remand of the suit for fresh trial after granting him leave to defend.

22. Accordingly, the questions of law formulated while admitting the Second Appeal are answered as follows:

(i) In a substantive Appeal filed challenging the decree in the main suit, it is permissible for a Defendant to also challenge the order granting conditional leave to defend.

(ii) The amount deposited by Defendant in the first Appellate Court as a condition precedent for stay to the execution of the Decree, can be considered as compliance with the condition granted for leave to defend by the Trial Court.

(iii) The suit deserves to be remanded in the light of deposit of amount of Rs. 20 lakhs by Appellant/Defendant as against condition for deposit of amount of Rs.10 lakhs by the Trial Court.

23. I am therefore of the view that the Defendant deserves to be granted leave to defend the suit in view of deposit of amount of Rs. 20,00,000/- by him before the first Appellate Court and also if he further deposits amount of Rs. 5,00,000/-.

24. Appeal accordingly succeeds partly and I proceed to pass the following order :

(i) The Judgment and Order dated 16 August 2023 passed by the first Appellate Court dismissing Regular Civil Appeal No.164/2021 and confirming the Decree dated 15 January 2021 passed by the Trial Court in Special Summary Suit No. 235/2019 is set aside.

(ii) The Defendant shall deposit further amount of Rs. 5,00,000/- before the Trial Court within one month, failing which the Decree passed by the first Appellate Court dated 16 August 2023, as well as, the decree passed by the Trial Court on 15 January 2021 shall stand revived.

(iii) On deposit of amount of Rs. 5,00,000/- before the Trial Court, Special Summary Suit No. 235/2019 shall stand restored on the file of 18th Joint Civil Judge Junior Division, Pune who shall proceed to grant opportunity to Defendant to file Written Statement and to defend the suit.

(iv) The Trial Court shall make an endeavour to decide Special Summary Suit No. 235/2019 as expeditiously as possible, preferably within one year.

25. With the above directions, the Second Appeal is partly allowed. There shall be no order as to costs.

26. In view of disposal of the Second Appeal, the Interim Application does not survive and the same also stands disposed of.

SANDEEP V. MARNE, J.