

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

**COMMERCIAL APPEAL FROM ORDER NO. 24 OF 2023
WITH
INTERIM APPLICATION NO. 16599 OF 2023
IN
COMMERCIAL APPEAL FROM ORDER NO. 24 OF 2023**

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Sachi Molding Solutions Pvt. Ltd.

.. Appellant/Applicant

Versus

Rasikbhai G. Bhalodi

.. Respondent

**Mr. Zubin Behramkamdin, Senior Counsel a/w Vidya Nair i/b. Kaizeen
Mistry *for the Applicant/Appellant***

**Mr. Shanay Shah a/w Parisha Shah, Raseh Shah i/b. Arshil Shah & Anju
Kandha *for the Respondent.***

**CORAM : B. P. COLABAWALLA &
SOMASEKHAR SUNDARESAN, JJ.**

DATE : JANUARY 05, 2024

P. C.

1. By this Appeal, the Appellants have challenged the order dated 28th August, 2023 passed by the Court of Senior Civil Judge at Silvassa whereby the Application of the Appellant [the Original Defendant] under Section 151 of the Code of Civil Procedure 1908 for submitting to a decree in terms of prayer clause (a) to Commercial suit No. 11 of 2021 filed by the Respondent herein [the Original Plaintiff], was dismissed.

2. Commercial Suit No. 11 of 2021 was filed by the Respondent herein [the Original Plaintiff] *inter-alia* seeking specific performance of an agreement said to have been entered into between the Original Plaintiff and Original Defendant No.2 to transfer 70% shares in the Original Defendant No.1 for a total consideration of Rs. 12,50,00,000/-. Out of this, an amount of Rs. 4,60,00,000/- was paid and therefore the relief sought is for transfer of the 70% shares in the Original Defendant No.1 for the remaining amount of Rs. 7,94,00,000/-. In this Suit, the Defendants filed an application [Exhibit-70] submitting to a decree in terms of prayer clause (a) of the said Suit. This application was dismissed by the impugned order and which is challenged in the present Appeal. In the present Appeal, it is the Respondent's case [the Original Plaintiff] that after the filing of the above Commercial Suit, a change in circumstances, led to the reduction in the valuation of the shares of the 1st Defendant-Company. In fact, the Original Plaintiff is no longer seeking specific performance in the form as pleaded in Commercial Suit No. 11 of 2021. We are informed that the Respondent has preferred an amendment application being Exhibit-74 before the Trial Court seeking an additional prayer for refund of part consideration of Rs. 4,56,00,000/- already paid by the Plaintiff to the Defendants, with interest thereon, and which application is pending before the Trial Court.

3. The learned Counsel appearing for the Plaintiff has stated that the Original Plaintiff filed an application seeking appropriate interim reliefs in view of the change in circumstances and which would be decided by the Trial Court on its own merits.

4. Considering the fact that the Original Plaintiff has, by his conduct, given up the case of specific performance as pleaded in the Plaint in Commercial Suit No. 11 of 2021, coupled with the fact that he has moved an amendment application seeking additional and/or alternate reliefs, the injunction order granted by the Trial Court cannot continue.

5. In fact, Mr. Shah, the learned Counsel appearing for the Original Plaintiff, on instructions, did not even dispute this position.

6. In these circumstances, the injunction granted by order dated 5th January, 2023 is hereby vacated.

7. The Original Plaintiff is at liberty to file an application seeking appropriate interim reliefs on the basis of the changed circumstances. If any such application is filed, the same shall be decided on its own merits and in accordance with law.

8. The Trial Court is requested to decide the amendment application filed by the Original Plaintiff as expeditiously as possible and in accordance with law.

9. The above Appeal is disposed of in the aforesaid terms. No order as to costs.

10. In view of the disposal of the above Appeal, nothing survives in the above Interim Application and the same is disposed of accordingly.

11. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[SOMASEKHAR SUNDARESAN, J.]

[B. P. COLABAWALLA, J.]