IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH AT AURANGABAD

APPEAL FROM ORDER NO. 85 OF 2025

Sayyad Khalil Abdul Razzak and another.. Appellants

Versus

Yuvraj Kishanlal Dongre and others .. Respondents

Shri Arun S. Shejwal, Advocate for the Appellants.
Shri Anand P. Bhandari, Advocate for the Respondent No. 1.

CORAM : SHAILESH P. BRAHME, J.
DATE : 25TH NOVEMBER, 2025.

FINAL ORDER :

. Heard both sides.

2. Appeal is directed against order dated 29.09.2025 rejecting application for temporary injunction preferred in Spl.C.S. No. 773 of 2023.

3. Learned counsel for the appellants submits that no opportunity of hearing was given by the Trial Court and for that purpose roznama has been shown to me. It is submitted that appellants spent an amount of Rs. 40 Lakhs for the development of the land besides parting with earnest amount of Rs. 50 Lakhs and they were inducted in the suit land at the time of agreement. It is submitted that the refund of the earnest amount could not be the mitigating circumstance. It is further submitted that

agreement to sale executed on 07.09.2021 contains recital of handing over of possession. The agreement has not been disputed, hence a *prima facie* case is made out by the appellants. It is further submitted that the respondents did not reply the notices and fraudulently transfer of the suit land vide sale deed dated 13.07.2023 was irreparable loss to the appellants.

4. Learned counsel for the appellants submits that Court below committed perversity in rejecting the application on extraneous circumstances by overlooking to Order II Rule 2 of the Code of Civil Procedure (for the sake of brevity and convenience hereinafter referred as to the "C.P.C.") and non registration of agreement. It is submitted that no registration is required. My attention is adverted to order of status quo passed on 18.12.2023. It is submitted that the Trial Court committed perversity and patent illegality in refusing the injunction. The temporary injunction is necessary to preserve the property and avoid the complications.

5. Per contra, learned counsel for the respondent No. 1 tenders on record compilation of the documents, which are born from the record. It is submitted that the conduct of the appellants is objectionable because they could have filed suit for specific performance of contract earlier. After receiving the earnest amount the suit was preferred. Even application Exhibit 05 was pending for more than one year. It is submitted that due opportunity of hearing was given to the appellants. It is

vehemently submitted that the suit in the present format is not maintainable as no relief has been solicited in respect of termination of contract vide correspondence dated 23.11.2022. It is submitted that appellants failed to comply the agreement and thereafter the contract was terminated. The sale deeds executed on 13.07.2023 cannot be faulted with. It is further submitted that in view of the parameters laid down by the Supreme Court in the matter of <u>**Wander Ltd. Vs. Antox India P. Ltd.**</u> reported in ***1990 (Suppl.) SCC 727,*** no case is made out for causing any interference.

6. I have considered rival submissions of the parties. The ownership of the respondent No. 1 over the land gut No. 253 is not disputed. On 07.09.2021 unregistered agreement was executed for consideration of Rs. Three crorers. Earnest amount of Rs. 50 Lakhs was parted with and it is recited in the agreement that possession was handed over for certain purposes. For payment of balance amount of consideration and execution of sale deed the cut off date was 07.07.2022. There is correspondence between the parties to support their claims before filing suit. Admittedly, appellants had filed R.C.S. No. 1505 of 2022 simplicitor for injunction. In that suit application for temporary injunction was rejected and order has not been challenged further.

7. The parties are *ad-idem* that on 04.05.2024 earlier suit was withdrawn unconditionally. On 21.01.2022 earnest amount of Rs. 50,00,000/- was refunded by the respondent No. 1 through

R.T.G.S. in two installments. An application submitted by the respondent No. 1 U/O II Rule 2 of the C. P. C. in the present suit was rejected.

8. Sale deed was to be executed on 07.07.2022 by accepting balance amount of consideration. On 23.11.2022 notice was addressed by the respondent No. 1 to the appellants terminating the agreement and refunding the earnest amount through R.T.G.S. It is stated that appellants failed to comply with the agreement within stipulated period. No relief is solicited in the present suit in respect of termination of contract. In such a situation reliance is placed by the respondent No. 1 on the judgment of the Supreme Court in the matter of **I. S. Sikander (Dead) by L.Rs. Vs. K. Subramani and others** reported in ***(2013) 15 SCC 27***. Para Nos. 33 to 38 would enure to the benefit of the respondent No. 1. *Prima facie* in absence of any relief in respect of termination of the agreement, the suit for specific performance of contract is unsustainable. Though this aspect of the matter has not been dealt with by the Trial Court, it has bearing over merits of the matter, when this Court is considering *prima facie* case.

9. The roznama produced on record indicates that on 23.09.2025 application Exhibit 05 is shown to have been rejected. Again on 29.09.2025 it is shown to have been rejected. It was rejected on 29.09.2025. The text of the impugned order shows that appellants were heard and their submissions and the documents were considered. I find no merit in the submission

that without extending due opportunity application Exhibit 05 was rejected.

10. In previous proceedings application Exhibit 05 was rejected meaning thereby appellants were not found to be in possession. Mere recital in the agreement regarding handing over of possession would not strengthen the case of the appellants to show possession. They were returned the earned amount. The agreement was terminated. Then sale deeds were executed on 13.07.2023. Therefore, the possession for certain purpose and for certain duration would not attribute anything more.

11. A reference is made in the impugned order in respect of rejection of application and admissibility of the unregistered document. I am of the considered view that those observations are inappropriate for deciding application Exhibit 05, but that would not affect overall approach and the reasons assigned by the learned Judge in rejecting application Exhibit 05. Both the learned counsels have made submissions in respect of admissibility of unregistered agreement. Reliance is placed on the judgment of the Coordinate Bench dated 29.07.2025 in Writ Petition No. 13409 of 2023, but that can be dealt with during the course of trial. It is not necessary to delve upon that aspect of the matter at this juncture. *Prima facie*, it reveals that appellants were unable to muster up the funds for execution of sale deed within stipulated period and save termination of the contract. No relief is solicited in the suit in respect of

termination of contract. After receiving the refund of earnest amount, suit was preferred for specific performance of contract. In earlier round of litigation the issue of temporary injunction was decided against them. Application Exhibit 05 is undecided for considerable period. The conduct of the appellants is objectionable. In view of observations of the Hon'ble Apex Court in the matter of **Gujrat Bottling Co. Ltd. Vs. Coca Cola Co.** reported in ***(1995) 5 SCC 545*** conduct is also relevant factor.

12. For the reasons stated above, I find that no case is made out to cause interference in the impugned order. I am guided by the observations made by the Supreme Court in the matter of **Wander Ltd. Vs. Antox India P. Ltd.** (supra). I find no merit in the appeal from order. It stands rejected.

13. After pronouncement of the order, learned counsel for the appellants prays for continuation of status quo granted on 01.11.2025. The prayer is objected by the learned counsel for the respondent No. 1. The order of status quo was passed by the Additional District Judge in Misc. Civil Appeal No. 130 of 2025, who was not having jurisdiction. The earnest amount has been refunded and already sale deeds are executed in the present matter. I have already observed that no *prima faice* case is made out. The request for continuation of status quo is rejected.

[SHAILESH P. BRAHME J.]

bsb/Nov. 25