



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

APPEAL FROM ORDER NO. 45 OF 2024

M/s Bhakti Developers Through
its Authorized Signatory
Smt. Rita Anil Daigavane .. Appellant

Versus

Shoeb Asif Khan and another .. Respondents

Shri Nityanand S. Choudhari, Advocate for the Appellant.

The Respondent No. 1 is served.

Shri Niranjana V. Dhake, Advocate h/f Shri Girish V. Wani,
Advocate for the Respondent No. 2.

**CORAM : SHAILESH P. BRAHME, J.
DATE : 08TH OCTOBER, 2025.**

FINAL ORDER :

. Heard Mr. Nitin S. Choudhari, learned counsel for the appellant.

2. Appeal from order is directed against order dated 30.09.2024 passed below Exhibit 05 in Spl.C.S. No. 168 of 2024 granting injunction against the appellant and another defendant from creating any third party interest.

3. Appeal is emanating from Spl.C.S. No. 168 of 2024 filed by the respondent No. 1 for specific performance of contract and injunction. It is founded on agreement dated 30.10.2021, which

is executed between the appellant and the respondent No. 1. The respondent No. 2, who is original defendant No. 2 is the owner of the disputed 110R land from gut No. 83 situated at Itkheda. It is contended that the disputed land was proposed to be sold for the consideration of Rs. 3 crores and out of that Rs. 1.50 crores was paid by the plaintiff to the present appellant through bank transfer. The defendants refused to comply further part of the agreement, which prompted the plaintiff to file the suit.

3. Appellant contested the suit by filing written statement. The transaction is denied. The payment of earnest amount has also been denied. It is further contended that there was no transaction and there was no cause of action between the parties.

4. The respondent No. 1 filed application Exhibit 05 for temporary injunction. It is also contested by filing say by the present appellant.

5. By the impugned order passed below Exhibit 05, it is held that no relief could be granted against the defendant No. 2 in the absence of any privity of contract with the defendant No. 2. It is recorded that from the bank statement amount of Rs. 1.50 crores appeared to be transferred to the appellant. The learned Judge found *prima facie* case and the balance of convenience in favour of the respondent No. 1. The appellant is restrained from creating any third party interest till final disposal of the suit.

6. Learned counsel Mr. N. S. Choudhari, appearing for the appellant submits that learned Trial Judge committed mistake apparent on the face of record in reading transfer of Rs. 1.50 crores instead of Rs. 15,00,000/-. My attention is adverted to the bank statement. It is submitted that there is absolutely no material on record to indicate that actually Rs. 1.50 crores was transferred by the respondent No. 1 and received by the appellant. He would submit that it is improbable that the respondent No. 1 would transfer huge amount without entering into contract between the parties. It is further submitted that there is considerable delay in filing the suit.

7. Learned counsel for the appellant seeks reliance on the following judgments of the Supreme Court and Full Bench of this Court.

- I UTO Nederland B. V. and another Vs. Tilaknagar Industries reported in AIR Online 2025 BOM 473.
- II Wander Ltd. and another Vs. Antox India P. reported in 1990 (Supp.) SCC 727.
- III Shyam Sel and Power Ltd. and another Vs. Shyam Steel Industries Ltd. reported in (2023) 1 SCC 634.
- IV Ramakant Ambalal Choksi Vs. Harish Ambalal Choksi reported in (2024) 11 SCC 651.
- V Ambalal Sarabhai Vs. K. S. Infraspace LLP reported in AIR 2020 SC 307.

8. None appears for the respondent No. 1 though served. Mr. Dhake, learned counsel holding for Mr. Girish V. Wani appears for the respondent No. 2. He adopts the submissions of the appellant.

9. Though temporary injunction is solicited against both the defendants, by the impugned order it is granted against the appellant – defendant No. 1. The agreement dated 30.10.2021 is executed between appellant and the respondent No. 1. It refers that the respondent No. 2 is the owner of the land in question. The plaintiff also refers that the respondent No. 2 is the owner of the land in question. There is no contract as such between owner of the land and the proposed purchaser i. e. plaintiff-respondent No. 1. However, appellant appeared to have acted on behalf of the respondent No. 2 on the basis of some agreement or the authorization. He appeared to have promised the respondent No. 1 to transfer the plots. In this backdrop the submissions of the parties need to be considered.

10. I have gone through the bank statements produced on record. Agreement dated 30.10.2021 reflects that amount of Rs. 1.50 crores was transferred by the respondent No. 1 to the appellant. It is not claimed that any amount is transferred to the original owner of the land. The bank statements indicate transfer of various amounts. Amounts of Rs. 2,00,000/- and Rs. 3,00,000/- respectively were transferred on 01.11.2021. Amount of Rs. 15,00,000/- and Rs. 15,00,000/- respectively were

transferred on 09.03.2021. The bank statements show that approximately an amount of Rs. 35,00,000/- has been transferred by the respondent No. 1 to the appellant.

11. Learned Mr. N. S. Choudhari is right in his contention that findings recorded in para No. 15 of the impugned order that towards earnest amount, an amount of Rs. 1.50 crores was transferred to the account of the appellant is incorrect. But the fact remains that the appellant received approximately Rs. 35,00,000/-. He is neither owner of the land, nor having any authorization in the tangible form to act on behalf of the respondent No. 2.

12. Just because a wrong figure is perceived by the learned Judge, cannot be a ground to find fault with the impugned order. Considering role played by the appellant, I find that he is being benefited to some extent, when he is neither owner of the property, nor having any authorization. It is rightly recorded by the learned Judge that the so called stamp or the agreement between the appellant or the respondent No. 1 has not been produced on record. The respondent No. 1 has parted with the amount. The respondent No. 2 has adopted the submissions of the appellant. In all probabilities, they are sharing a common interest.

13. I do not find that there is any perversity or patent illegality in clamping injunction against the appellant. There is inherent

restriction in exercise of jurisdiction U/O 43 of the Code of Civil Procedure, which is laid down in para No. 14 of the judgment. I find that no case is made out to exercise the jurisdiction as contemplated by the Supreme Court in the matter of Wander Ltd. and another Vs. Antox India P. (supra). I am bound by the law laid down by the Apex Court. Therefore, I do not find that a case is made out for exercising jurisdiction in favour of the appellant.

14. Reliance is placed on the judgment of the Full Bench of this Court in the matter of UTO Nederland B. V. and another Vs. Tilaknagar Industries Ltd. reported in *AIR 2025 Bombay 193*. Parameters for granting temporary injunction are laid down, which cannot be doubted. No case is made out by the by the appellant for granting injunction. Further reliance is placed on the judgment Supreme Court in the matter of Shyam Sel and Power Ltd. and another Vs. Shyam Steel Industries Limited reported in *(2023) 1 SCC 634*. I have gone through para No. 37 of the judgment, which *inter alia* refers to the judgment of the Supreme Court in the matter of Wander Ltd. and another Vs. Antox India P. This judgment will not help the appellant.

15. Next judgment cited by the learned counsel for the appellant is of the Supreme Court in the matter of Ramakant Ambalal Choksi Vs. Harish Ambalal Choksi and others reported in *(2024) 11 SCC 351*, which also *inter alia* refers to the judgment in the matter of Wander Ltd. and another Vs. Antox India P. in its para Nos. 21 and 22. Lastly, another judgment of the Supreme Court in the

matter of Ambalal Sarabhai Enterprises Ltd. Vs. K. S. Infraspace LLP Ltd and another reported in AIR 2020 SC 307 is cited, which lays down the principles for granting discretionary relief. I am bound by the same. The appellant has failed to make out a case.

16. For the foregoing reasons, I do not find that any case is made out by the appellant to cause interference in the impugned order. Appeal from order is dismissed.

[SHAILESH P. BRAHME J.]

bsb/Oct. 25