

Iresh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER NO. 6 OF 2025
WITH
INTERIM APPLICATION NO. 67 OF 2025
IN
APPEAL FROM ORDER NO. 6 OF 2025**

Nirav R. Parekh and ors

.....Appellants

Vs.

Gautam Co-operative Hsg. Society Ltd

.....Respondent

Mr. Rohit Gupta a/w Ms. Shaheen Moghul and Ms. Virkhare i/b Divya Shah Associates for the appellant

Mr. Saurabh Oka, Mr. Govind H. Rajpurohit, Mr. Rohit Jain and Mr. Rohit Shinde for respondent

CORAM : GAURI GODSE, J.

DATE : 7th JANUARY 2025

ORDER:

1. Heard learned counsels for the parties. This appeal challenges the order passed by the City Civil Court dismissing the notice of motion for interim injunction pending the suit for specific performance.

2. The appellants filed a suit on 30th September 2024 seeking specific performance of an agreement dated 19th November 2006, which according to the appellants was executed on behalf of the

IRESH
MASHAL

Digitally
signed by
IRESH
MASHAL
Date:
2025.01.27
18:09:02
+0530

society in favour of their father. The plaintiffs contended that by the said agreement, the society agreed to transfer 55.1 square meters FSI to the plaintiffs' father. Hence, the plaintiffs filed a suit for specific performance of the said agreement against the society. By way of interim application, the plaintiffs prayed for an order of temporary injunction restraining the society from utilising FSI of 55.1 square meters. The plaintiffs also prayed for an injunction restraining the society from creating any third-party rights with respect to FSI of 55.1 square meters. The notice of motion for interim relief further prays for restraining the society from inviting and finalising any proposal for redevelopment of the society without disclosing the plaintiffs' rights with respect to FSI of 55.1 square meters.

3. The society has opposed the grant of any such prayers by disputing execution of the suit agreement by the society. By the impugned order, learned Judge has rejected the application on the ground that plaintiffs' father has remained silent since execution of the agreement and the plaintiffs took no steps till the society decided to redevelop its building. The learned Judge has further observed that grant of any interim relief to the plaintiffs would cause prejudice to the members of the society as the society would be ultimately restrained

from developing the building in any manner. Thus, the learned Judge has considered the rights claimed by the plaintiffs and the irreparable loss and balance of convenience in the facts and circumstances of the case.

4. The plaintiffs have also relied upon certain entries in the society's accounts to support their contentions that the amounts were paid by plaintiffs' father in terms of the suit agreement. With reference to the contentions raised on behalf of the plaintiffs, the learned Judge has examined the pleadings and the supporting documents. The learned Judge has observed that the suit agreement is signed by plaintiffs' father as a secretary of the society. The impugned order also refers to plaintiffs' contentions that according to them the society had agreed to transfer the suit property i.e. 55.1 square meters FSI in favour of the plaintiffs' father in the year 1985 and thereafter the plaintiffs' father had persuaded the corporation to get the TDR transferred in respect of the suit property in his favour. The resolutions of the general body meeting held on 5th January 2002 and the minutes of the meeting mentioning that the society had to verify the payment of consideration claimed by the plaintiffs is also taken into consideration by the learned Judge.

5. Thus, it is observed in the impugned order that the plaintiffs' father has not taken any steps from the date of general body meeting till the execution of the agreement in 2006. Thus, the delay on the part of the plaintiffs' father to claim his rights is also considered as an important factor for deciding the prayers for interim relief.

6. Learned counsel for the appellants submitted that resolutions of the annual general body meetings placed on record would indicate that the society has accepted execution of the agreement, however, has refused to enter into any further agreements in favour of the plaintiffs. Learned counsel for the plaintiffs has relied upon one of the minutes of the meetings held on 26th May 2024. According to the learned counsel for the appellants, as per the said minutes of meeting, the society refused to execute any further agreement in favour of the plaintiffs. He also relied upon the documents annexed along with the plaint to indicate that the society's accounts reflects payment of part consideration amount paid by the plaintiffs' father in view of the suit agreement.

7. Learned counsel for the appellants thus submits that the minutes of the meeting of the society relied upon by the plaintiffs filed alongwith

the plaint would indicate that the society did agree to transfer the FSI in favour of plaintiffs' father. He further submits that the plaintiffs do not intend to stall the redevelopment of the society. He further submits that the plaintiffs' rights in respect of 55.1 square meters FSI pursuant to the suit agreement needs to be protected. He submits that in the event the society building is redeveloped by using the FSI which is the subject matter of the suit agreement, serious prejudice would be caused to the plaintiffs. He, therefore submits that during the pendency of the suit, the plaintiffs' rights in respect of FSI concerning the suit agreement needs to be protected.

8. With reference to the reasons recorded in the impugned order, learned counsel for the appellants submits that the learned Judge has incorrectly recorded the reasons regarding redevelopment of the society building. He submits that the plaintiffs have never attempted to stall the redevelopment of the society building. He submits that the observations by the learned Judge regarding society members suffering irreparable loss due to the injunction claimed by the plaintiffs is without any basis. He submits that neither the suit nor the motion for interim relief makes any attempt to stall the redevelopment of the society's building. He, therefore, submits that the appeal from order

would require consideration by this Court as the plaintiffs would be entitled to the interim relief claimed in the suit.

9. Learned counsel for the society opposes grant of any interim relief. He submits that the society has disputed the execution of the suit agreement. He further submits that the plaintiffs' father got the agreement executed in his favour when he was acting as secretary of the society. He further submits that the minutes of meeting relied upon by the plaintiffs nowhere indicates that the society has any time agreed about execution of the suit agreement. He submits that the society's building is in dilapidated condition and most of the members have vacated the building except for one or two members. He, therefore, submits that the society proposes redevelopment of the building and any kind of injunction granted restraining the society as claimed by the plaintiffs would stall the redevelopment of the society's building. He submits that in such an event, the members of the society who are already out of their own premises would suffer irreparable loss.

10. I have perused the impugned order as well as the documents relied upon by the parties in the suit. The plaintiffs' claim is based only on an agreement which according to the plaintiffs was executed in

favour of their father by the society. A perusal of the copy of the agreement indicates that it is signed by plaintiffs' father as secretary in his own favour on 19th November 2006. The agreement nowhere refers to any resolution passed by the general body for transfer of the FSI of the society in favour of the plaintiffs' father.

11. I find it necessary to record at this stage that in spite of sufficient and long hearing given to the learned counsel for the appellants, dictation of this order is being unnecessarily interrupted by the learned counsel for the appellants.

12. A perusal of the agreement does not even indicate that there is any resolution passed by the society or any authority given to the plaintiffs' father to execute any agreement in his favour on behalf of the society. The agreement appears to have been signed by the treasurer; however, the agreement does not contain any clause about the authority of the treasurer to agree to transfer society's property in the name of plaintiffs' father who was at the relevant time acting as a secretary. Even the plaint does not refer to any authority to the secretary or the treasurer to create any third-party rights in respect of the society's properties. There is no dispute that FSI claimed by the

plaintiffs is owned by the society. Thus, in the absence of any authority to the treasurer or the secretary, the suit agreement does not create any right in favour of the plaintiff's father. Thus, based on such an agreement, prima facie, I am of the opinion that the plaintiffs would not be entitled to seek any interim relief against the owner of the suit property.

13. The impugned order has rightly considered the aspect of delay on the part of the plaintiffs to seek any such relief based on the suit agreement. It is important to note that the plaintiffs' father during his lifetime has not taken any steps to seek any relief of specific performance of the suit agreement allegedly executed in the year 2006. Thus, considering the facts and circumstances of the case, prima facie I am of the opinion that the attempt on the part of the plaintiffs is to stall the redevelopment and pressurise the society to concede to the request of the plaintiffs based on the suit agreement. At the cost of repetition, I find it necessary to record that not even a prima facie case is made out to indicate that the executors of the suit agreement had any authority to enter into any such an agreement on behalf of the society.

14. Granting injunction is a discretionary relief by exercising an extraordinary power vested in the Court. Thus, weighing the risk of injustice, the defendants are likely to suffer higher prejudice and inconvenience by the relief of injunction as prayed, than the prejudice, if any, to the plaintiffs. In view of the aforesaid facts, learned Judge of the City Civil Court has rightly considered the balance of convenience and irreparable loss that will be caused to the members of the society, if any restraining orders are passed in the suit.

15. I, therefore, do not find any reason to interfere in the impugned order. The appeal is therefore dismissed.

16. In view of dismissal of the appeal, Interim Application No. 67 of 2025 is disposed of as infructuous.

[GAURI GODSE, J.]