



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10482 OF 2025**

1. Eskay Hospitality Services India Pvt. Ltd.
A company incorporated under the provisions of the Companies Act, 2013, having its registered address at :
Eskay House at Eskay Resorts, Off Link Road, Borivali (West), Mumbai, Maharashtra – 400 091
2. Suresh Kanjibhai Turakhia,
Age 73 years, Occu – Business,
An adult, Indian Inhabitant, Eskay House, Off. Link Road, Borivali (W), Mumbai, Maharashtra – 400 091.
Email : tina@eskaygroupindia.com
3. Tina Karan Turakhiya,
Aged 32 years, Occu – Business,
An adult, Indian Inhabitant, Eskay House, Off Link Road, Borivali (W), Mumbai, Maharashtra – 400 91.
Email : tina@eskaygroupindia.com
4. Nisha Suresh Turakhiya
Aged 65 years, Occu – Business,
An adult, Indian Inhabitant, Eskay House, Off Link Road, Borivali (W), Mumbai, Maharashtra – 400 091.
Email : tina@eskaygroupindia.com

... Petitioners

versus

M/s. Sterling Hospitality
through Mr. Pranay Goyal, Age 32 years,
Managing Partner, A partnership firm
having its address at 2, 358 TPS III,
Ram Mandir Road, Akshat, Borivali
(W), Mumbai, Maharashtra 400 092

Email id : Pranay@thegoyalgroup.in

... Respondent

Mr. Mayur Khandeparkar with Mr. Chetan Yadav, Mr. Pankaj Waghela, for Petitioners.

Mr. Ranjeet Thorat, Sr. Advocate with Mr. Tejas Sanghrajka, Mr. Kayval Shah, Ms. Dhvani Vora, Mr. Parthvi Mehta, for Respondent.

CORAM: N.J.JAMADAR, J.

RESERVED ON : 16 SEPTEMBER 2025

PRONOUNCED ON : 9 OCTOBER 2025

JUDGMENT :

1. Rule. Rule made returnable forthwith, and, with the consent of the learned Counsel for the parties, heard finally.

2. This Petition under Article 227 of the Constitution of India calls in question the legality, propriety and correctness of an order dated 7 April 2025, passed by the learned Judge, City Civil Court at Mazgaon, in Notice of Motion No.1158 of 2025 in Commercial Suit No.1115 of 2024, whereby the said Notice of Motion taken out by the Petitioner – Defendant No.1 for rejection of the plaint under the provisions of Order VII Rule 11(1)(a) and (d) of the Code of Civil Procedure, 1908 ('the Code') came to be dismissed.

3. Shorn of unnecessary details, the background facts can be stated as under :

3.1 The Respondent – Plaintiff is a partnership firm. It is engaged in the business of hospitality. The Petitioner – Defendant No.1 is a private limited

company. Petitioner Nos.2 to 4 – Defendant Nos.2 to 4 are its directors. Defendant No.1 Company used to run a club-cum-resort under the name and style of 'Eskay Resorts', excluding 'Eskay House and Hotel Building' at Borivali (W), Mumbai (the suit property).

3.2 The Defendants were allegedly facing financial constraints. Defendant No.1 Company entered into a leave and licence agreement dated 21 June 2022 with the Plaintiff to give on licence premises described in Annexure A thereto. The Plaintiff claimed to have invested a sum of Rs.7,71,58,450/- for the renovation and repairs of the said premises, as there was an understanding between the parties that the premises would be let out for a longer period.

3.3 It is the claim of the Plaintiff that, in the meeting held on 11 October 2022, it was agreed and decided between the parties that the hospitality business in the suit premises would be jointly carried on by the parties and the income and expenses on account of the Club, would be shared between the Plaintiff and Defendants. As the business was run by the Plaintiff successfully, on 15 February 2023, Defendant No.1 terminated the Leave and Licence Agreement mala fide and with a dishonest intent and called upon the Plaintiff to handover vacant and peaceful possession of the premises described in Annexure A to the said Agreement.

3.4 The Plaintiff, thus, instituted the suit for specific performance of the

understanding arrived at and entered into between the Plaintiff and Defendants on 11 October 2022; for a declaration that the termination letter dated 15 February 2023, was illegal and invalid, and, in the alternative, for an order and direction to the Defendants to jointly and severally pay to the Plaintiff an amount of Rs.7,71,58,450/- along with interest @ 24% p.a., as and by way of refund of the amount spent and expenses incurred by the Plaintiff pursuant to the understanding between the parties.

3.5 In the said suit, Defendant No.1 took out a Notice of Motion seeking rejection of the plaint on the ground that there was no cause of action for the institution of the suit, and, as the Plaintiff was not the registered partnership firm, the suit was barred by the provisions contained in Section 69(2) of the Indian Partnership Act, 1932.

3.6 The Plaintiff resisted the application by filing an affidavit in reply. It was, inter alia, contended that there was no absolute bar to the institution of the suit by an unregistered partnership firm. The suit to enforce a statutory or common law right was tenable even at the instance of an unregistered partnership firm. Yet, by way of abundant caution, the Plaintiff had approached the Registrar of Firms for the registration of the Plaintiff firm.

3.7 Learned Judge, City Civil Court, after appraisal of the contentions of the parties and the material on record, was persuaded to dismiss the Notice of Motion observing, inter alia, that the suit of the present nature at the instance

of the Plaintiff firm was maintainable as the bar under Section 69(2) of the Indian Partnership Act, 1932 was not absolute.

3.8 Being aggrieved, the Defendants have preferred this Writ Petition.

Submissions :

4. I have heard Mr. Mayur Khandeparkar, learned Counsel for the Petitioners, and Mr. Ranjeet Thorat, learned Senior Advocate for the Respondent, at some length. Learned Counsel took the Court through the pleadings and material on record.

5. Mr. Khandeparkar, learned Counsel for the Petitioners, submitted that, at this stage, the Petitioners are restricting their claim for rejection of the plaint to the ground of bar created by Section 69(2) of the Act, 1932. Mr. Khandeparkar would urge that, there is not much controversy over the basic facts. The fact that the Plaintiff and Defendant No.1 had entered into a Leave and Licence Agreement on 21 June 2022, is not in dispute. Nor the fact that the Defendant No.1 after the expiry of the term of the said licence, declined to renew the licence beyond 30 April 2023, vide letter dated 15 February 2023, and called upon the Plaintiff to handover clear and vacant possession of the licenced premises, is in dispute. In fact, the termination of the said licence is the cause for the institution of the suit. The fact that the Plaintiff is not a registered partnership firm is rather indubitable, as the Plaintiff claimed to have now applied for the registration of the firm. As the dispute between the

parties has its genesis in the purported contract entered into by the Plaintiff, an unregistered partnership firm, with the Defendant No.1 – a third party, the Plaintiff was debarred from institution of the suit under Section 69(2) of the Act, 1932, was the thrust of the submission of Mr. Khandeparkar. The subsequent registration of the firm is of no avail, submitted Mr. Khandeparkar.

6. In order to lend support to the aforesaid submissions, Mr. Khandeparkar placed reliance on the decision of the Supreme Court in the case of **Seth Loonkaran Sethiya and Ors. V/s. Ivan E. John and Ors.**¹, and a Division Bench judgment of this Court in the case of M/s. **Pragati Developers and Anr. V/s. M/s. Cornis Realty Pvt. Ltd.**²

7. In amplification of the aforesaid submission, Mr. Khandeparkar would urge, the learned Judge, City Civil Court, fell in error in not appreciating the distinction between a statutory remedy and the statutory right. A statutory or common law right can be enforced by an unregistered partnership firm. However, the invocation of the statutory remedy on the basis of the rights which arose out of the contract falls foul of the mandate contained in Section 69(2) of the Act, 1932. Failure to keep in view this distinction vitiated the impugned order, urged Mr. Khandeparkar. In the process, the learned Judge, City Civil Court, recorded two erroneous findings, namely, the suit was not arising out of the contract, and, that the suit was instituted for enforcement of

1 (1977) 1 SCC 379

2 IA No.2288 of 2023 in FA No.1469 of 2019 dt. 29 March 2023

the common law and statutory rights. It was urged with a degree of vehemence that the specific reliefs awardable under the Specific Reliefs Act, are the remedies and not the statutory rights.

8. Per contra, Mr. Thorat, learned Senior Advocate for the Respondent, would support the impugned order. It was urged that the learned Judge, City Civil Court has correctly appreciated the nature of the suit and rightly held that the suit was for the enforcement of the common law and statutory rights. In any event, according to Mr. Thorat, the prayer for the rejection of the plaint was misconceived as it is well settled that a plaint cannot be rejected in part. Mr. Thorat would urge, the suit was instituted not only for the declaration and specific performance of the contract between the parties, but also for the refund of the amount which has been invested by the Plaintiff in pursuance of the said contract.

9. Laying emphasis on prayer clause (c), Mr. Thorat would urge, the said prayer for refund of the amount of Rs.7,71,58,450/-, along with interest, would be maintainable, independent of the rights and obligations arising from the contract between the parties. Even if a part of the claim is maintainable and warrants adjudication at the trial, the plaint cannot be rejected and the suit must go for the trial, submitted Mr. Thorat.

10. To bolster up this submission, Mr. Thorat placed reliance on a decision of the Supreme Court in the case of **Sri Boyenepally Srijayavardhan V/s. V.**

Nirupama Reddy and Ors.³

11. Mr. Khandeparkar joined the issue by canvassing a submission that the aforesaid proposition does not apply in a case where the subsidiary or alternate prayer also flows from the principal prayer. Reliance was placed on a judgment of the learned Single Judge of this court in the case of **Chetana Shankar Manapure and Anr. V/s. Bandu Tanaji Barapatre**⁴

Consideration :

12. I given anxious consideration to the rival submissions canvassed across the bar.

Nature of the Suit Claim :

13. To begin with the nature of the Suit. From a meaningful reading of the Complaint as a whole, which is the normative discipline to determine an Application for rejection of the Complaint under Order VII Rule 11 of the Code, it becomes abundantly clear that the parties initially entered into a Leave and Licence Agreement on 21st June 2022, whereby and whereunder the Plaintiff was allowed to use and occupy the premises described in Annexure-A to the said Agreement for a period of 11 months from 1st June 2022 to 30th April 2023. The Plaintiff claims the parties had, however, agreed that the premises would be given on licence for a longer period than the one fixed under the said Leave and Licence Agreement. Therefore, the Plaintiff had invested and

³ Civil Appeal No.9904 of 2025 dt. 29 July 2025

⁴ 2020(4) Mh.L.J. 481

spent a huge amount of Rs.7,71,58,450/- towards the renovation and repairs of the Suit premises.

14. During the currency of the Leave and Licence Agreement, in the meeting held on 11th October 2022, the parties arrived at an understanding about the running of the business in the Suit premises and those terms of the understanding were recorded in the Minutes of the Meeting. Pursuant to the understanding, which the Plaintiff terms as the "Suit understanding", the Plaintiff incurred expenditure towards the performance of Plaintiff's promises thereunder. Plaintiff has, thus, assailed the legality and validity of the letter dated 15th February 2023, whereby the Leave and Licence Agreement was purportedly terminated, and seeks performance of the contract contained in the suit understanding dated 11th October 2022, and, in the alternative, a decree in the sum of Rs.7,71,58,450/-, along with interest, as and by way of the refund of the amount spent and expenditure incurred by the Plaintiff pursuant to the suit understanding

15. In the backdrop of the aforesaid nature of the Suit, the question that wrenches to the fore is whether the bar under Section 69 (2) of the Act, 1932 comes into play as the Plaintiff-firm was not a registered partnership firm as on the date of the institution of the Suit.

Bar under Section 69(2) of the Act, 1932 :

16. Section 69 of the Indian Partnership Act, 1932 reads as under:-

“69. Effect of non-registration -

(1) No suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm.

(2) No suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm.

.....”

17. On a plain reading of the aforesaid provision, it becomes abundantly clear that to attract the bar against institution of a suit by an unregistered partnership firm, the following conditions ought to be satisfied :

First, the partnership firm must not be registered under the Act, 1932 on the date of the institution of the suit and the person suing is not shown in the register of firms as a partner of the firm.

Second, such suit by the unregistered partnership firm must be against the defendant who is a third party.

Third, the suit must be instituted for enforcement of right arising from a contract between such unregistered firm and the third party.

18. The necessary corollary of the aforesaid ingredients of the interdict against the institution of a suit by an unregistered partnership firm is that, in contradistinction to a suit arising from contract, an unregistered partnership firm is not precluded from enforcing either statutory or common law rights which do not emanate from the contract between such unregistered firm and the third party defendant in relation to the business of the firm.

19. The aforesaid position in law is well crystallized. In the case of **Haldiram Bhujawala and Anr. V/s. Anand Kumar Deepak Kumar and Anr.**⁵ after adverting to an earlier pronouncement in the case of **Raptakos Brett and Co. Ltd. vs. Ganesh Property**⁶ the Supreme Court enunciated the legal position as under:

22] In **Raptokas Brett and Co., [1998] 7 SCC 184** it was clarified that the contractual rights which are sought to be enforced by plaintiff firm and which are barred under section 69(2) are "rights arising out of the contract" and that it must be a contract entered into by the firm with the third party defendants. Majmudar, J. stated (at p.191) as follows :

"A mere look at the aforesaid provision shows that the suit filed by an unregistered firm against a third party for enforcement of any right arising from a contract with such a third party would be barred....."

(emphasis supplied)

5 (2000) 3 SCC 250.

6 (1998) 7 SCC 184.

From the above passage it is firstly clear that contract must be a contract by the plaintiff firm not with anybody else but with the third party defendant.

23] The further and additional but equally important aspect which has to be made clear is that - the contract by the unregistered firm referred to in section 69(2) must not only be one entered into by the firm with the third party - defendant but must also be one entered into by the plaintiff firm in the course of the business dealing of the plaintiffs firm with such third party - defendant.

25] Further Section 69(2) is not attracted to any and every contract referred to in the plaint as the source of title to an asset owned by the firm. If the plaint referred to such a contract it could only be as a historical fact. For example, if the plaint filed by the unregistered firm refers to the source of the firm's title to a motor car and states that the plaintiff has purchased and received a Motor Car from a foreign buyer under a contract and that the defendant has unauthorisedly removed it from the plaintiff firm's possession, it is clear that the relief for possession against defendant in the suit does not arise from any contract with defendant entered into in the course of plaintiff firm's business with defendants but is based on the alleged unauthorised removal of the vehicle from the plaintiff firm's custody by the defendant. In such a situation, the fact that the unregistered firm has purchased the vehicle from somebody else under a contract has absolutely no bearing on the right of the firm to sue the defendant for possession of the vehicle. Such a suit would be maintainable and

Section 69(2) would not be a bar, even if the firm is unregistered on the date of suit. The position in the present case is not different.

27] For all the reasons given above, it is clear that the suit is based on infringement of statutory rights under the Trade Marks Act. It is also based upon the common law principle of tort applicable to passing-off actions. The suit is not for enforcement of any right arising out of a contract entered into by or on behalf of the unregistered firm with third parties in the course of the firm's business transactions. The suit is therefore not barred by section 69(2). (emphasis supplied)

20. In the case of **Purushottam And Anr Vs Shivraj Fine Arts Litho Works and Ors**,⁷ the Supreme Court expressly approved the decision in the case of **Haldiram Bhujawala and Anr (Supra)** and observed as under:

23] Relying upon the aforesaid analysis this Court in Haldiram Bhujawala and Anr. (supra) held that the contract contemplated by Section 69 of the Act is the contract entered into by the firm with the third party defendant. The contract by the unregistered firm referred to in Section 69(2) must not only be one entered into by the firm with a third party defendant, but must also be one entered into by the plaintiff firm in the course of the business dealings of the plaintiff firm with such third party defendant.

24] With respect, we find ourselves in complete agreement with the principles enunciated in Haldiram Bhujawala and Anr. (supra). Having regard to the purpose Section 69(2)

7 (2007) 15 SCC 58.

seeks to achieve and the interest sought to be protected, the bar must apply to a suit for enforcement of right arising from a contract entered into by the unregistered firm with a third party in the course of business dealings with such third party. If the right sought to be enforced does not arise from a contract to which the unregistered firm is a party, or is not entered into in connection with the business of the unregistered firm with a third party, the bar of Section 69(2) will not apply. (emphasis supplied)

21. In the case of **Shiv Developers Through Its Parnter Sunil Bhai Somabhai Ajmeri Vs Aksharay Developers & Ors**,⁸ the Supreme Court, after an elaborate analysis and expressly referring to the decision in the case of **Haldiram Bhujawala and Anr (Supra)** expounded the scope of words, “enforcing a right arising under the contract”, as employed in Section 69(2) of the Act of 1932 to the effect that, the bar under section 69(2) is not attracted to any and every contract referred to in the plaint as a source of title to an asset owned by the firm. The observations in paragraph 15 of the decision in the case of **Shiv Developers (Supra)** are instructive and, hence, extracted below.

“15. In our view, the questions arising in this matter could be directly answered with reference to the principles enunciated by this Court in the case of *Raptakos Brett & Co. Ltd. v. Ganesh Property* which have further been explained and applied by this Court in the cases of *Haldiram Bhujawala and*

8 (2022) 13 SCC 772.

Purushottam (supra). We may take note of the principles vividly expounded in the case of Haldiram Bhujawala (supra) that to attract the bar of Section 69(2) of the Act of 1932, the contract in question must be the one entered into by firm with the third-party defendant and must also be the one entered into by the plaintiff firm in the course of its business dealings; and that Section 69(2) of the Act of 1932 is not a bar to a suit filed by an unregistered firm, if the same is for enforcement of a statutory right or a common law right. (emphasis supplied)

22. The position in law which thus emerges is that, to attract the bar under Section 69(2) of the Act, 1932, two conditions need to be satisfied. First, the Suit must be for enforcement of a right arising under the contract and, second, such contract must have been entered into by the firm with a third party in the course of its business. If the contract is totally unconnected with the business of the firm, then the interdict contained in Section 69(2) of the Act would not be attracted even if the Suit is for enforcing a right arising from a contract.

23. At this juncture it would be apposite to note the reasons which weighed with the learned Judge, City Civil Court, to hold that the Suit is not barred by the provisions of Section 69 (2) of the Act, 1932. The reasons are encapsulated in paragraph 36 of the impugned order as under:

“36. Thus, after considering rival submissions irresistible legal position emerges, as far as the maintainability of the suit by unregistered firm. Considering the bar contemplated U/Sec.

69 (2) of the Indian Partnership Act, 1932, such bar to institute suit would not be ipso-facto would be applicable, in present case if the suit is not arising out of a contract. However, suit is filed against third party based on 'enforcement of common law rights' or 'statutory rights'. Therefore, with utmost respect, ratios relied upon by the defendant would not help defendant to say that the bar would come into play in the present case. Thus, the suit would be maintainable. Hence, prayer to dismiss the suit by rejecting the present Notice of Motion on the said count alone, cannot be entertained."

24. Evidently, the learned Judge was of the view that the instant Suit was not arising out of a contract. Secondly, the Suit was instituted for enforcement of common law or statutory rights.

25. Upon a meaningful reading of the Plaint and documents annexed with it, this Court finds it rather difficult to concur with the view of the learned Judge that the instant Suit did not arise out of a contract.

26. As noted above, the substratum of the Plaintiff's case is that the initial jural relationship between the parties was that of the licensor and licensee. During the subsistence of the said relationship, the parties entered into a contract for running the hospitality business and the facilities which were available in the Suit premises and the terms of the contract, recorded in the form of the Minutes of Meeting, constituted the "Suit understanding". The

Plaintiff is, in fact, seeking specific performance of the said contract between the parties as evidenced by the “Suit understanding”.

27. The aforesaid being the plain nature of the Suit, the learned Judge, City Civil Court was clearly in error in returning a finding that the Suit did not arise out of the contract between the Plaintiff and Defendants.

28. This propels me to the moot question as to whether the contract was entered into by Plaintiff-firm in connection with its business. If the answer is in the affirmative, then the provisions contained in Section 69(2) of the Act, 1932 would be clearly attracted.

29. For an answer, perforce recourse is required to be made to the averments in the Plaint. As is evident, the Plaintiff is engaged in hospitality business. The Defendant No.1 holds the suit property, “Eskay Resorts”. The Defendants were allegedly suffering losses in running their business from the suit property. Thus, the Defendants entered into a Leave and Licence Agreement and allowed the Plaintiff to use, occupy and operate, “Pyramid entire First floor area, Poolside cafe, Lawns, Tennis Court and Amphitheater etc, as set out in Annexure A of the said Leave and Licence Agreement”. Subsequently, the Defendants allegedly expressed their incapacity in successfully running business of “Eskay Resorts” and, thus, proposed to hand over the entire running concern/business of the Eskay Resorts to the Plaintiff. A meeting was held on 11th October 2022 and the parties agreed that the

business from the Suit premises would be jointly carried on and income and expenditure on account of the Club will be shared between the Plaintiff and Defendants. Pursuant to the said understanding, the Plaintiff claims to have invested the amount and incurred expenditure to the tune of Rs.7.7 Crores.

30. If the aforesaid nature of the Suit Claim, as is evincible from a meaningful reading of the averments in the Plaint, is considered, then, it would be rather audacious to hold that the contract in question was not in relation to the business of the Plaintiff firm. It is not the case that the Plaintiff is engaged in another business and entered into the contract to purchase an immovable property for expansion of the said business. The contract in question was essentially for running the very business into which the Plaintiff was engaged in.

31. In a case of this nature, where an unregistered partnership firm has entered into a contract in relation to its core business, the Suit for specific performance of such contract cannot be said to be one arising out of common law or statutory rights. The Suit in question is primarily for enforcement of the rights arising out of the contract entered into by the firm in relation to its principal business.

32. This takes me to the submission of the Mr. Thorat that, in any event, since the Plaintiff has claimed the relief of the refund of the amount invested by the Plaintiff, the Plaint cannot be rejected in part.

33. A strong reliance was placed by Mr.Thorat on the decision in the case of **Sri Boyenepally Srijayavardhan (Supra)**. In the said case, after referring to the decisions in the cases of **Sejal Glass Limited Vs Navilan Merchants Private Limited**⁹ and **Central Bank of India & Anr Vs Prabha Jain & Ors**,¹⁰ the Supreme Court enunciated that it is well-settled principle of law that where out of many reliefs claimed in the Plaint, the Plaintiff is found entitled to even one of them, the Plaint cannot be rejected under Order VII Rule 11 of the Code. In such circumstances, the suit must be tried on the basis of evidence led by the parties.

34. There can be no quarrel with the aforesaid proposition. However, the pivotal question that merits consideration is, whether the relief of refund of the amount, purportedly invested by the Plaintiff, emanates from the contract in question or is independent thereof. Prayer clause (c) of the plaint, which Dr. Thorat urged, can be granted to the Plaintiff irrespective of the fact that the Suit is based on contract, reads as under:

“c. this Hon’ble Court be pleased to order and direct the Defendants, jointly and severally to pay, an amount of Rs.7,71,58,450/- with interest @ 24% per annum from the date of filing of the present suit till the realization of the full and final amount, to the Plaintiff as and by way of the refund fo the amount spent, expenses incurred by the Plaintiff

9 (2018) 11 SCC 780.

10 (2025) 4 SCC 38.

pursuant to the suit understanding in compliance and execution of the same;”

35. At this stage, it may be apposite to note the foundational pleadings which support the aforesaid prayer. The averments in paragraphs 15 and 28 of the Plaint read as under:

“15. The Plaintiff states that in compliance of their obligations under the Suit understanding and as per the Suit understanding, the Plaintiff have spent huge amount and incurred heavy expenses in renovating the Suit property and for buying required equipment and materials The Plaintiff states that pursuant to the suit understanding, the Plaintiff have incurred expenses approximately an amount of Rs.7.7 crores approx. The Plaintiff crave leave to refer to and rely upon a copy of the Bills, Invoices etc. with respect to the aforesaid expenses, as and when produced. Here to annexed and marked as Exhibit “E” is the copy of the supporting ledger account.

.....

28. The Plaintiff states that the relation between the parties was so good and peaceful and that the Defendants were in such bad financial state, the the Plaintiff were maintaining and paying expenses of the personal residence and offices of the Defendants. The Plaintiff state that the Plaintiff have invested the considerable amount towards renovating the suit property and buying new equipment and articles and materials in running a profitable business from the suit property. The Defendants are very well aware about the expenditure incurred by the Plaintiff and have been aware that the same had been incurred pursuant to the suit understanding between the Plaintiff and the

Defendants. Thus, if the Defendants are not interested in performing their part of the suit understanding or if there is any difficulty or hardship in doing the same, the Plaintiff are entitled for immediate refund of their invested and expended amount in running the business from the suit property. Thus, in the alternative to the reliefs claimed hereinabove, the Plaintiff are entitled for the relief that this Hon'ble Court be pleased to order and direct the Defendants, jointly and severally, to pay an amount of Rs.7,71,58,450/- with interest @ 24% per annum from the date of filing of the present suit till the realization of the full and final amount, to the Plaintiff as and by way of the refund of the amount spent, expenses incurred by the Plaintiff pursuant to the suit understanding in compliance and execution of the same."

36. If the aforesaid averments are read in juxtaposition with the prayer clause (c) (extracted above), it becomes explicitly clear that the prayer of refund of amount invested and expended by the Plaintiff is inextricably interlinked with the enforcement of the rights arising under the contract, nay, draws support and sustenance from the contract alone. It is the positive case of the Plaintiff that in performance of its part of the promises under the contract evidenced by the Suit understanding, the Plaintiff had invested the amount and incurred the expenditure and if the contract cannot be specifically enforced, the said amount be ordered to be refunded along with interest.

37. In my view, it would be impermissible to urge that the prayer in prayer clause (c) can be granted *de-hors* the rights and obligations arising out of the

contract. To sum up, the claim for refund also arises from the contract and not independent thereof. The learned Judge, City Civil Court, was in error in holding that the Suit did not arise out of the contract and, even otherwise, it was for enforcement of common law or statutory rights.

38. The conspectus of the aforesaid consideration is that, in the facts of the case at hand, the bar contained in Section 69(2) of the Act, 1932 is clearly attracted and the Suit was in teeth of the interdict contained thereunder.

39. Resultantly, the Petition deserves to be allowed.

40. Hence the following order:

: O R D E R :

- (i) The Writ Petition stands allowed.
- (ii) The impugned order in Notice of Motion No. 1158 of 2025 stands quashed and set aside.
- (iii) The Notice of Motion stands allowed.
- (iv) The Complaint in Commercial Suit No. 1115 of 2024 (High Court Commercial Suit (L) No. 6285 of 2023) stands rejected.
- (v) Rule made absolute in the aforesaid terms.
- (vi) No costs.

(N.J.JAMADAR, J.)