IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 8606 OF 2025
IN
FIRST APPEAL NO. 1909 OF 20240

Township Developers Corporation
through its partners and Ors. ...Applicants
In the matter between:
R. V. Lifestyle Limited formerly known
as Vasparr Shelters Ltd. Mumbai ...Appellant
Versus
Sheth Pragji Laxmidas Charitable Trust and Ors. ...Respondents

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Mr. Gaurav Joshi, Senior Advocate with Mr. Sanmish Gala, Mr. Piyush Raheja, Mr. Rahul Soman and Mr. Jigar Shah i/b. Mr. Sanmish Gala for the Applicants.
Mr. Mayur Khandeparkar a/w Mr. Rupesh Geete, Mr. Rajeev Carvalho, Ms. Priya Dangat i/b Satyaki Law Associates for the Appellant in FA/1909/2024.
Mr. Jayesh Joshi a/w Sanskar Marathe for Respondent Nos. 1, 3 to 6 & 9.
Mr. Dharmesh Joshi a/w Ms. Charoo Shukla, Mr. Abhishek Mishra, Mr. Akshita Vakharia for Respondent No.7.
Mr. Simil Purohit, Senior Advocate a/w Mr. Vishal Pattabiraman, Mr.Satyen Vora, Mr. Sahil Gandhi i/b Markand Gandhi and Co. for Respondent No.8.
Mr. Anand Desai, Treasurer and Mr. Arvind Jain, Chairman (through VC), present.
Mr. Narendra Walavalkar a/w. Ms. Aishwarya Shinde, for proposed Intervener.

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CORAM : M.M. SATHAYE, J.

DATE : 22nd AUGUST, 2025

P.C. :

1. This is an application for permitting the Applicants to be impleaded as party Respondent in the present first appeal.

2. The case of the Applicants is that they are engaged in the business of construction and development of immovable properties and their sister concern Applicant No.3 is Pvt. Ltd. Company. That the Applicants have direct and substantiate interest in the subject matter property. That by Lease dated 02.07.1966, Respondent No.1 Trust gave the subject property to M/s. Shah Brothers as lessee, for a period of 50 years with option of renewal for further 48 years, which lease has expired due to efflux of time. Said M/s. Shah Brothers constructed a building comprising of 96 residential units and 11 garages. Said M/s. Shah Brothers sold various flats and premises to various purchaser, who have formed Respondent No.7 - Co-Op Housing Society Ltd. which is duly registered. By assignment dated 15.03.1972 said M/s. Shah Brothers assigned in favour of Respondent No.7 – Society, the balance lease-hold rights. On 07.09.2012 Respondent No.1 Trust passed a resolution to alienate the subject property by inviting offers in newspapers. The Appellant participated and offered to purchase subject property for Rs.61,00,000/-. The Applicant No.1 also participated and offered to purchase the subject property for Rs.60,00,000/-. After review of offers received, Respondent No.1 Trust accepted the bid of the Appellant subject to terms and conditions of the MOU to be executed subject to retention of the lease hold rights of the society and subject to grant of permission by concerned Charity Commissioner. According to the Applicants, on account of certain disputes and differences, Respondent No.1 Trust decided not to proceed with the sale and the amounts paid by the Appellant were returned. Respondent No.1 Trust proceeded to invite fresh applications and addressed letter dated

12.01.2013 to Applicant No.1 and called upon to submit a revised offer. Applicant No.1 with one more entity (M/s. Sun-Nidhi Management and Consultants) offered to purchase the subject property under letter dated 21.01.2013 for revised offer of Rs.65,00,000/-. The bid of the Applicant was accepted and Respondent No.1 Trust issued letter dated 23.01.2013 confirming the decision to sell. Respondent No.1 Trust also confirmed receipt of earnest money of Rs.32,50,000/-. Accordingly, a MOU dated 28.01.2013 was accepted between Applicant Nos.1 and Respondent No.1 Trust.

3. It is their further case that Respondent No.1 Trust then applied to the concerned Charity Commissioner seeking permission to sell the subject property to Applicant No.1. In the meanwhile, being aggrieved by action of Respondent No.1 Trust of not proceeding with the transaction, the Appellant filed S.C. Suit No. 1197 of 2013 before City Civil Court, Dindoshi *inter alia* seeking declaration and injunction and specific performance. By order dated 10.04.2013, interim relief was refused and the Appellant filed Appeal from Order No.466 of 2013, in this Court. By order dated 29.04.2013, this Court directed Respondent No.1 Trust to maintain status quo in respect of subject property. On 02.09.2014, the Charity Commissioner granted permission to sell subject property to Applicant No.1, however, on application by present Appellant, the Charity Commissioner by order dated 26.11.2014, set aside the order granting permission. On 27.09.2014, Respondent No.1 Trust informed Applicant No.1 that injunction has been granted till disposal of the suit. It is alleged that

discussion about amicable settlement were initiated between Applicant Nos.1 & 2, Trustees of Respondent No.1 Trust and representative of the Appellant and it was broadly agreed that the Appellant will withdraw the suit for mutually agreeable consideration paid by Applicant No.1. MOU was executed on 06.04.2023 between Applicant No.1 and Trustees of Respondent No.1 Trust recording the settlement arrived at. It is alleged that parties proceeded on bona fide belief that the Appellant would comply with terms of settlement.

4. It is alleged that several emails have been exchanged thereafter between the parties for executing formal documents. Under email dated 20.01.2024 final revised draft of MOU to be executed in favour of the Appellant was forwarded. It is alleged that concluded contract in respect of flat No.604 in a project known as "Vivan Homes" was arrived at between the parties and thereafter, Applicant Nos.1 & 2 started following up with Trustees of Respondent No.1 Trust as well as the Appellant for execution of document in terms of draft. It is alleged that the Appellant avoided to execute documents as per draft. It is further alleged that notwithstanding draft agreement, the Appellant proceeded with final hearing of the suit, which was dismissed by present impugned judgment and decree dated 23.07.2024.

5. The present first appeal is filed challenging the said impugned judgment and decree. In the present appeal, under order dated 28.08.2024, interim relief was granted in favour of the Appellant. It is alleged that thereafter, the Appellant has avoided to execute documents as per draft agreement. It is alleged that various

correspondence thereafter have been exchanged between Applicants and Respondent No.1 Trust, under which Respondent Trust has purported to terminate the agreement between the parties. It is alleged that the Appellant and Respondent No.1 to 6 attempted to resile from MOU of January 2013, therefore, the Applicants were constrained to file Suit (L) No.13353 of 2025 in this Court seeking specific performance of January 2013-MOU and 2023-MOU and seeking further directions against the Appellant to come forward and to execute registered documents. It is the case of the Applicants that under January 2023 MOU agreement between Applicant No.1 and Respondent No.1 is concluded.

6. It is stated that Applicant No.1 is and has been always ready and willing to perform its obligation under both the MOUs. Respondent No.1 Trust may settle the dispute with the Appellant without involving the Applicants which will seriously prejudice their rights.

7. Learned senior counsel Mr. Joshi appearing for the Applicants, submitted that the Applicants have right in the subject property under two MOUs as is clear from the dates and events narrated in application their right would be directly affected if any order is passed in the present Appeal. He submitted that from the order passed on 14/08/2025, it is clear that certain consent terms are filed in the Appeal but the Applicants are not aware about the terms agreed between the parties. He however submitted that the consent terms are illegal. He also submitted that the consent terms are pre-mature because permission of Charity Commissioner is not taken.

According to him, the Applicants being third parties will not be able to file a separate suit challenging the consent terms, as it will be barred under Order 23 Rule 3A of Civil Procedure Code (CPC). It is also submitted that there is difference between parties agreeing outside Court and withdrawing appeal and parties adding new developer as party and then agreeing on compromise with an *imprimatur* of the Court. Therefore, it is necessary to permit the Applicants to be impleaded in the Appeal and oppose disposal of Appeal in terms of consent terms. He relied on following judgments in support of his submission that a separate suit will be barred under Order 23 Rule 3A of CPC:

(A) Karuna Shankar Dube Versus Krishna Kant Shukla [1971 SCC OnLine All 152]

(B) Triloki Nath Singh Versus Anirudh Singh (Dead) Thr. Lrs. And Ors. [(2020) 6 SCC 629]

(C) Siddhesh Suresh Chawan Versus Suresh Chawan and Ors. Order Dated 27/07/2022 In Interim Application (ST.) No. 23040 of 2022 in Administration Suit No.55 of 2022 Bombay High Court.

(D) Shri. Mukund Bhavan Trust and Ors. Versus Shrimant Chhatrapati Udayan Raje Pratapsinh Maharaj Bhonsle and Anr. [2024 SCC OnLine SC 3844].

8. On the other hand, learned counsel Mr. Khandeparker appearing for the Appellant submitted that there is no illegality as the

consent terms are nothing but a legal contract between parties by which a *lis* is being compromised. It is submitted that the Applicants have no locus since they have no vested right in the subject property, except a right to seek specific performance, for which substantial suit is already pending in which the Applicants have chosen not to press for any interim relief. He pointed out that on 07/05/2025, the Applicant's interim application was listed before this Court. It is accepted by the applicants that since the interim relief is passed in the present Appeal, there is no need to pass any separate order in respect of urgent ad interim relief and liberty is already given to the Applicants in the event the injunction is vacated. He submitted that therefore, the Applicants are free to move for appropriate urgent relief in their suit. He submitted that so far as the Appellant is concerned, it is his choice whether to compromise the matter in a particular way with a particular party and Applicants can not have any say in the same.

9. Mr. Purohit, learned senior counsel for the Respondent No. 8 (new developer), submitted that the applicants have no locus to oppose disposal of the appeal in terms of consent terms as only right they have, is to seek specific performance and nothing else.

10. Mr. Khandeparkar and Mr. Purohit have relied upon following judgements in support of his case:

(A) Ramkrishna Shridhar Choube and Ors. Versus Court Receiver and Ors.[2011 (2) Mh.L.J.]

(B) Razia Sultana K. Ahmed In the matter between Adarsh

Water Parks And Resorts Pvt. Ltd. Versus Abdul Rashid Abdul Rehman Yusuf and Ors. Order Dated 26/04/2021 in Interim Application No.(ST) 5113 of 2021 in Suit No.396 of 2006 (Bombay High Court)

11. I have considered the submissions and perused record.

12. Though the only prayer in the present application is for impleadment, the Applicants are submitting that the consent terms should not be accepted as the same are illegal affecting the rights of the Applicants in the subject property.

13. Technically, the consent terms are not yet accepted and appeal is not disposed of in terms thereof and therefore there is no consent decree. Order 23 Rule 3A reads as under :

> "3A. Bar to Suit - No suit shall lie to set aside <u>a decree</u> on the ground that the compromise on which the decree is based <u>was not lawful</u>."

[emphasis supplied]

14. Therefore, the question of bar under Order 23 Rule 3A does not arise to seek any prayer in respect of decree on the ground that compromise on which the decree is based was not lawful.

15. It is true that when parties agree before Court and consent decree is passed, challenge to such situation can face hurdle of Order 23, Rule 3A. But that is precisely the reason I am considering the arguments/submissions **without prejudice** to the contention of the

Applicants that they are not aware of the compromise terms **and assuming that** separate suit by Applicants to challenge the consent terms will be barred under Order 23, Rule 3A.

16. It must be noted that a few arguments were advanced on behalf of the Applicants to suggest *prima facie* that they have very good case for specific performance of contract against the Respondent No. 1 – Trust. I am refraining from dealing with or commenting anything upon it to avoid any prejudice being caused to the Applicants in their pending suit, except to the extent required to decide this application.

17. I am dealing with whether the Applicants have any locus as on today to stop the parties to the appeal from entering in consent terms and seeking disposal of appeal in terms thereof. I am also dealing with their argument that consent terms should not be accepted because they are illegal.

18. From the facts narrated by the Applicants themselves on affidavit, it is clear that the Applicants were interested in purchasing the subject property ever since October 2012. The Applicants are relying on the two MOUs dated 28/01/2013 and 06/04/2023. Copies of these MOUs are produced with this application.

19. Perusal of MOU dated 28/01/2013 shows that it is between Applicants and Respondent No. 1-Trust and neither the Appellant nor the new developer (Respondent No. 8) are party to it. Clause 5 of the said MOU provides that in case any authority declines or refuses permission to transfer or sell the rights, the Trust shall refund the

amount and the said MOU will automatically come to an end and parties (Applicants and Respondent No. 1 Trust) shall have no claim of whatsoever nature against each other. Clause 13 of the said MOU clearly provides that no right title or interest is created in favour of the present Applicants until receipt of full consideration of amount. There is nothing on record to indicate that the Applicants have paid full consideration to the Respondent No. 1 Trust. The copies pf deemand drafts/pay orders placed on record are of Rs. 32,50,000/- only and not full Rs.65,00,000/-. Also, the permission granted by the Charity Commissioner pursuant to the said MOU has been cancelled under order dated 26/11/2014 passed by Charity Commissioner. The Charity Commissioner has cancelled the sanction because the order granted by this Court dated 30/06/2014 passed in A.O. No. 466 of 2013 directing the Trust to maintain status quo, was not brought to the notice of the Charity Commissioner. It is observed by Charity Commissioner that if this fact was brought to the notice of the Authority, it would have never granted such permission. Therefore, under both clauses 5 & 13, this MOU of 28/01/2013 has prima facie come to an end.

20. Next, perusal of MOU dated 06/04/2023 shows that it is once again between the present Applicants and the Respondent No. 1 Trust and neither present Appellant nor new developer (Respondent No. 8) are party to it. The draft of alleged agreement between the Respondent No. 1-Trust, the present Appellant and Applicant Nos. 2 and 3 produced along with Application (page 91 onwards) is 'a without prejudice draft' for 'approval' and is a print-out of document

in track changes. Therefore, by no stretch of imagination, it can be said that there is any concluded contract or agreement between the Applicants on one hand and present Appellant and Respondent No. 1 Trust on the other hand or amongst them. Therefore the Applicants have no locus to stop the Appellant and Respondent No. 8 (new developer) from entering into consent terms.

21. The present appeal is pending and there is interim relief granted by this Court under order dated 28/08/2024, which is basically continuation of injunction order dated 6/09/2014 passed in Notice of Motion during pendency of the suit. Parties have followed it and are lawfully before the Court asking to compromise. Question is why and how the Appellant and Respondents in the appeal, can be stopped from agreeing on compromise terms ? The Appellant and Respondent No. 1 Trust, for their own reasons and in their commercial or other wisdom, may wish to proceed in a particular way for compromise. They can not be stopped unless a bar is shown or unless there exists a restraining order of the Court. None is the case here.

22. The Applicants, by choice, have not pressed their interim application in their suit for urgent ad-interim relief which is clear from order dated 07/05/2025 passed by this Court. Therefore, there is no order restraining the parties to this Appeal from reaching a compromise on mutually agreed terms and there is also no bar or restraint against the appeal being disposed of in terms of consent terms. Neither the present Appellant nor the new Developer (Respondent No. 8) are bound by said MOUs. Whether Respondent

No. 1 Trust is bound under the MOUs as on today, is a question that squarely falls for consideration in Applicant's suit for specific performance and not in this application.

23. If the Applicants were interested ever since October 2012, nothing stopped them from filing a suit for specific performance earlier and seek necessary injunction against either the Respondent No. 1-Trust or Respondent No. 7-Society or even applying to the Trial Court in the present suit for impleadment on the same grounds as they are urging today. Considering that the Applicants have not taken steps till 2025 when the suit for specific performance is finally filed, their last minute objection and that too without having any locus, cannot be accepted and cannot detain the Court from proceeding with accepting the consent terms.

24. Needless to mention that Respondent No. 1 Trust is bound to take permission from Charity Commissioner, in accordance with law, before the subject property is dealt with, even as per consent terms.

25. Lastly, 5 members of Respondent No. 7 Society have filed an affidavit dated 18.08.2025 for limited purpose of opposing the consent terms being taken on record on the ground that they are contrary to law and executed without prior permission and approval of all members of the Respondent No. 7-Society. The affidavit itself produces Minutes of SGM (Special General Body Meeting) dated 07/08/2025 resolving in favour of new Developer (Respondent No. 8), but allegations are made about procedure and resolution adopted. There are about 96 members of the Society. If there is any dispute

between 5 members and the Co-Op. Housing Society, the members are free to agitate the same in accordance with law. This appeal can not be converted into dispute u/s. 91 of the Maharashtra Co-Operative Societies Act, 1960 or any other provision thereunder. Suffice it to record that the managing committee of Respondent No. 7 Society is directed to supply copies of consent terms to all its members including the 5 members who have filed said affidavit.

26. In the aforesaid facts and circumstances and for the reasons indicated above, the Interim Application is rejected.

27. Observations made in this order shall not prejudice any of the parties in Suit (L) No. 13353 of 2025 and interim applications therein.

28. All concerned to act on duly authenticated or digitally signed copy of this order.

(M.M. SATHAYE, J.)