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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 10825 OF 2025
IN
FIRST APPEAL NO. 1601 OF 2025

Smt. Janta Hari Kataria and another.

.. Applicants/ Appellants
(Orig. Plaintiffs)

Versus

M/s. Life Style Developments and others.

.. Respondents
(Orig. Defendants)

Mr. Nitin Deshpande (through VC), Advocate for the Applicants.

Mr. Abhijit Kulkarni a/w. Mr. Shreyas R. Zarkar a/w. Mr. Abhishek Roy,
Advocates for the Respondents.

**CORAM: B. P. COLABAWALLA &
AMIT S. JAMSANDEKAR, JJ.**

DATE: SEPTEMBER 12, 2025

P. C.

1. The above interim application is filed by the Applicants/ Appellants to restrain the Respondent No.1 from carrying out any construction activity on Survey No. 136/1A/1 situated at Village Wakad, Taluka Mulshi, District Pune, till the hearing and final disposal of the above First Appeal.

2. The above First Appeal is filed challenging the order passed by the trial court below Exhibit - 30 in Special Civil Suit No. 1639 of 2023. By this order (dated 06.05.2025) the plaint of the Applicants/Appellants was rejected under Order VII Rule 11(d) of the Code of Civil Procedure, 1908 (for short '**CPC**'). It is this order which is challenged in the above First Appeal.

3. The learned Advocate appearing on behalf of Respondent No.1 submitted that reliefs sought in the above interim application seeking to restrain Respondent No.1 from carrying out any construction activity is not maintainable. He submitted that once the plaint is rejected under Order VII Rule 11 of the CPC, and an Appeal is filed therefrom, the Appellate Court has no power to grant any interim relief until the Appeal is finally heard. In support of the aforesaid submissions, the learned Advocate has relied upon the decision of the Hon'ble Supreme Court in the case of ***IEEE Mumbai Section Welfare Association V/s. Global IEEE Institute for Engineers [2025 SCC OnLine SC 1756]***.

4. We have heard the learned counsel for the parties on the preliminary objection taken by the Advocate for Respondent No.1. It is not in dispute that in the present case, the plaint has been rejected under Order VII Rule 11(d) of the CPC. It is from that order the present appeal is filed. As

held by the Hon'ble Supreme Court in the case of *IEEE Mumbai Section Welfare Association* (supra), once the plaint has been rejected by the trial court, until it is revived/restored, an order of temporary injunction cannot operate against the Defendant in the suit, and who is the Respondent in the Appeal filed against the rejection of the plaint. The Hon'ble Supreme Court has opined that it is necessary that there ought to be a subsisting Plaint in order to seek a temporary injunction before the Appellate Court. The logic is that an Appeal from the rejection of the plaint is not is not a continuation of the suit. The relevant portion of the Hon'ble Supreme Court's decision in *IEEE Mumbai Section Welfare Association* (supra) is reproduced herein under:-

3. The impugned order dated 15.04.2025 is passed on I.A.NO.1 of 2025 in COMAP NO.181 of 2025 by the High Court of Karnataka at Bengaluru. The said appeal is filed assailing the order passed by the LXXXIV Additional City Civil and Sessions Judge, Commercial Court, Bengaluru on I.A.NO. 4 of 2024 in Commercial Original Suit No.906 of 2024. The said application (IA NO.4 of 2024) was filed under Order VII Rule 11 of the Code of Civil Procedure, 1908 ("CPC" for short) seeking rejection of the plaint. By the order dated 12.03.2025, the plaint was rejected by the Commercial Court.

4. Being aggrieved, the respondent herein has filed COMAP No.181 of 2025. Along with the said appeal, an application (IA NO.1 of 2025) was filed by the respondent herein seeking temporary injunction against the appellant herein. By the impugned order dated 15.04.2025, the temporary injunction has been granted. The appeal is still at large and pending consideration before the High Court.

5. Having heard learned counsel for the appellant and learned senior counsel for the respondent, we observe that in a case where an appeal is filed by being aggrieved by the rejection of a plaint in exercise of powers under Order VII Rule 11 CPC, the High Court ought not to have granted an order of temporary injunction. We say so for the reason that the plaint itself has been rejected by the Commercial Court and the correctness or otherwise of the said rejection is a matter at large before the High Court. When the plaint itself has been rejected, it cannot be said that the appeal filed against such an order is a continuation of a suit. It may be that in the commercial suit the respondent herein had the benefit of an interim injunction, but once the plaint has been rejected by the trial court i.e. the Commercial Court, in the instant case, until it is revived / restored, an order of temporary injunction cannot operate against the defendant in the suit, who is the respondent in the appeal filed against the rejection of the plaint. In other words, it is necessary that there ought to be a subsisting plaint in order to seek an order of temporary injunction.

6. In the circumstances, we set aside the impugned order dated 15.04.2025 passed on I.A.NO.1 of 2025 in COMAP NO.181 of 2025 by the High Court of Karnataka at Bengaluru. We request the High Court to dispose of COMAP NO.181 of 2025 as expeditiously as possible and preferably on or before 30.06.2025.

5. In the light of aforesaid decision, we find considerable force in the argument canvassed by the learned Advocate for Respondent No.1. In the facts of the present case, we are afraid, we are unable to grant any interim/ad-interim relief to the Applicants/Appellants. The interim application is accordingly dismissed. However, there shall be no order as to costs.

6. We place the First Appeal for admission on 03.10.2025.

7. This order will be digitally signed by the Private Secretary/
Personal Assistant of this Court. All concerned will act on production by fax
or email of a digitally signed copy of this order.

[AMIT S. JAMSANDEKAR , J.] [B. P. COLABAWALLA, J.]