
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO.10826 OF 2025
IN
FIRST APPEAL (L) NO.24943 OF 2025
WITH
FIRST APPEAL (L) NO.24943 OF 2025

M/s. Kenstream Ventures LLP .. Applicant / Appellant

Versus

M/s. Goel Ganga India Pvt. Ltd. and others.. Respondents

Mr. Girish Godbole, Senior Counsel a/w. Mr. Nirmay Dave, Ms. Jyoti Sinha, Mr. Apoorv Karekar and Ms. Neha Thirani i/b. Khaitan & Co., Advocates for the Applicant / Appellant.

Mr. Saket Mone a/w. Mr. Raghav Taneja i/b. Viddhi Partners, Advocates for Respondent Nos.1 to 5.

Mr. Rohan Cama a/w. Mr. Vijay Upadhyay and Ms. Asha Kanzariya, Advocates for Respondent No.6.

Mr. Cyrus Ardeshir, Senior Counsel a/w. Mr. Alessandra Shroff, Counsel a/w. Mr. Lalit Katariya, Ms. Pooja Jhaveri and Ms. Monali Solanki i/b. Katariya & Associates, Advocates for Respondent No.7.

Mr. Aadesh Patil a/w. Mr. V. H. Narvekar, Advocates for Respondent No.8.

**CORAM: B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.**

DATE : AUGUST 22, 2025

P. C.

1. First Appeal is not on Board. With the consent of the parties, taken on Board.

2. The above First Appeal is filed challenging the order passed below Exhibit-25 dated 15th April 2025. Exhibit-25 was an Application filed by Defendant No.6 seeking rejection of the Plaint filed by the Appellant-Plaintiff. In that Application, two basic grounds were raised for rejection of the Plaint. The first ground was that Defendant No.8 was a Co-operative Housing Society registered under the provisions of the Maharashtra Co-operative Societies Act, 1960. The Plaintiff had not issued a mandatory notice as required under Section 164 of the Maharashtra Co-operative Societies Act, 1960 and therefore, the Plaint ought to be rejected on this ground. The second ground was that on a holistic reading of the Plaint and the documents enclosed therewith, it is clearly established that the Suit for specific performance filed by the Appellant-Plaintiff was in respect of a determinable contract (i.e. the Memorandum of Understanding dated 6th February 2023) and therefore, in view of Section 14 of the Specific Relief Act, 1963, the Plaint was liable to be rejected. This was for the reason that specific performance of a determinable contract is barred in law.

3. The Trial Court, on the second ground, namely on the issue whether specific performance of determinable contracts was barred, held against Defendant No.6. In other words, the Trial Court held that

the Plaint cannot be rejected under Order VII, Rule 11 of the Code of Civil Procedure, 1908 on this ground.

4. However, the Trial Court rejected the Plaint on the ground that notice under Section 164 of the Maharashtra Co-operative Societies Act, 1960 was not issued by the Appellant-Plaintiff, and which according to the Trial Court, was mandatory because Defendant No.8 was a Co-operative Housing Society. It is from this order that the above First Appeal is filed.

5. Since the issues raised in the above First Appeal lay in a very narrow compass, we hereby admit the Appeal, and with the consent of parties, take it up for final hearing.

6. After we heard the learned Counsel for the parties for some time, all parties agreed that the following order be passed:-

- a. The impugned order passed below Exhibit-25 dated 15th April 2025, as well as order passed below Exhibit-1, also dated 15th April 2025, are hereby quashed and set aside;
- b. As a consequence, Special Civil Suit No.1686 of 2024 is restored back to the file of the Trial Court;

c. As far as issuance of notice under Section 164 of the Maharashtra Co-operative Societies Act, 1960 is concerned, the said contention is left open to be agitated at the trial of the Suit;

d. As far as the issue regarding whether on a holistic reading of the Complaint, the bar under Section 14 of the Specific Relief Act, 1963 would apply or otherwise, can be agitated by the Defendants in the Injunction Application filed by the Appellant-Plaintiff, which is pending before the Trial Court. If this issue is raised at the time of the hearing of the Injunction Application, the Trial Court shall hear and decide the same on its own merits and in accordance with law, without being influenced by its observations in the impugned order dated 15th April 2025;

e. The Trial Court is requested to hear the Injunction Application filed by the Appellant-Plaintiff as expeditiously as possible;

f. Since all the Defendants were represented by Advocates in the Trial Court before the rejection of the Complaint, and have also appeared before us, there will be no

requirement of issuing any fresh summons by the Trial Court;

g. Special Civil Suit No.1686 of 2024 shall be placed on Board 'for directions' before the Trial Court on 3rd September 2025. On that date, the Trial Court will give all further directions as to how the Injunction Application filed by the Appellant-Plaintiff, as well as the Suit, are to proceed.

7. The above First Appeal is allowed in the aforesaid terms. In the facts and circumstances of the case, there shall be no order as to costs.

8. In view of the disposal of the First Appeal, nothing survives in the above Interim Application and the same is disposed of accordingly.

9. 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.

[FIRDOSH P. POONIWALLA, J.]

[B. P. COLABAWALLA, J.]