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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION (ST.) NO. 17499 OF 2025
IN
FIRST APPEAL NO. 17498 OF 2025

M/s. Nanji Khimji Thakkar and Bros.

.. Appellant
(Orig. Plaintiff)

Versus

M/s. Varsha Builders and others.

.. Respondents
(Orig. Defendants)

Mr. A. R. Gole, Advocate for the Appellant.

Mr. Sagar Joshi, Advocate for the Respondent No.1.

Mr. Mayur Thorat, Advocate for the Respondent No. 7.1 and 7.2.

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

DATE: SEPTEMBER 12, 2025

P. C.

1. The above interim application is filed to restrain the Respondents from creating third party interest in the suit property or commence any construction thereon, pending the hearing and final disposal of the above Appeal.

2. The above Appeal has been filed challenging the order passed by the trial court dated 20.02.2025. By this order, not only the suit was

dismissed as provided under Order VII Rule 2 for failure of the Plaintiff to file their evidence but also the plaint was rejected under Order VII Rule 11(c) of the Code of Civil Procedure, 1908 (for short '**CPC**'). The learned Advocate appearing on behalf of Respondent No.1 submitted that the reliefs sought in the above interim application are not maintainable in view of the fact that the present Appeal is filed against the order *inter alia* rejecting the plaint. In such a scenario, no interim relief can be granted by the Appellate Court. In this regard, the learned Advocate appearing on behalf of Respondent No.1 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]***.

3. We have heard the learned counsel for the parties. We also perused the paper and proceeding in the above interim application as well as the above Appeal. It is not in dispute that the trial court *inter alia* rejected the plaint under Order VII Rule 11 of the CPC. It is also not in dispute that the present Appeal has been filed being aggrieved by such an order. The Hon'ble Supreme Court in the case of ***IEEE Mumbai Section Welfare Association*** (supra) has clearly held that when an Appeal is filed from an order rejecting the plaint, the Appellate Court cannot grant any interim relief in the said Appeal. This is for the reason that the plaint itself has been

rejected and the correctness and otherwise of the said rejection is a matter at large before us. When the plaint itself is rejected, it cannot be said that the Appeal filed against such an order is the continuation of a suit. The Supreme Court has clearly opined that 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 who is the Respondent in the Appeal filed against the rejection of the plaint. The relevant portion of the Hon'ble Supreme Court's decision 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.

4. In view of the law laid down by the Hon'ble Supreme Court, we find that the above interim application seeking the reliefs as more particularly set out above, cannot be granted. The interim application is accordingly dismissed. There shall be no order as to costs.

5. We place the above First Appeal for admission on 03.10.2025. The Advocate for the appellant shall ensure that service of the above First Appeal is done on all the Respondents before the next date.

6. 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.]