



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO.4934 OF 2025
IN
SUIT NO.224 OF 2025

Raju Shah,
Son of Dhirajlal Shah

...Applicant/Plaintiff

V/s.

Jyoti Shah and Anr.

...Defendants

Ms. Spenta Kapadia with Mr. Aditya Thakkar, Mr. Murtuza Federal, Ms. Urali Bodaji, Mr. Veer Ashar and Ms. Palomi Vatsyayan i/b. M/s. Federal and Co. for the Applicant /Plaintiff.

Ms. Janhavee Joshi with Mr. Mohan B. Jadhav for Defendant No.1

CORAM: SANDEEP V. MARNE, J.

DATED: 1 OCTOBER 2025.

Order:

1) The Interim Application is filed by the Plaintiff seeking temporary injunction during pendency of the Suit to restrain Defendants from selling, transferring, alienating, encumbering, dealing with or creating third party rights in respect of the suit property.

2) Plaintiff's case, as pleaded in the Plaint, in brief is stated thus:-

One Byramjee Jeejeebhoy Private Limited was owner of larger land admeasuring 4,57,444 sq.yards (3,82,421 sq.mtrs) bearing Survey

No.161(part) situated at Village-Pahadi, Taluka-Borivali. By three separate registered Indentures of Conveyance dated 12 September 1962, the larger lands were sold to a partnership firm 'M/s. N.M. Mehta & Co. and P.N. Mehta & Co.'(**the Firm**) comprising of 6 partners including one Balkrishna Natverlal Shah (**Balkrishna**). By registered Deed of Partition dated 29 January 1966 and registered Supplemental Agreement dated 5 August 1966 executed between the partners of the Firm, the larger lands were partitioned by the partners amongst themselves. Balkrishna became absolute owner of Plot Nos.BD/2,BD/3, BD/4. BD/4A, BD/5, BD/6, BD/7, C/1,C/1X, C/1Y, C/12 and C/2. This is how Balkrishna became owner of 12 plots admeasuring 60,147 yards. By Articles of Agreement executed between Balkrishna and Plaintiff's father Dhirajlal Shah, Plot No.BD/3 admeasuring 3,857 sq.yards /3,224.75 sq.mtrs. was agreed to be purchased by Plaintiff's father. Similarly, by another Articles of Agreement dated 19 March 1966 Plaintiff's mother -Taragauri Dhirajlal Shah (**Taragauri**) agreed to purchase Plot Nos.BD/4 and BD/5 admeasuring 3,423 sq.yds (2,862.07 sq.mtrs.) and 3,421 sq.yds.(2,860.40 sq.mtrs), respectively from Balkrishna. Said Agreements were followed by three registered Indentures, by which Plot No.BD/3 was purchased by Plaintiff's father -Dhirajlal Shah whereas Plot Nos.BD/4 and BD/5 were purchased by Plaintiff's mother -Taragauri. The registered Indentures were executed on 22 September 1966 and 23 February 1967.

3) On 5 October 1991, Balkrishna passed away leaving behind his wife-Indira, daughter-Jyoti (Defendant No.1), son- Deepak and son's daughter-Parul as his legal heirs. On 1 November 1995 Plaintiff's father -Dhirajlal Shah passed away leaving behind his last Will and Testament dated 27 April 1995, under which he bequeathed all his estate including Plot No.BD/3 equally unto his wife -Taragauri and son (Plaintiff herein).

Pursuant to Taragauri's application, Talathi- Goregaon certified Mutation Entry No.2022 for Plot No.BD/3 and Mutation Entry No. 2023 for Plot Nos.BD/4 and BD/5 on 9 March 2007. Defendant No.1 objected to the above mutation entries on the ground that conveyance document were forged and fabricated. On 30 August 2007, Tehsildar-Borivali rejected Taragauri's application and she filed appeals before the Sub Divisional Officer (**the SDO**), who admitted the Appeals. The order of admission of appeals were challenged by Defendant No.1 before the Deputy Collector, who dismissed the appeals preferred by Defendant No.1 and confirmed the SDO's admission order dated 27 October 2008.

4) On 1 August 2011 Defendant No.1 executed registered Deed of Conveyance in favour of Defendant No.2 purporting to transfer land admeasuring 2900 sq.mtrs. carpet area together with 90 tenanted structures. On 21 September 2011, a Deed of Rectification was registered rectifying the schedule of Deed of Conveyance dated 1 August 2011 in which Plot Nos.BD/2 to 4/1, 4A/1, 5/1, 7/1, CIX/1 were added in the description of the property. Thereafter Defendant No.1 filed revision application before the Additional Commissioner, Konkan Division challenging the order of the Deputy Collector dated 11 March 2011. The Additional Commissioner, Konkan Division, allowed the revision application and directed the SDO to decide the aspect of condonation of delay. On 12 December 2014 Plaintiff's mother passed away leaving behind the Will under which all the right, title and interest in Plot Nos.BD/3, BD/4 and BD/5 were bequeathed in favour of the Plaintiff. On 20 September 2017 probate of Taragauri's Will is granted by this Court. Plaintiff claims that he caused search in the office of sub-registrar and acquired knowledge of Deed of Conveyance dated 1 August 2011 and Deed of Rectification dated 21 September 2011. Accordingly,

Plaintiff has filed present Suit seeking a declaration that he is the owner in respect of the Plot Nos.BD/3, BD/4 and BD/5 (**suit property**). Plaintiff has also sought cancellation of Deed of Conveyance dated 1 August 2011 and Deed of Rectification dated 21 September 2011. Plaintiff has also sought injunction against Defendants from selling, alienating or creating third party rights in respect of suit property.

5) In his Suit, Plaintiff has filed Interim Application seeking following prayers:

9(a) That pending the hearing and final disposal of the present Suit, this Hon'ble Court be pleased to:

(i) Pass an order and injunction against Defendant No.1 restraining her, and/or her agent(s), representative(s), servant (s), and any other person(s) claiming through or under her from selling, transferring, alienating, encumbering, dealing with or creating third party rights of any nature whatsoever with respect to the Suit Property described in Exhibit "A" or any part or portion thereof;

AND

(ii) Pass an order and injunction against Defendant No.2 restraining it, and/or its agent(s), representative(s), servant(s), employees and any other person(s) claiming through or under it from selling, transferring, alienating, encumbering, dealing with or creating third party rights of any nature whatsoever with respect of Plot No.BD/3 forming part of the Suit Property described in Exhibit "A" or any part or portion thereof.

6) Defendant No.1 has appeared in the Suit and filed affidavit-in-reply opposing the Interim Application. Plaintiff has filed affidavit-in-rejoinder. Despite being served with private notices, Defendant No.2 has failed to appear or to file affidavit-in-reply opposing the Interim Application. The reason for non-appearance by Defendant No. 2 can be discerned from the Reply filed by Defendant No. 1 in which he contends that he continues to own the suit properties despite execution of Deed of

Conveyance dated 1 August 2011 on account of Deed of Rectification dated 21 September 2011. This appears to be the reason why Defendant No. 2 has possibly not appeared for opposing the Interim Application.

7) Ms. Spenta Kapadia, the learned counsel appearing for the Plaintiff would submit that the Plaintiff is the lawful owner of the suit property on the strength of registered Indentures dated 22 September 1966 and 23 February 1967 by which the suit property was purchased by his parents. That after death of his parents, Plaintiff is exclusive owner in respect of the suit property and Defendant No.1 does not have a semblance of documents on record. That father of Defendant No.1 has sold the suit property to the parents of the Plaintiff and has accordingly divested of ownership in respect thereof. That therefore Defendant No.1 did not have any authority to execute Deed of Conveyance dated 1 August 2011 or Deed of Rectification dated 21 September 2011. That Defendant No.1 has not challenged the registered Indentures dated 22 September 1966 and 23 February 1967. That on the basis of prior registered instruments, Plaintiff has better title in respect of the suit property over Defendant No.1. She would rely upon judgment of the Apex Court in *Rattan Singh and Others V/s. Nirmal Gill and Others*¹ in support of her contention that there is presumption that the person in whose favour registered document is executed is the owner of the property and the onus is on the person, who seeks to rebut such presumption. That in the present case Defendant No.1 is not in a position to rebut the presumption of ownership by Plaintiff in respect of the suit property. That title in respect of the suit property has not passed on to Defendant No.2 since Defendant No.1 herself did not have any title in the suit property. Ms. Kapadia would therefore submit that Plaintiff is

¹ (2021) 15 SCC 300

entitled to temporary injunction to restrain Defendants from selling, alienating, creating third party rights or parting with possession of suit property during pendency of the Suit.

8) *Per contra*, Ms. Janhavee Joshi, the learned counsel appearing for Defendant No.1 would oppose the Interim Application submitting that the Suit filed by the Plaintiff is grossly barred by limitation. That the Plaintiff has no semblance of relation with the suit property. That the alleged Indentures dated 22 September 1966 and 23 February 1967 have surfaced for the first time as Plaintiff has never relied on them nor claimed any ownership rights in respect of the suit property for over 40 years. That Defendant No.1 has always possessed the suit property and Plaintiff has never even visited the same. That the Suit is filed merely as a facade to cover the delay on the part of the Plaintiff in not claiming any right based on the Indentures dated 22 September 1966 and 23 February 1967. That otherwise said Indentures are outcome of fraud and forgery. That Defendant No.1 is not required to challenge the said Indentures as the same were never relied upon by the Plaintiff. That there is gross delay even in challenging the Deed of Conveyance dated 1 August 2011 and Deed of Rectification dated 21 September 2011.

9) Ms. Joshi would further submit that the Suit is strategically filed by the Plaintiff after noticing initiation of acquisition proceedings by the Planning Authority in respect of Plot No.BD/3. That otherwise Plaintiff has never visited the suit property. She would submit that since Defendant No.1 has continuous and settled possession for the last 40 years, she is also entitled to claim title on the basis of adverse possession. That Plaintiff does not have any personal knowledge about execution of Indentures dated 22 September 1966 and 23 February 1967 as he was not

even born when the said documents were executed. That the suit property was owned by father of Defendant No.1 and is inherited by Defendant No.1. Having failed to assert any right in respect of the suit property over 40 years, it is too late in a day for the Plaintiff to seek any injunctive relief against Defendant No.1. She would rely on provisions of Section 31 of the Specific Relief Act, 1963 in support of her contention that relief of cancellation of instruments is equitable in nature and Plaintiff's conduct needs to be considered while deciding his entitlement to relief of cancellation of Deed of Conveyance. That comparative assessment of conduct of Plaintiff and Defendant No.1 would show that Plaintiff has neither asserted any right nor has adopted any remedies in respect of his false claim whereas Defendant No.1 has always been vigilant in addressing public notices in the year 1998, taking steps in respect of the acquisition proceedings, etc. Ms. Joshi would accordingly pray for rejection of the Interim Application.

10) Rival contentions of the parties now fall for my consideration.

11) Plaintiff claims title in respect of the suit property bearing Plot Nos.BD/3, BD/4 and BD/5 collectively admeasuring 8947.22 sq.mtrs on the basis of following three registered Indentures:

Date	Registration No.	Details
22 September 1966	3513/66	Sale by Balkrishna Natvarlal Shah in favour of Plaintiff's father-Dhirajlal Shah of Plot No.BD/3 admeasuring 3,224.75 sq.mtrs.
22 September 1966	3512/66	Balkrishna Natvarlal Shah sold Plot No.BD/5 admeasuring 2,860.40 sq.mtrs. in favour of Taragauri Dhirajlal Shah

23 February 1967	834/67	Balkrishna Natvarlal Shah sold Plot No.BD/4 admeasuring 2,862.07 mtrs. In favour of Taragauri Dhirajlal Shah.
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This is how Plaintiff's father Dhirajlal Shah is claimed to be the owner of Plot No.BD/3 whereas his mother Taragauri is claimed to be owner of Plot Nos.BD/3 and BD/5. After death of his father on 1 November 1995, it is claimed that Plaintiff and mother -Taragauri became equal owners of Plot No.BD/3 on the strength of the Will executed by Dhirajlal Shah. Plaintiff's mother Taragauri passed away on 12 December 2014 and Plaintiff claims to have become exclusive owner of all three Plot Nos.BD/3, BD/4 and BD/5 on the strength of the Will executed by his mother, which is probated. This is how Plaintiff claims exclusive ownership in respect of all the three plots bearing Nos.BD/3, BD/4 and BD/5.

12) Defendant No.1 is the daughter of Balkrishna, who was the original owner in respect of Plot Nos.BD/3, BD/4 and BD/5 and has allegedly executed Indentures dated 22 September 1966 and 23 February 1967 in favour of Plaintiff's parents. Defendant No.1 questions the genuineness of Indentures dated 22 September 1966 and 23 February 1967 and claims that the same are fabricated. However, as of now Defendant No.1 has not executed any Suit or proceedings seeking cancellation of Indentures dated 22 September 1966 and 23 February 1967. It must be borne in mind that said Indentures are registered documents of conveyance and since the same are registered, there would be a presumption of ownership by person in whose name the same are executed. In this regard reliance by Ms. Kapadia on judgment in ***Rattan Singh and Others*** (supra) is apposite, in which it is held in paragraph 33 as under:-

33. To appreciate the findings arrived at by the courts below, we must first see on whom the onus of proof lies. The record reveals that the disputed documents are registered. We are, therefore, guided by the settled legal principle that a document is presumed to be genuine if the same is registered, as held by this Court in ***Prem Singh v. Birbal***, (2006) 5 SCC 353. The relevant portion of the said decision reads as below:

“27. There is a presumption that a registered document is validly executed. A registered document, therefore, prima facie would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption. In the instant case, Respondent 1 has not been able to rebut the said presumption.”

In view thereof, in the present cases, the initial onus was on the plaintiff, who had challenged the stated registered document.

(emphasis added)

Thus there is presumption that the registered Indentures dated 22 September 1966 and 23 February 1967 are valid in law. Any person seeking to question validity of those documents needs to challenge the same filing a suit for seeking their cancellation. Until the Indentures are declared to be void, the same would create a presumption of title in person in whose favour the same are executed. Therefore, there is presumption that Dhirajlal and Taragauri acquired a valid title in the suit property by virtue of the Indentures dated 22 September 1966 and 23 February 1967. After their death, Plaintiff has prima facie acquired title in respect of the suit property.

13) Since there is presumption of ownership in Plaintiff's favour on account of registered Indentures dated 22 September 1966 and 23 February 1967 executed in favour of his parents, the burden would shift on Defendant No.1, who seeks to question Plaintiff's title. Defendant No.1 will have to file suit and seek declaration for cancellation of the Indentures to rebut the presumption of ownership of Plaintiff. Defendant No. 1 cannot, on her own, presume that the Indentures are void. She

needs to secure declaration to that effect by instituting a suit. This is exactly what a registered instrument of transfer does, it creates a presumption of ownership in favour of person in whose name the same is executed and puts burden on person who denies it to prove that the instrument is invalid. Till Defendant No. 1 proves that the registered Indentures are void, Plaintiff would be presumed to be the owner of suit property in law.

14) The contention of Ms. Joshi that failure on the part of the Plaintiff to assert ownership rights based on registered Indentures would divest him of title in the suit property does not commend to this Court. Mere alleged failure on the part of the Plaintiff to visit the suit property would not mean that the title was restored in the name of father of Defendant No. 1. The plea of adverse possession by Defendant No. 1 would also meet outright rejection as Defendant No. 1 claims that the registered Indentures are outcome of fraud and thereby questions title of Plaintiff and his parents. Plea of adverse possession cannot be raised by questioning the title of the owner. Plea of adverse possession needs to be notorious by publishing that the possessor is possessing the property owned by the owner. When a plea of adverse possession is projected, it is inherent in the nature of it that someone else is the owner of the property. In a plea of adverse possession, there is no room for a confused possessor, who also believes that she/he is also the owner of the possessed property. It is settled position in law that alternate plea of title and adverse possession cannot be raised (SEE: *Narasamma Vs. A. Krishnappa*²). Thus, plea of Defendant No.1 of adverse possession *prima facie* deserves rejection.

² (2020) 15 SCC 218

15) Thus, as of now, there is *prima facie* case of ownership in Plaintiff's favour in view of the registered Indentures dated 22 September 1966 and 23 February 1967.

16) Defendant No.1 has purportedly sold some portion of the suit property in favour of Defendant No.2 vide Deed of Conveyance dated 1 August 2011 registered at Sr. No.6859/2011. What is shown to have been sold vide the said Deed of Conveyance dated 1 August 2011 is slightly unclear as the said Deed of Conveyance does not specify plot numbers. It would be apposite to reproduce the Schedule to the said Deed of Conveyance dated 1 August 2011, which is description of property shown to have been conveyed and which reads thus:-

THE SCHEDULE ABOVE REFERRED TO

“ALL THAT” piece or parcel of land and ground along with tenant structures Total tenant 90 occupied area 2900 sq. mtrs carpet area standing thereon bearing Revenue Survey No.161 (part), C.T.S. No.1A(part), major portion admeasuring 2900 sq.mtrs area of Village Pahadi Goregaon (West), Taluka Borivali, Bombay Suburban District and failing within the Registration District and Sub-District of Bombay City and Bombay Suburban. This piece of land specifically does not form part of the land mutated under entry no.1987.

17) There is a Rectification Deed executed for rectification of the schedule to the Deed of Conveyance. The Schedule to the Deed of Rectification dated 21 September 2011 reads thus:

THE SCHEDULE ABOVE REFERRED TO:

ALL THAT piece or parcel of land and ground along with tenant structures occupied area 2900 sq.mtrs. carpet area standing thereon bearing Revenue Survey No.161(part), Plot No.BD 2 to 4/1, 4A/1, 5/1, 7/1,C1X/1, C.T.S. No.1A(part) major portion admeasuring 2900 sq.mtrs. area of Village Pahadi Goregaon (west), Taluka Borivali, Bombay Suburban District and failing within the Registration

District and Sub-District of Bombay City and Bombay Suburban. This piece of land specifically does not form part of the land mutated under entry no.1987.

On or towards the North Side : 18.30 mt. Wide D.P.Road.

On or towards the South Side : Azad Nagar (Mud Road).

On or towards the East Side : 36.60 mt. Wide New Link Road.

On or towards the West Side : Plot B2, CTS. No.1A/158.

18) Defendant No.1 however does not believe that the Deed of Conveyance dated 1 August 2011 has the effect of selling suit property bearing Plot Nos.BD/2 to BD/4 and claims that she still is the owner thereof. This is clear from averments in Paragraph 9 of the affidavit-in-reply, which reads thus:-

9. I say that, vide Deed of Conveyance dated 1.8.2011, later rectified by Deed of Rectification dated 21.9.2011, I sold certain properties belonging to me to Defendant No.2. However, the said Deed of Rectification erroneously holds a mention of part of the suit property viz. Plot No.BD/2 to BD/4 which still remains with me and in view thereof, these Defendants are taking suitable measures to have the error rectified and negotiations are ongoing between Defendant No.1 and Defendant No.2 to ensure correction of the said document. Be that as it may, there is absolutely no dispute in respect of Deed of Conveyance dated 1.8.2011 which is a registered agreement executed in respect of part of the suit property.

19) It is not necessary to delve deeper into the exact effect of the Deed of Rectification dated 21 September 2011 in view of the assertive stand taken by Defendant No.1 that she continues to remain owner in respect of the suit property bearing Plot Nos.BD/3, BD/4 and BD/5. The effect of the pleadings of Defendant No.1 in paragraph 9 of the affidavit-in-reply is that the Deed of Conveyance dated 1 August 2011 is effectively meaningless. So far as Plaintiff's claim of title in respect of the

suit property is concerned, going by the averments in paragraph 9 it is not even necessary for Plaintiff to challenge the Deed of Conveyance dated 1 August 2011 or Deed of Rectification dated 21 September 2011. This would also quell *prima facie* the objection of limitation in raising challenge to the Deed of Conveyance dated 1 August 2011 and Deed of Rectification dated 21 September 2011.

20) Thus, the pleaded case of Defendant No.1 in paragraph 9 of the affidavit-in-reply is that she continues to remain the owner in respect of the entire suit property. Except her relationship with Mr. Balkrishna Natvarlal Shah as daughter, there is no document of title in favour of Defendant No.1. On the contrary, registered Indentures dated 22 September 1966 and 23 February 1967 would *prima facie* establish divestment of ownership by Balkrishna in respect of the suit property. After execution of the said registered Indentures, Balkrishna did not retain title in respect of the suit property. In order to seek a claim of ownership to the suit property, Defendant No.1 will have to challenge the registered Indentures dated 22 September 1966 and 23 February 1967, which she believes to be fabricated. As of now, Defendant No.1 has not instituted any proceedings seeking cancellation or avoidance of registered Indentures dated 22 September 1966 and 23 February 1967. In that view of the matter, presumption of ownership in respect of the suit property by Plaintiff would continue to exist unless such presumption is rebutted by Defendant No.1. As of now, there is no material on record to presume that the said registered Indentures dated 22 September 1966 and 23 February 1967 are fabricated or void. Defendant No.1 will have to institute appropriate proceedings seeking cancellation of the said three registered Indentures dated 22 September 1966 and 23 February 1967.

21) Considering the above position, in my view *prima facie* case of ownership of suit property is made out by the Plaintiff. Defendant No.1 claims possession of the suit property. Even if the claim of possession of Defendant No.1 is momentarily accepted, Plaintiff is not seeking any interim injunction *qua* possession. The limited interim injunction sought by the Plaintiff is to restrain Defendants from selling, alienating, encumbering or creating third party rights in respect of the suit property. The said injunctive relief can be granted in favour of the Plaintiff even if it is presumed that Defendant No.1 is in possession of the suit property. It is another matter that the suit property is apparently affected by slums and claim of Defendant No.1 about exclusive possession of the suit property would itself be questionable. However, it is not necessary to delve deeper into this aspect since the limited temporary injunction sought by the Plaintiff is to restrain Defendants from creating third party rights in respect of the suit property.

22) Ms. Joshi's contention that Plaintiff has brought in belated Suit to assert his rights in the suit property is not of much assistance for deciding the present application. Once *prima facie* case of ownership of suit property is made out by the Plaintiff, temporary injunction to restrain Defendants from creating third party rights can be granted irrespective of the time at which the Suit is filed. Also of relevance is the fact that Plaintiff's mother commenced proceedings for mutation of her name in revenue records on 9 March 2007, it cannot be contended that the Plaintiff has never asserted his ownership right *qua* the suit property.

23) Ms. Joshi's contention that the Suit is strategically filed to prevent Defendant No.1 from securing compensation in respect of Plot No.BD/3, which is slated for acquisition, again does not cut any ice. The affidavit-in-reply filed by Defendant No.1 indicates that the Acquisition

Notification was issued on 8 September 2008 and Award has been passed on 30 November 2018. The Plot No.BD/3 has already been acquired by the Municipal Corporation of Greater Mumbai (**MCGM**). It appears that some earnest money has already been paid to Defendant No.1 by MCGM on 21 December 2018 in token of commencement of acquisition proceedings. Thus, acquisition proceedings are going on for the last 17 long years and it would be incorrect to contend that the Suit is strategically timed, for preventing Defendant No.1 from securing compensation in respect of the acquired land.

24) In my view, Plaintiff has made out a *prima facie* case for grant of temporary injunction. Irreparable loss would be caused to the Plaintiff if Defendant No.1 and/ or Defendant No.2 create any third party rights in respect of the suit property. Creation of such rights would create complications in the Suit. On the other hand, maintenance of *status-quo qua* title of the suit property needs to be ensured during pendency of the Suit. Balance of convenience is heavily tilted in favour of the Plaintiff and against Defendants. In my view therefore, Plaintiff is entitled to grant of temporary injunction during pendency of the Suit.

25) Consequently, the Interim Application is made absolute in terms of prayer clauses 9(a)(i) and (ii), which read thus:-

9(a) That pending the hearing and final disposal of the present Suit, this Hon'ble Court be pleased to:

(i) Pass an order and injunction against Defendant No.1 restraining her, and/or her agent(s), representative(s), servant (s), and any other person(s) claiming through or under her from selling, transferring, alienating, encumbering, dealing with or creating third party rights of any nature whatsoever with respect to the Suit Property described in Exhibit "A" or any part or portion thereof;

AND

- (ii) Pass an order and injunction against Defendant No.2 restraining it, and/or its agent(s), representative(s), servant(s), employees and any other person(s) claiming through or under it from selling, transferring, alienating, encumbering, dealing with or creating third party rights of any nature whatsoever with respect of Plot No.BD/3 forming part of the Suit Property described in Exhibit "A" or any part or portion thereof.

26) Interim Application is accordingly **allowed and disposed of.**

[SANDEEP V. MARNE, J.]