

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIRCUIT BENCH AT KOLHAPUR

APPEAL FROM ORDER NO. 465 OF 2025  
WITH  
INTERIM APPLICATION NO. 10971 OF 2025  
IN  
APPEAL FROM ORDER NO. 465 OF 2025

Krushna Tukaram Khutale And Others

VERSUS

Kishor Totaram Lulla And Others

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Mr. Chetan Patil a/w Mr. Prathamesh P. Magadum i/by Mr. Mandar G. Bagkar, Advocate for Appellants.

Mr. Surel Shah, Senior Counsel a/w Mr. Sandeep S. Koregave, Advocate for Respondent Nos.1, 8 & 9.

Mr. Ashok Misal, Advocate for Respondent Nos.2 to 7.

Mr. Padmanabh Pise i/by P. Padmanabh and Associates, Advocate for Respondent Nos.10 to 12.

Ms. Supriya Koregave, Advocate for Respondent Nos.13 to 36.

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CORAM : SACHIN S. DESHMUKH, J.

DATE : 10<sup>th</sup> APRIL, 2026.

P. C. :

1. The appellant/original plaintiff has approached this Court raising an exception to the order passed by the learned 12<sup>th</sup> Joint Civil Judge, Senior Division, Kolhapur, below Exhibit-5 in Special Civil Suit No. 90 of 2025.

2. The appellant instituted the suit seeking a decree of specific performance of the agreement, as well as partition and permanent

injunction on the basis of the agreement dated 25.10.2023 executed by the defendants. Pursuant to the said agreement, part payment towards the consideration has been paid. The agreement contained several stipulations which were to be complied with by the contracting parties.

3. Coupled with the same, the appellant filed an application under Order XXXIX Rule 1 seeking an injunction against the defendants. Upon registration of the suit, the respondents presented their written statement and countered the claim of the appellants. It is further submitted that the conduct of the appellants, in not complying with the stipulations vis-a-vis executing a further agreement in favour of a third party, disentitles the appellant from claiming any injunction.

4. Considering the conduct of the litigating side, the trial Court declined to exercise discretion in favour of the present appellant. The said order is the subject matter of challenge. Learned counsel for the appellant submits that the trial Court has not considered the triple test, i.e., prima facie case, balance of convenience, and irreparable loss, which would be caused to the present appellant, while ignoring the settled principles of law.

5. The trial Court has misdirected itself while considering the alleged execution of the agreement, which is seriously disputed by the appellants, and in any case, non-disclosure of the same cannot be regarded as a material aspect. As such, the trial Court has committed a serious error in not exercising discretion in favour of the present appellant.

6. In that process, the learned counsel for the appellant has placed heavy reliance on the judgments of the Hon'ble Apex Court in *Ramakant Ambalal Choksi Versus Harish Ambalal Choksi and Ors.*, (2024) 11 SCC 351, as well as in *Government of NCT of Delhi and Another Versus BSK Realtors LLP and Anr.*, (2024) 7 SCC 370, to contend that the facts suppressed must be material in the sense that they would have an effect on the merits of the case, and this principle is not intended to be used as a weapon of technicality by a contesting party, but rather serves as a safeguard to the judicial process. As such, it is prayed that the appeal be allowed.

7. Per contra, Mr. Shah, learned Counsel, has supported the order rendered by the trial Court, submitting that the failure on the part of the appellant to comply with the stipulations in the agreement, as laid down, would disentitle the appellants.

8. It is further submitted that predominantly the conduct of the appellant has been taken into account by the trial Court in its proper perspective, inasmuch as the attempt of the appellant to execute a subsequent agreement would lead to multiplicity of proceedings, and non-disclosure of the same disentitles the appellant from claiming relief. In the process, the learned counsel has placed reliance on the judgments of the Hon'ble Apex Court in *Mandali Ranganna and Ors. Versus T. Ramchandra and others (2008) 11 SCC and Ambalal Sarabhai Enterprise Limited Versus KS Infraspace LLP and Anr. (2020) 5 SCC 410*.

9. Having heard the submissions from the litigating sides and upon perusal of the material on record, the only issue that falls for consideration before this Court is the entitlement of the appellant to claim interlocutory relief from the trial Court pendente lite the suit.

10. Admittedly, the parties to the litigation have entered into an agreement containing various stipulations, it was incumbent upon the present appellant to comply with. In any case, while presenting the suit, it was incumbent upon the appellant to make a candid disclosure of each and every material fact and not to withhold the same. However, the appellant herein has consciously withheld the

fact of executing an agreement in respect of the suit property in favour of a third party so as to precipitate the cause of action. Although an attempt is made by the learned counsel for the appellant to dispute the said agreement, at this stage the same does not warrant consideration.

11. The trial Court, while considering the application under Order XXXIX Rules 1 and 2, and applying the principles laid down by the Hon'ble Supreme Court in *Dalpat Kumar and Anr. vs. Prahlad Singh and Ors.*, AIR 1993 SC 276, declined to exercise discretion in favour of the present appellant. Mere satisfaction that there is a prima facie case is by itself not sufficient to grant an injunction. The Court must further be satisfied that non-interference would result in irreparable injury to the party seeking relief and that there is no other remedy available except the grant of injunction, and that the party needs protection from the consequences of the apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury.

12. The Court, while granting or refusing an injunction, must exercise sound judicial discretion to ascertain the extent of substantial mischief or injury likely to be caused to the parties.

13. While exercising its discretion, the Court must also ensure that the litigating party approaches the Court with clean hands, and the conduct of such party is required to be taken into account. The Hon'ble Apex Court in ***Mandali Ranganna*** (*supra*) has held that while considering an application for grant of injunction, the Court will not only take into consideration the basic elements, viz., the existence of the triple test, i.e., prima facie case, balance of convenience, and irreparable injury, but must also take into account the conduct of the parties.

14. Grant of injunction is an equitable relief, and a litigant who has indulged in an act which is impermissible and reprehensible such as, in the present case, an attempt on the part of the appellant to create third-party interests by executing an agreement demonstrates conduct disentitling the appellant from seeking discretionary equitable relief.

15. At this juncture, it would be appropriate to refer to the authoritative pronouncement of the Hon'ble Apex Court in *K.D. Sharma Versus Steel Authority of India Limited and Others*, (2008) 12 SCC 481, wherein the Apex Court has emphasized the obligation of a litigant to make full and candid disclosure of all material facts.

The primary object thereof is to ensure that a litigant who does not approach the Court with clean hands and indulges in suppression or concealment of material facts has no place in the equitable and prerogative jurisdiction.

16. If a litigant fails to disclose material facts fairly and without distortion, the Court is duty-bound to protect itself and prevent abuse of its process by refusing to entertain such proceedings. It has further been observed that if the Court entertains a petition despite suppression of material facts, it would fail in its duty; and such proceedings may be dismissed at the threshold without entering into the merits, and in appropriate cases, may also invite action for abuse of the process of the Court.

17. The Hon'ble Apex Court in ***Ramakant Ambalal Choksi*** (*supra*) has held that, in a matter concerning the grant of injunction, apart from the existence of a prima facie case, balance of convenience, and irreparable injury, the conduct of the party seeking equitable relief is also a relevant consideration. Thus, the conduct as observed and noted by the trial Court while refusing to exercise discretion does not warrant reconsideration by this Court.

18. At this juncture, it would be appropriate to make a reference to the principles laid down in *Wander Limited and Another vs. Antox India P. Ltd.*, 1990 (Supp) SCC 727, wherein the Hon'ble Apex Court has held that an appeal against an order of injunction is essentially an appeal against the exercise of discretion, and the appellate Court will not interfere with the exercise of discretion of the Court of first instance and substitute its own discretion except where such discretion has been shown to have been exercised arbitrarily, capriciously, or perversely, or where the Court has ignored the settled principles of law governing the grant or refusal of interlocutory injunction.

19. An appeal against the exercise of discretion is regarded as an appeal on principle. The appellate Court will not reassess the material and seek to arrive at a conclusion different from the one reached by the Court below if the conclusion reached by that Court was reasonably possible on the material available. The appellate Court would not be justified in interfering with the exercise of discretion under appeal solely on the ground that, had it considered the matter at the trial stage, it might have come to a contrary conclusion. In the absence of any perversity, the order under



challenge does not warrant any interference.

20. So far as the reliance placed by the learned counsel on the judgment of the Hon'ble Apex Court in ***Ramakant Ambalal Choksi*** (*supra*) is concerned, the contention that suppression must be material in the sense that it would affect the merits of the case cannot be accepted in the present case.

21. Further, the act of executing the agreement in the absence of any valid title sufficiently demonstrates the tenacious approach of the appellant, and the same is predominant and is required to be treated as a material circumstance having indulge in precipitating cause of action, executing an agreement in favour of third party, in relation to which criminal prosecution is already launched against the present appellant, disentitles appellant from discretionary relief.

22. Thus, reliance on the aforesaid judgment, as well as on the decision in ***Government of NCT of Delhi and Another*** (*supra*), does not lend any support to the submissions put forth by the learned counsel for the appellant.

23. In the result the appeal sans merit. Resultantly, the same stands dismissed.

24. In view of the disposal of the appeal, the Interim Application does not survive and the same stands disposed of.

25. At this juncture, the learned counsel for the appellant submits that since this Court has granted interim relief, the same may be continued for a period of four weeks. The said request warrants consideration, as the interim relief is in vogue.

26. Accordingly, the same shall continue for a period of six weeks only.

**[SACHIN S. DESHMUKH, J.]**