

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO.419 OF 2025
WITH
INTERIM APPLICATION (ST) NO.4577 OF 2026
AND
INTERIM APPLICATION NO.3034 OF 2025
IN
FIRST APPEAL NO.419 OF 2025**

Digitally
signed by
BASAVRAJ
GURAPPA
PATIL
Date:
2026.04.17
19:33:34
+0530

Marvel Edge Realtors Pvt. Ltd. & Anr. .. Appellants
Vs.
Mr. Shankar Santdas Kishnani & Ors. .. Respondents
...
Mr. Surel Shah, Senior Advocate with Mr. Amit Gharte,
Advocates for the Appellants/Applicants
Mr. Nikhil Patil i/b. Mr. Prabhakar M. Jadhav, Advocates
for the Respondents

**CORAM : SHREE CHANDRASHEKHAR, CJ &
SUMAN SHYAM, J.**

DATE : 24th MARCH 2026

Per, Shree Chandrashekhar, CJ :-

The appellant no.1-Marvel Edge Realtors Private Limited through its Director and the appellant no.2-Vishwajeet Subhash Jhavar have filed the present First Appeal against the decision rendered on 9th September 2024 in Special Summary Suit No.124 of 2020.

2. The said Suit was instituted by the respondent no.1- Shankar Santdas Kishnani and the respondent no.2- Shailesh Shankar Kishnani under Order XXXVII of the Code of Civil Procedure, 1908 (CPC) for recovery of Rs.3,54,95,313/-.

3. In the Suit, the appellants filed an application under Order XXXVII Rule 3(6)(a) of the CPC for leave to defend. The said

application came to be dismissed by an order dated 8th May 2024 which was challenged by the appellants in Writ Petition No.16135 of 2024. During the pendency of the said writ petition, the learned Civil Judge, Senior Division, Pune rendered his decision in Special Summary Suit No.124 of 2020 dated 9th September 2024. This First Appeal was filed on 21st December 2024 and thereafter Writ Petition No.16135 of 2024 was withdrawn by the appellants with liberty to raise in this First Appeal the grounds of rejection of application for leave to defend.

4. The appellants state that the appellant no.1-Company through the appellant no.2 and the respondents had entered into an agreement to lease dated 27th February 2013 for a period of 999 years of Shop / Office Premises No. 0020, Ground Floor, H-Wing with two stacked car-parking spaces ("said Unit") in the commercial complex known as Marvel Edge ("said project") situated at Lohegaon, Pune for a total premium amount of Rs. 4,35,59,728.50/-. The said Agreement was registered before the Sub-Registrar Office, Haveli No. 8, Pune bearing Registration No. 2052 of 2013. The said Project was being executed by the appellant no.1-Company and possession thereof was to be handed over to the respondents on or before 30th June 2014. The respondents state that they have paid a sum of Rs.5,00,00,012/- to the appellant no.1-Company. However, there was a delay in handing over the possession of the said Unit. Accordingly, vide a letter dated 13th August 2018 the appellant no.1-Company informed the same to the respondents. To compensate the respondents for the delay caused in handing over the possession of the said Unit, the appellant no.1-Company handed over a post-dated cheque dated 31st March 2019 of Rs.2,43,43,750/- bearing number 000272 drawn on HDFC Bank, Koregaon Branch, Pune.

5. This is the case of the appellants that the said cheque was handed over as security for compensation due to the delay in handing over the possession. It is submitted that in the said letter, it was specifically stated that in case the said Unit is completed on or before 31st March 2019, the respondents shall return the said cheque and a fresh cheque shall be issued calculating the interest @ 10.50% per annum on the consideration amount from 1st July 2014 till the date of actual possession. Further, the said letter also mentioned that in case the possession is delayed beyond 31st March 2019, the interest @ 12% per annum will apply from 1st April 2019 till the date of actual possession. The appellants state that the respondents proceeded to present the said cheque on 2nd May 2019 with RBL Bank for encashment without intimating the appellants. The said cheque was dishonoured on 4th May 2019 with remark "Account Blocked". Thereafter, the respondents sent a Legal Notice dated 30th May 2019 to the appellant no.1-Company demanding a demand draft of the due amount with agreed interest for delay. The appellants state that there was a change in the promoter of the said Project and the same was informed by the appellant no.1-Company to the respondents vide e-mail dated 16th September 2020.

6. This is the case of the appellants that despite the receipt of the said e-mail by the respondents, they have filed Special Summary Suit No. 124 of 2020 before the Civil Judge, Senior Division, Pune seeking recovery of Rs. 3,54,95,313/- from the appellants.

7. The Civil Judge, Senior Division framed the following issues:

- "1. Is the plaintiff entitled to recover the amount of Rs. 3,54,95,313/-with interest from the defendants as claimed in this suit?"*
- 2. What is the final order and decree?"*

8. The appellants contend that the responsibility for paying the amount of the disputed cheque does not lie with them but with the

new promoter who replaced them, as the disputed cheque was given as security. The appellants' stand that the responsibility for paying the amount of the said cheque now rests with the new promoter has been dealt with by the trial Court as under:-

"13. The defendant's further defense is that the responsibility for paying the amount of the cheque in question now rests with the new promoter, Classic Promoters and Builders. However, the defendant does not claim that the plaintiff has accepted Classic Promoters and Builders as the new debtor. Therefore, according to the legal principle in the State Bank of India judgment cited by the plaintiffs lawyers, since the plaintiff has not accepted the new debtor, the responsibility for paying the amount of the cheque in question remains with the present defendant."

9. Further, it is also contended by them that the Suit should have been filed under the Commercial Courts Act, 2015 and, therefore, they should be given an opportunity to present their defence in the Suit. On the other hand, the respondents contend that they had an agreement with the appellants to lease a commercial space in the building constructed by them but despite paying the consideration amount to the appellants as per the agreement they did not complete the construction of the building within the stipulated period. The Civil Judge, Senior Division held that with regard to the definition of a loan, according to Section 62 of the Indian Contract Act, 1872, even if the liability under the old agreement is accepted by a party under a new agreement it is necessary that the party in whose favour the new agreement is to be performed also accepts such responsibility. On the issue that the said cheque was given as security, the trial Court held as under:

"12. The defendant's second defense is that the cheque in question was given as security, and therefore, they should be given an opportunity to defend themselves. However, the plaintiff has filed a copy of the letter sent by the defendant to the plaintiff on August 13, 2018, at Exhibit 3/7. In paragraph 4 of that letter, the defendant has admitted that the cheque in question was given to the plaintiff as compensation. Therefore, There is no need to consider this defense of the defendant either."

10. The Civil Judge further held that as per section 2 of the Commercial Courts Act, 2015 if the immovable property is used in trade or commerce then the suit must be governed according to the Commercial Courts Act, 2015 and where the defendant has admitted the responsibility of returning the plaintiff's amount it is not appropriate to grant the defendant an opportunity to defend. On the issue of the Suit being tried under the Commercial Courts Act, 2015, the trial Court held as under:

“11. As per the arguments of the defendant's Advocate, even if the subject matter of the present suit arises from a transaction involving registered immovable property, the scope of the transaction in dispute is only the amount of the unpaid cheque, therefore no dispute has been raised in the present claim regarding the immovable property in use, the defendant's defense that the present claim should have been filed under the Commercial Courts Act is not prima facie acceptable.”

11. The trial Court concluded that the defence of the appellants mentioned above are unbelievable and not worthy of consideration. The Civil Judge, Senior Division vide an order dated 8th May 2024 dismissed the application seeking leave to defend.

12. During the trial, the Court examined the certified copy of the cheque, letter received by the respondents dated 13th August 2018 etc. and held that the appellants have admitted that they had given the said cheque to the respondents as a compensation for the damages caused due to their inability to hand over possession of the said Unit on time and, that, if the appellants could not hand over the possession of the said Unit by 31st March 2019 then they would pay interest to the plaintiff at the rate of 12% per annum from 1st April 2019. The respondents were held entitled to recover the cheque amount of Rs. 2,43,43,750/- from the appellants. The respondents were also held entitled to receive an interest on the cheque amount at the rate of 12% per annum from the date of filing the claim, that

is, 13th July 2020 as admitted by the appellants, until the entire amount is repaid. The trial Court observed as under:-

“The plaintiff filed the present claim on 13/07/2020. The cheque in dispute is dated 31/03/2019. Therefore, the claim has been filed within the stipulated period from the date of the cheque. The plaintiff is entitled to recover the cheque amount of Rs. 2,43,43,750/- from the defendants. Similarly, the plaintiff is entitled to receive interest on the cheque amount at the rate of 12 percent from the date of filing the claim, 13/07/2020, as admitted by the defendants, until the entire amount is repaid. Therefore, I am recording a partially affirmative conclusion on Issue No. 1 and passing the following order for Issue No. 2.”

13. The order passed by the Civil Judge, Senior Division dated 9th September 2020 is reproduced below:

Order

- 1) *The claim is partially granted with certified costs.*
- 2) *Defendants No. 1 to 3 are hereby ordered to repay the amount of Rs. 2,43,43,750/- to the plaintiff individually or jointly within 30 days from today.*
- 3) *It is further ordered to Defendant No. 1 to 3 that they shall, individually or jointly, pay to the plaintiff interest at the rate of 12 percent per annum on the amount of Rs. 2,43,43,750/- from the date of filing the suit 13/07/2020, until full repayment.*

14. Mr. Surel Shah, the learned senior counsel for the appellants contends that the judgment under challenge does not refer to the legal issues raised on behalf of the appellants such as the Suit was not triable by the regular Court as it involves a commercial dispute between the parties. The documents which were produced by the respondents were not proved in accordance with the law and the judgment could not have been delivered in their favour on the basis of such documents. The learned senior counsel for the appellants referred to a decision in *“Daivshala & Ors. v. Oriental Insurance Co. Ltd. & Anr.”* 2025 SCC OnLine SC 1534 and submitted that the Unit which was the subject matter of the Suit shall bring the Suit within the scope of the definition clause under section 2(c) of the

Commercial Courts Act, 2015 as the cheque for compensation given to the plaintiffs was in connection to and arising out of an agreement relating to the immovable property.

15. To begin with, we would indicate that the claim made by the respondents in Special Summary Suit No. 124 of 2020 was for an amount of Rs.3,54,95,313/-. This was the amount promised by the appellant no.1-Company to be paid to the respondents as a compensation and a cheque for such an amount was drawn in their favour. As noticed above, the appellants contend that the subject matter in question is an immovable property and the proceedings thereon should be in accordance with the Commercial Courts Act, 2015. In that regard, it is necessary to take note of section 2(1)(c)(vii) of the Commercial Courts, 2015. The said provision to the extent relevant is extracted herein below for easy reference:

*“2. Definition.—(1) In this Act, unless the context otherwise requires—
 (a)-(b) * * *
 (c) "commercial dispute" means a dispute arising out of—
 (i)- (vi)
 (vii) agreements relating to immovable property used exclusively in trade or commerce;
 (viii)-(xxii) * * *”*

16. In *“Ambalal Sarabhai Enterprises Limited v. K.S. Infraspace LLP & Anr.”* (2020) 15 SCC 585, the Hon’ble Supreme Court held that:

“It is noticed that in the said case on taking note of the provision contained in Section 2(1)(c)(vii) of the CC Act, 2015 it is held that the dispute involved therein would constitute a commercial dispute and the expression "arising out of" and "in relation to immovable property" should not be given the narrow and restricted meaning and the expression would include all matters relating agreements in connection with the immovable properties. The said conclusion reached was in a circumstance where the immovable property in question was undoubtedly being used for a trade or commerce and it was held so when the claim in the suit is for recovery of rent or mesne profit, security deposit, etc. for the use of such immovable property.”

17. It is noted that the disputes arising out of agreements relating to immovable property used exclusively in trade or commerce will qualify to be a commercial dispute triable by the Commercial Courts. The parties had entered into a transaction for sale of the immovable property but it was a claim for compensation with regard to failure in handing over the possession of the said Unit on time which was the subject matter for adjudication and, therefore, it can not be held that any immovable property was being used exclusively in trade or commerce. It is also necessary to consider whether the transaction between the parties which forms the subject-matter of the Suit could be considered as a "commercial dispute" so as to enable the Commercial Court to entertain the Suit. Merely because the compensation paid to the respondents was *in lieu* of the delay in handing over possession of the said Unit which is an immovable property, the dispute between the parties shall not become a commercial dispute. In "*Ambalal Sarabhai Enterprises Limited*" the Hon'ble Supreme Court held as under:

"Considering Section 2(c)(vii), "commercial dispute" means a dispute arising out of the agreements relating to immovable property used exclusively in trade or commerce. As observed hereinabove, at the time of filing of the suit and even so pleaded in the plaint, the immovable property/plots the agreements between the parties cannot be said to be agreements relating to immovable property used exclusively in trade or commerce. As per the agreement between the party after getting the plots on lease from the GIDC, the same was required to be thereafter developed by the original Defendant 1 and after providing all infrastructural facilities and sub-plotting it, the same is required to be given to other persons like the original plaintiff. It is the case on behalf of the original plaintiff that as the original Defendant 1 has failed to provide any infrastructural facilities and develop the plots and therefore, a civil suit for specific performance of the agreement has been filed. There are other alternative prayers also. Therefore, it cannot be said that the agreement is as such relating to immovable property used exclusively in trade or commerce. It is the case on behalf of the original plaintiff that as in clause (vii) of Section 2(c), the phraseology used is not "actually used" or "being used" and therefore, even if at present the plot is not used and even if it is likely to be used even in future, in that case also, Section 2(c)(vii) shall be applicable and

therefore, the Commercial Court would have jurisdiction. The aforesaid has no substance.”

18. The letters written by the appellant no.1-Company and, in particular, the letter dated 13th August 2018 was produced before the trial Court. In the said letter, the appellant no.1-Company admitted issuance of the cheque as a compensation by way of damages on account of delay in handing over possession of the said Unit. In the application filed by the appellants seeking leave to defend, they did not challenge the veracity of the letter dated 13th August 2018. This is also equally important to note that in *ex parte* proceeding the defendant cannot put his defence on merits but it could have raised such an objection. However, the judgment in Special Summary Suit No.124 of 2020 does not reflect any such objection raised by the appellants before the trial Court. There is no material on record and, in particular, no objection seems to have been taken by the appellants in their application seeking leave to defend to arrive at a conclusion that the objections raised by the appellants were such that leave to defend should have been granted by the trial Court.

19. The procedure as envisaged under Order XXXVII of the CPC provides that the plaintiff shall be entitled for a decree if he applies for an order based on bills of exchange, hundies and promissory notes. The cheque drawn by the appellants in favour of the respondents shall fall under the category of bill of exchange. We are not inclined to accept the challenge to the order dated 8th May 2024 by which leave to defend has been declined to the appellants. The emphasis laid by Mr. Surel Shah, the learned senior counsel for the appellants on the decision in “*Daivshala*” is distinguishable on facts inasmuch as in the said case a limited leave to defend was granted

by the trial Court. It was in that context that a decision was rendered that a challenge may be laid by the appellants before the appellate Court on the ground that it was beyond his control or circumstances that he could not comply with the conditional order of leave to defend.

20. We do not find any error committed by the trial Court while decreeing the suit in favour of the respondents, having regard to the nature of the proceedings conducted before it. The judgment under challenge is a well-reasoned decision and the trial Court has adopted a judicial approach and arrived at a just and right conclusion.

21. In view of the aforesaid discussion, First Appeal No.419 of 2025 is dismissed. Interim application/s stands disposed of.

[SUMAN SHYAM, J.]

[CHIEF JUSTICE]