2026:BHC-AS:7337

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 263 OF 2024

Sierra Hotels and Tourism Private Limited]
A company governed by the]
provisions of the Companies Act, 2013]
and having its registered office at]
Plot No. 38, Daya Vithalnagar Society, Road No.]
11, JVPD Scheme, Mumbai - 400 049.] **...Appellant**

Versus

1. **Hemant Padmakar Chauhan**]
   Aged 43 years, Occupation : Business,]
   Residing at 52, Vedas, Near Manohar Garden,]
   Govind Nagar, Nashik.]
2. **Kiran Dattatreya Walke,**]
   Aged 50 years, Occupation : Business,]
   Residing at Priyanka Pride,]
   Mahatma Nagar, Near Water Tank, Nashik]
3. **Gul (Raju) Lakho Lulla**]
   Aged 50 years, Occupation : Business,]
   Permanent residence at Plot No. 38, Road]
   No. 11, Vithal Nagar Society, JVPD Scheme,]
   Juhu, Mumbai – 400 049.]
4. **Prakash L. Lulla**]
   Aged 59 years, Occupation : Business,]
   Residing at Plot No. 38, Road No. 11,]
   Vithal Nagar Society, JVPD Scheme, Juhu,]
   Mumbai – 400 049.]
5. **Leena P. Lulla**]
   Aged 43 years, Occupation : Business,]
   Residing at Plot No. 38, Road No. 11,]
   Vithal Nagar Society, JVPD Scheme, Juhu,]
   Mumbai – 400 049.] **...Respondents.**

Mr. Mutahhar Khan, Mr. Harshil Gandhi i/b Mr. Moinuddin Chowdhari for Appellant.
Mr. Surel Shah, Senior Advocate a/w Mr. Jayendra Khairnar for Respondent Nos. 1 and 2.
Ms. Apurva Thipsay i/b Mr. Sidharth Salve for Respondent Nos. 4 and 5.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 8th June, 2026

Oral Judgment :

1. The suit came to filed by the Respondent No 1 claiming specific performance of receipt purporting to constitute an agreement for sale of the subject property. The receipt dated 6th July, 2022 alleged to have been executed by the Director of the present Appellant in favor of Respondent Nos. 1 and 2 states that the Director of the Appellant had accepted and acknowledged the receipt of Rs. 11,00,000/- in cash from Respondent Nos. 1 and 2. In the case of ***the Correspondence, RBANMS Educational Institution vs. B. Gunashekhar and Another***[1], the Hon'ble Apex Court noted the provisions of Section 269-ST of Income Tax Act, 1961 and observed that as per the said provision action is to be taken against recipient and onus is also on the Plaintiffs to disclose their source for such huge cash. The Hon'ble Apex Court has issued the following directions :

> **"(A)** Whenever, a suit is filed with a claim that

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> ₹ 2,00,000/- and above is paid by cash towards any transaction, the Courts must intimate the same to the jurisdictional Income Tax Department to verify the transaction and the violation of section 269-ST of the Income Tax Act, if any,
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> **(B)** Whenever, any such information is received either from the Court or otherwise, the Jurisdictional Income Tax authority shall take appropriate steps by following the due process in law,
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> **(C)** Whenever, a sum of ₹2,00,000/- and above is claimed to be paid by cash towards consideration for conveyance of any immovable property in a document presented for registration, the jurisdictional Sub-Registrar shall intimate the same to the jurisdictional Income Tax Authority who shall follow the due process in law before taking any action,
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> **(D)** Whenever, it comes to the knowledge of any Income Tax Authority that a sum of ₹2,00,000/- or above has been paid by way of consideration in any transaction relating to any immovable property from any other source or during the course of search or assessment proceedings, the failure of the registering authority shall be brought to the knowledge of the Chief Secretary of the State/UT for initiating appropriate disciplinary action against such officer who failed to intimate the transactions."

2. In view of the directions issued by the Hon'ble Apex Court, the Registrar (Judicial-I) is directed to intimate subject matter transaction to the jurisdictional Income Tax Department to verify the transaction and take appropriate steps in accordance with law and as directed in ***The Correspondence, RBANMS Educational Institution vs. B. Gunashekhar and Another*** (supra).

3. The present Appeal at the instance of the original Defendant No. 1 is preferred being aggrieved by the order of 26th October, 2023 granting temporary injunction restraining the Defendants from creating third-party rights in respect of the suit property till the final decision of the suit.

4. Briefly stated, the facts of the case are that Respondent Nos. 1 and 2 filed Special Civil Suit No. 04 of 2023 seeking specific performance of agreement contained in a document dated 6th July, 2022 styled as receipt claiming to have been executed by the Director of the Appellant-Private Limited Company accepting a sum of Rs. 11,00,000/- in cash from Respondent Nos. 1 and 2 against the sale of the property situated at Nashik admeasuring 21217 sq. mtrs. for the total consideration of Rs. 78,00,00,000/-. The suit was filed against the Defendant No 1 Company and the Respondent Nos 3 to 5 here in as Directors of Defendant No 1.

5. By the impugned order, the Trial Court held that though there is denial to the execution of the receipt and acceptance of consideration amount, in the notice reply issued through their advocate, they have admitted the facts that there were talks between the Plaintiffs and the Defendant for sale of the suit property and that amount of Rs. 11,00,000/- was received, which leads to an inference of some transaction between the parties. The Trial Court observed that the issue as to whether the contract was concluded contract, whether Defendant No. 2 had the authority to sell the property or execute the receipt will be considered at the stage of trial. The Trial Court opined that for grant of temporary injunction, the Plaintiffs have to *prima faice* prove that third party interest is being created by the Defendants.

6. The Trial Court also took into consideration that there is a subsequent agreement for sale in respect of the suit property by executing another Isar Pavati dated 19th August, 2022 in favor of one Shakil Ahmad Nazir Ahmad who has also instituted civil suit seeking specific performance. The Trial Court therefore, accepted the apprehension of the Plaintiff that the Defendants are creating third-party interest in the subject property which would result into complication and multiplicity of proceedings and that grant of injunction was justified.

7. Mr. Khan, learned counsel appearing for Appellant would submit that the receipt based on which the suit for specific performance was filed is purportedly on face of it executed by Director-Gul (Raju) Lakho Lulla who has 10% share holding in the Appellant company. He would further submit that the receipt does not bear the seal and stamp of the Defendant No 1 company and is not supported by any board resolution. He submits that the receipt cannot be considered as a concluded contract between the parties especially when the Appellant which is a private limited company is the owner of the property and without authorisation of Board of Directors, the property of the Company could not be sold. He would further submit that before the Trial Court, an application was filed by the Appellant for a direction to the Plaintiff to deposit the balance consideration which application has been rejected. He submits that there is no readiness and willingness demonstrated by the Plaintiffs and the same has not been considered by the Trial Court.

8. He would further point out the specific plea taken in the Written Statement that the Defendant No. 2 did not have any authority on behalf of the Defendant No. 1 and there is no authorization of the Board of Directors. He submits that the Trial Court has brushed aside the said contention by holding that these aspects can be considered at the time of trial. He would further submit that the Trial Court has accepted the sale transaction and the execution of the receipt based on the alleged correspondence addressed by purported lawyer of the Defendants to the legal notice issued by the Plaintiff. He submits that in the Written Statement, the Defendants have specifically denied that the lawyer who had responded to the Plaintiff's legal notice was not known to the Defendants and that they have never instructed him to reply to the notice on behalf of the Defendant-Company or Defendant Nos. 3 and 4. He would further point out that the Defendants have pleaded in the Written Statement about non-receipt of purported notice from the Plaintiffs. He submits that the Trial Court has not dealt with the said contention. He would further point out that the notice alleged to have been sent by the Advocate on behalf of the Plaintiffs is by registered post, however, there was no postal receipt or acknowledgment produced on record. He would further point out that the reply purported to have been sent on behalf of the Defendant Nos. 1, 3 and 4 does not bear the signature of the Defendants. He would further point out that the documents based on which the Trial Court came to a finding that subsequently, third-party rights have been created have also been executed by the said Gul (Raju) Lakho Lulla, which transaction is also not supported by any Board resolution.

9. *Per contra,* Mr. Shah, learned Senior Advocate appearing for Respondent Nos. 1 and 2-original Plaintiffs would submit that the Trial Court has rightly considered the subsequent agreement for sale which was entered into in respect of the said property with the said Shakil Ahmad Nazir Ahmad. He submits that the Trial Court has considered that in view of the subsequent agreements, there will be complications in respect of the suit property leading to multiplicity of proceedings as already two suits in respect of the suit property is filed and pending in the Court and therefore, restrained the Defendants from creating any third-party rights in the suit property. He submits that though specific plea was taken in the Written Statement that the Defendants have not authorized the Advocate to reply to the legal notice and submission was canvassed that the action will be taken, however, there is no action which is taken against the Advocate. He would further submit that the Trial Court has come to a *prima facie* finding based on the material placed on record and no perversity which is demonstrated. He would further submit that the proceedings have now reached before the Trial Court at the stage of evidence and therefore, there is no warrant for interference as Trial Court proceedings can be made time-bound.

10. I have considered the submissions and perused the record.

11. The suit has been filed seeking specific performance of receipt which on the face of it shows the same has been executed by one Gul (Raju) Lakho Lulla as director of the Appellant-company against the sale of the property admeasuring substantial area of 21217 sq. mtrs. for total consideration of Rs. 78 crores. During the hearing, this Court inquired with Mr. Shah as to whether the Plaintiffs are willing to deposit the balance consideration and, on instructions, he submits that if time of six months is given, the Plaintiffs would be able to deposit the money. The suit has been filed in the year 2022 seeking specific performance of the alleged transaction contained in the receipt of 6th July, 2022. It is well-settled position in law that in order to seek a relief of specific performance, the Plaintiff is required to demonstrate the readiness and willingness from the date of execution of agreement till the final decree is passed. Even before this Court, there is no readiness demonstrated to comply with the obligations which is *sine qua non* for claiming the relief of specific performance.

12. The Trial Court erred in formulating the proposition for the purpose of considering the *prima facie* case of grant of injunction. The Trial Court has addressed itself to the issue of creation of third party rights without adverting to the relevant issue of *prima facie* case being has been made out for grant of specific performance of the receipt dated 6th July, 2022. Considering the reliefs sought in the suit, the Plaintiffs had to make out a *prima facie* case of being entitled to specific performance of the document dated 6th July, 2022, which entailed a *prima facie* inquiry as to whether the document can be construed as a concluded contract, whether the Defendant No 2 had any authority to sell the property of the Defendant No 2 Company, all of which was brushed aside by the Trial Court opining that the issues will require evidence to be led. True that the final conclusion of these issues will require evidence, however, these issues had to be *prima facie* proved by the Plaintiffs at the stage of seeking interim injunction premised on the document of 6th July, 2022.

13. As the Trial Court has failed to address the correct proposition arising for consideration, there is perversity demonstrated at the outset. The impugned order is premised on the admissions forming part of response to the legal notice alleged to have been given on behalf of the Defendants by their Advocate. The Defendants had denied that they have received the legal notice dated 28th November, 2022 from the Plaintiffs and have also specifically pleaded that there was no communication with the concerned Advocate and they had never directed him to give reply on behalf of Defendant-company or on behalf of the Defendant Nos. 3 and 4. At the *prima facie* stage, in view of denial of receipt of the purported notice, it was incumbent upon the Plaintiffs to demonstrate by producing on record, the postal receipts/acknowledgment that the notice was in fact sent and received by Defendant No. 1 or by Defendant Nos. 3 and 4. The impugned order ignores the stand taken by Defendant Nos. 1, 3 and 4 on the response by the lawyer being unauthorised and has premised the impugned order on the acceptance of transaction through the notice response. It is no answer to say that no action has been taken against the lawyer.

14. The ownership of the subject property is not disputed. The receipt of 6th July, 2022 is not on the letterhead of the Defendant No 1 Company nor bears the stamp and seal of the Company nor is supported by Board resolution. The Plaintiffs claim to have entered into an agreement of sale in respect of an area admeasuring 21217 square meters land in Nashik, which is owned by a private limited company. In such facts, the least minimum requirement is the authorisation for the sale by the Board of Directors.

15. *Prima facie* the receipt makes it clear that it is one of the Directors of the Company who has accepted the amount in cash from the Plaintiffs, without any authorisation by the Defendant No 1 Company. By grant of injunction, the Trial Court has in fact bound the Company with an unauthorised act of its Director. Unless it is *prima facie* shown that the said director was authorized to enter into sale transaction, execute the receipt or accept the cash, the document could not have been considered as a concluded contract for sale of the property belonging to the Defendant No. 1-company.

16. The Trial Court has considered the subsequent transaction of sale in favor of Shakil Ahmad Nazir Ahmad to accept that the apprehension of the Plaintiff of alienation is well-founded without noticing that the subsequent Isar Pavati of 19th August, 2022 is executed by the same Director i.e. Gul (Raju) Lakho Lulla and not by Defendant No. 1. In the absence of any authorization by Defendant No. 1, the Director could not have executed even the subsequent Isar Pavti. For the acts of the Director in his personal capacity, no fetters could be imposed on the rights of the Defendant No. 1 company to deal with its own property. The ownership of the property being admitted, the balance of convenience tilts in favor of Defendant No. 1-company.

17. The Plaintiffs have failed to make out a *prima facie* case of the receipt constituting a concluded contract of the sale of property between the Defendant No. 1 which is the owner of the company or readiness to complete the transaction.

18. The impugned order is clearly unsustainable and is hereby quashed and set aside.

19. In view of above, nothing survives for consideration in pending Applications, if any, and the same stand disposed of.

[SHARMILA U. DESHMUKH, J.]

20. At this stage, request is made for stay of the order for period of six weeks from today. Considering the findings noted above, I am not inclined to grant any stay. The request for stay is rejected.

[SHARMILA U. DESHMUKH, J.]