

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 178 OF 2026
WITH
INTERIM APPLICATION NO. 945 OF 2026
IN
APPEAL FROM ORDER NO. 178 OF 2026

Vasant Ganesh Phadke and Ors.

.. Appellants

Versus

M/s. Vaishnavai Developers

Respondent

.. (Orig. Plaintiff)

.....

- Mr. Vivek B. Rane, Advocate for Appellants.
- Mr. Atul Damle, Senior Advocate a/w. Mr. Vivek Salunke and Ms. Payal Vardhan, Advocates for Respondent.

.....

CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 20, 2026.

P.C.:

1. Heard Mr. Rane, learned Advocate for Appellants and Mr. Damle, learned Senior Advocate for Respondent.

2. On 18.02.2026, the following order was passed on mentioning the present Appeal From Order:-

"1. Not on Board. Mentioned by way of filing praecipe dated 18.02.2026. Perused the praecipe.

2. Heard Mr. Rane, learned Advocate for Appellants and Mr. Tiwari, learned Advocate for Respondent.

3. Short point of law arises in the present Appeal from Order. The Suit has been dismissed by the learned Trial Court under Order VII Rule 11 of the Code of Civil Procedure, 1908 (for short 'CPC') on the legal ground that despite Plaintiff – Firm claiming to be a registered partnership firm it has not produced the partnership certificate neither disclosed the names of the

partners which is a prime and mandatory requirement under the provisions of Section 69 (2) of the Partnership Act, 1932.

4. *Being aggrieved Plaintiff has filed Regular Civil Appeal before learned District Judge and in that proceeding by virtue of the impugned order dated 23.04.2025, the learned Judge has stayed the order and proceedings. Such an order of stay when the Suit has been dismissed under Order VII Rule 11 of the CPC is directly in the teeth of the decision of the Supreme Court in the case of **IEEE Mumbai Section Welfare Association Vs. Global IEEE Institute for Engineers**.¹*

5. *The Supreme Court holds that when the Plaint itself stands rejected it cannot be said that the Appeal filed against such an order can be a continuation of the suit proceedings.*

6. *Mr. Tiwari, learned Advocate enters appearance on behalf of original Plaintiff. He would submit that he is holding for concerned Advocate on record – Mr. V. V. Salunke. Mr. Salunke is directed to remain present on the next adjourned date failing which the Appeal from Order will have to be allowed by this Court.*

7. *Stand over to 20th February 2026. To be placed under the caption 'First on Board'.*

8. *Praecipe is disposed."*

3. Today, the matter was kept 'First on Board' for hearing, Mr. Damle, learned Senior Advocate appears for Appellant, Plaintiff before the Appellate Court. He would submit that the observations made in paragraph No.3 of the aforesaid order have been duly complied with by Plaintiff before the Appellate Court *albeit* before the order under Order VII Rule 11 of the Code of Civil Procedure, 1908 was passed by the Appellate Court.

4. He would also refer to and rely upon the decision of the Supreme Court in the case of **Mohammadhanif Mohammadibrahim Patel and Ors. Vs. Pallaviben Rajendra Kumar Patel and Ors. passed in**

¹ Civil Appeal No.(s).7235/2025 @ Special Leave Petition (Civil) No(s).14208 of 2025) decided on 27.05.2025

Special Leave Petition @ No.27549 of 2025 reported in *2025 SCC OnLine SC 2526* to answer the question raised by the Court in paragraph No.4 of the previous order. He would submit that the first Appellate Court can undoubtedly re-examine both the question of facts and law and can grant appropriate relief being discretionary in nature under the power of the Appellate Court, but however the same must be exercised judicially based on the well-settled principles of a *prima facie* case, irreparable injury and balance of convenience. He would submit that by virtue of the impugned order, the reference is made to another proceedings between the same parties in respect of same subject matter.

5. Be that as it may, no purpose will be served in keeping the present Appeal From Order pending as it will be merely of academic interest. Rather it would be appropriate if the learned Appellate Court is directed to dispose of Regular Civil Appeal No.14 of 2025 as expeditiously as possible and in any event within a period of four weeks from today so as to put an end to the *lis* between the parties.

6. Both the parties shall appear before the learned Appellate Court on 23rd February 2026 (Monday) at 11:00 a.m. alongwith a server copy of this order and the learned Appellate Court shall list the matter accordingly as per its convenience and diary for hearing.

7. All contentions of the parties are expressly kept open before the Appellate Court.

8. This Court has not given any imprimatur on the merits of the case.

9. In view of the above directions, Appeal From Order No.178 of 2026 is disposed.

10. In view of the disposal of Appeal From Order, pending Interim Application No.945 of 2026 is accordingly disposed.

[MILIND N. JADHAV, J.]

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