

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 2 OF 2026

Sheth And Popat Enterprises Through its Partner ..Applicant
Rupesh Chhotalal Seth

Versus

Santosh Gulab Kalate & Ors ...Respondents

Mr. Karan Parmar, i/b Siddharth Sutaria, for the Applicant.

CORAM: N. J. JAMADAR, J.

DATE : 6th JANUARY 2026

ORDER:

1. This Civil Revision Application is directed against an order dated 20th September 2025 passed by the learned Civil Judge, Senior Division, Pune, on an Application for rejection of the Plaint under the provisions of Order 7 Rule 11 of the Code of Civil Procedure, 1908 (“the Code”), whereby the said Application came to be rejected.

2. The Respondents have instituted a Suit for specific performance of the contract to sell 5(five) commercial units (“the suit shops”), with the assertion that Defendant No.1-developer, has agreed to sell the suit shops for a total consideration of Rs.2,40,82,500/-, and despite accepting a substantial consideration of Rs.2,39,69,300/- reneged from

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the said promise and refused to perform the contract by raising false and untenable disputes.

3. Defendant No.1 appeared and filed an Application for rejection of the Plaint on multiple grounds ranging from absence of cause of action to bar of jurisdiction.

4. By the impugned order the learned Civil Judge was persuaded to repel each of the grounds on which the rejection of the Plaint was sought.

5. Mr. Parmar, the learned Counsel for the Applicant, submitted that there is no cause of action for the institution of the Suit as there is no concluded contract between the Plaintiffs and the Defendants. The draft agreements were merely exchanged. In the absence of the concluded contract, a suit for specific performance is not tenable. Reliance was sought to be placed on a judgment of a learned Single Judge of this Court in the case of **Pansn Construction and Developers Private Limited Vs Zaphna Properties Pvt Ltd & Ors**,¹ wherein it was enunciated that the draft Deed of Conveyance did not create any right, title, interest or charge in favour of the Plaintiffs and was wholly unenforceable in law and, thus, there being no contract, specific performance could not be granted. Secondly, Mr. Parmar would urge, the jurisdiction of the Civil Court was expressly barred in view of the specialized machinery provided under the Real Estate (Regulation and Development) Act,

¹ 2025 SCC OnLine Bom 3178.

2016 (“the RERA 2016”). Thirdly, the Suit was also not maintainable before the Regular Court as the dispute between the parties fell within the ambit of the definition of the “commercial dispute” within the meaning of the Commercial Courts Act, 2015.

6. None of the aforesaid contentions merits consideration. While determining an application for the rejection of the Plaint, the Court is required to consider only the averments in the Plaint and the documents annexed with it. The defence raised by the Defendants is not at all germane to the determination of the aspect of the rejection of the Plaint.

7. In the case at hand, there are categorical averments supported by documents which indicate that the Defendants have entered into a contract for sale of five suit shops for a consideration of Rs.2,40,82,500/- and more than 99% of the agreed consideration has already been paid, and what remained was the execution of the instruments.

8. Mr. Parmar attempted to wriggle out of the situation by contending that it was the case of the Defendants that the amount of Rs.2,39,69,300/- (out of the total consideration of Rs.2,40,82,500/-) was not paid towards the consideration for the sale of the suit shops. Plainly, the said contention is the defence of the Defendants. The said

defence implies that the receipt of the amount of Rs. Rs.2,39,69,300/- is incontrovertible.

9. The issues which were sought to be raised by the Defendants in the reply to the pre-suit notice, like, the said payment being not towards the agreed consideration, the said payment was credited to the account of Defendant No.1. without the consent and knowledge of Defendant No.1 and the employees of Defendant No.1. had inadvertently addressed communication and shared the draft Agreements, without any authorisation by the Defendant No.1, are the matters which fall in the realm of the defence and, therefore, do not deserve any consideration at the stage of determination of the Application for the rejection of the Plaint. The learned Civil Judge was thus well within his rights in returning a finding that the Plaint does disclose a cause of action.

10. On the aspect of the bar under Section 79 of the RERA, 2016, the learned Civil Judge rightly relied upon the judgment of the Supreme Court in the case of **Imperia Structures Ltd Vs Anil Patni and Anr²** to repel the challenge that the Civil Courts jurisdiction was barred in view of the provisions contained in the RERA, 2016.

11. Likewise, the reliance by the learned Civil Judge on the judgment of the Supreme Court in **Ambalal Sarabhai Enterprises Ltd Vs K.S.**

² (2020) 10 SCC 783.

Infraspac LLP³ to dispel the contention that the dispute in question was a commercial dispute within the meaning of the Commercial Courts Act, 2015 also appeared to be impeccable.

12. Resultantly, there is neither any jurisdictional error nor material irregularity in the exercise of jurisdiction by the learned Civil Judge, which would warrant interference in exercise of the revisional jurisdiction.

13. The Revision Application thus stands dismissed.

[N. J. JAMADAR, J.]

3 (2020) 15 SCC 585.