

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO.2122 OF 2025
IN
COMMERCIAL SUIT NO.49 OF 2025
WITH
INTERIM APPLICATION NO.5864 OF 2025
IN
COMMERCIAL SUIT NO.49 OF 2025
WITH
INTERIM APPLICATION NO.2122 OF 2025
IN
COMMERCIAL SUIT NO.49 OF 2025
WITH
COMMERCIAL SUIT NO.49 OF 2025

Ajmera Realty and Infra India LimitedApplicant/Plaintiff
Versus
Nikhil Dharamdas ShahRespondent

WITH
INTERIM APPLICATION NO.5572 OF 2025
IN
COMMERCIAL SUIT NO.49 OF 2025

Nikhil Dharamdas ShahApplicant

IN THE MATTER BETWEEN

Ajmera Realty and Infra India LimitedPlaintiff
Versus
Nikhil Dharamdas ShahRespondent

Mr. Zal Andhyarujina, Senior Advocate a/w. *Mr. Karl Tamboly, Mr. Pratyush Gupta & Ms Mitali Dhoble i/b. Vidhii Partners, for Plaintiff.*

Mr. Janak Dwarkadas, Senior Advocate a/w. *Ms Ankita Singhania, Mr. Shanay Shah, Mr. Kausar Banatwala & Mr. Dhavall Gandhi i/b. Mr. Tushar Goradia, for Defendant No.1.*

Mr. Sharan Jagtiani, Senior Counsel a/w. *Ms Ravleen Sabharwal, Mr. Aditya Mehta, Ms Aarushi Yadav & Mr. Aatish Tayade i/b. R S Justicia Law Chambers, for Defendant No.3.*

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE : MARCH 05, 2026

JUDGEMENT:

Context and Factual Background:

1. Interim Application No.5864 of 2025 has been taken out by the Plaintiff, Ajmera Realty and Infra India Limited (***“Ajmera Realty”***) in Suit No.49 of 2025 (***“IA 5864”***). IA 5864 is a sequel to Interim Application No.2122 of 2025 (***“IA 2122”***), which is also taken out in the same suit by Ajmera Realty.
2. Ajmera Realty is a party to a Term Sheet dated June 29, 2016 (***“Term Sheet”***) executed with Defendant No.1, Nikhil Dharamdas Shah (***“Shah”***) by which a property by the name of Nikhil Villa, located on Carmichael Road, was made subject matter of redevelopment (***“Suit Property”***). The parties had worked out an intricate, scenario-based formulation of what would be paid to Shah for vacating his own unit in the Suit Property, and how monies would need to be contributed by Ajmera Realty, and how the funds would be deployed in vacating the tenants and occupants from the premises.
3. According to Ajmera Realty, pursuant to the Term Sheet, various payments were made by Ajmera Realty to Shah from time to time, which were to be utilised towards settling with tenants residing in the Suit Property. Eventually, the parties are said to have been unable to progress the

redevelopment inasmuch as the Suit Property is said to be subject to a pre-emptive right enjoyed by the State. It is stated that in the case of other similar properties too, such pre-emption had been exercised, rendering it difficult for the Term Sheet to be progressed.

4. With the redevelopment not going through, the parties agreed to exit the Term Sheet by scouting for buyers to whom they would sell the Suit Property and share the proceeds. This formed the subject matter of two Letters of Understanding ("**LOUs**") executed between the parties to govern the terms on which the arrangement in the Term Sheet would be brought to an end by the parties, who had agreed to exit the same.

5. *First*, the parties executed a LOU dated September 22, 2021 ("**First LOU**"). Thereafter, another LOU was executed between Shah and Defendant No.2, Ajmera Housing Corporation Pvt. Ltd. ("**Ajmera Housing**") on September 1, 2022 ("**Second LOU**"). For convenience, in this judgement, "**Ajmera**" is collectively used to denote either of Ajmera Realty or Ajmera Housing, or both.

6. Under the First LOU, it was agreed that the parties would exit the Term Sheet and would look for a buyer for the Suit Property, with the proceeds being split after deduction of expenses incurred between Shah and Ajmera Realty in the ratio of 64:36. The parties agreed that the estimated price for sale of the Suit Property would be in the region of Rs.250 crore, and neither

party may object to any sale price above Rs.200 crore as a base price.

7. Under the Second LOU, executed one year later, further amounts were agreed to be paid by Ajmera Housing to vacate two last tenants Fali Heerjee, and Zarin Mehli Lalkaka, to facilitate their vacating the Suit Property. This would enable sale of the Suit Property for a better value realisation, as envisaged in the First LOU.

8. Both the LOUs contain a requirement that as a matter of security, Shah would deposit and hand over the original title deeds of the Suit Property and the premises released by the tenants to Ajmera, who would hold on the deeds until settlement of accounts. Both the LOUs entailed interest at the rate of 16% per annum.

9. On December 2, 2022, a tripartite letter of confirmation (“**Letter of Confirmation**”) was executed by Ajmera Realty, Shah and Ajmera Housing, and the parties intended that this instrument would be a “*guiding tool*” in understanding the LOUs. The parties agreed the manner of sharing of profits under the LOUs in terms of certain approximations based on examples. In this computation, the parties signed off on an interest component on the various amounts paid from time to time, and the total value of what was payable by Shah to Ajmera was indicated at Rs.89 crore. Interest was pegged at Rs. 12 crore and the amounts actually received by Shah from Ajmera was Rs. ~67 crore – the precise amounts paid to each tenant or occupant, including the Rs.

15 crore to Shah himself, were spelt out.

10. On December 17, 2022, Shah has evidently confirmed to Ajmera on their WhatsApp Group that the Suit Property was by then, completely vacant of tenants and occupants. Thereafter, the parties are said to have been attempting to have the Suit Property sold.

11. On February 26, 2025, Ajmera executed with Defendant No.3, Mayfair Housing Private Limited ("*Mayfair*"), a Term Sheet ("*Mayfair Term Sheet*") for sale of the Suit Property for a value of Rs.224 crore. Ajmera contends that the LOUs entitle it to have the Suit Property sold to any buyer who is willing to pay of Rs.200 crore or higher. On March 1, 2025, Ajmera informed Shah about execution of the Mayfair Term Sheet, and on March 17, 2025, Mayfair issued a public notice about the proposed transaction. Shah responded to the public notice by a lawyer's notice dated March 20, 2025, objecting and contending that Ajmera had no rights whatsoever to effect any such transaction and that no LOU as claimed by Mayfair, was ever in existence. Shah also issued a public notice dated March 25, 2025, asserting that he is in the process of self-developing the Suit Property.

12. On April 7, 2025, Mayfair's advocates wrote to Shah's advocates, calling upon Shah to complete the conveyance of the Suit Property in favour of Mayfair. Mayfair would also write to Ajmera ten days later, calling upon Ajmera to comply with the Mayfair Term Sheet.

13. This led to Ajmera calling upon Shah to refrain from acting in any manner that would result in breach by Ajmera of the Mayfair Term Sheet. Ajmera claimed a total outstanding amount owed under the Letter of Confirmation at Rs. ~ 114.63 crore.

14. Ajmera filed the captioned Suit and IA 2122. On May 6, 2025, when IA 2122 was called out, a Learned Single Judge of this Court recorded a statement made on behalf of Shah in the following terms:

1. Mr. Chinoy, Learned Senior Counsel appearing on behalf of the defendant no.1 makes a statement that defendant no.1 is not selling the said plot of land to any third party but proposes to develop the same. He further submits that before any flat in the said redeveloped building is sold, the entire amount due to the plaintiff under the letter of understanding shall be discharged. Statement is accepted. Hence there is no need today to pass any ad-interim order.

[Emphasis Supplied]

15. Four and a half months later, IA 5864 was filed by Ajmera on the premise that the statement about self-development made by Shah was not truthful, and that Shah was neither taking steps to self-develop the Suit Property nor engaging in having the Suit Property sold.

Contentions of Parties:

16. Against this factual backdrop, I have heard Mr. Zal Andhyarujina, Learned Senior Advocate on behalf of Ajmera, Mr. Janak Dwarkadas, Learned

Senior Advocate on behalf of Shah, and Mr. Sharan Jagtiani, Learned Senior Advocate on behalf of Mayfair, and with their assistance, I have examined the material on record.

17. The short question to consider is whether the prayers sought in IA 2122 read with the prayers in IA 5864 are worthy of being granted in any form. Mr. Andhyarujina would submit that IA 2122 was not disposed of and the statement indicating self-development was merely a *pro-tem* statement recorded pending completion of pleadings. From the pleadings, it would be clear, he would submit, that Ajmera had parted with over Rs. 69 crore to Shah. Ajmera is now owed, along with interest, over Rs. 114 crore by Shah, who used Ajmera's money to get the Suit Property vacated of tenants and is now reneging on his promise to have the Suit Property sold, with the proceeds being shared in the agreed proportion.

18. Mr. Andhyarujina would submit that at the least, the title deeds ought to be deposited in Court to secure the interests of the Plaintiff. He would submit that the LOUs confer upon Ajmera a right to have the Suit Property sold, because both Shah and Ajmera have such a right, with the only condition being that the price discovered should be at least Rs. 200 crore, beyond which neither party could object to a sale. Mr. Andhyarujina would point to the completely divergent positions adopted by Shah and call out his messages to Ajmera to indicate that his stance keeps varying, betraying dishonesty, and submitted that there is every risk of the Suit Property being dealt with in

violation of the LOUs, when such a large sum is owed to Ajmera. The LOUs entail deposit of title deeds with Ajmera and this has not been done.

19. Mr. Janak Dwarkadas would submit on behalf of Shah that the LOUs had a limited shelf life of 18 months, during which the only right Ajmera had was to be consulted on the price discovery. Even that right to be consulted expired in 18 months, and by no stretch could the LOUs be regarded as giving Ajmera a right to have the Suit Property sold. Mayfair can claim no interest in the Suit Property since, to begin with, Ajmera had no right to have the Suit Property sold to Mayfair, he would submit.

20. Mr. Dwarkadas would also point to the prayers in the Complaint to contend that the prayer in the Suit is for handing the Suit Property over to Mayfair. IA 2122 seeks a restraint on alienation, which ought to be in aid of the prayer in the Complaint. However, IA 5864 seeks a prayer for appointment of a Court Receiver to take over the property and sell it including by way of an auction or private sale to any third party, which abandons the main thrust of having the Suit Property sold to Mayfair. The mutually and inherently self-destructing prayers, Mr. Dwarkadas would submit, ought to lead to the Plaintiff not being given any relief. According to him, Ajmera has not sought specific performance of the obligation to create an equitable mortgage and therefore, the Court ought not to simply direct deposit of title deeds, when the real intent is to have the Suit Property sold to Mayfair (in the Complaint) and to any party whatsoever (in IA 5864).

21. Mr. Sharan Jagtiani on behalf of Mayfair would submit that the LOUs indeed enable Ajmera to have the Suit Property sold, which is how Mayfair has agreed to acquire the Suit Property. He would submit that at this interim stage, the Court has to simply examine the *prima facie* case and see how best to preserve the subject matter of the Suit. Mayfair has initiated its own Suit with the leave of the Court and would be seeking reliefs in that Suit.

Analysis and Findings:

22. Having heard the parties, it would be appropriate to extract the key provisions of the First LOU which binds the parties, and also the prayers in each of the Plaint and the two interim applications. Before doing so, a word on the sequence of events would be in order.

23. First, Ajmera and Shah executed the Term Sheet. It is evident that significant sums of money have flowed from Ajmera to Shah. Such monies have been used to make payments to tenants and occupants ahead of being able to redevelop the property. A sum of Rs. 15 crore was in fact paid for Shah's own unit in the Suit Property.

24. The First LOU entailed abandoning the Term Sheet and selling the Suit Property, with Ajmera continuing to pay a sum of Rs. 10 lakh per month and Rs. 40 lakh twice a year, which would continue to be used for making the Suit Property vacant of all tenants and occupants so that the parties could sell the Suit Property and realise value to split the proceeds in the agreed ratio of 64%

(to Shah) and 36% (to Ajmera). The Second LOU executed a year later, entailed further investment by Ajmera to pay out two tenants, which could only be in aid of selling the Suit Property at a better value. Thereafter, no sale of the Suit Property was effected, and three years later, the Mayfair Term Sheet was executed by Ajmera.

Analysis of First LOU Terms:

25. It would be appropriate to examine the critical terms of the First LOU, which are extracted below:

1. *In pursuant to the Term Sheet (TS-I) dated 26th June 2016 and the terms and conditions mentioned therein, on the request of Mr. Nikhil Dharamdas Shah, it has been decided by both the parties to exit their above arrangement due to unavoidable circumstances and beyond the control of both the parties which shall impact the prospects of redevelopment of the project, it is agreed the Owner may sell his land on an outright basis to a third party, which shall be mutually decided by both the parties. For a cleaner and faster transaction certain activities will be needed to be carried out prior to the Sale and both the parties agree to work towards peaceful settlement and for smooth exit from this project.*

2. *That ARIIL shall continue to honor its commitment and in continuation of:-*

(a) . Funding the process of eviction of the present tenants from Nikhil Vila premises (at a consideration decided by the Owner).

(b) . Paying monthly compensation to the Owner of 10/- lacs uninterruptedly and 40/- lacs in January and in August uninterruptedly till the final sale and or settlement but the continuation of the final date of which will not extend beyond October 2023.

(c) ARIIL shall as agreed pay past dues of INR4.50 Crores calculated until August 2021 to the Owner. The amount of 2 Cr will be paid on the signing of this document and the balance amount of 2.5 Crores will be paid simultaneously on the signing of the tenant, Mr. Wagie,

(d) Paying miscellaneous expenses on actual basis upon request by the Owner and which shall be related to the project.

(e) Expenses towards the sale of the property as maybe needed on actual basis, such as Name Change, MHADA processing. Legal Fees, etc.

- 3) ARIL shall continue to get the same consideration as agreed in TS-1 agreed by Nikhil Dharamdas Shah (Owner) and also for the expenses made now and henceforth for the project, it shall attract the similar rate of simple interest as was proposed earlier, i.e sixteen (16) percent per annum (calculated from the date the monies have been received by the Owner).
- 4). After removal of All the expenses incurred and other proposed expenses accepted by AIIRL as mentioned under para 6 below, the Balance for Distribution from proposed Sale of property shall be as under • 64 % to the Owner - Nikhil Dharamdas Shah; and • 36% to the ARIIL - Ajmera Realty & Infra India Limited.
- 5). The estimated price for the sale of the Nikhil Vila Plot should be in the region of Rs. 250/- Crores, (target price). However neither party shall object to any sale price above 200/- Crores (base price).
- 6). The following expenditure shall be deducted for arriving at the BALANCE MONEY FOR DISTRIBUTION ("Bal for Distribution")
- The expenditure and the fund incurred by ARIIL in funding the settlement with the tenants (consideration of which is determined by the Owner).
 - Simple interest (5) 16% p.a. for all the monies paid on behalf of the Owner by ARIIL (which shall be reimbursed by the Owner to ARIIL).
 - Deduction for Proposed expense of purchase of apartment 03 on the second floor of Nikhil Villa admeasuring 2100.0 sqft. agreed and presently valued at Rs.15.00 Crores.
 - All expenses which may be required at Mhada and all the legal expenses incurred by both the parties and paid by ARIIL
 - The expenditure incurred by ARIIL for effecting the change in the name and transfer of the PR card in the name of the Owner.
 - Legal and any other miscellaneous expenses as agreed by both the parties for the settlement of the land.
- 7) In event Owner/ ARIEL cannot sell Nikhil Vila for reasons beyond both parties control in 12 months plus 06 months grace Period from the date of this document, then the Owner may sale at a price best available and distribute the net profits as per point 4 above.

In the event the owner agrees to sell below the base price ie.200 Crores, the distribution of profits between owner aril as per pt 4 shall be done on the basis of minimum base price ie. 200 Crores.

9) As a matter of security, the Owner agrees to handover the original title deeds of the property (listed under the Annexure 1 attached herewith) to ARIIL and the latter will hold on to them till the settlement of the accounts.

[Emphasis Supplied]

26. The controversy between the parties revolves around a *prima facie* interpretation of the aforesaid extracts. When one reads the provisions of Clause 1, it is evident that the parties had decided to “exit” the Term Sheet and this was due to circumstances beyond their control, which is consistent with the pre-emption right of the State being the impediment to smooth redevelopment. The sale of the Suit Property had to be effected, indeed by Shah, since the Suit Property was in his name, but such sale was to be on an outright basis, to be mutually decided by both the parties. Therefore, *prima facie*, it is evident that the parties had a joint say in the sale of the Suit Property. The activities upon which the parties agreed upon, were aimed at making the sale smoother.

27. The First LOU evidently entailed continuing to make the Suit Property occupant-free and tenant-free, for which, under Clause 2, Ajmera was to continue to provide funding as contracted in the Term Sheet. Under Clause 3, interest would continue to accrue at 16% per annum, while under Clause 4, after deduction of agreed expenses, the balance would be split 64:36 between Shah and Ajmera.

28. Under Clause 5, the parties had a target price of Rs.250 crore and a base price of Rs.200 crore. Neither party could object to a sale if the price for the sale were to be above the base price.

29. Clause 7 is critical since it refers to *either* Shah *or* Ajmera being unable to sell the Suit Property for reasons beyond the control of both parties. The time period for failure to sell was agreed at 12 months, with a further grace period of six months from the date of the First LOU (September 22, 2021). In that event, the sale was to be effected at the best available price, and the net profits would be distributed in the 64:36 ratio. The second paragraph of Clause 7 provides that if Shah were to agree to sell below the base price of Rs.200 crore, the distribution would be as if the realisation were the minimum base price of Rs.200 crore. Essentially, this is a disincentive to sell at a price lower than Rs.200 crore, but it also has implications for who has the right to sell and who has the right to be consulted.

30. Under Clause 9, Shah would need to deposit the title deeds to the Suit Property, and to the properties surrendered by tenants, to be held by Ajmera until settlement of accounts.

31. In my opinion, the aforesaid commercial contractual provisions have to be read with a commercial commonsensical approach. That is why Mr. Dwarkadas' contention that the very validity of the First LOU had a finite shelf life of 18 months does not appeal at all to my mind. If the First LOU, which

itself was the means of exit from the Term Sheet, was to have a limited shelf life of 18 months, it would follow that the exit from the Term Sheet would come to an end and the Term Sheet would revive. Such an approach would militate against Shah's professed intention to effect the redevelopment on his own.

32. The First LOU itself, under Clause 2 provides for Ajmera continuing to make payments that had been contracted in the Term Sheet. Shah's contention in the public notice and in response to Ajmera and Mayfair is in the extreme – that the LOUs were non-existent and unheard of. If that extreme position were to be accepted, it would mean that the First LOU itself no longer being valid, the exit from the Term Sheet was abandoned. It would follow that the Term Sheet stood revived; and therefore, the monies received by Shah from Ajmera were not meant to evaporate into thin air.

33. Moreover, Clause 9 of the First LOU and indeed Clause 9 of the Second LOU, which has an identical provision are explicit in their terms. To secure the monies already provided by Ajmera under the Term Sheet and further provided under the LOUs, until settlement of accounts, the title deeds were to be deposited with Ajmera. This would show that the LOUs were not meant to be a temporary attempt of 18 months after which the obligation to repay the amounts received and that too at 16% per annum would magically evaporate, but that the parties had consciously agreed upon a framework for winding down their positions under the Term Sheet, with the substantial monies

expended by Ajmera being protected by deposit of title deeds with Ajmera.

34. Indeed, it is equally true that one cannot conclusively contend that the LOUs represent a blanket and perpetual call option over the Suit Property to be enjoyed by Ajmera i.e. a right of Ajmera to have the Suit Property sold to whomsoever it chooses without Shah having a say, so long as the price was above Rs.200 crore. Indeed, if the price discovered was more than the base price, neither party could object. However, the involvement of both parties in the price discovery process is essential and the base price is a threshold criterion to regulate what can and cannot be objected to. It is evident that the parties envisaged a sale and an exit from the Term Sheet within a period of 18 months and therefore envisaged potentially having to sell at below the base price after 18 months. In that event, regardless of the value of sale proceeds being below Rs.200 crore, Ajmera would get a share as if the sale proceeds were of at least Rs.200 crore i.e. its 36% would mean Ajmera would be entitled to at least Rs.72 crore with the balance amount of the sale proceeds (although representing a proportion below 64% of such lower sale proceeds) would go to Shah.

35. The specific reference to such a back-stop value realisation beyond 18 months, indicates that Shah could have sold at a price below Rs.200 crore after 18 months. The parties have not used any *non-obstante* provisions in any of the terms of the LOU. Therefore, at this stage of the Suit, one would have to examine, *prima facie*, whether Ajmera would have a say even if Shah

were desirous of selling at below Rs.200 crore after 18 months, or whether Ajmera could on his own, sell the Suit Property without even checking with Shah.

36. The parties do not seem to have imagined selling at a non-distress price point of above Rs.200 crore after 18 months. Clause 7 of the First LOU refers to both Shah and Ajmera as being capable of selling the Suit Property in the opening portion which refers to the period of 18 months for the sale. The second part of Clause 7 provides that Shah may sell at a price below Rs.200 crore, which appears to be a provision that a sale may take place at a price below Rs.200 crore if Shah insists, but in such event, Ajmera's share of proceeds would be as if the sale was for Rs.200 crore (i.e. Rs.72 crore), and Shah would only get the balance.

37. It cannot also be forgotten that the Second LOU was itself executed one year after the First LOU. If the parties had intended to give a short shelf life of just 18 months to the arrangement, they would not further expand the financial collaboration through further investment by Ajmera in the exit process, with Shah taking even more money from Ajmera to vacate the last two tenants. It is also noteworthy that Shah indeed claimed that the Suit Property was totally tenant-free and occupant-free and accepted hearty congratulations from Ajmera. Later, Shah would do a *volte face* to claim that there were still occupants in the form of a shop (run by none other than Shah) and in the form of a gardener (Shah's own employee) who stayed on the property. On Shah's

behalf, it was contended by Mr. Dwarkadas, that he is not alone in his family and his two sisters too have to be settled; and therefore, it cannot be said that there are no occupants. What this indicates *prima facie*, is that Shah's statements on record and his conduct as evident from the record, have an established record coming across as very unreliable. He has been fast and loose with his factual assertions even while merrily continuing to pocket funds from Ajmera and also asserting that Ajmera must continue to pay under Clause 2, failing which the First LOU would stand terminated.

38. Clause 2(b) does provide that Ajmera would have to keep paying Rs.10 lakh every month and Rs.40 lakh twice a year (in January and in August) until final sale or settlement. Yet, that provision also indicates that such final date would be October 2023, which indicates that after October 2023, such payments are not required to be made – the parties meant to have the Suit Property made occupant-free and tenant-free by then using Ajmera's funds.

39. It is in this backdrop that the extremity of contentions by each of Mr. Andhyarujina and Mr. Jagtiani – that the First LOU is a perpetual call option (with Ajmera having a right to sell the Suit Property at any time whatsoever to any person whosoever without any involvement of Shah, so long as the price is above the base price of Rs.200 crore), does not inspire confidence. Likewise, Shah's extreme position that the LOUs are no longer validly in existence, is totally devoid of merit.

40. The stance of Ajmera and Mayfair about the perpetual call option over the Suit Property would need to be tested in trial during adjudication of the Suit. It is not *ex facie* obvious that such a right with no role for Shah, is available. On the other hand, it does appear that both parties had a right to find a buyer within the price range, and that they envisaged doing so with the 18-month period. This only meant that Ajmera had the right to bring a buyer in that value range. Indeed, Mayfair was brought into the picture, but in 2025, and without any involvement of Shah.

41. While the aforesaid issue is a matter for trial, what is evident is that Shah has received serious funding from Ajmera and has continued to receive more after the First LOU and indeed under the Second LOU. Both the LOUs entail interest at 16% per annum. Both the LOUs expressly entail deposit of title deeds to secure the monies owed by Shah to Ajmera until settlement of accounts. A good component of the amount (Rs.15 crore) has gone to Shah himself.

42. Shah has also claimed that no LOUs were in existence. However, later in these proceedings, sought to explain it away stating that he meant to state that the LOU had a shelf life of 18 months. Shah had claimed that the Suit Property had been made fully vacant and free of any occupant and tenant, but then turned around to indicate that his own gardener and his own shop would need to be vacated too, and also indicates that his sisters may also need to be compensated for. Seeking to reconcile the conflict between position held out

to Ajmera earlier before the litigation, and the position now taken on oath after the litigation began, Shah seeks to confirm that his statement made on oath is the accurate one.

43. Therefore, to my mind, it is fair to state that Ajmera indeed deserves to be protected from Shah's actions and intentions. The conduct of Shah and his approach to representation of facts does call for Ajmera, which has a clearly contracted right to interest at 16% per annum and a right to hold on to the title deeds until settlement of accounts, to be protected.

44. Mr. Dwarkadas' would submit that there is no prayer in the Suit for specific performance in the form of deposit of title deeds, and that what Ajmera desires is only to have the Suit Property sold to Mayfair (under the Complaint) and to any third party at all (under IA 5864). I am unable to agree with such depiction of the prayers. Indeed, the Complaint has reliefs in the nature of specific performance of the Mayfair Term Sheet, but the Complaint's primary prayer is for a declaration that the LOUs are valid and subsisting; a declaration that Shah's disavowal of the existence of the LOUs is illegal; and that the LOUs need to be specifically performed.

Formulation of Interim Relief:

45. Prayer clause (d) and (e) in the Complaint indeed seek reliefs in the form of handing over of the Suit Property to Mayfair in terms of the Mayfair Term Sheet, but it may not be accurate to characterise them as the primary prayers.

The primary prayers on the contrary, are prayer clauses (a), (b) and (c), which have nothing to do with Mayfair and the Mayfair Term Sheet, and read thus:

(a) *To pass decree, judgement and orders for declaration that the Suit Contract being (i) Letter of Understanding dated September 22, 2021 (Exhibit "C") executed between the Plaintiff and Defendant No. 1, (ii) Letter of Understanding dated September 01, 2022 (Exhibit "D") executed between the Defendant No. 1 and Defendant No. 2 read with (iii) the Letter of Confirmation dated December 02, 2022 (Exhibit "F") executed between the Plaintiff, Defendant No. 1 and Defendant No. 2 are valid, subsisting and binding;*

b) *To pass decree, judgement and orders declaring that the Letter dated March 20, 2025 issued by Defendant No. 1 through its Advocates and the Public Notices dated March 25, 2025, and March 26, 2025 at the behest of the Defendant No. 1 are illegal and non-est;*

c) *To pass decree, judgement and orders against Defendant No.1 to specifically perform the Suit Contract being (i) Letter of Understanding dated September 22, 2021 (Exhibit "C") executed between the Plaintiff and Defendant No. 1, (ii) Letter of Understanding dated September 01, 2022 (Exhibit "D") executed between the Defendant No. 1 and Defendant No. 2 read with (iii) the Letter of Confirmation dated December 02,2022 (Exhibit "F") executed between the Plaintiff, Defendant No. 1 and Defendant No. 2;*

46. The prayer in IA 2122 is to restrain Shah from alienation of the Suit Property, which is consistent with the aforesaid primary prayers in the Plaint. Against these primary prayers in the Plaint, the primary prayer in IA 2122 is eminently consistent with the Plaint – seeking a restraint on alienation and creation of third-party rights in the Suit Property. Prayer (a) in IA 2122 reads thus:

a) *that pending the hearing and final disposal of the present suit, pass orders and injunctions restraining Defendant No. 1, his servants, agents and representatives from selling, transferring, parting with possession of, encumbering or in any manner*

creating any third-party rights or interests in the Suit Property or development of the Suit Property or any part thereof in any manner whatsoever;

[Emphasis Supplied]

47. When the Learned Single Judge passed an order on May 6, 2025, he did not dispose of IA 2122, but merely accepted the voluntary statement on behalf of Shah that he intended to develop the Suit Property on his own, and assured the Court that Ajmera would be paid entirely before any alienation of any rights is effected, so that the Court need not grant any *ad interim* relief. The Court took note of the same and accepted it and issued directions for the completion of pleadings.

48. IA 5864 has been filed on the premise that after the aforesaid statement, there is no sign of self-development. This is objected to on behalf of Shah, contending that it is not open to any litigant to keep expanding the scope of reliefs in the garb of newer interim applications. That principle is unexceptionable, but at the same time, Shah's conduct, as noticed in this judgement, cannot be ignored. Indeed, in his affidavit-in-reply to IA 5864, Shah has contended that he has taken steps towards development on his own. However, it is noteworthy that apart from naming one architect for the redevelopment and another "liaison architect", the affidavit-in-reply is delightfully vague on any material particular in relation to the steps purportedly taken in furtherance of redevelopment by Shah on his own. The listing of activity could well be a generic checklist of what a development would entail. The affidavit-in-reply says nothing about what was done, when it

was done, and in what manner, and through whom.

49. Indeed, IA 5864 seeks appointment of a Court Receiver to take charge of the Suit Property and also dispose it in the market to give Ajmera his promised proportion of sale proceeds, and this would be in conflict with the prayer in the Plaint seeking delivery of the Suit Property to Mayfair, but is not inconsistent with the primary prayers for declaratory relief and the specific performance of the LOUs.

50. Accepting Shah's contention at face value for purposes of formulating the interim relief, and also completely discounting Ajmera's contention that Shah has no wherewithal or intention to undertake any redevelopment on his own, it would be possible to balance the competing interests of all parties. Ajmera needs to be secured from Shah's extreme positions playing fast and loose – with statements ranging from LOUs being non-existent to their having been expired; statements ranging from the Suit Property being completely vacant of occupants and tenants, to contending that there are even more occupants left, only to find that those are his own family and his employee (presented as an occupant who may litigate) and his own shop.

51. Ajmera has made out a strong *prima facie* case of the LOUs being valid and subsisting and that Ajmera's monetary resources already deployed on the strength of the LOUs being at serious risk. Yet, I intend to protect Shah's purported intent to effect redevelopment on his own, so long as he protects

Ajmera's significant financial exposure.

52. At this stage, I am not inclined to grant any interim relief in aid of protecting the Mayfair Term Sheet – indeed, Mayfair has filed its own Suit and may pursue it. The issue of whether Ajmera had a perpetual call option on the Suit Property to have it sold to whoever it chooses without involving Shah, whenever Ajmera chooses, so long as the price is above Rs.200 crore, would need more consideration during trial. I do not have a strong *prima facie* view that there can be a call option on immovable property at a fixed price with payment obligations coming to an end by October 2023. This would need greater examination with evidence having to be led.

53. However, I am very much inclined to protect Ajmera's serious monetary exposure to Shah, which at last count was in the order of Rs.~114 crore, and continues to grow at 16% per annum, even while Shah has disclaimed the very existence of the LOUs and their validity. Towards this end, the prayers in the Plaint seeking declaratory reliefs and specific performance of the LOUs bring within their ambit, the prayer of restraint on creation of third-party rights made out in IA 2122.

54. Prayer clause (d) in IA 5864 is indeed consistent with the aforesaid approach to the Plaint and IA 2122, and reads thus:

d. that pending the hearing and final disposal of the present suit, this Hon'ble Court be pleased to direct Defendant No.1, to deposit all the original title deeds of the

Suit Property with this Hon'ble Court on such terms and conditions as this Hon'ble Court may deem fit in the facts and circumstances of the present matter:

[Emphasis Supplied]

55. I am still not discounting Shah's desire to develop the Suit Property himself. If he were genuinely serious about it, it would be appropriate to ensure that deposit of the title deeds in this Court does not pose an impediment to his ability to develop the Suit Property.

56. Therefore, factoring in these competing considerations, in my opinion, the following *interim order* would meet the ends of justice at this stage, in *disposal* of IA 2122 and IA 5864:

(a) Shah shall deposit the title deeds to the Suit Property and properties of every tenant and occupant who has been vacated from the Suit Property, with the Court Receiver within a period of two weeks from the upload of this Order on the Court's website, which is in any case consistent with Shah's committed contractual obligations under Clause 7 of the First LOU and Clause 4 of the Second LOU;

(b) Shah shall be entitled to have the aforesaid title deeds released to him in order to pursue redevelopment by himself, as solemnly indicated to the Learned Single Judge of this Court on May 6, 2025, whenever he desires, provided Shah deposits all amounts due and owing under the LOUs, including interest computed at the contracted rate of 16% per annum, computed until the date on which he seeks the release of the title documents; and

(c) When seeking to have the title deeds released by deposit of monies as aforesaid, Shah shall file a statement on oath about the

computation of the amount sought to be deposited and its compliance with the LOUs, for the Taxing Master of this Court to examine the same and confirm the accuracy, against which, the title deeds shall stand released.

57. The aforesaid arrangement would meet the ends of justice and balance the competing interests of both Ajmera and Shah. I did consider if Shah should be asked to deposit only Rs.72 crore on the basis of the minimum base price, but that would presume that the value of the Suit Property is below Rs.200 crore at this distance of time since the LOUs, which does not appeal to me considering the prime location of the property on Carmichael Road. Should the deposit amount be restricted to Rs.72 crore, then it would not be fair to let Shah develop the property on his own when such large sums are still owed to Ajmera. Hence the formulation as set out above.

58. In formulating the aforesaid moulded relief, I have not factored in the interests of Mayfair, which may pursue its interests in its own Suit. I have factored in the right of Shah to develop the Suit Property on his own terms as indicated earlier to this Court on May 6, 2025, if his desire to do so is indeed a *bona fide* and serious one.

59. Ajmera, who is out of pocket by a considerable sum and always had a contracted right to have the amounts secured by deposit of title deeds would also be secured by the aforesaid, inasmuch as the title deeds would be deposited with this Court, but for its release, the amounts due in the LOUs,

which Ajmera seeks to enforce, would be secured by deposit of the sums in Court.

60. With the aforesaid formulation, IA 2122 and IA 5864 are *disposed of*.

61. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]