



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

APPEAL AGAINST ORDER (AO) NO. 12 OF 2025

Shri Ashok Gulabchand Chandak
Aged about 64 years, Occupation -Business,
Resident of Balraj Marg, Dhantoli,
Nagpur.

... **Petitioner**

Versus

Smt. Asha Ambarrao Selokar
Aged about 70 years, Occupation – Retired,
Resident of Plot No.99, Ramkrishna Nagar,
Dighori, Nagpur

... **Respondent**

Mr. Rohan R. Deo, Advocate for petitioner.
Mr. P.M. Pande, Advocate for respondent.

CORAM : PRAFULLA S. KHUBALKAR, J.
DATE : 01.04.2026

JUDGMENT:

Heard.

(2) **Rule.** Rule made returnable forthwith. Heard finally by the consent of the learned counsel appearing for the rival parties.

(3) By this appeal filed under Section 104(1) read with Order XLIII Rule 1(r) of the Code of Civil Procedure, 1908, the appellant has challenged order dated 19.06.2025 passed by the Appellate Court allowing an application for temporary injunction during pendency of the appeal.

(4) The appellant is the original defendant in Special Civil Suit No.279/2023, which was filed by the respondent seeking a declaration that the sale-deed dated 02.04.2008 was illegal and void ab-initio. The defendant appeared in the suit and filed an application under Order VII Rule 11 of the Code of Civil Procedure seeking rejection of plaint and by order dated 12.01.2024, the application was allowed and the plaint was rejected. The original plaintiff filed an appeal bearing Regular Civil Appeal No.313/2024, in which the application for temporary injunction is allowed by order dated 19.06.2025, which is subjected to challenge by way of instant appeal.

(5) Advocate Mr. Rohan Deo, learned Counsel for appellant primarily submitted that the application for temporary injunction deserves to be rejected since the plaint in civil suit is already rejected under Order VII Rule 11 of the Code of Civil Procedure. In support of his submissions, he placed reliance on the judgment of the Hon'ble Supreme Court in the matter of **IEEE Mumbai Section Welfare Association Vs. Global IEEE Institute for Engineers**, reported in *2025 SCC OnLine SC 1756*.

(6) As against this, learned counsel for respondent submitted that the original plaintiff is entitled to seek temporary injunction to restrain the defendant from alienating the suit property, in absence of which, the appeal itself will become infructuous.

(7) He submitted that although the Hon'ble Supreme Court has clarified the legal position with respect to temporary injunction in appeal challenging order passed under Order VII Rule 11 of the Code of Civil Procedure, the Appellate Court is always empowered to exercise powers under Section 151 of the Code of Civil Procedure. He, therefore, submitted that the application for temporary injunction could be entertained under Section 151 of the Code of Civil Procedure and hence, no interference is warranted with the impugned order.

(8) While considering the controversy, it has to be seen that the application for temporary injunction was filed in the appeal challenging the order passed under Order VII Rule 11 of the Code of Civil Procedure. Pertinent to note that the Trial Court has rejected the plaint by order dated 12.01.2024. As such, there is no plaint which is alive and in which, any application for temporary injunction could be entertained. The position of law in this regard is elucidated by the Hon'ble Supreme Court in the matter of *IEEE Vs. Global* (referred supra) from which paragraph No.5 dealing with this legal position is reproduced below.

“Having heard learned counsel for the appellant and learned Senior Counsel for the respondent, we observe that in a case where an appeal is filed by being aggrieved by the rejection of a plaint in exercise of powers under Order VII Rule 11 CPC, the High Court ought not to

have granted an order of temporary injunction. We say so for the reason that the plaint itself has been rejected by the Commercial Court and the correctness or otherwise of the said rejection is a matter at large before the High Court. When the plaint itself has been rejected, it cannot be said that the appeal filed against such an order is a continuation of a suit. It may be that in the commercial suit the respondent herein had the benefit of an interim injunction, but once the plaint has been rejected by the trial court i.e. the Commercial Court, in the instant case, until it is revived/restored, an order of temporary injunction cannot operate against the defendant in the suit, who is the respondent in the appeal filed against the rejection of the plaint. In other words, it is necessary that there ought to be a subsisting plaint in order to seek an order of temporary injunction.”

(9) From perusal of the judgment of the Hon’ble Supreme Court, it is clear that in the instant case, the application for temporary injunction could not have been entertained. The reasons recorded by the Appellate Court about the appeal being a continuation of suit cannot also be accepted. As such, I find force in the contentions canvassed on behalf of the appellant which are in tune with the position of law as laid down by the Supreme Court in *IEEE Vs. Global* (referred supra).

(10) After giving anxious consideration to the entire controversy, I am of the firm opinion that the order 19.06.2025 passed by the Appellate Court allowing the application for temporary injunction, deserves to be set aside and hence, I pass the following order:

ORDER

- (i) The Appeal Against Order is allowed.
- (ii) Order 19.06.2025 passed by the Appellate Court on the application at Exhibit 8 in Regular Civil Appeal No.313/2024 is quashed set aside.

Rule stands discharged. No order as to costs.

[Prafulla S. Khubalkar, J.]

Prity