MHPU020063282015

Presented on :- 29/10/2015
Registered on :- 27/11/2015
Decided on :- 23/07/2026
Duration :- 10Y 08M 25D

IN THE COURT OF 05th JT. CIVIL JUDGE, SR. DIVISION, PUNE.
(Presided over by Smt. S. N. Ratkanthwar-Jawadwar)

R.C.S. No. 2053/2015 **Exh.42**

Palladium Properties
A Joint Venture (Association of Persons)
Having its office at S.No.17/1A/2,
Lohgaon Road, Dhanori, Pune-411015.
Through its Constituents :

a) M/s. Raojee Constructions,
A Partnership Firm, formed and registered under the provisions of the Indian Partnership Act, 1932 & having its registered office at Aarti Complex, 23 Rambaug Colony, Paud Road,
Pune - 411038.
Through its Partner
Mr. Suresh S. Tingre,
Age: 56 years, Occupation : Business,

b) M/s. Shreyas Shelters Pvt. Ltd.,
A Private Limited Company, formed and registered Under the provisions of the Indian Companies Act, 1956 & having its registered office at 401, Shreyas Covert, S.No.108/1, Chatushringi, Pune-411016.
Through its authorized Director :
Mr. Sandeep M. Kolatkar,
Age :49 years, Occupation : Business **...Plaintiffs**

Vs.

01.Mr. Anjani Singh,
Age : 47 years, Occ. : Service,

02. Mrs.Anita Singh,
Age : 43 years, Occ. : Service,
R/at.: Flat No.D-603,
Palladium Grand,
S.No.17/1A/2,
Dhanori, Pune-411015. **...Defendants**

Suit for recovery of an amount of Rs.1,65,292/-.

Shri. V. S. Rajebhosale, for the Plaintiffs.
Smt. Leena Kaulgekar, for the Defendants.

:: J U D G M E N T ::

(Delivered on 23.07.2026)

The suit is for recovery of an amount of Rs.1,65,292/-.

02. Brief version of the plaintiff is as under :-

The plaintiff is a joint venture (Association of Persons) formed by first constituent partnership firm M/s.Raojee Construction and second constituent private limited M/s Shreyas Shelters Private Limited. The plaintiff had development rights in respect of land bearing survey no.17, Hissa no.1A/2, situated at village Dhanori, Taluka Haveli, District Pune. After obtaining necessary permissions and approvals, the plaintiffs launched residential project by name ‘Palladium Grand’ and commenced construction activities over the above mentioned land. The plaintiff being promoter of the said project was entitled to enter into agreement with prospective purchasers for sale of units in the said project. The defendant approached and applied for allotment of residential unit bearing number D-603, situated on 6th floor of 'D' building to be constructed on the said land. The plaintiff agreed to sell the said unit to the defendants for Rs.24,67,750/- and executed flat purchase agreement dated 28.03.2008, which was duly registered.

03. The Government of Maharashtra issued ordinance no. VI of 2006 on 20.06.2006 amending definition of sale in section 2(24) of Maharashtra Value Added Tax Act, 2002(MVAT Act, for short) which was converted into Act w.e.f. 05.08.2006. The government issued a trade circular bearing 12T of 2007 dated 07.02.2007 and made applicable Value Added Tax (i.e.VAT) to transfers of property w.e.f. 20.6.2006, irrespective of date of execution of agreement. The agreement between the plaintiff and the defendants comes within its purview.

04. The constitutional validity of said amendment was challenged by CREDAI (PMR) formerly known as Promoters and Builders Associations of Pune vide Writ Petition No.1152/2011. The said petition was heard along with Writ Petition No.2022/2007 filed by Maharashtra Chamber of Housing Industry. Said petitions were rejected by Hon'ble Bombay High Court on 10.04.2012 upholding the validity of the amendment. Thereafter, the State Government issued another trade circular bearing No.14-T of 2012 dated 06.08.2012 calling upon the developers including the plaintiff to pay VAT amounts and file their returns on or before 31.08.2012. The judgment of Hon'ble Bombay High Court was challenged before the Hon'ble Supreme Court vide SLP No. 17738/2012 and 17709/2012 by way of interim arrangement, it was directed, amongst other directions, that no coercive action should be taken if developers pay tax on or before 31.10.2012. It was further observed that in case the amendment in S.2(24) is held constitutional and the tax deposited by the developers is ordered to be returned, it will carry interest as directed.

05. In view of the directions, the plaintiff got calculated through its chartered accountant the amount of VAT payable against all the flats in the said scheme as per rule 58 of Maharashtra Value Added Tax Rules, 2005. The plaintiff also got registered under MVAT Act, 2002. As per the VAT computation, the defendant is liable to pay Rs.82,300/-. The plaintiff is entitled to collect VAT from purchaser as per contractual terms agreed in the agreement with the defendant and to deposit the same with the concerned authorities. The plaintiff demanded said amount from the defendant orally on several occasions and issued notice dated 27.10.2012. The defendant failed and neglected to discharge his statutory and contractual liability. Considering the fact that liability is cast on the promoters and builders to collect and deposit VAT and the interim order of Hon'ble Apex court, the plaintiff was constrained to deposit total amount of Rs.88,61,614/- for the project on 31.12.2012. The plaintiff called upon the defendant to reimburse said amount of Rs.82,300/-. The defendant did not comply with it.

06. Hon'ble Apex court disposed of Special Leave Petition upholding validity of the impugned amendment. At the time of agreement with the defendant, the levy of VAT as against contract of sale of flat/units under construction was subject to judicial review. Thus, the plaintiff did not claim or recover it from the defendant. After the constitutional validity of amendment in MVAT Act was upheld, it is bounden duty of the defendant to pay VAT. The defendant has already undertaken to pay service taxes, levy, cess or charge under the agreement. However, the defendant has not complied his statutory or contractual liability. On the contrary, the defendant started making frivolous claims and allegations against the plaintiff. For the purpose of business, the plaintiff is required to raise funds at high rate of interest from financial institutions. The plaintiff is entitled to recover the amount from the defendant with interest. Tax authorities also are claiming interest from the plaintiff on the VAT amount. Therefore, the plaintiff is entitled to recover the amount of VAT of Rs.82,300/- with interest of Rs.24,622/- plus interest payable to tax authorities Rs.58,370/- i.e. total amount of Rs.1,65,292/- with future interest. Hence, this suit.

07. In spite of service of summons vide Exh.6 defendants Nos.1 and 2 remained absent and failed to appear. My learned predecessor by passing order below Exh.1 on 14.07.2017 proceeded *ex-parte* against defendant Nos.1 and 2.

08. On the basis of contentions made in the plaint and evidence by an affidavit and documents filed on record, the following points arise for my determination and I recorded my findings thereon as follows :-

S.No.	ISSUES	FINDINGS
1.	Does the plaintiff prove the defendants have duty bound to pay the VAT on the flat purchased by him ?	...Negative
2.	Does the plaintiff prove that the amount of Rs.82,300/- is due towards VAT ?	...Negative
3.	Does the plaintiff prove that the defendants are liable to pay interest of Rs.24,622/- upon VAT ?	...Negative
4.	Does the plaintiff prove that the defendants are	...Negative

	liable to pay the interest of Rs.58,370/-?	
5.	Is the plaintiff entitled for the relief as prayed ?	**...Negative**
6.	What order and decree ?	**The suit is dismissed with costs.**

: R E A S O N S :

09. In order to substantiate the claim, plaintiffs examined plaintiff Sandip Kolatkar as (PW-1) by filing evidence by an affidavit at **Exh.13**. Apart from oral testimony plaintiffs have relied upon the following documentary evidence :-

Sr.No.	Documents	Exhs.
i.	Demand Notice	**17 and 18**
ii.	Envelope	**19**
iii.	Copy of Resolution dtd.05.12.2016	**21**
iv.	Certificate of VAT Registration dtd.29.08.2012	**22**
v.	Certificate issued by C.A. for method adopted for computing the VAT	**23**
vi.	13 VAT challans	**24 to 34, 37, 38** respectively,
vii.	Postal Receipts	**35**
viii.	Copy of Article agreement dtd.03.03.2008	**39**

Plaintiffs have closed their evidence by filing pursis **Exh.40**.

10. Heard the learned advocate Shri. V. S. Rajebhosale for the plaintiffs and perused the written notes of argument filed by the plaintiff at **Exh.41**.

11. It being civil proceeding it has to be decided on preponderance of probabilities. As of general rule initial burden is on the plaintiff to prove his case. The plaintiff must be stand on his own merit not on the weaknesses of the defence of defendant.

AS TO ISSUES NO.1 TO 5 :-

12. These issues are interlinked to each other, therefore, in order to avoid repetition of evidence and for the sake of convenience I have taken them together for discussion.

13. Plaintiff authorized director Mr. Sandip Kolatkar (PW-1) reiterated the contention in the plaint *inter alia* wherein he specifically testified that, he is director of M/s Shreyas Shelters Pvt. Ltd. which is one of the constituents of the plaintiff. He relied on letter of resolution passed by the directors authorizing him to represent the company **Exh.21**. Plaintiff stated that both the constituents of joint venture have signed the plaint Exh.1. From submission, it appears that the plaintiff is a joint venture constituted by M/s Raojee Constructions and Shreyas Shelters Pvt. Ltd..

14. The limitations is the question of law needs to be consider for deciding the further claim. According to the plaintiff, it has deposited the amount of VAT on behalf of the defendants. The plaintiff pointed out that limitation to recover the amount paid on behalf of the defendants are three years as per Article 23 of Limitation Act from the date the amount is paid by the plaintiff. The amount of VAT is paid by the plaintiff on 31.10.2012 and the suit is filed on 29.10.2015. Further, the constitutional validity of the levy of VAT in respect of the agreement with the defendants attained finality in view of order of Hon'ble Supreme Court on 26.09.2013. Thus, according to it,the suit is well within limitation.

15. It is a matter of record that the constitutional validity of amendment in MVAT Act was challenged before Hon'ble High Court and Hon'ble Supreme Court. The interim order passed by Hon'ble Supreme Court is also a matter of record. The plaintiff deposited the amount of VAT by way of Challans **Exh.24 to 34, 37, 38** as per said interim order. According to the plaintiff, he has deposited the amount of VAT on behalf of the defendants and the defendants are liable to repay the same in view of the terms of the agreement at **Exh.39**. At this place, it must be noted that the point of limitation has to be decided taking into account the averments in the plaint. It appears that after payment of the amount of VAT by the plaintiff the suit is within limitation. If the circumstances and the chronology of events as brought forth by the plaintiffs are considered, it appears that the suit is within limitation.

16. The plaintiff submitted that it is the contractual liability of the defendant to indemnify the plaintiff as the plaintiff has complied with liability to pay VAT which is ultimately the duty of the defendant to pay. For that purpose, the plaintiff relied on clause 25(l) of the agreement at **Exh.39**. Clause 25(l) of **Exh.39** provides that the purchaser agree to pay and indemnify the promoter in the event of any claim or liability being made as regards applicability or liability to pay any service tax or related levy, cess or charge ancillary or related thereto pertaining to said contract. The plaintiff stressed the terms service tax, levy, cess or charge used in the said clause to argue that these words cover VAT and thus, the defendant is duty bound to pay the same. Relying on ***Venkataraman Krishnamurthy & Anr. V/S Lodha Crown Buildmart Pvt. Ltd., Civil Appeal No. 971/2023 dtd.22.02.2024,*** the plaintiff submitted that actual meaning should be given to the words of a contract and it is not permissible for the court to re-write a new contract if the parties have not made it themselves.

17. In the light of the argument advanced on perusal of agreement **Exh.39** it appears that it is a standard form contract, giving an upper-hand to the plaintiff in respect of terms and conditions incorporated in it. With better bargaining power, the plaintiff is vested with greater duty towards the defendant to disclose all the relevant information concerning his interest. The plaintiff was bound to make complete disclosure of the relevant facts to the defendant concerning the agreement. As per the bare case of the plaintiffs, it appears that ordinance of State Government of Maharashtra which amended the definition of the same as per Section 2(24) of the Maharashtra Value Added Act came into effect as it converted in to Act w.e.f.05.08.2006. Further, plaintiff himself contended that Government of Maharashtra issued a trade circular bearing No.12T of 2007 dtd.07.02.2007 and made applicable the Value Added Tax (VAT) to transactions in respect of the transfer of property w.e.f. 20.06.2006. Irrespective of agreement signed prior to 20.06.2006 otherwise. Agreement in the present case **Exh.39** executed on 03.03.2008 i.e. after the effect of imposition of the liability of the VAT came into force. However, the plaintiff did not disclose the said fact to the defendants further not disclose the fact of the effect of amendment is subjudice before Hon'ble Appellate Court. The plaintiff did not make it clear to the defendants that the price of flat is not all inclusive and in case it is required to pay VAT, it will be recovered from them. The plaintiff did not bother to inform the defendants about it since before the agreement till handing over the possession of the flat and even thereafter. Thus, it cannot be said that there was consent of the defendants in respect of said liability.

18. Agreement **Exh.39** if perused minutely, there was no clause as to liability of VAT on the purchaser. Even, though by the time of execution agreement **Exh.39**, the amendment in MVAT Act had came into force. Clause 25(l) in agreement is in general terms. VAT is a specific tax and not a local tax. Hence, a specific reference of said tax could have been made in the agreement but plaintiffs have not made the same in the agreement **Exh.39**. By not making any such provision and not informing the defendants, the plaintiffs made the defendants to believe that the consideration amount mentioned in the agreement **Exh.39** for sale of the unit to him is full and final price or that it is all inclusive price and he will not be liable to pay anything over and above the same. The plaintiff himself has called for the interpretation of the clause 25(l) of agreement **Exh.39** and interpreting the same to find out the actual intention of the parties does not amount to re-writing the contract. Therefore, the citation referred by the plaintiff is not helpful to them.

19. The plaintiff also submitted that agreement **Exh.39** is the contingent contract in view of Section 31, 32 and 37 of the Contract Act,

1872. Thus, happening of the contingency as contemplated in the said clause i.e. ascertainment of applicability of liability to pay VAT, the defendant was bound to pay the same. So far as the legal issue raised by the plaintiff is concerned, it must be first understood that the event contemplated in a contingent contract is known to both the parties to the contract. They agree to enter into such type of contract with full knowledge and consequences thereof. Here, only the plaintiff was aware about all the developments regarding application of VAT and the defendants were not even made aware that the circumstances may eventually fetch liability to them to pay the VAT. Thus, clause 25 (l) of agreement **Exh.39** cannot be said to be a contingent.

20. As per the contentions of the plaintiff, though it is the statutory liability of the promoter/developer to deposit the tax with the government, to pay the same out of own pocket or to collect the same from the flat purchaser is purely a bargain between the purchaser and the promoter/developer. It appears from this argument that the plaintiff is seeking enforcement of contractual liability of the defendant and not any statutory duty. The plaintiff has heavily relied on clause 25(l) of the agreement **Exh.39.** However, to fasten contractual liability on the other party to the agreement, there must be complete disclosure of the facts and circumstances surrounding it. The clauses of the agreement must be specific and should not leave any scope for interpretation. In Clause 25(l) of agreement there is specific absence of either imposition of the VAT on purchaser or recovery of the VAT paid by the builder from the purchaser.

21. The plaintiff contended that they are claiming amount of VAT of Rs.82,300/- with interest of Rs.24,622/- from the defendants. It is also claiming the interest of Rs.58,370/- on the said amount to be paid to the tax authorities. In order to prove the payment of VAT, the plaintiff produced on record VAT calculation certificate issued by the Charted Accountant **Exh.23** and VAT challans **Exh.24 to 34, 37, 38.** These documents shows that VAT amount of Rs.88,51,613/- paid by the plaintiff. The plaintiff stated in course of the argument that the VAT amount is paid for entire Palladium Grand project consisting of 140 units. The amount reflected in **Exh.24 to 34, 37, 38** is the cumulative amount. However, neither **Exh.23** nor **Exh.24 to 34, 37, 38**, reflect the amount of VAT to be paid by the individual flat holder. Argument of the plaintiff that the VAT is required to be calculated for the entire project and then calculated on pro-rata basis for the individual flat holder appears to be without substantial support. However, the plaintiff for the first time came up with the said version at the time of final argument. There is nothing on the record to show the calculation of VAT amount for individual flat holder. The plaintiff is claiming VAT amount of Rs.63,881/- from the defendants. However, it did not explain as to how this amount calculated. Sandeep Kolatkar PW-1 deposed that the VAT amount and interest amount is calculated by the chartered accountant but no document is produced in support of the statement except the calculation submitted that C.A. **Exh.23**. However, **Exh.23** is the document, which shows the entire amount paid by the builder towards VAT, it does not reflect the VAT amount to be paid by each flat holder or unit. Further there is no document to show that what amount of tax paid by the builder on behalf of the defendants. Even, plaintiff has not produced on record of VAT returns to substantiate his contentions. In **Exh.23**, there is a specific clause that it is issued on the basis of documents provided to them. Plaintiff has not examined the C.A. or any other witnesses to prove his case or recitals in **Exh.23**.

22. Merely mentioning the total VAT amount and the methodology of calculation will not suffice in absence of evidence. As such, there is nothing on record to justify the claim raised by the plaintiff. In view of above discussion, plaintiff failed to establish that he is entitled to recover the amount of VAT with interest. Hence, I answer issue No.1 to 5 in negative.

<u>AS TO ISSUE NO.6:-</u>

23. In view of negative findings to issue No.1 to 5, plaintiff is not entitled for relief claimed. Thus, the suit is liable to be dismissed with costs. Thus, in answer to issue No.6, I pass following order:-

<u>:: O R D E R ::</u>

1) The suit is dismissed with costs.
2) Decree be drawn up accordingly.

(Dictated and pronounced in the open Court)

Digitally signed by SUJATA NILESH RATKANTHWAR JAWADWAR
Date: 2026.07.23 17:22:28 +0530

(S. N. Ratkanthwar – Jawadwar)
05th Jt. Civil Judge Senior Division,
Pune.

Date : 23.07.2026

CERTIFICATE

I Affirms that the contents of this PDF file Judgment are same word for word as per Original Judgment.

Name of Steno: M.B. Marathe (Stenographer-Grade II)

Court's name: Smt. S.N. Ratkanthwar-Jawadwar,

05th Jt.C.J.S.D., Pune.

Date of Judgment : 23.07.2026

Judgment signed by Presiding officer on: 23.07.2026

Judgment uploaded on : 23.07.2026