



Commercial Suit No.32/2024

CNR No.MHPU01-010210-2024

M/s. Sai Developers

Through Partner Vitthal Laxman Bhujadi & Ors.

Vs.

M/s. Laxmi Developments & Ors.

ORDER BELOW EXH.5

This is an application for temporary injunction. I have heard at length Ld. Advocate for the plaintiff and the defendants. Perused the proceeding.

2. The plaintiff has filed instant suit for declaration, enforcement of statutory obligations, perpetual injunction and recovery of money. As per the plaintiff, the suit properties described in para Nos.1-A, 1-B, 1-C and 1-D in the plaint are related to the dispute and the land in para No.1-A is to be referred as larger land and the properties in dispute are the lands described in para Nos.1-B and 1-C which are part of Survey No.286/1B. An agreement in the year 2015 was executed between the plaintiff and the defendants for the development of the land and thereafter, another supplementary agreement was executed between the parties in the year 2016 and as mentioned in para No.14 of the plaint, the entire amalgamated land was 16112 Sq.Mtrs. and the defendants were entitled to carry out construction on 29029 Sq. Mtrs. existing and proposed built-up area and as per the Agreement of the year 2016, the plaintiff is absolutely entitled to get 50% share in total built-up area i.e. 14514.05 Sq.Mtrs. In lieu of that area, the defendants have given 31 flats in the form of consideration and which was the built-up area to the extent of

1766.86 Sq.Mtrs. only and therefore, the plaintiff is entitled to balance built-up area 12747.19 Sq.Mtrs. and thus, he has entitlement in remaining buildings C, D, E, F and G of the project.

3. For this purpose, in January 2024 on two or three occasions, the plaintiff personally met the defendants and also issued legal notice dated 01/06/2024 to handover the balance built-up area as well as make payment of Rs.3.30 crores along with interest @ 18% p.a. but the defendants have not replied or complied with the aforesaid notice and therefore, the present suit.

4. In Exh.5, the plaintiff has stated that the construction work of the 'C' and 'D' buildings is in full swing and the defendants are likely to create third party interest in residential flats/units and if the defendants succeed in it, then the plaintiff will suffer irreparable loss which cannot be compensated in terms of money. The plaintiff has prima facie case, balance of convenience in his favour and therefore, temporary injunction to restrain the defendants from carrying out any further construction in suit project by name "Laxmi Emerald" described in para No.1-D of the application Exh.5.

5. Ld. Advocate for the plaintiff has referred to the two agreements of the year 2015 and 2016 and also produced copies of certain photographs and submitted that the plaintiff has prima facie case. In support of submissions, Ld. Advocate for the plaintiff has relied on the following Judgments :

1. **Gangubai Babiya Chaudhary v. Sitaram Bhalchandra Sukhtankar – 1983 CJ(SC) (5)22.**

2. N. Srinivasa v. M/s. Kuttukaran Machine Tools Ltd. - Civil Appeal No.1098 of 2009 – Decided on 18/02/2009.
3. Breach Candy Swimming Bath Trust & Ors. v. Dipesh Mehta & Ors. - 2016(7) ALL MR 330.
4. Ramkishorelal v. Kamalnarayan – 1962 CJ(SC)(11) 39.
5. Bihar State Electricity Board, Patna v. M/s. Green Rubber Industries - 1989 CJ(SC)(11) 57.
6. Bank of India & Anr. v. K. Mohandas & Ors. - Civil Appeal No.1942 of 2009 – Arising out of S.L.P. © No.22704/2005.
7. Bangalore Electricity Supply Company Limited (BESCOM) v. E. S. Solar Power Pvt. Ltd. & Ors. - Civil Appeal No.9274 of 2019.
8. Food Corporation of India & Ors. v. Abhijit Paul – 2022 LiveLaw (SC) 975.
9. Praful Manohar Rele v. Smt. Krishnabai Narayan Ghosalkar And Others - 2014 CJ(SC)(1) 8.
10. Akhilesh Kumar Alias Hansu S/o Late Vishwanath Ji & Ors. v. Shri. Saradchandra Bhate S/o Shri. Viswanath Ji Bhate & Ors. - Misc. Petition No.6181 of 2022.

This Court will comment on aforesaid Judgments at a later stage in this order.

6. On the other hand, the defendant has vehemently opposed the application and submitted that the plaintiff has filed the suit as well as instant application by suppressing material facts. The plaintiff has conveniently not at all disclosed supplementary development agreement dated 15/03/2021 executed between the parties. Further, the plaintiff has mischievously stated about very small built-up area but the actual built-up area of the 31 flats of which the plaintiff has already taken possession and he has mostly

disposed them of by monetising them, with ulterior motive by submitting false and fabricated story, the plaintiff is trying to stall the project when he has already received his entitlement and in fact, the plaintiff himself has committed breach of the terms and conditions of the contract by which there were obligations on the part of the plaintiff to make certain payment, purchase additional area FSI as per the terms and conditions in the agreement. That has not at all been done by the plaintiff and in fact, the plaintiff has committed breach of the terms and conditions between the parties. He has suppressed the material document which is supplementary development agreement of the year 2021 and therefore, when the plaintiff has come up with false and fabricated case, he is not entitled to get any relief. There is no prima facie case in favour of the plaintiff when, he himself committed breach of the terms and conditions between the parties.

7. Following points arise for consideration and findings of this Court thereon are for the reasons stated thereto :

Sr. No.	POINTS	FINDINGS
1.	Whether the plaintiff made out prima-facie case ?	In the Negative.
2.	Is the balance of convenience lies in favour of the plaintiff ?	Does not survive.
3.	Whether the plaintiff will suffer irreparable loss, if injunction is refused ?	No.
4.	What order ?	Application is Rejected.

REASONS

AS TO POINT NOS.1 TO 4 :

8. Making out a prima facie case is sine-qua-non and for their purpose and the plaintiff has to stand on his own legs. Perusal of the development agreement in particular first development agreement of the year 2015 clearly shows that there were certain obligations on the part of the plaintiff and the plaintiff has not complied or given any answer to the argument of the Ld. Advocate for the defendants as to why the obligations on the part of the plaintiff in para No.4(h) i.e. regarding the owner shall purchase the necessary paid FSI/Premium FSI/TDR at its own costs and expenses and shall make available the said paid FSI/Premium FSI/TDR for construction of buildings on the said properties. Prima facie it appears that the plaintiff has not complied or done his bit as per the agreement. Further, though the plaintiff has claimed that the period of the development is sixty months, but it is not yet complete but the document i.e. supplementary development agreement of the year 2016 clearly shows that the plaintiff has agreed to take 31 flats along with the area mentioned in it which is on internal page Nos.11 and 12 of the said agreement and undisputedly, the plaintiff has received the possession, long time back.

9. Further, the plaintiff has suppressed the material fact that the agreement of the year 2015 was having a dispute resolution clause at item No.25 according to which the dispute ought to have been referred to the arbitration and this fact is suppressed by the plaintiff or even, the defendant has not brought it out in the

pleadings but when this Court has asked the parties as to why the parties have kept mum on this clause between the parties, the plaintiff has argued that it was for the defendant to raise this point at the first hearing of the suit as per the Judgment of the Hon'ble Calcutta High Court in **Smt. Gitarani Maity v. Mrs. Krishna Chakraborty and Others – FAT No.308/2023 – Decided on 09/01/2025** and the jurisdiction of this Court is not barred if such objection is not taken. Be that as it may, but the fact remains that the plaintiff has suppressed this material fact from this Court. Then another factor, the plaintiff has suppressed is the agreement of the year 2021 which indicates some different story than what has been projected by the plaintiff. The suit is filed in the year 2024, therefore, the plaintiff was very much aware of the supplementary development agreement of the year 2021 of which copy filed by the defendant and existence of that document is not denied by the plaintiff and that document creates certain further rights and liabilities. Therefore, the plaintiff has suppressed the very important document and development after the year 2016 and 2021 i.e. after taking possession of 31 flats from the defendant and selling many of them and now, the plaintiff is trying to stop the defendants from carrying out further work in the project.

10. It is settled principle of equity that who seeks equity must do equity and comes with clean hands. Suppression of material document and selective pleadings by the plaintiff amounts to seeking favourable order by suppressing material facts and if the party is coming before the Court with such conduct, it cannot expect equitable remedy from the Court. Therefore, the plaintiff has failed

to make out any prima facie case. Once the prima facie case is not made out, there is no need for this Court to consider the aspects of balance of convenience and irreparable loss. Even otherwise when the plaintiff has already got his benefit and dues by getting 31 flats and tried to cleverly make submissions by suppressing the actual developments, the balance of convenience does not lie in his favour and rather if injunction is granted, the defendant will face irreparable loss because the further project will be stalled.

11. So far as the Judgments relied by the Ld. Advocate for the plaintiff are concerned, some of them highlighted the above three principles to be considered and there is no dispute about following those principles by this Court. However, ultimately the application for temporary injunction has to be decided on the basis of the facts and circumstances of the case which this Court has to do and is being done. Therefore, I pass following order :

ORDER

1. Application is hereby rejected.
2. Costs in the cause.

Pune.
Date : 05/05/2026

(P. Y. Ladekar)
District Judge – 2 and
Commercial Court, Pune.

CERTIFICATE

I affirms that the contents of this P.D.F. file Order are same word for word as per original Order.

Court Name	:	P. Y. Ladekar, District Judge – 2 and Commercial Court, Pune.
Name of Steno	:	Abhishek Arun Gite (Stenographer Grade - I)
Date of Order	:	05/05/2026
Order signed by Presiding Officer on	:	05/05/2026
Order PDF and Uploaded on	:	05/05/2026