Order below Ex.5 in Spl.C.S.No.467/2012

Shri.Anandrao Dhondu Pawar .... Plaintiff.
Vs.
M/s Nirman Associates and
and others. .... Defendants

Perused the application, say, affidavits as well as documents filed on behalf of respective parties and the entire record. Heard both the sides.

2 Facts relevant for adjudication of the application are classified as follows:

A. Admitted facts : An agreement for development of the properties including the suit property dated 29/04/2005 had taken place amongst the parties, the terms of which are not disputed amongst the parties. The correspondence amongst plaintiff and defendants like issuing of notices to defendants and the reply of defendants thereof received to plaintiff have been admitted. Execution of power of attorney deed is also undisputed.

B. Plaintiff's case : Defendants have not developed the suit property within the time stipulation mentioned in paragraphs no.3 and 4 of the development agreement which expired on 28/04/2011. In case of failure of defendants to perform the part of their contract as to development of the property within 6 years, plaintiff gets right to sell out the suit property irrespective of contract and contract stands terminated by virtue of lapse of time, regarding which, plaintiff had issued a notice dated 17/09/2012 as to termination of contract which was replied by defendants stating that the defendant firm had got emerged and amalgamated into a company notified in the notice, that in the interest of usufruct in the

property on account of probable increase in FSI defendants waited for such an increment so that the work of development could not be completed, that the third party interests have been created in the property under contract and that the material of the construction was not available for defendants, more particularly, there was prohibition on sand excavation placed by the Supreme Court and these grounds have been counter replied by plaintiff whereby even the particulars of the third party interest were called by plaintiff from defendants which were not disclosed by defendants at any point of time. The prohibition of sand excavation was not demonstrated by defendants to be applicable to the said city and when the construction permission was obtained long back in the year 2008 itself, defendants could not complete the construction work till date. Execution of power of attorney deed being ***co-terminus*** with the execution of contract for development, the said power of attorney deed, although nomenclatured as ***"irrevocable power of attorney"***, stood terminated by virtue of termination of principal contract, incidental to which, the said deed was executed. ***Time was essence of contract*** and, therefore, by virtue of ***efflux of time***, and for want of performance within time stipulation, the contract stood rescinded so that plaintiff is entitled to sell the suit property as per the terms of contract, resultantly, defendants have no authority to develop the suit property and to enter upon the suit property in pursuance of permission to enter upon granted by the terms of contract. Despite notice having been issued to defendants regarding termination of contract, defendants are attempting to enter upon the suit property without any authority. Hence the suit and this application therein.

C. **<u>Defendants' case</u> :** The pleadings of plaintiff are evasive in nature in so far as plaintiff has conveniently downplayed the fact that the contract for development had been the contract for development of **all properties taken together** and it could not be taken to be consisting of

several contracts for development of each of the properties severally. As there were 4 properties to be developed as per the terms of contract, the choice of chronological development was to be made on discourse of the parties to be taken place. It was in pursuance of a chamber meeting amongst the parties that deciion to develop the property in S.no.50 first which was the remotest from railway station was taken and the development was to go on according to the descending proximity in remoteness so that such chronological development was in the best interest of the usufruct as well as the returns out of the properties as the later development of the property nearest to railway station would have fetched the maximum profit. Defendants, therefore, had begun the development of property accordingly and had developed, in fact, the three properties under the contract for development, after the completion of which development of the properties, the payments thereof regarding the flats constructed have been received by plaintiff from time to time till the entire development of 100 gunthas land out of 110 gunthas land. On account of receipt of payment from time to time, defendants have acquiesced with the developments going on with the contemporary speed and had also acquiesced with the development going on after the time stipulation. Time was never the essence of contract as the **paragraph 31** of the terms of contract itself was very much clear which did not give any of the parties an authority to rescind the contract. In the year 2011, plaintiff had issued a letter dated 01/03/2012 thereby calling upon defendants to complete the work of development within the time period mentioned in the letter so that this letter being one having been issued after the so called expiry of time stipulation, this subsequent conduct of plaintiff virtually extended the time, and rather, by virtue of this conduct of plaintiff, the terms of contract have to be construed in such a manner as to interpret that time had never been the essence of contract. The power of attorney being an agency in which an interest has been created in favour of agent, that cannot be terminated in view of **Section 202 of**

Contract Act as is unilaterally professed to be terminated. The construction of this last property could not be made on account of time spent for the construction of rest of the properties which were constructed first considering the best benefits of the property, and that at the relevant time, by virtue of prohibition of Supreme Court on sand excavation, material could not be made available for construction of this property. Similarly, it was obligation of plaintiff to get the requisite permissions, and after the performance of this obligation the come turn of performance of obligation of defendants was to come and therefore, it is in this background that plaintiff has not come with clean hands in seeking these reliefs when he himself has been guilty of non performance, acquiescence and evasive pleadings. According to defendants, about 150 flats have been constructed and sold since 01/08/2008 and about more than Rs.4 crores of amount has been received by plaintiff from time to time, and therefore, option to avoid or rescind the contract is not available for plaintiff so that the suit is false and so is the application.

3 Heard both the sides. Following are the points for determination, alongwith my findings thereof for the reasons ensuing:

Sr.No.	Points.	Findings
1	Whether plaintiff has made out prima facie case in his favour?	**No.**
2	Whether balance of convenience lies in his favour?	**No.**
3	To whom irreparable loss will be caused if injunction is allowed?	**To defendants.**
4	What order?	**Application is rejected in terms of final order.**

REASONS

4 **Points No.1 to 3** : By way of an interim order, plaintiff got interim protection and an objection regarding maintainability of the suit for the existence of **Arbitration Clause** in the contract was raised which was rejected by this court. The said order of rejection of objection was challenged in the Hon'ble High Court where the proceedings of this suit were stayed. Defendants, during the pendency of the proceedings before the Hon'ble High Court, preferred an application under O.XXXIX Rule 4 of Code of Civil Procedure, 1908 for vacating the interim injunction granted. It is, in this background, that this application came up for hearing and has been heard.

5 According to plaintiff, as defendants themselves have moved this court when there was stay to the proceedings of this suit, the conduct of defendants amounts to waiver of remedy before the Hon'ble High Court. Hon'ble High Court stayed the proceedings; but the stay to proceedings does not mean that interlocutory application cannot, at all, be entertained or heard by the court. Even otherwise, whether the conduct of defendants amounts waiver or not is less significant question, more particularly, when this court has nothing to do with what amounts to relinquishment of claim in the proceedings before Hon'ble High Court as that is a question to be considered by that Court. Furthermore, when objection as to existence of **Arbitration Clause** has been rejected by my learned predecessor, this court can have no occasion to reconsider the same.

6 In as much as the terms of contract No. 2 to 4 relied upon by plaintiff are concerned, it is true that the development was to be carried out, as per the terms, within a period prescribed and further there was a prescription of penalty of Rs.25,000/- per month for the belated

development and there also appears a prescription that if development could not be completed within 6 years, plaintiff had right to sell the property under contract treating it as his own property without any right of third party. It has been argued on behalf of defendants that Paragraph 31 of the contract, which is unambiguously clear as to non-rescindability of contract, rules out and outweighs any prescription of time being essence of contract, and therefore, time cannot be said to be the essence of this contract.

7 In the realm of law of contracts, the terms of contract are required to be construed by reading the document as a whole and having regard to the surrounding circumstances and the conduct of parties preceding as well as subsequent to contract. Here, paragraph No. 4 of the contract prescribes for completion of work within a particular time not exceeding 6 years; but paragraph No. 31 goes diametrically opposite to what has been prescribed in the earlier paragraph.

8 There are terms of contract, which are incorporated with an intent to be acted upon ***stricu sensu*** and there are, in some cases, terms which are incorporated only with an intent to **secure performance** of other important terms of contract, and accordingly, act as deterrence. The best example can be found in the text of Contract Act itself by way of Section 74, which prescribes for a penalty in case of breach of contract and the Section itself says that it is the question of fact whether such term is required to be given effect to in toto. There may be contracts in which a particular sum may be prescribed to be paid to other party in case of default which is called a ***sum-in-terrorrem*** (at Common Law) prescribed only with intent to **secure performance** so that it does not mean that, in case of non performance, the other side gets right to recovery of entire sum in toto. The exception to such instance of prescription as to **sum-in-terrorrem** has been set out by the law itself in the form of **recognizances**

accepted by the Court in the form **bail bonds,** in which case, the Court can give an effect, in entirety, to the term relating to prescription of sum where the said sum cannot be said to be merely a **sum-in-terrorem**. Applying the same analogy, alike a **sum-in-terrorem,** there may be a ***"term-in-terrorem"*** in a given contract. It is to be considered here whether time stipulation prescribed in contract in the earlier paragraph was a ***"term-in-terrorem"*** , or a term really intended to be given effect to, more particularly, when there has been an another term diametrically opposite to what is apparently conveyed by the earlier term. The plain reading of the term in the earlier paragraph gives a connotation as to time being essence of contract; whereas the term in paragraph 31 reverses the effect of the earlier term.

9 The c**annons** of construction of documents require the Court to construe a document in such a manner that, as far as possible, all the terms are given effect to and no term is rendered redundant. If the term in the earlier paragraph regarding time being essence of contract is given its full effect as per literal meaning, the term in paragraph No. 31 would be rendered redundant and its existence would be absurd. On the other hand, even if the term in paragraph No. 31 is given effect as to non-avoidability of contract, the term earlier prescribed does not become redundant to be thrown out of the contract as its relevance as well as existence can be justified by way of treating it to a be ***term-in-terrorrem*** prescribed only in order to secure performance of contract within a reasonable period. Moreover, while interpreting the terms of contract, the discourse of parties and conduct, previous as well as subsequent, is very much essential, and here, it appears that there have been 3 more properties under contract for development, out of which, the property remotest from the Railway Station was taken up for development and so on in the descending chronology. This course of development at the

instance of defendants with the consumption of a particular duration of time till 2012 appears to have been observed by naked eyes by plaintiff, that too, with an implied participation by receiving the part of consideration amount on account of sale of flats so developed and usufruct thereupon. It, therefore, seems that plaintiff has acquiesced with the performance of the obligation as to development of properties with the speed with which it was going on till the time limit, and even after the efflux of time limit, as is contended to have been stipulated under the earlier terms of contract in the beginning. It is in this scenario that the pleadings of plaintiff as regards the mention of this property in alone exclusion of the mention of other properties command significance when time spent in development of other property under contract has been one of the grounds set out in defence as to why so much of time was consumed by them in construction of the suit property. There appears no manifest reason why this facet of the matter could not find place, or was not otherwise dealt with, in the pleadings in plaintiff, which are utterly silent in this behalf regarding the mention of other 3 properties in contract for development which was a ***contract in omnibus for composite development of all the properties taken together***. Plaintiff cannot blow hot and clod at same time by acquiescing with development of some of the properties and in reverting himself to claim rescission after getting advantage out of development of considerable portion of composite property under contract.

10 It, accordingly, appears from the terms of contract and the conduct of the parties that *time has not been the essence of contract*, more particularly, when it is presumed by law that in contracts for transfer of interest relating to immovable properties, time is essence of contract. Needless to say that even if time is not essence of contract, the obligation is required to be performed within a ***reasonable period***.

11 Much has been argued on a letter dated ……/2012 invoked by defendants in claiming subsequent acquiescence of plaintiff in the performance of obligation of defendants, which, according to plaintiff, has been after the expiry of time stipulated by earlier paragraphs No. 2 to 4 of contract. The letter is purported to have been issued by plaintiff after so called expiry of contract as per para No. 2 of the contract, when, according to the said term, the contract is to expire in 2012. By virtue of the letter, defendants are called upon to complete the development within the period mentioned therein. It has been argued on behalf of defendants that this letter is a conduct which indicates that parties had never intended to act upon the term as to time stipulation and, therefore, time cannot be said to be essence of contract. Plaintiff has argued that this letter cannot be relied upon, particularly, when there has been no whisper thereof in the reply to the notice issued by plaintiffs and this is for the first time, after the advancement of argument on this application and when the matter was posted for order before my learned predecessor, that the copy of letter came to be produced before the Court so that there is every ground to suspect the genuineness of the letter. *Per contra*, defendants have pointed out that issuance of letter is well pleaded by them at the earliest in the written statement itself. When it was asked about the omission of mention of this letter in the erstwhile reply issued to notice, it has been argued that merely because the counsel issuing reply omitted its mention for his own reasons, defendants' reliance upon the said letter cannot be stifled and genuineness of fact of issuance of letter cannot be suspected, at least, at this interim stage when the contrary is required to be established by adducing cogent evidence ruling out the said fact of issuance of letter.

12 It is true that copy of the letter came to be filed much after the arguments have been advanced; but it is equally true that the existence of such a letter was pleaded at the very first instance before the Court in filing written statement. It is at the same time true that the said letter was

not mentioned in reply issued to the notice. When the existence of letter has been pleaded in the written statement, the contention that it was submitted long back after the arguments becomes one of less relevance as the pleading in the written statement is at the earliest. Furthermore, on account of such pleading having been taken at the earliest, merely because it was not so mentioned in the reply, defendants' reliance upon this letter cannot be questioned as it is upto the party claiming some document like letter to be not genuine to establish the fact contrary to genuineness in view of presumption gathered from illustration of common course of human conduct regarding the letter correspondences found in Section 114 of Indian Evidence Act, more particularly, when on perusal of letter and its comparison by bare eyes with the admitted signatures of plaintiff, there seems no reason to doubt its genuineness, at least, at this stage. There may be some circumstances which may render the genuineness of the said letter doubtful; but these circumstances are required to be established which have not been brought before me, which, perhaps, may require thorough scrutiny at the time of recording evidence. At this interim stage, therefore, the reliance upon the said letter on behalf of defendants appears to be proper and cannot be brushed aside by jumping to conclusion as to its falsehood. *Alternatively, even independent of this letter*, as is already recorded in the foregoing discussion, it can safely be said that time was not essence of contract.

13 Coming to the argument that even if time was not essence of contract, the performance of obligation has to be within a reasonable time, it, perhaps, appears to be contention of plaintiff that the delay on part of defendants had been beyond all reasonableness in the time duration that may be considered as a reasonable time. Whenever an obligation under a contract is required to be performed either within a fixed time stipulation or within reasonable period, under the law of contracts itself, the same can be performed within that period, or within such time which may be

allowed by the other party even after the time stipulation, or as the case may be, reasonable time which may be so called, and in that background, the quantum of reasonable time becomes calibrated to that quantum as may be granted after such expiry by the party securing performance. In the case in hand, even after the period of 6 years, the work of development of other 3 properties continued as there is nothing to show to the contrary, nothing even pleaded in this regard by plaintiff, and as this continuation can be said to be acquiesced, approved and recognized by plaintiff by virtue of his conduct, even if, for the sake of moment, it is assumed that reasonable time stood expired, on account of this acquiescence on the part of plaintiff, the subsequent performance of defendants stood approved to be performance within contract. From the subsequent conduct, either reflected in acquiescence or in some discourse like correspondence, which brings about ***novation of contract,*** and from what has been observed so far, it can certainly be said that, the development was regarding 4 properties and each of the properties was required to be developed one by one which was so developed simultaneous with the receipt of returns and usufruct by either parties, and that, development was so acquiesced even as regards the time when the said properties were being developed. It is in this background, therefore, on account of omission to question as regards the quantum of time spent in development in earlier properties, the questioning of development of this part of property (under scanner) to the exclusion of other 3 properties itself becomes incomplete an enquiry regarding the reasonableness of time spent in development of the 4th property under contract. Neither is there any question raised as regards time spent in earlier properties in plaint nor does it appear to have been so questioned in any of the notices issued. It, therefore, appears from the pleadings that the questioning of the time spent in development in 4th property in segregation of other properties falls insufficient for being scrutinized under the test of reasonableness.

14 On this count itself, the consideration of grounds taken by defendants which have been challenged by plaintiff viz. unavailability of material, sand, etc. becomes less significant as independent of these grounds, the questioning of reasonableness of time itself must be held to be immature and insufficient. Hence, although it is true that defendants cannot say that material of construction was not available for constructing property when they themselves have stated that about 150 flats have been constructed as well as sold, and although this ground appears to be a lame excuse, this, of itself cannot patch up the inherent lacuna in the questioning of reasonableness of time at the instance of plaintiff. Hence, whether Supreme Court prohibited the excavation of sand or not, etc. all these are grounds, independent of which, it can be said that the relevance of question as to the reasonableness of time itself is in question when no question has been raised regarding reasonableness or otherwise of consumption of time in earlier development and no opportunity has been given to defendants to justify the same, for, the pleadings themselves do not at all give a mention thereof regarding unreasonableness of time spent in entire property inclusive of 4 properties in contract.

15 There has been a counter reply, by virtue of which, plaintiff had called upon a list of particular persons to whom the suit property has been sold, to which there has been no response. Plaintiff has always been segregating, for the purpose of knowing the third party interest, this suit property from other property under contract. Plaintiff has not at all whispered about development of 3 properties under contract, regarding which, therefore, the contention of defendant that about 150 flats have been sold remained undealt with by plaintiff. Furthermore, from the tenor of argument that the material of construction can not be said to be unavailable for defendants when it was obviously available for constructing 150 flats, it appears that there has been not only development of 3 properties, but there has also been sale of units of

developments like flat and this aspect has been omitted to be dealt with by plaintiff in the course of evading the information. It in this perspective that the contention that about Rs.4 crores has been paid as consideration to plaintiff thereof is required to be looked into. It, therefore, appears that there has been existence of third party interest in the properties under contract which included 3 more properties in addition to this suit property, so that recession of such contract which may proceed to rescind the contract to the jeopardy of such party holding an interest in property under contract, therefore, appears to be unjustified. This finding, of course, is without prejudice to hearing and decision on merits and is recorded for purpose of this interim stage.

16 Plaintiff has come to the Court with the case of recession of contract which requires a contract to be termed “voidable” or “terminable” at the instance of one party. There are several contingencies in which contract may become voidable which are either the case in which contract is executed with any of the flaws in consent enumerated under Sections 14 to 19-A of Contract Act or when there are some stipulations in contract, which give to any of the parties, an option to avoid any contract, for example, a time stipulation as per sec 55 of Contract Act. The tenor of plaint appears to be mentioning the only ground for recession that is existence of time stipulation u/s 55 of Contract Act. Although a lame attempt has been done to invoke ground of fraud at the very inception in contending that while executing contract defendants were holding a fraudulent intention, the said pleading, cannot make out, with all force, the ground of fraud, more particularly, when, in the beginning paragraphs of plaint itself, plaintiff has contended about good reputation of defendants and the reason why they entered into the contract with defendants. This contention rules out existence of induced belief leading to fraud. Furthermore, Order VI Rule 4 of the Code of Civil Procedure, 1908, requires either plaintiff or defendant coming with the case of fraud

to plead all particulars of fraud and the manner in which the party was defrauded. For the manifest absence of all these necessary particulars as to fraud in plaint, fraud cannot be said to be a ground pleaded by plaintiff. Thus, the suit for declaration basing itself on fact of contract having been rescinded, which in itself, is edificed on the sole ground of time being essence of contract rendering the contract voidable, which theory has failed for the foregoing reasons. There being no other ground taken by plaintiff as to how contract was voidable which could have been given him right to rescind the contract, plaintiff cannot be said to be entitled to claim the right which is being claimed by virtue of occurrence of recession of contract.

17 In absence of recession of contract, there has to be an existing contract and the activity under contract which have been promised to be undertaken and allowed to be undertaken reciprocally by parties to contract are required to be allowed to be so undertaken that those cannot be restricted as restriction would amount to an impediment in performance of an obligation arising out of a valid contract existing as on date. Hence, it appears that due to existence of contract, the restriction placed on activities to be undertaken and allowed to be undertaken may cause injury to plaintiff instead of defendant and non placement of any restriction would just be in furtherance of contract and also would facilitate the preservation of right under contact. It, therefore, appears that plaintiff has failed to make out a prima facie case in his favour and balance of convenience does not tilt in favour of granting injunction. Comparatively, a greater hardship would be caused to defendant in case of grant of injunction than the hardship that may be caused to plaintiff in case of refusal to grant. The old age of plaintiff in comparison with age of defendants can hardly be any criteria for deciding the balance of hardships in this case, when the claim placed by plaintiff is intended to obstruct the activities undertaken as well as allowed to be undertaken under the

reciprocal promises, and when plaintiff could not bring about his case of recession of contract having taken place. Similar can be said about the argument based on subsistence of protection granted to plaintiff since long duration of 3 years, which, on merits, appears to have been a wrong protection.

18 Before parting with, it is expedient to deal with case law references which have been considered while applying law of contacts to the facts of this case. Plaintiff has relied upon following case law references:

1 **Hungerford Investment Trust Limited Vs Haridas Mundhra** reported in **SCC-1972-3-684**

2 **K.S.Vidyanadam Vs. Vairavan** reported in **AIR (SC)- 1997-0-1751**

3 **Arosan Enterprises Limited Vs. Union of India** reported in **SCC-1999 - 9 -449**

4 **Food Corporation of India Vs. Anupama Warehousing Establishment** reported in **AIR (KER)-2004-0-137**

5 **Pankoj Kumar Bhattacharjee Vs. Manmatha Nath Vidyabhushan Bhattacharjee** reported in **AIR (CAL)-1973-0-439**

6 **Hind Construction Contractors by its sole proprietor Bhikam Chand Mulchand Jain (dead) by Lrs. Vs State of Maharashtra** reported in **SCC-1979-2-70**

7 **Bali Ram Prasad Vs. State of Mysore** reported in **AIR 1973 SC 506**

20 In the case of ***Hungerford Investment*** *(supra)*, it has been held that even if it is not mentioned in contract as to time being essence of

contract, the obligation has to be performed within a reasonable time. There can be no disagreement with this postulate that every obligation under contract is required to be performed within a reasonable time; but in the case in hand, for the aforesaid reasons, plaintiff has failed to make out the case that defendants have been guilty of an unexplainable and inordinate delay and non performance within reasonable time. Rather, plaintiff appears to have acquiesced with further development taking place in contemporary times. The judgment cited, therefore, stands distinguished.

21 Similar can be said about the precedents in the cases of ***K.S. Vidyanadam*** *(supra),* ***Food Corporation of India*** *(supra)*, ***Pankoj Kumar Bhattacharjee*** *(supra)*, ***Hind Construction Contractors*** *(supra)*. For the manifest finding of this Court that plaintiff himself has acquiesced with the further activity of development during contemporary times and the elaborate reasons assigned for holding the failure of plaintiff to make out case of recession on the ground of existence of time stipulation.

22 The reliance of plaintiff upon ***Bali Ram Prasad*** *(supra)*appears to be mistaken in so far as the said case deals with an issue as regards omission of accused to set out a particular fact under section 313 of the Code of Criminal Procedure,1908 as the court was dealing with criminal trial. Needless to say, standard of proof in civil and criminal trial differs from each other and what is required in criminal trial is ***proof beyond reasonable doubt***; whereas in civil case, the test is that of ***preponderance of probabilities***. The analogy, in this light of difference in standard of proof required in a civil or criminal trial, is of no help to plaintiff in as much as the reliance of defendants on the said letter of March 2012 is questioned by plaintiff. Even on hypothetically assuming that logic in precedent is applicable to the case in hand, in that case also, it is

independent of that letter relied upon by defendants that time cannot be said to be essence of contract and performance of defendants can never be said not to have been within reasonable time.

23 Defendants, on the other hand, have relied upon the judgments in following cases:

1 **Ramjas Foundation & Anr. Vs. Union of India & Ors** reported in **2010 ALL SCR 2819**

2 **Shri.Yashwant Laxman Pai Raikar & Anr. Vs. Shri. Laxman V. Singbal & Ors** reported in **2010 ALL MR (Supp.) 89**

3 **Man Kaur (dead) by Lrs. Vs. Hartar Singh Sangha** reported in **(2010) 10 Supreme Court Cases 512**

4 **Chand Rani (Smt)(dead) by Lrs Vs. Kamal Eani(Smt) (dead) by Lrs** reported in **(1993) 1 Supreme Court Cases 519**

5 **Rameshwar Dayal Vs. Banda (dead) through his Lrs and another** reported in **(1993) 1 Supreme Court Cases 531**

6 **National Green Tribunal Bar Association Vs. Ministry of Environment & Forests & Ors. M.A.no.671/2013 etc. in Ori.Appln.no.171 of 2013 before the National Green Tribunal, Principal Bench New Delhi**

7 **Sagar Shramik Hatpati Walu Utpadak Sahakari Sanstha Maryadit Vs. State of Maharashtra & Ors. In Writ Petition no.4830 of 2010 before High Court of Judicature at Mumbai, civil Appellate Jurisdiction**

24 Case of ***Chand Rani*** *(supra)* has been cited by plaintiff which reiterates the principle that there is no presumption as to time being essence of contract in case of contracts for transfer of immovable property. This principle, which itself is legislated in Specific Relief Act,1963 by way

of explanation to Section 10, cannot need the help of any ruling and hardly any authoritative pronouncement thereof is necessary..

25 Case of ***Man Kaur*** *(supra)*, has been relied upon by defendants which has held that if parties to contract prescribe time stipulation and they themselves extend time stipulated in such term, the contract has to be held to be one in which time is not essence of contract. As to when time can be said to be essence of contract in the consideration of the terms of contract,their construction and the conduct of parties has been deliberately dealt with in the foregoing discussion, and while dealing with the same, principles set out in the judgment cited by plaintiff have been relied upon as the principles so culled out have been the outcome of propositions of law independent of aspect requiring peculiarity of act.

26 Case of ***Yashwant*** *(supra)* deals with the principles of grant or refusal of temporary injunctions. Law relating to principles of temporary injunction is no more *res itingra* and has been well synchronized in India by catina of decisions. The case of ***Yashwant*** *(supra)* is one of such judgments. I take this opportunity to opine that the over-reliance of precedents in interlocutory proceedings requiring summary adjudication based on ***subjective satisfaction*** of court like temporary injunction applications or bail petition on criminal side is a practice which needs to be checked not only by Courts but also by the members of Bar. Summary adjudication in the proceedings like this one is required to be made keeping in mind the peculiarity of the fact of the respective cases in hand involving the matter of subjective satisfaction of Court, for which there is no straight jacket formula.

27 For the aforesaid reasons, findings to points No.1 to 3 are recorded.

28 **Point No. 4 :** In view of negative findings to points No. 1 to 3, the application is liable to be rejected. It is desirable to leave the question of determination of costs of this application to be decided at the time of adjudication of final costs in the main cause. In the conclusion, I pass the following order:

ORDER

1 Application is rejected.

2 Costs in cause.

Panvel
Date- 18/03/2016.

(D.R.Deshpande)
Jt. Civil Judge, Sr.Division, Panvel.