

**COMMON ORDER BELOW EXH.36 & 97 IN SPL.C.S. NO.411/2018**

1. This application is filed by plaintiff for grant of status-quo against defendants. Plaintiff contended that he has filed this suit for specific performance of contract against defendants. He is bonafide purchaser of suit plot admeasuring 1000 sq. mtrs. out of 4000 sq.mtrs. Due to financial difficulties defendant No. 1 unable to develop the plot. Hence, in the year 2006 defendant No. 1 approached to the plaintiff to transfer and sell the suit property. Recently, plaintiff came to know that defendant No. 5 & 6 are developing the suit property and trying to sell the flats as well as shops in the suit property. Hence, this application to restrain defendant No. 5 & 6 for proceeding further by the grant of status-quo.

2. Heard Ld. Advocate for plaintiff Shri. Chandre. It is pertinent to note that this is a suit for specific performance, declaration and perpetual injunction. The suit property is admeasuring 1000 sq.mtrs. out of 4000 sq. mtrs out of Plot No. 73 & 74. From the pleadings of plaintiff, it appears that defendant No. 1 has transferred suit property in favour of defendant No.5 & 6 and executed tripartite agreement.

3. Plaintiff has filed an application at Exh. 36 for amendment of plaint under the provisions of Order 6 Rule 17 of Code of Civil Procedure for adding proposed defendant No. 4, 5 & 6 and to add consequential pleadings. The said application is pending.

4. Along with this application, plaintiff had filed another application at Exh.38 for interim injunction for restraining defendant

No. 5 & 6 from further creating third party interest in the suit property. The said application is pending.

5. Defendant had filed an application at Exh.20 under Order 7 Rule 11 of Code of Civil Procedure for rejection of plaint but, the said application was rejected on merits. Being aggrieved by the said order, defendant preferred a Revision Application before Hon'ble High Court which was rejected. Against it, defendant preferred Special Leave Petition before Hon'ble Supreme Court which was disposed of by consent and parties agreed to go for mediation process. Matter was referred to mediation by this Court. But, the matter was not settled before mediator. Again defendant No. 1's Power of Attorney Holder came before the Court and requested the Court to refer the matter for mediation. As in the previous mediation process, parties were not present hence, this Court again referred the matter for mediation and directed the parties to appear before Mediator Judge. This order of referring the matter to mediation by this Court was challenged by plaintiff before Hon'ble Bombay High Court. On 24/09/2024 in Writ Petition No.13297/2024, the Hon'ble Bombay High Court directed the parties to remain present before the Court & inform whether they would be going for mediation or otherwise in consonance with the impugned order in the present writ petition.

6. Again, in Writ Petition No.13297/2024 the Hon'ble Apex Court in the minutes of the order allowed application filed by respondent No.5 & 6 and impleaded them as defendant No.5 & 6 in this suit. Here it is pertinent to note that there is no such application

of defendant No. 5 & 6 to add them as party to the suit. On the contra, plaintiff had filed an application at **Exh.36** to add them as party to the suit. The said application is pending.

7. In view of the above facts, I proceed to discuss the present application. Plaintiff is seeking interim restraining order against defendant No. 5 & 6 from creating third party interest. From the record, before me, it is transpired that tripartite agreement was executed in favour of defendant No. 5 & 6 on 18/11/2019. It is admitted fact that defendant No. 5 & 6 have constructed a building consisting 196 flats. I have perused the photographs of the building filed by the plaintiff. Plaintiff has also filed the Index-II extracts of the agreements with regard to the flats constructed on the plot.

8. It is pertinent to note that defendant No. 5 & 6 have constructed flats on 4000 sq.mtrs area and plaintiff is claiming specific performance on 1000 sq. mtrs area. In the interim application filed by plaintiff at Exh.5 this Court while rejecting the said application directed defendant No. 1 to pay an amount Rs.37,50,000/- and charge was also kept on the suit plot for the said amount. Now, in the present scenario defendant No. 5 & 6 are not yet added as a party. Today, on basis of the order passed in the Writ Petition No.13297/2024, plaintiff has added defendant No. 5 & 6 as party to the suit but, it is pertinent to note that there is no amendment in the prayer clause of the suit. In this circumstances, I am of the opinion that before considering the application for restraining order against defendant No. 5 & 6, they need to be heard. Thus, considering the order of Hon'ble Bombay High Court in Writ

Petition No.13297/2024 and in view of the willingness of defendant No. 5 & 6 to be added them as a party to the suit, application filed by plaintiff at **Exh.36** needs to be allowed and opportunity should be granted to the defendant No. 5 & 6 to put up their pleadings.

9. Taking into consideration, the nature of the rights involved in the suit property which plaintiff is claiming and the relief of plaintiff granting status-quo with respect to the entire area needs to be decided on merits after considering both the parties. Hence, I am not inclined to pass status-quo order considering the complications involved. Thus, I am of the opinion that this application deserves to be rejected. But the application of plaintiff at **Exh.36** is allowed and plaintiff is directed to carry out amendment on or before next date and served the copy of amended plaint along with the documents to defendant No. 5 & 6. As Advocate for defendant No. 5 & 6 are present before the Court, hence, no summons be issued against them. Hence, in view of above discussion, I pass the following order

### ORDER

1. Application Exh.97 stands rejected
2. Application Exh. 36 is allowed.
3. Plaintiff to carry out amendment on or before next date and provide the copies to proposed defendant No. 5 & 6.

Panvel.  
Date : 14-10-2024.

Sd/-  
(Nayomi P. Pawar)  
Civil Judge, Senior Division Panvel.