

ORDER BELOW EXH. 38 IN S.C.S. NO. 411/2018

(CNR NO.MHRG04-001753-2018)

1. In a suit for specific performance of agreement dated 30/10/2006 executed between plaintiff & defendant No. 1, plaintiff has filed this application for restraining defendant No. 5 & 6 from further alienating the suit property, restraining defendant No. 2 & 3 from granting permission to sell alienate or execute tripartite agreement of suit property and also from granting permission to develop the suit property.

2. Plaintiff contended that he has filed this suit for cancellation of tripartite agreement, declaration that agreement for transfer of leasehold rights agreement dt.30/10/2006 executed by defendant No. 1 in his favour is legally valid and for declaration that defendant No.1 is liable to perform his obligations. In the present application plaintiff further contended that he adopts the contents of suit/plaint in to-to and they be treated as part and parcel of this application. Further he contended that this suit will take time for disposal and hence, plaintiff has filed this application. They have strong prima-facie case, if injunction order is not granted there will be irreparable loss and hence, prayed that defendant No. 5 & 6 and defendant No. 2 to 4 be restrained as above. Hence, the application.

3. Proposed defendant No. 5 & 6 resisted the said application and filed their reply at **Exh.48**. These defendants contended that defendant No.5 is bonafide purchaser of leasehold rights of suit property without notice for any alleged prior transaction. Tripartite agreement is executed in their favour on 18/11/2019. The suit is not maintainable. The previous interim application Exh. 5 of plaintiff is

rejected by this Court. In the present application name of proposed defendant No. 5 & 6 are not mentioned as a party. Defendant No.1 has served notice dated 26/04/2012 whereby he had clearly and unequivocally refused to execute the agreement. The suit is barred by limitation. There is no cause of action. Plaintiff is not eligible for any interim relief hence, prayed that the application be rejected.

4. Considering rival contentions of both the parties following points arise for my determination and I record my findings thereon for the reasons mentioned below.

No.	POINTS	FINDINGS
1	Whether the plaintiff has made out prima-facie case in their favour ?	... No
2	Whether balance of convenience lies in favour of the plaintiff ?	... No
3	Whether an irreparable loss will be caused to the plaintiff ?	... No
4	What Order ?	... Application is rejected.

:: REASONS ::

POINT NO.1 to 4. :-

5. Heard Ld. Advocate Shri. S. M. Lad. and Shri. Vishal Pattivaram for defendants. Ld. Advocate for plaintiff was absent when called out repeatedly. His colleague Adv. Mr. Bhushan Kolhe was present. Plaintiff was present in person. Plaintiff has filed application **Exh.118** for adjournment and the said application was rejected. Hence, plaintiff and his advocate Mr. Bhushan Kolhe was asked as to whether they want to argue/say anything in support of their applications, but they refused to argue.

6. The Hon'ble High Court in Writ Petition No. 13297/2024 had directed this Court to hear and to dispose of application Exh.38 expeditiously as possible and preferably within period of four weeks. The present matter was referred to mediation and plaintiff had filed an application Exh.36 & Exh.97 which were disposed off on 14/10/2024. On 11/10/2024, Plaintiff has filed an application Exh.97 for grant of status-quo which was rejected on the same day. On 14/10/2024 & 08/11/2024 the matter was referred to mediation again. On 13/12/2024, plaintiff has filed an application under Order 1 Rule 10 of Code of Civil Procedure and defendant filed his say. On 03/01/2025, Advocate for plaintiff insisted to proceed with application Exh.107 instead of Exh.38 while advocate for defendant insisted to proceed with Exh. 38 as the said application is time bound.

7. The present application Exh.38 was filed on 24/01/2020 after that there was amendment in the said matter and matter was posted for hearing on Exh,38. Moreover, Hon'ble Bombay High Court had directed to dispose off application Exh.38 as expeditiously as possible. Hence, I have taken this application for consideration.

8. Plaintiff contended that defendant No. 5 & 6 have intending to sell suit property and hence, they be restrained and also defendant No. 2 to 4 be restrained from granting permission to develop the property and from executing tripartite agreement. I have gone through the contents of application Exh. 38, dated 24/01/2020. In the said application plaintiff has adopted the contents of the plaint. This application is specifically to restrain defendant No. 5 & 6 from creating third party interest. But, in the

entire application there is no whisper about defendant No. 5 & 6. At the time of application Exh.38 defendant No. 5 & 6 were not party to the suit. Since the filing of this application till date, plaintiff has not taken any efforts to mention contents/details about defendant No. 5 & 6 and also to mention as to how they are entitled for restraining orders against defendant No. 5 & 6. Moreover, plaintiff and his Advocate failed to argue the application.

9. In the present suit, plaintiff has filed application Exh.5 for restraining defendants from alienating and transferring and creating third party interest in the suit property. The application was heard by my predecessor and it was decided on merits. Application Exh. 5 was rejected. Against this order appeal was preferred by plaintiff but it was later withdrawn and thus, the said order attained finality. In application Exh. 5 plaintiff had mentioned the contents of the plaint and in the present application Exh.38, plaintiff has adopted the contents of the plaint. Thus, on basis of the contents of application Exh.5 interim application was rejected.

10. Moreover, I have gone through the record. In the plaint the suit property is mentioned area admeasuring 1000 sq. mtrs. out of total area admeasuring 8000 sq.mtrs. plot to be allotted to defendant No. 1. But, in the said agreement dated 30/10/2006, executed between plaintiff and defendant No. 1 it is specifically mentioned that 1000 sq.mtrs. out of 4000 sq.mtrs. which comes to the share of defendant No. 1 will be the property which will be sold by defendant No. 1 in favour of plaintiff. But, in the plaint plaintiff has mentioned entire 8000 sq.mtrs. area.

11. Advocate for plaintiff has not argued the said application. I have already observed about that plaintiff has not mentioned anything about defendant No. 5 & 6 in the said application and as to how they are entitled for restraining orders against defendant No. 5 & 6 & defendant No. 2 to 4. Thus, plaintiff has miserably failed to make out a prima-facie case in his favour, question of balance of convenience and irreparable loss does not arise. Thus, taking into consideration the contents of the application Exh. 38 and in view of above discussion, I am of the opinion that application deserves to be rejected. Thus, I answer point No. 1 to 3 in the negative and in answer the point no. 4, I pass the following order.

:: ORDER ::

Application is rejected

Sd/-

Panvel.

Date : 06-01-2025

(Nayomi P. Pawar)

Civil Judge, Senior Division Panvel.