

**MHRG170021522025**



**COMMERCIAL SUIT NO.5/2025**

**Maharashtra State Road Development  
through Shrimant Vishnu Patole**

**Vs.**

**Expressway Truck Terminus Pvt Ltd  
through its Director Shri Vijay  
Ratanchand Javeri**

**CNR NO. MHRG170021522025**

**ORDER BELOW EXH. 20**

1. This is an application by the defendant with the prayer to declare that the No Objection Certificate issued by the plaintiff dated 29.04.2021 as illegal, bad in law and not binding on the defendant and the plaintiff be directed to instruct the Indian Oil Corporation Limited to reinstate the retail outlet as was prevailing prior to COCO arrangement i.e. commencement of supply and to permit the dealer Novel Fuel to vend the fuel as earlier.
2. It is an admitted position that the Concession Agreement dated 09.02.2018 has taken place between the plaintiff and defendant. The plaintiff had initially issued No Objection Certificate considering the defendant as the Lessor of the property to the Indian

Oil Corporation Limited with whom the Indian Oil Corporation Limited has executed lease deed.

3. According to the defendant, in fact, the No Objection Certificate was not necessary, pursuant to the terms of the Concession Agreement, as it was granted authority and power to sub-lease the premises. Similarly, upon issuance of the No Objection Certificate the lease deed was duly executed and registered.
4. The defendant has further claimed that on the basis of the No Objection Certificate it has sub-leased the premises and that the Noel Fuel Station is paying monthly lease rentals to the defendant, and therefore it cannot be revoked. The defendant claims that Plaintiff is estopped from claiming material project defaults because it issued a Part Occupancy Certificate in 2018 and a Full Occupancy Certificate in 2019. In the afore stated factual matrix, the defendant sought the relief of declaration that the No Objection Certificate revocation dated 29.04.2021 issued by he plaintiff is illegal, bad in law and not binding and further to direct the plaintiff to instruct Indian Oil Corporation Limited to reinstate the retail outlet as was prevailing prior to COCO arrangement i.e. commencement of supply and to permit its dealer Novel Fuel to vend the fuel on the

basis the Concession Agreement dated 03.11.2014 executed by the plaintiff in favour of the defendant. The defendant further has also sought for directions to the plaintiff to instruct Indian Oil Corporation Limited to reinstate the retail outlet/fuel supply as it prevailed prior to the COCO arrangement.

5. The plaintiff has resisted the Counter Claim and temporary injunction application by filing its say Exh.28. The plaintiff has contented that the relief sought in the current Interim Application specifically the declaration that the April 29, 2021, No Objection Certificate revocation is illegal is already part of an ongoing suit (Commercial Suit No. 1116 of 2024) pending before the learned Bombay City Civil Court, Mazgaon and as such the present counter-claim is not maintainable.
6. The Plaintiff has further contented that the defendant has deliberately suppressed the fact that the learned City Civil Court on March 25, 2026 dismissed a related Chamber Summons because the defendant failed to obtain necessary leave under Order II, Rule 2 of the Code of Civil Procedure. According to the plaintiff, the present application is an attempt to "circumvent and camouflage" the relief already rejected by the Learned

City Civil Court.

7. The plaintiff has further contended the relief claimed being in the nature of final relief, it cannot be sought by way of interim application. The Plaintiff has contented that the defendant has no Prima facie case and that it would not suffer irreparable loss. Thus, the plaintiff has sought to reject the application for interim relief.
8. I have heard the submissions advanced by learned advocates M/s Indrajeet Bhosale for the plaintiff and Kishor Vig for the defendant and perused the documents which are placed on record including Exhibit-A and Exhibit-B annexed to the Reply, and the relevant provisions of the Concession Agreement dated 03.11.2014.
9. On the basis of the submissions advanced by both the sides following points arise for my determination and I have answered the same for the reasons stated herein below:-

<b>Sr. No.</b>	<b>Points</b>	<b>Findings</b>
<b>01.</b>	Whether Counter Claim is maintainable?	In the affirmative.
<b>02.</b>	Whether the defendant has made out a Prima-facie Case?	In the affirmative.

03.	Whether irreparable loss would cause to the defendant, if injunction is refused?	In the affirmative.
04.	Whether balance of convenience lies in favour of the defendant?	In the affirmative.
05.	What order?	As per final order.

**:: REASONS ::**

**AS TO POINT NO.1 :-**

10. The provisions under Order VIII Rule 6-A to 6-G of the Code of Civil Procedure deal with the counterclaims. Order VIII Rule 6A of the Code defines a counterclaim as a claim made by the defendant against the plaintiff in response to the plaintiff's original claim. This claim may arise from the same cause of action as the plaintiff's suit or from another cause of action that is connected to the dispute. It is treated as a cross-suit and is adjudicated alongside the main suit and it allows defendant to assert the claim within the same suit, so that the court is able to resolve all related disputes in a single judicial proceeding.
11. Upon perusal of the Counter Claim submitted by the defendant it Prima facie reveals that it arises directly out of the same cause of action and transaction as the

Plaint filed by the plaintiff (i.e., the alleged termination of the 2014 Concession Agreement and its consequences). Thus, there would be no hesitation to hold that it is squarely maintainable under Order VIII Rule 6-A of the Code.

12. The learned advocate for the plaintiff Mr. Bhosale has vehemently submitted that the claim made by the defendant in the present application is covered in the reliefs claimed in Commercial Suit No.1116 of 2024 and thus, it is claimed that the Counterclaim submitted by the defendant is not maintainable.
13. In reply, learned advocate for the defendant Mr. Vig has submitted that the counter-claim arises directly out of the same cause of action and transaction as the Plaint has been filed by the plaintiff alleging the termination of the 2014 Concession Agreement and its consequences. Therefore, it is claimed that the counter-claim is squarely maintainable under Order VIII Rule 6A CPC read with Section 12 of the Commercial Courts Act, 2015.
14. It is true that the present suit is based upon the Concession Agreement. The relief claimed by the defendant is also arising out of the same agreement. Considering this aspect of the matter the counter Claim

submitted by the defendant cannot be said to be barred, merely because the defendant had earlier filed the Suit before the Learned City Civil Court. It is to be noted that present Counter Claim is a defensive claim as well as substantive claim filed in response to the plaintiff's suit, and as such there is no scope to conclude that the counter-claim is barred. In the light of this the contention of the plaintiff regarding alleged overlap/parallel proceedings or similarity of the proceeding does not survive for consideration.

15. Learned advocate for the plaintiff Mr. Bhosale has submitted that the defendant took a Chamber Summons before the Learned Bombay City Civil Court, in said Commercial Suit and that it had claimed similar relief. In this regard, learned advocate Mr. Vig for the defendant has submitted that the relief claimed in the Chamber Summons has no concern, with the relief claimed in this application. He has invited my attention to the copy of the order passed in Chamber Summons No.2160/2024 dated 25.03.2026.
16. Upon perusal of the order it is revealed that in the said Chamber Summons, the defendant had prayed for amendment and to introduce the claim for Rs.55,16,02,164/- and Rs.9,56,74,28,791/ and interest

and that it had also sought leave under Order II Rule 2 of the Code. However, the Learned Judge, City Civil Court, was pleased to reject the counter-claim.

17. Thus, upon perusal of the claim made in either the counter-claim or the application, it does not reveal that the claim made by the defendant is covered under those claims. Therefore, in my view the fact that the Chamber Summons has been rejected by the Learned Judge, City Civil Court, would not adversely affect the claim of the defendant.
18. Be that as it may, on the face of the pleadings, it can be easily said that the reliefs in the present Counter Claim specifically targets the legality of the actions taken by the plaintiff, post termination of the agreement and their binding effect on the plaintiff's lessees/licensees, including the fuel station operated through Novel Fuel Station/IOCL. Therefore, I am of the view that there is no force in the contention of the plaintiff and accordingly it is held that the defendant's counter claim is maintainable.
19. In my view, the relief claimed by the defendant in the counter-claim is required to be decided in the present suit for the complete adjudication of the disputes between the parties. If the contention of the plaintiff

that in the light of the fact that the suit is pending before the learned City Civil Court, present counter-claim is not maintainable is accepted, in that view of the matter, there would be scope to hold that the plaintiff also had an opportunity to approach the learned City Civil Court, by filing the counter-claim, but it did not do so for the best reasons known to it. Therefore, it can be said that the plaintiff is sailing in the same boat. However, in view of the cause of action shown by the plaintiff, I am of the view that the plaintiff cannot be allowed to make hue and cry on the point of maintainability of the counter-claim in as much as the plaintiff is estopped from doing so under the principle of estoppel, by conduct.

20. In the background of this, present counter-claim, does not render the Suit pending before the learned City Civil Court infructuous. Therefore, it is held that the counter-claim submitted by the defendant is maintainable. Accordingly, point No.1 is answered, in the affirmative.

**AS TO POINT NOS.2 TO 4 :-**

21. So far as grant of temporary injunction and interlocutory orders are concerned, Order XXXIX of the Code of Civil Procedure deals with temporary

injunctions and interlocutory orders and its scope is to protect the rights of parties during the pendency of a suit, so as to empower the Court to grant temporary injunctions under Rules 1 and 2 when there is a Prima facie case, a balance of convenience, and a risk of irreparable injury, in the case if such relief is denied. Further, these injunctions may restrain a party from committing acts like waste, damage, alienation of property, dispossession, or breach of contract until the suit is decided.

22. A *Prima facie* case in a case of temporary injunction is a substantial, bonafide question raised by the plaintiff at first sight, showing a legal right and a probability of success, without requiring full proof at the preliminary stage. It necessitates showing a "serious question to be tried". It is settled law that Prima facie case is not to be confused with Prima facie title which has to be established on evidence at the trial. Prima facie case is a substantial question raised bonafide which needs investigation and a decision on merits. Satisfaction of court that there is a Prima facie case by itself is not sufficient to grant injunction.
23. The second condition is that the balance of convenience must be in favour of grant of interim injunction. The

court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief of injury which is likely to be caused to the parties if the injunction is refused and compare it with that what is likely to be caused to the other side if the injunction is granted. If on weighing competing, the possibilities or probabilities of likelihood of injury, the court considers that pending the suit, the subject matter should be maintained in status quo, an injunction would be issued.

24. In addition to existence of the Prima facie case and the balance of convenience, the court has to further satisfy that non-interference by court would result into irreparable injury to the party seeking relief and that there is no other remedy available to the party except the one to grant injunction and he needs protection from the consequences of the apprehended injury or dispossession. "Irreparable injury" however does not mean that there must be no physical possibility of repairing the injury but means only that the injury must be material one, namely one that cannot be adequately compensated by way of damages or money.
25. In the light of the above, it may be stated that where the relief sought is declaratory in nature, the Court has

to be satisfied that a Prima facie case is made out on the basis of the pleadings and documents. In the present matter, the interim relief of temporary injunction claimed by the defendant can be adjudicated at this stage on the available material, particularly since the plaintiff has not disputed the core facts regarding issuance of the No Objection Certificate, its revocation, and the termination notice in its Reply. Grant of the declaration will not pre-judge the Suit which is pending before the learned City Civil Court, but will prevent multiplicity of proceedings and irreparable harm to the business operations of the defendant. As such there is no hesitation to hold that Prima facia case exists in favour of the defendant.

26. Learned advocate for the defendant has submitted that the plaintiff has not disputed the core facts regarding issuance of the No Objection Certificate, its revocation, and the termination notice. According to him, Article 9.10 and Schedule A of the Concession Agreement granted the defendant a vested right to sublease part or full of the facility without the strict necessity of an additional No Objection Certificate and that the plaintiff has no legal right to interfere in internal dealership arrangements between a lessee and sub-lessee.

27. Upon perusal of the Concession Agreement and letters dated 19.04.2017 and 13/15.07.2017 prima facie it is revealed that the plaintiff had permitted the defendant to enter into the sub-lease agreement to establish retail outlet of petroleum product and that accordingly the defendant had entered into sub-lease agreement was informed of this structure *four years* before it had revoked the No Objection Certificate. It goes to prima facie suggest that the Plaintiff had clear prior knowledge of dealership and as such it is estopped from denying the defendants' rights regarding subleasing of the premises for the fuel station.
28. At the cost of repetition it can be said that the Concession Agreement and Occupancy Certificate are the prima facie proof of grant of sublease rights in favour of the defendant. It is worthy to be noted that the plaintiff had issued a full occupancy certificate after the alleged 2017 defaults and had knowledge of the dealership structure for not less than the period of four years. Thus, there would be no hesitation to hold that the Defendant has a strong prima facie case on the point that it was empowered to sub-lease the premises.
29. Under these circumstances it can be said that the act of the defendant to challenge the act of the plaintiff

revoking the No Objection Certificate gets support from the terms and conditions of the Concession Agreement Art 9.10 granting sublease rights and the Occupancy Certificate 2019.

30. If the act of the plaintiff to revoke the agreement is Prima facie examined in the line of the letters placed on record and the agreement, in that case there is no hesitation to hold that the defendant was competent to sublease the premises. Thus, there would be no hesitation to hold that there is substance in the contentions of the defendant that Prima facie the act of the defendant to issue letter dated 29.04.2021 to revoke the fuel station No Objection Certificate is illegal, void, and not binding on the Defendant.
31. The balance of convenience clearly lies in favour of the defendant. In my view, if the interim relief is not granted, the defendant and its lessees will continue to suffer irreparable loss and injury in the form of halted petroleum retail operations, loss of revenue, and disruption of the truck terminus business. On the contrary, no prejudice would be caused to the plaintiff, since its main concern is that of recovery of outstanding amount of Rs.8,40,00,000/- besides the interest thereupon.

32. So far as this aspect of the matter is concerned, learned advocate for the defendant has submitted that as on the date of revocation of the No Objection Certificate, the defendant was not liable to pay any amount to the plaintiff. According to him, the defendant on number of occasions had deposited the amount, well in advance of the due date. Whether the amount was outstanding or not will be the matter to be decided by this court after giving an opportunity to the parties.
33. Without delving into the issue, learned advocate Mr. Vig for the defendant, has fairly submitted that the plaintiff has submitted an application Exh.29 (although the application was submitted along with the suit, but it remained to be exhibited and therefore, it was exhibited during the course of hearing of Exh.20.) before this court and in the said application, without prejudice to the rights of the defendant, if the court directs the defendant to deposit certain amount, in that case under protest, the defendant is ready to deposit Rs.8,40,00,000/- in the account of the plaintiff, provided the plaintiff submits an undertaking that in future, if the claim of the plaintiff is turned down, in that case it would return the amount with interest, at the rate of 6% per annum.

34. Admittedly, the plaintiff by filing an interim application Exh.29 had claimed an amount of Rs.16,77,21,602/- from the Defendant which is inclusive of interest till the date of the filing of the suit. This court, has passed an order today on the basis of the submissions made at bar directing the banks with whom the defendant has maintained the accounts, to deposit part of the alleged outstanding amount, under protest. Therefore, it can be said that the issue in respect of balance of convenience, in respect of Exh.29, in favour of the plaintiff has already been resolved. Therefore, in my view the ground of non payment of the outstanding amount is not available to the plaintiff to revoke the agreement and to claim denial of the relief in favour of the defendant.
35. So far as the relief claimed by the defendant is concerned, the plaintiff has vehemently opposed the interim relief and contended that the relief is in the nature of the final relief and cannot be granted at interim stage as the defendant has to prove the claim amount. It is true that the interim relief claimed in the application and the counter-claim are much or less are similar. However, if hearing on the counter-claim is deferred till the decision of the counter-claim, in that case it would amount to give approval to the letter

dated 29.04.2021, which is Prima facie found to be against the basic terms and conditions of the Concession Agreement.

36. It is to be noted that admittedly, the defendant is in possession of the property. It has incurred huge expenses for developing the property. It has introduced sub-lessee in the premises. Under such circumstances, if the letter dated 29.04.2021 is not stayed, till the decision of the present suit, in that case it would cause irreparable loss not only to the defendant, but also to the plaintiff.
37. In this regard, I may add that the law relating to injunctions in India has its origin in Equity Jurisprudence of common law. Injunction is a judicial process by which party is required to do or to refrain from doing any particular act. It is in the nature of preventive relief to a litigant to prevent future possible injury. Identification of the standards for exercising such discretionary powers by the Court has not, generally, been part of the legislation. The guiding principles for exercise of discretionary powers appear to be drawn from the judicial precedence and the common law principles. The decision whether or not to grant an injunction has to be taken at the time when

existence of the legal right asserted by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. The relief, by way of interlocutory injunction is granted to mitigate the injustice to the plaintiff during the period before that uncertainty could be resolved. The object of interlocutory injunction is to protect the plaintiffs against the injury by violation of his right for which he cannot be adequately compensated in damages in the recovery if the uncertainty were to be resolved at the trial.

38. Considering the facts and circumstances, of the case and taking note of the fact that the plaintiff knew the fact that there was sublease of the premises and that the issue in respect of outstanding amount is triable issue, the interest of justice require that this court shall stay the operation and execution of the letter dated 29.04.2021, till the decision of the suit, subject to compliance of the order passed by this court below Exh.29 by the defendant, requiring it to pay the amount of Rs.8,40,00,000/-, which is half of the alleged due amount claimed by the plaintiff. Thus, I answered points No.2 to 4 in favour of the defendant.

**AS TO POINT NO.5 :-**

39. Considering the foregoing reasons and attending circumstances and the findings recorded against point Nos.1 to 4 the application deserves to be allowed partly in following terms. Hence, I proceed to pass following order;

**:: ORDER ::**

- i. Application Exh.20 is hereby partly allowed.
- ii. Execution and operation of the letter dated 29.04.2021, by which the plaintiff has revoked the No Objection Certificate issued by it, is hereby stayed till the decision of the suit, upon complying with the order passed below Exh.29, by which the plaintiff had sought the relief of directing the defendant to deposit the outstanding amount.
- iii. Upon compliance of the order below Exh.29 by making payment of Rs 8,40,00,000/-, the plaintiff is directed to instruct Indian Oil Corporation Limited, in writing to reinstate the retail outlet/fuel supply at the site within Seven days as per the Concession Agreement dated 03.11.2014, as prevailed prior to the COCO arrangement and further to permit Novel Fuel Station

to vend fuel as per the dealership agreement, dated  
16.03.2018.

**Panvel,  
Dated :- 21/04/2026**

**(Dinesh E. Kothalikar)  
District Judge-2, Panvel-Raigad.**