

MHTH020014532025



Rohit Kantilal Jain
Vs.
Shree Ambaee Developers

ORDER BELOW EXH.12 IN REG. CIVIL SUIT NO.263/2025.

This application filed on behalf of defendant No.1, 1(A), 1(B), 1(C) and 2 under Order VII Rule 11 of the Code of Civil Procedure.

2. In brief, it is submitted by the applicants that the suit is hit by the provisions of Section 41 (h) of the Specific Relief Act, 1963. The injunction cannot be granted when equally efficacious relief of specific performance is available to the plaintiff. In this background, suit simplicitor for injunction is untenable.

3. It is further submitted that the plaintiff has undervalued the suit and by doing so, deficit court fee stamp is paid. It is also submitted that the suit is hit by the principles of mis-joinder and non-joinder of the parties. Defendant No.2 is unnecessarily added as a party. There is no cause of action to file the suit. On these grounds, the applicants prayed to reject the plaint vide Order VII Rule 11(a), (b) and Clause (d) of the Code of Civil Procedure.

4. The plaintiff filed his reply which is below Exh.36. It is submitted that the application is false and baseless. There is no bar of Section 41(h) referred above in the given set of facts. He has properly valued the suit and paid court fees thereon. The parties are properly joined. On these submissions, he prayed for rejection of the application.

5. Heard Ld. Advocates of the party. Ld. Advocate for the plaintiff also filed written notes of argument, which is below Exh.52 and Ld. Advocate for the applicants filed his written notes of arguments which is below Exh.42.

6. The points for determination alongwith my findings thereon with reasons therefore, are as under:

<u>Sr. No.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1.	Whether the plaint is liable to be rejected as prayed ?	No.
2.	What Order ?	The application is rejected.

:REASONS:

AS TO POINT NO. 1 AND 2:-

7. Before considering the rival submissions, it would be necessary to look into the averments made in the plaint and the relief sought by the plaintiff. The plaintiff invested and promised to have an area of 2,165 Sq. ft. in the Redevelopment project which is being

carried out by defendant No.1 firm on land bearing plot No.10, Tika No.22, Survey No.147, CTS No.5/5 situated at Baji Prabhu Deshpande Marg, Vishnu Nagar, village Naupada and the bungalow over it known as “Shree Bungalow. The plaintiff invested an amount of Rs.1.45 Crores by the end of October 2023 as the said partners of the project were in need of funds. The said promised area comprises of flat Nos. 501, 502 and 503 initially and thereafter as flat 502 and 503 plans were not sanctioned, defendant No.1 agreed to give Flat Nos.501, 601 and 701. All these flats 501, 502, 503, 601 and 701 are collectively referred as the “Suit Property.”

8. It is further pleaded that the defendant No.1 is a Partnership firm was/is constituted (with partners named in cause title) for the redevelopment of piece of said land of “Shree Bungalow” land. Defendant No.1 (A) Shri. Sameer Mukund Natu is a main partner of the said defendant firm having 40% stake. Defendant No.1(B) Shri. Advait Anant Karve is also a partner of the said defendant firm having 30% stake. The defendant No.1(C) Smt. Pooja Sandeep Nemawarkar is also a partner of the said defendant No.1 firm having 25% stake. The defendant No.1 (D) Shri. Satyanarain Bajaj- a well- established business man and a partner of the said defendant firm and has 05% stake in the firm being an investor/money lender. The said investment deal was solicited through a common friend by Shri. Ranjan Jhawar who is also looking after accounts of defendant No.1 in capacity as a Chartered Accountant. Defendant No.2 is husband of defendant No.1 (C)

partner in defendant No.1 firm is active and was entrusted to take all decisions in the said business on behalf of his wife i.e. defendant No.1(C) along side defendant No.1(A). Consequently, defendant No.2 has taken over the responsibility of raising funds and he looks after the day to day activities of defendant No.1 on behalf of all the partners.

9. The plaintiff further pleaded that the defendant No. 2 informed him that the defendant No.1 (A) withdrew an amount of Rs. 50 lakhs from the firms account and thus, a need arose for raising and depositing the said 50 lakhs in the firm's account. The defendant No.2 thus introduced defendant No.1 (A) to the plaintiff through common friend to whom defendant No.2 was continuously following up for the said capital. Thereafter discussions and negotiations took place between them and finally the Plaintiff parted with the said amount of Rs.50 lakhs. At the time of investment it was represented to him by defendant No.1 (A) and defendant No.2. that defendant No.1(A) i.e. Shri. Sameer Mukund Natu is the main Partner and is a front decision maker and having majority of percentage as a partner of the said firm, and hence the Development Agreement was signed, executed by him alone. The said amount was supposed to be returned within a period of one month i.e. on or before 08th June 2023. Defendant No.2 has assured his personal guarantee for repayment as it being paid for short term period of 30 days only. Even after continuous follow up and reminders defendant No.1 (A) failed to repay the said amount and the defendant No.2

also failed to keep his promise and personal guarantee for repayment of the said amount.

10. It is also pleaded that in above circumstances and incapacity to refund the said amounts, defendant No.1(A) and defendant No. 2 in consultation with active partners i.e. defendant No.1 (B) and his father and 1 (C). offered the plaintiff an investment proposal in the month of August 2023. The said defendant parties also agreed and took responsibility to inform other non-active partner/investor. Defendant No.2 had even shared with common friend of the plaintiff the cost profit analysis prepared by defendant No.1 (A) in consultation with other active partners and associates. The plaintiff pleaded that at the time of investment he was offered an option either to have 25% stake in the said firm or take fixed area equivalent to one complete floor i.e. of 2,165 Sq. It was for a total investment of Rs.1.45 Crores. The plaintiff further pleaded that based on the assurances and rosy picture painted by the active partners of defendant No.1 and defendant No. 2, the plaintiff decided to keep an area equivalent to one complete floor i.e. of 2,165 sq. ft in the said project. It was decided among parties that of the said investment of Rs. 1.45 Crores an amount of Rs.1.25 Crores would be attributed towards the payment of flats, while Rs.20 lakhs would be repaid without any additional return/interest in the month of March 2024. Further defendant No.1 (A) and 2 requested the Plaintiff to pay another Rs.25 lakhs on interest free basis for a period of 6 months, i.e. to be paid back in the month of March 2024. The

said amount would be paid back along with the other amount of Rs. 20 lakhs paid earlier.

11. The plaintiff further pleaded that initially he was offered entire fourth floor thereafter it was changed to fifth floor as the defendants had some difficulties in giving fourth floor, and the Plaintiff was issued allotment letters and documents related to flat numbers 501, 502 and 503 in the said project and documents were executed on 18/10/2023. The plaintiff further pleaded that thereafter around last week of October 2023 he was informed on behalf of defendant No.1 by defendant No.2, that the defendant No.1 was going for partial plan sanction and the said sanction will not have flat No.502 and 503 as sanctioned units. Pursuant to this, the active partners of defendant No.1 had allotted the plaintiff flat No.601 and 701 in lieu of the difference shortfall area, with clear understanding that the said area will not be allotted or sold to any other party. The defendants had not paid back the said amount of Rs.45 lakhs which was due in March 2024 and neither kept their promise of flats allotment. The plaintiff was rigorously following with the defendant Nos.1 (A) and 2 continuously. The plaintiff states that after rigorous follow-ups Rs.19.95 Lakhs was refunded by the defendants in the month of June 2024 out of the Rs.45 Lakhs due and pending.

12. The plaintiff further pleaded that the date of completion for the said project as was promised was 30 months from September

2023 i.e. 30 March 2026 and it was also agreed that the defendant No.1 will register plaintiff's name as Investor on RERA for legally securing his rights. On 11/12/2024, defendant No. 2 on behalf of himself and others bluntly told the Plaintiff that they won't register his name as Investor with MahaRERA. The plaintiff further states that on 11/12/2024 it was also confirmed by the defendant No.2 on behalf of defendant No.1 that the flats which were allotted to the plaintiff. Flat No.501, 601 and 701 were allotted by them to other parties. The plaintiff thus was compelled to send notices in this regard to the defendant No.1 to resolve the issue but it has felt on deaf ears. The defendants had also while denying to register his name in MahaRERA are forcing him to take only his principal amount and forget his rights over the said flats stating that they do not intend to give him anything. Thus, he raised issue before MahaRERA authorities. On the basis of these averments, the plaintiff pleaded that the cause of action for filing the present suit firstly arose in the month of December 2024, when he was informed by defendant No.2 about the flats which were allotted to him have also been allotted to other persons and the said cause of action is arising everyday thereafter. It is further pleaded that the suit is for Simplicitor Injunction and thus have valued the suit for at Rs.1,000/- as the same is not susceptible to monetary valuation and have hence value the same as per Schedule I Article 23 (1) of the Bombay Court Fees Act 1959 and have affixed a stamp of Rs.200/-.

13. On the basis of above averments, the plaintiff prayed as

follows:-

“a. The Hon'ble Court may be pleased to order the Defendants or their agents, servants or anybody claiming through or under them by an order and decree of permanent prohibitory injunction from creating a third party interest on the suit property i.e. Flat No. 501, 502, 503, 601 and 701, in the Redevelopment project which is being carried out by the Defendant No.1 on land bearing plot no.10, Tika no.22, Survey no.147, CTS no.5/5 situated at Baji Prabhu Deshpande Marg, Vishnu Nagar, village Naupada, Thane (W), within the limits of the Thane Municipal Corporation.”

“b. Pending the hearing and final disposal of the suit the Hon'ble Court may be pleased to order the Defendants, their partners, their representatives, their agents, servants or anybody claiming through or under them by an order of temporary injunction from creating a third party interest on the suit property as mentioned in prayer “a” herein above.”

OR IN THE ALTERNATIVE

“The Hon'ble Court may be pleased to direct the Defendants to furnish on Affidavit an undertaking that the Defendants or their agents, servants or anybody claiming through or under them shall not create a third party interest over the area of 2,165 sq.ft as mentioned in the suit property and register the same in name of the Plaintiff for its nominees at the earliest before the office of the Sub-Registrar, Thane.”

“c. The Hon’ble Court may be pleased to order the Defendant No.1 to register the name of Plaintiff with MahaRERA as investor.”

“d. The Hon’ble Court may be pleased to order the Defendant No.1 to register an area of 2,165 sq.ft. out of the said suit property as mentioned in prayer “a” herein above in favour of the Plaintiff or its nominees.”

14. Ld. Advocate for the applicants relied upon the decision of the **Church of Christ Charitable Trust & Educational Charitable Society Vs. M/s. Ponniyamman Educational Trust, SLP @ No.30632 of 2011**. In this case, the Hon’ble Supreme Court expounded the meaning of ‘cause of action’. In paragraph 8 of his ruling, it is held as under:

“Cause of Action :- while scrutinizing the plaint averments, it is the bounden duty of the trial Court to ascertain the materials for cause of action. The cause of action is a bundle of facts which taken with the law applicable to them gives the plaintiff the right to relief against the defendant. Every fact which is necessary for the plaintiff to prove to enable him to get a decree should be set out in clear terms. It is worthwhile to find out the meaning of the words “cause of action”. A cause of action must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue.”

15. In the light of above legal position the fact of the present case needs to be weighed. The plaintiff elaborately with said referred

bundle of facts stated the cause for him to agitate his claim before the Court. More specifically, in paragraph 47 of the plaint he stated that the cause of action first arose in the month of December 2024 when he was informed by defendant No.2 that flats which were allotted to him have also been allotted to other persons. He mentioned about continuous cause of action from this period. In paragraph 48 of the plaint, he mentioned specifically about the role of defendant No.2. The role of other defendants and partners of defendant No.1 is also mentioned in detail. It would be impermissible to appreciate the facts by considering the defence. At this stage, the plaint and the documents filed by the plaintiff in support of the plaint clearly shows cause of action for him to file the suit. The contention of non-joinder or mis-joinder are the aspects which are to be considered on totality of facts and evidence, but cannot be a ground to reject the plaint for above reasons. Ld. Advocate for the plaintiff relied upon case of **Bhushan Prasad Vs. Lala Sirish Kumar Sinha, 2020(5) ALL MR (JOURNAL) 19**, wherein it is held by the Hon'ble Patna High Court that, while considering such applications the averments made in the plaint are only to be seen. He also relied upon case of **T. Arivandandam Vs. T. V. Satyapal & Another, 1977 AIR 2421**. In this case, the Hon'ble Supreme Court held that, while considering the aspect of cause of action, the plaint must be read meaningfully and it should be seen whether it discloses a clear right to sue. As the plaintiff has satisfied this aspect, on said ground the plaint cannot be rejected.

16. Now coming to the prayer to reject the plaint as per Section 41(h) of the Specific Relief Act, 1963 is concerned, it is again a triable issue. Ld. Advocate for the applicants relied upon the case of *Anathula Sudhakar Vs. P. Buchi Reddy (Dead) by Lrs. & Ors., Appeal (Civil) 6191 of 2001, reported in AIR 2008 SUPREME COURT 2033.* In this case the Hon'ble Supreme Court has laid down general principles as to when a mere suit simplicitor for injunction would lie. As mentioned, this aspect is triable issue and on that count alone the plaint cannot be rejected. Therefore, with utmost and humble respect to these rulings, in the given set of facts and considering nature of application, at this stage, the ratio would not be of any help to the applicants.

17. In so far as valuation of the suit is concerned, the plaintiff has prayed for injunction simplicitor. The above referred prayer clause a to d makes this aspect amply clear. No other inference can be drawn from plain reading of plaint. Hence, it cannot be said at this stage that the suit is undervalued and further directions are necessitated on the point of proper valuation and payment of court fee stamp. Hence, I answer Point No.1 in the Negative and in answer to Point No.2, I pass following order.

ORDER

1. The application stands rejected.
2. Costs in cause.

Place :- Thane.
Date :- 20.11.2025

(P. A. Patki)
2nd Jt. Civil Judge (S.D.) Thane.