

Ajay

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**APPEAL FROM ORDER NO.179 OF 2025
WITH
INTERIM APPLICATION NO.3823 OF 2025
IN
APPEAL FROM ORDER NO.179 OF 2025**

Jagdamba Co-operative Housing Society Ltd. .. Appellant

Versus

M/s. Parisparsh and Anr. .. Respondents

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- Mr. R. M. Hardas a/w Ms. Ashwini B. Jadhav i/b Mr. Jagdish G. Reddy, Advocates for Appellant.
 - Mr. S. S. Patwardhan, i/b Ms. Mrinal Shelar, Advocates for Respondent No. 1.
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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 24, 2026.

P.C.:

1. Heard Mr. Hardas, learned Advocate for Appellant and Mr. Patwardhan, learned Advocate for Respondent No. 1. Appellant is Defendant No.1 before the Trial Court.

2. Present Appeal from Order is filed challenging Order dated 25.04.2024 passed by Civil Judge (Senior Division) Kalyan, District Thane in Application under Exhibit 5 filed in Special Civil Suit No. 134/2024 restraining Appellant from creating development rights in favour of any another developer to develop suit property. Order dated 25.04.2024 is appended at Exhibit "A" at Page No. 16 of the Petition.

For the sake of convenience, parties herein shall be referred to by their nomenclature before the Lower Court.

3. Briefly stated, Defendant No.1 is a Co-operative Housing Society named Shri Jagdamba CHS Ltd situated at Rajaji Path, 4th Cross Lane, Dombivili (East)- 421201, Taluka- Kalyan, District- Thane (for short **“suit property”**). Plaintiff is M/s Parisparsh, a registered partnership firm situated at 1st Floor, Shankeshwar CHS, Manpada Road, Opp. Navjivan Hospital, Dombivli (East)- 421201, Taluka- Kalyan, District- Thane. In 2018 Defendant No.1 invited quotations from various builders and developers to redevelop the suit property as they are old and dilapidated, however no developer wished to develop the suit property since there was no direct access road available to the suit property. Since Plaintiff was developing the adjacent property, Defendant No.1 approached Plaintiff to redevelop the suit property and held lengthy negotiations between May 2018 and May 2022. On 29.05.2021 Defendant No.1 issued Letter of Intent (for short **“LOI”**) in favour of Plaintiff. On 22.06.2021 Defendant No.1 passed resolution for appointment of Plaintiff as Developer. On 25.04.2022 all members of Defendant No.1 – Society gave their individual consents in favour of Plaintiff.

3.1. Defendant No.1 approached Respondent No. 2 i.e. Deputy Registrar of Co-operative Societies who issued No Objection Certificate

(for short “**NOC**”) dated 27.04.2022 for redevelopment of suit property. Defendant No.1 delivered the same to Plaintiff after which Plaintiff prepared draft Development Agreement and sent it to Defendant No.1 on 08.05.2022.

3.2. Defendant No.1 addressed letters dated 05.12.2022 and 20.01.2023 and emails dated 12.05.2022 and 31.03.2023 to Plaintiff seeking clarification of queries however no response was received.

3.3. In 2023, Plaintiff conducted structural audit of the suit property, prepared building plan and undertook further steps toward redevelopment. However Defendant No.1 did not sign and execute the Development Agreement.

3.4. Plaintiff addressed letter dated 19.04.2023 to Deputy Registrar seeking direction to Defendant No.1 to cooperate in the process of redevelopment. On 06.07.2023 Plaintiff addressed to Defendant No.1 Legal Notice through its Advocate for execution of Development Agreement which is appended at page No. 141 of the Petition.

3.5. On 26.07.2023 Defendant No.1 addressed reply to Plaintiff's Legal Notice stating that Plaintiff failed to reply to Defendant No.1's communication and denied entering into any contract with Plaintiff as there was no registered Development Agreement. Defendant No.1 stated that the contract was liable to be terminated without any

reason.

3.6. On 18.08.2023 Plaintiff addressed reply to Defendant No.1 stating that communication sent by Plaintiff was never delivered to Plaintiff. Plaintiff also stated that all formalities were complied with and redevelopment work could begin.

3.7. Defendant No.1 did not co-operate with Plaintiff and began to search for another developer to redevelop the suit property. Hence Plaintiff filed Special Civil Suit No. 134/2024 in the Court of Civil Judge (Senior Division) Kalyan for specific performance of the above oral contract along with Application for temporary interim injunction.

3.8. The Court of Civil Judge (Senior Division) Kalyan, passed Order dated 25.04.2024 allowing Plaintiff's Application for injunction and restrained the Plaintiff from creating development rights in favour of any other developer to develop the suit property.

3.9. Hence the present Petition by the Plaintiff – Developer.

4. Mr. Hardas, learned Advocate for Appellant – Defendant No.1 would submit that the impugned order is bad in law, passed without consideration of material on record and against the principles of natural justice. He would submit that *prima facie* suit is not maintainable as it is filed for seeking specific performance of the alleged oral agreement and contract appointing Plaintiff as Developer

for redevelopment of suit property.

4.1. He would submit that Defendant No.1 has not executed any registered and / or un-registered agreement i.e. like Development Agreement or Memorandum of Understanding (for short “MOU”) or Power of Attorney etc. in favour of Plaintiff and merely Letter of Intent has been issued on 29.05.2021 of which clause (3) states that Defendant No.1 reserves its rights to cancel the LOI without any reason.

4.2. He would submit that the LOI merely indicates a party's intention to enter into a contract with the other party in future and no binding relationship between the parties at that stage emerges and totality of circumstances have to be considered in each case. He would submit that it is no doubt possible to construe the Letter of Intent as a binding contract, if such an intention is *prima facie* evident from its terms, but it is not so in the present case. He seeks to rely upon the decision of the Supreme Court in the case of *South Eastern Coalfields Ltd and others Vs. S. Kumar's Associates AKM (JV)*¹ in support of his above proposition.

4.3. He would submit that Plaintiff neglected to give clarifications sought by Defendant No.1 on various issues raised by Defendant No.1 via letters and emails but to no avail.

¹ 2021 SCC OnLine SC 486

4.4. He would submit that Defendant No.1 held negotiations with Plaintiff in respect of redevelopment of suit property but as Plaintiff did not co-operate, Defendant No.1 – Society passed an unanimous resolution to cancel the LOI which was issued in favour of Plaintiff.

4.5. He would submit that Plaintiff had submitted plans for development of suit property to the Kalyan-Dombivli Municipal Corporation (for short “K.D.M.C.”) without approval from Defendant No.1 which is contradictory to the terms of Government Resolution dated 04.07.2019 issued by the Co-operation Department of the Government of Maharashtra which provided guidelines for redevelopment of old buildings.

4.6. He would submit that on the basis of unanimous resolution passed by Defendant No.1 – Society for cancellation of LOI, NOC which was granted by Respondent No. 2 i.e. Deputy Registrar was cancelled. Hence Defendant No.1 has every right to appoint a new developer to redevelop the suit property.

4.7. He would submit that no right, title or interest in the immovable property can be conferred on any party much less the Plaintiff without a registered document and no title could be transferred with respect to the suit property on the basis of the unregistered LOI. He would submit that the Registration Act, 1908

provides that a document which requires compulsory registration under the said Act, if not registered would not confer any right, much less a legally enforceable right to approach a court of law on its basis. He would submit that in this case no such document is executed in favour of Plaintiff so it cannot seek specific performance or any substantive right, title or interest in respect of the suit property.

4.8. He would submit that Plaintiff has made an alternate prayer before the court of Civil Judge (Senior Division) Kalyan, for seeking compensation of amount of Rs.64,25,242/- but has not placed any *prima facie* evidence on record to show as to how this alleged amount was spent by it.

4.9. He would submit that even if any amount would have been paid to Defendant No.1 by Plaintiff, even then no right could have accrued to Plaintiff to develop the suit property in the absence of a registered Development Agreement.

4.10. He would submit that Letter of Intent dated 29.05.2021 disclosed three major conditions, viz; (i) that it was issued with the intention to discuss further terms and conditions for finalization of the draft Development Agreement, (ii) that Defendant No.1 reserved its right to cancel the LOI without assigning any reason before execution of the Development Agreement and (iii) that LOI would be valid only after signing of Development Agreement and Power of Attorney.

Hence he would contend that Defendant No.1 – Society has rightly cancelled the agreement before execution of the Development Agreement and Plaintiff does not have any legal right to claim development rights in the suit property.

4.11. He would submit that LOI means declaring preliminary commitment of one party to do business with another party and hence LOI is issued. He would submit that offer letter was issued by Plaintiff and it was accepted by Defendant No.1 but subsequently certain clarifications were sought by members of Defendant No.1 – Society to which Plaintiff failed to respond despite repeated requests via letters and emails. He would submit that before revocation of NOC, Defendant No.1 – Society issued letters dated 05.12.2022 and 20.01.2023 to which Plaintiff – Developer did not revert.

4.12. He would submit that members of Defendant No.1 – Society though had given their individual consents, in the facts of the present case since no Development Agreement has been executed in favour of Plaintiff - Developer, then as per the LOI, Defendant No.1 can revoke such consents in the interest of its members.

4.13. He would submit that the Court of learned Civil Judge (Senior Division) Kalyan, has come to the erroneous conclusion that both Defendant No.1 – Society and Plaintiff – Developer are interested in developing the suit property and members of Defendant No.1 –

Society would get newly constructed flats for accommodation, and if injunction was granted, members of the Defendant No.1 – Society would not be affected, and if injunction was refused then Plaintiff – Developer would lose the project, and its reputation was based on that project. He would submit that based on such erroneous findings the Court of Civil Judge (Senior Division) Kalyan has allowed Plaintiff's Application below Exhibit 5 without consideration of merits of the matter where Defendant No.1 – Society has no privity of contract or any registered document with the Plaintiff - Developer.

4.14. He would submit that Plaintiff – Developer gave false promise that it would provide access to the suit property from the adjacent property, which was being developed by it whereas one of the member of the adjacent society objected to the same resulting in Plaintiff not taking any steps to provide the access road.

4.15. He would submit that Defendant No.1 is a duly registered co-operative housing society under the Maharashtra Co-operative Societies Act (for short **“MCS Act”**) and therefore it cannot have an agreement with the Plaintiff.

4.16. He would submit that the Court of Civil Judge (Senior Division) Kalyan, should not have granted order of injunction restraining the Defendant No.1 from creating development rights and restraining its members from development of their property, as they

are the owners of the suit property, especially when the suit property building is in a dilapidated condition and due to the impugned interim order, future of members of the society is affected.

4.17. In support of his above submissions, Mr. Hardas has referred to and relied upon the following decisions of the Bombay High Court;

*(i) Heritage Lifestyle And Developers Ltd. Vs. Cool Breeze Co-operative Housing Society Ltd. and others*² and *(ii) Mannalal Vs. Upendrakumar and others*³.

5. **PER CONTRA**, Mr. Patwardhan, learned Advocate appearing on behalf of Plaintiff, would oppose the Appeal From Order. At the outset, he would submit that the Impugned Order does not suffer from any defect of arbitrariness, caprice or perversity and the Court of Civil Judge Senior Division did not ignore any of the settled principles of law regulating grant or refusal of interlocutory injunction. He would also submit that law on interference in Interim Orders of injunction passed by the Courts is well settled by the Supreme Court and he relies upon the decision of this Court in the case of *Wander Ltd. And Anr. V/s. Antox India P. Ltd*⁴ in support of this submission.

5.1. He would submit that facts of the case are to be asserted on the basis of the acts of parties. He would submit that even though there may not be a registered Development Agreement in the present

2 2014 (3) Mh.L.J.

3 2009 SCC OnLine Bom 1809

4 1990 SCC OnLine SC 490

case, it *ispo facto* does not mean that in the present facts Plaintiff's case is not sustained. He would submit that in the present case society accepted the detailed commercial offer of the Plaintiff by affirmative acts like passing an unanimous General Body Resolution and thereafter each member of the Society having given individual consents to the Plaintiff. He would submit that the commercial offer is dated 18.06.2021, unanimous General Body Resolution is dated 22.06.2021 and further additional benefits offered by the Plaintiff to the Society are contained in the letter dated 24.04.2022. He would submit that in this background, the individual consent given by each member of the Society to the Plaintiff constitutes a valid and binding contract. Next clinching fact argued by him is the NOC issued by the Deputy Registrar of the Co-operative Societies after following the due process of law under the MCS Act, 1960. He would submit that Special General Meeting passed a fresh General Body Resolution in presence of designated officer appointed by the Deputy Registrar of the Co-operative Societies pursuant to which after filing of the Statutory Report, Registrar issued NOC paving the way for development. In the above context he would therefore submit that execution and registration of the Development Agreement was a mere formality.

5.2. He would submit that Defendant No.1 – Society has claimed that they wrote two letters dated 05.12.2022 and 20.01.2023 and

emails dated 12.05.2022 and 31.03.2023 seeking clarification and Plaintiff – Developer neglected the same. This fact he would submit is factually incorrect because no such letters and emails were delivered to Plaintiff and such record was created by Society with ulterior motive. He would submit that although the above letters were never received, Plaintiff – Developer had agreed to fulfill the additional demands contained therein of which cognizance is taken by the learned Civil Judge (Senior Division) Kalyan. He would submit that the Court of Civil Judge (Senior Division) Kalyan, has *prima facie* found these letters and emails to be created documents as opined in paragraph No. 31 of the Impugned Order.

5.3. He would submit that Defendant No.1 – Society has relied on a subsequent General Body Resolution dated 11.02.2023 in which decision to terminate the contract was taken. He would submit that no such General Body meeting was even held as Defendant No.1 – Society did not produce the minutes of that meeting before the Trial Court, neither it had mentioned about the meeting dated 11.02.2023 in its reply dated 26.07.2023 to the suit notice dated 06.07.2023.

5.4. He would submit that Plaintiff – Developer is ready and willing to undertake the work of redevelopment; and has incurred expenditure of Rs. 64,25,242/- on the project, including substantial time and energy. He would submit that readiness of Plaintiff is

inferred from the preplanned access to Defendant No.1 – Society from the adjacent plot of land which belonged to Plaintiff – Developer. He would submit that Plaintiff has accepted all terms of Defendant No.1 – Society including even those which were contained in the subsequent letters that were never received by Plaintiff.

5.5. He would submit that Defendant No.1 – Society through their Advocate have stated in the High Court that they have appointed another developer during the pendency of the appeal, but they have not produced any particulars about the same. He would submit that if any such transaction has taken place during pendency of trial, a *transferee pendente* is not proper party to suit. He would submit that Defendant No.1 – Society has not obtained leave from the Court of Civil Judge (Senior Division) Kalyan or the High Court before creating such third party right.

5.6. In support of his above submissions, Mr. Patwardhan has referred to and relied upon the decisions of the Supreme Court in *Sunil Gupta Vs. Kiran Girhotra and others*⁵ and *Trimex International Fze Ltd. Vs. Vedanta Aluminium Ltd.*⁶

6. I have heard Mr. Hardas, learned Advocate for Appellant - Defendant No.1 and Mr. Patwardhan, learned Advocate appearing on behalf of Respondent No.1 – Plaintiff and with their able assistance,

⁵ 2007 SCC OnLine SC 1230

⁶ (2010) 3 SCC

perused the record of the case. Submissions made by learned Advocates at the bar have received due consideration of the Court.

7. At the outset it is seen that substantive right of Plaintiff – Developer emanates from a series of acts beginning with the first meeting held for re-development on 27.05.2018, thereafter with the Society accepting the offer by its letter dated 06.05.2022. It is seen that in between these two dates extensive negotiations took place between the parties supported by written correspondence, revision of offer by Developer, specific resolution having been passed by the General Body of the Society accepting the revised offer and written acknowledgment of the same by way of individual consents given by each member of the Society to the Developer for redevelopment. It is seen that Society addressed letter dated 08.04.2022 to the Deputy Registrar of Co – operative Housing Societies seeking deputation of Statutory Officer to be present during the Special General Body meeting held by the Society for appointment and confirmation of developer. It is seen that the Statutory Officer appointed by Deputy Registrar of Co-operative Societies attended the Special General Meeting and filed Statutory Report recommending appointment of Plaintiff – Developer. The Deputy Registrar, on the basis of recommendation submitted by the Statutory Officer addressed letter dated 27.04.2022 granting permission for redevelopment and

appointment of Plaintiff as Developer and the Society thereafter finally accepted the offer after above trials and tribulations. Pursuant to this the draft Development Agreement was shared with the Society for execution though it is true that Development Agreement is not executed, what is crucial is that substantial steps were taken by both the parties to fructify re-development over a substantial period of time. There is no denial of the fact that LOI dated 25.09.2021 was issued by the Society in favour of Developer for re-development. In that view of the matter and case of the Developer being supported by adequate and substantial documentary evidence and overwhelming correspondence entered into by the Society, case of the Society that there was no written contract or Development Agreement and hence specific performance cannot be granted. The principle element of contract namely offer and acceptance are *prima facie* satisfied by virtue of the admitted acts of the parties. The Impugned Order below Exhibit “5” delves upon each and every facet of redevelopment contained in the negotiations between the parties which was exchanged between the parties. From the record it is clearly seen that Plaintiff – Developer commenced development on the adjacent plot and the Society became interested in joining the re-development and approached the Plaintiff. The issue of access to the Society’s plot and the adjacent plot being developed was discussed between the parties and thereafter Project Management Consultant was appointed by the Developer qua Society’s

redevelopment pursuant to which commercial terms were discussed and LOI was issued by the Society on 29.05.2021 by following the due process of law. It is seen that after the LOI was given, the same *prima facie* constituted an acceptance of the offer by the Society after substantial negotiations and counter – offers culminating into the final offer letter dated 26.01.2022. Thereafter in response to this members of the Society acknowledged the offer and issued individual acceptance / consent letters all dated 25.04.2022 in favour of the Developer and accordingly on 08.05.2022 draft Development Agreement was exchanged between parties for execution. From the above it is *prima facie* seen that once negotiation between the parties culminated in the acceptance of the offer duly acknowledged by the affirmative acts of the Society then a *prima facie* case is clearly made out by the Developer for grant of injunction. The learned Trial Court while passing the Impugned Order below Exhibit “5” has returned cogent reasons on the aspect of *prima facie* case having been made out and the balance of convenience being entirely in favour of the Developer.

8. In view of the above observations and findings, order is passed by the Civil Judge (Senior Division), Kalyan allowing temporary injunction restraining Defendant No.1 – Society from creating development rights in favour of another Developer and

appointing a new Developer for development of the suit property. It is seen that Plaintiff – Developer filed suit for specific performance of contract along with an application seeking temporary interim injunction on the aforementioned grounds. It is seen that the dispute between the parties Defendant No.1 – Society and Plaintiff – Developer arose from the process of redevelopment of the building on suit property.

9. In view of Section 79-A of MCS Act, guidelines are issued by Government of Maharashtra that as per Government Resolution dated 04.07.2019 Development Agreement has to be executed within three months. It is seen that on the offer letter being issued by Plaintiff dated 26.01.2022 each member of Defendant No.1 – Society has individually given their consent for redevelopment of the building in the suit property which *prima facie* means Defendant No.1 – Society accepted the offer implicitly. It is seen that no modifications in terms and conditions were asked to be made by members of Defendant No.1 – Society; thus Respondent No. 1 was entitled to develop the property in terms of the offer letter dated 26.01.2022.

10. It is seen that Defendant No.1's major concern is the approach road from the adjacent property which is a difficult part in redevelopment. Defendant No.1 had approached Kalyan-Dombivli Municipal Corporation seeking permission for the road but it was

rejected, whereas Plaintiff had agreed to provide for the approach road through the adjacent property and it has even been mentioned as a relevant clause in the draft of Development Agreement exchanged between the parties.

11. From the above, it is *prima facie* seen that over a period of more than 2 years, the Developer and the Society exchanged their offer and counter offer and acceptance by the Society was complete and fructified and only when the draft Agreement was sent for execution, the Society reneged from executing it. It is seen that LOI was given in 2021, Project Management Consultant was appointed by the Developer and Resolutions were passed by the General Body of the Society thereafter fructifying the offer and all members of the Society giving their individual consents in writing to the Developer. The Deputy Registrar was also approached and the Designated Officer of the Registrar attended the Special General Meeting of the Society confirming appointment of the Developer. Accordingly report was made to the Deputy Registrar, who accorded the necessary permission for re-development. If the Society is allowed to resile from its stand after happening of the aforesaid events, it would amount to rejecting the Developer's case at the threshold, especially when the Society has not denied any of the aforementioned events / incidents / correspondence. Hence, since a *prima facie* case is clearly made out for

grant of injunction, the findings returned by the learned Trial Court on this ground are upheld and confirmed. In the present facts, grounds of balance of convenience and irreparable loss are both in favour of the Developer as Society has informed the Court across the bar through their Advocate that it is in talks with another developer.

12. Thus on overall consideration of the factual matrix, the negotiations between the Developer and Society as alluded to aforesaid *prima facie* show that there was a clear acceptance of the offer of the Developer by the Society and conduct of the Society being noticed by the Trial Court as stated in paragraph No.31 of the impugned order, the challenge to the Exhibit “5” Order deserves to fail. The Exhibit “5” Order is a well reasoned, cogent order which does not call for any interference whatsoever. It is therefore upheld and confirmed. Resultantly, Appeal from Order filed by Defendant No.1 – Society fails.

13. Appeal from Order stands dismissed. Pending Interim Application is also accordingly dismissed.

[MILIND N. JADHAV, J.]

14. After the above order is pronounced in Court, Mr. Hardas persuades the Court to stay this order in view of the fact that Exhibit “5” order itself was stayed for sometime when Defendant No. 1-Society

had approached the Supreme Court previously. He would submit that Society would like to test the legality and validity of this order before the Supreme Court.

15. The request made by Mr. Hardas is vehemently objected to by learned Advocate for Plaintiffs. However, in view of the trajectory of the matter, I am inclined to accede to the request made by Mr. Hardas and stay the operation of this order for a period of four weeks from today. Needless to state that in view of this order, the order passed below Exh. 5 by the learned Trial Court shall stand stayed for a period of four weeks from today to enable Defendant No.1 – Society to test the legality and validity of this order.

[MILIND N. JADHAV, J.]

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