

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CONTEMPT PETITION NO. 57 OF 2011

IN

SUIT NO. 3813 OF 2000

Atcom Technologies Ltd.

... Petitioner

Versus

Y.A. Chunawala and Co. and others

... Respondents

WITH

INTERIM APPLICATION NO. 6369 OF 2025

IN

CONTEMPT PETITION NO. 57 OF 2011

WITH

CONTEMPT PETITION NO. 59 OF 2012

IN

COMMERCIAL SUMMARY SUIT NO. 7 OF 1999

WITH

INTERIM APPLICATION (L) NO. 28912 OF 2025

IN

CONTEMPT PETITION NO. 59 OF 2012

.....

Mr. Shanay Shah alongwith Ms. Neuty Thakkar, Mr. Karan Aiya and Mr. Shubham Shah instructed by Mr. Tushar Goradia, Advocate for the Petitioners.

Mr. Yohaam Shah instructed by Negandhi Shah & Himayatullah, Advocate for the Defendants No.1, 3 and 4.

Mr. Samir Vaidya alongwith Zainab Khan, Mr. Amit Pradhan and Mr. Siddharth Nair, Advocate for the Respondents.

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CORAM : **ABHAY AHUJA, J.**
DATE : **26 MARCH 2026**

PC. :

1. When the matter was called out in the morning session, it was kept back as this Court was informed that Respondent No.4 although not in Court and suffering from an upper respiratory tract infection would in compliance of the orders of this Court be present in Court.
2. In the afternoon session when the matter is called out at 3.00 p.m., again this Court was informed by the learned Counsel for the Respondents No.3 and 4 that the Respondent No.4 would be present in Court by 5.00 p.m.
3. When the matter is called out at 5.09 p.m., Mr. Samir Vaidya, learned Counsel, appears for the Respondents No.3 and 4 and submits that the Respondent No.4 cannot remain present in Court as he has been advised bed rest due to upper respiratory tract infection.
4. Mr. Shah, learned Counsel, appearing for the Petitioners strongly objects to the conduct of the Respondent No.4.
5. This Court also strongly deprecates the conduct not only of the Respondent No.4, but also of the Advocates representing the Respondent No.4 in misleading the Court and attempting to have the

matter kept back. The Petitions before this Court are the Contempt Petitions and in both these Petitions show cause notices have been issued by this Court on 18th December 2025. Under Rule 1036(1) of the Bombay High Court (Original Side) Rules, 1980, it is clearly provided that the person charged pursuant to a notice shall, unless otherwise ordered, appear in person before the Court as directed on the date fixed for hearing of the proceeding, and shall continue to remain present during hearing till the proceeding is finally disposed of by the order of the Court. No order exempting or dispensing with the presence of the Respondent No.4 has been passed. In fact, on 11th November 2025 as noted above, the Respondents No.3 and 4 have been directed to remain present in Court on the next date, which is today. Therefore, the Respondent No.4 is in breach of the orders of this Court and has made himself liable to be proceeded with for willful breach and disobedience of the orders of this Court. However, to offer the said Respondent one last opportunity, this Court directs the Registry to issue non-bailable warrant of arrest against the Respondent No.4 to have his presence secured in Court on the next date, as despite waiting the whole day for the Respondent No.4 to remain present in Court, the Respondent No.4 has failed to remain present in Court.

6. It is not only the duty of the Courts to prevent breaches of the

orders of Courts but also the duty of the Advocate community to ensure as officers of this Court that orders of this Court are complied with. Unfortunately, in the present case that has not happened and the concerned Advocates need to do some soul searching before representing such clients in future.

7. List on **9th April 2026**.

8. Mr. Shah, learned Counsel, appearing for the Petitioners in both the Petitions further tenders across the bar a list of 14 flats in respect whereof the agreements were to be cancelled by the Respondents and which have till date not been cancelled.

9. Mr. Vaidya is aggrieved that despite sending notices to the counter parties with respect to the said flats to come and execute the cancellation deeds in respect of the said flats, the said counter parties have failed to respond.

10. Mr. Shah has submitted that if that be the case, then under Section 31 of the Specific Relief Act, 1963, since the said agreements having been entered into in breach of the injunctive orders of this Court being void can be cancelled by the Court.

11. I have perused Section 31 of the Specific Relief Act, 1963. For the sake of convenience the said Section is usefully quoted as under :

31. When cancellation may be ordered.-

(1) Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable, and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

(2) If the instrument has been registered under the Indian Registration Act, 1908 (16 of 1908), the court shall also send a copy of its decree to the officer in whose office the instrument has been so registered, and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation.

12. It is not in dispute that by two orders dated 9th October 2000 and 2nd February 2001, the Respondents in both the Contempt Petitions were injuncted from dealing with or creating third party rights in respect of the 23 flats including those in the list tendered across the bar by Mr. Shah.

13. Mr. Shah has relied upon the decision of the Division Bench of this Court in the case of *Keshrimal Jivji Shah and another vs. Bank of*

Maharashtra and others¹, to submit that transfer of immovable property in violation of an order of injunction or prohibition issued by court of law, confers no right, title or interest in the transferee, as it is no transfer at all.

14. I have also perused the said decision and in particular paragraph 27 thereof which clearly observes that transfer of immovable property in violation of an order of injunction or prohibition issued by court of law, confers no right, title or interest in the transferee, as it is no transfer at all. That the transferee cannot be allowed to reap advantage or benefit from such transfer merely because he is not a party to the proceedings in which the order of injunction or other prohibitory direction or restraint came to be issued. That it is enough that the transferor is a party and the order was in force. These two conditions being satisfied, the transfer must not be upheld. Paragraph 27 of the said decision is usefully quoted as under :

“27. We cannot accept Shri Naphade's contention that the observations of the Supreme Court in the case of Surjit Singh v. Harbans Singh, (1995) 6 SCC 50 should be read as restricted to proceedings under Order 22, rule 10 of the Civil Procedure Code and the same cannot be extended to defiance of

1 2004 SCC OnLine Bom 368

injunction order issued under Order 39, rule 1 of the Civil Procedure Code. Once the issue is placed on the pedestal of public policy and the very faith of litigants in rule of law and administration of justice, then it is not possible to make the distinction or bifurcation suggested by Shri Naphade. It would mean that consequences of nullifying such transaction not being provided by the statute, it would not lose its legal efficacy even if it is in utter disregard or in violation of or breach of a prohibitory order or order of injunction issued by a court of law. It would mean that parties can breach and violate court orders openly and with impunity and neither they nor the beneficiaries suffer any consequences. It is time that we recognise the principle that transfer of immovable property in violation of an order of injunction or prohibition issued by court of law, confers no right, title or interest in the transferee, as it is no transfer at all. The transferee cannot be allowed to reap advantage or benefit from such transfer merely because he is not a party to the proceedings in which the order of injunction or other prohibitory direction or restraint came to be issued. It is enough that the transferor is a party and the order was in force. These two conditions being satisfied, the transfer must not be upheld. If this course is not adopted then the

tendency to flout orders of courts which is increasing day-by-day can never be curbed. The court exercises its powers on the foundation of respect and regard for its authority by the litigating public. People would lose faith and respect completely if the court does not curb and prevent this tendency. The note of caution of the Supreme Court must be consistently at the back of everybody's mind. Therefore, Shri Naphade is not right in the distinction which he is trying to make.”

15. Mr. Vaidya also has no objection if Section 31 of the Specific Relief Act, 1963 is invoked.

16. Accordingly observing that the transfer/agreements in respect the following flats are admittedly in breach of the two injunctive orders of this Court, the transfers being no transfer in law viz. being void, this Court directs that the following agreements/documents with respect to the corresponding flats stated in the table below be delivered to the Prothonotary & Senior Master of this Court to be cancelled in accordance with Section 31 of the Specific Relief Act, 1963 :

Sr. No.	Wing / Flat Nos.in 'Emerald Court'	Particulars

1.	A - 204	Agreement dated 11 th December 2008 bearing Reg. No. 10753/2008 executed by Respondent No.2 (Nitin Mehta, Proprietor of M/s. Shree Siddhivinayak Builders) with Proman Multitraders Pvt Ltd.
2.	A - 404	<ul style="list-style-type: none"> • Agreement dated 20th August 2010 bearing Reg. No. 9868/2010 executed by Respondent No.2 (Nitin Mehta, Proprietor of M/s. Shree Siddhivinayak Builders) with Aruna A. Borude. • Indemnity Bond dated 16th August 2010 executed by Respondent No.2 (Nitin Mehta, Proprietor of M/s. Shree Siddhivinayak Builders) with Aruna A. Borude.
3.	A - 601	Agreement dated 26 th March 1998 bearing Reg. No. 1139/1998 executed by Respondent No.2 (Nitin Mehta, Proprietor of M/s. Shree Siddhivinayak Builders) with Najami Rangawalla. (Possession handed over in January 2005 in breach of Orders).
4.	B - 604	Agreement dated 29 th November 2008 bearing Reg. No. 10409/2008 executed by Respondent No.2 (Nitin Mehta, Proprietor of M/s. Shree Siddhivinayak Builders) with Proman Multitraders Pvt Ltd.
5.	B - 702	Agreement dated 20 th August 2010 bearing Reg. No. 9871/2010 executed by Respondent No.2 (Nitin Mehta, Proprietor of M/s. Shree Siddhivinayak Builders) with Fatima Gulam Mohammed Vohra & Jenul A. Vohra.
6.	B - 704	Agreement dated 18 th September 2003 bearing Reg. No. 3698 /2004 executed by Respondent No.2 (Nitin Mehta, Proprietor of M/s. Shree Siddhivinayak Builders) with Santosh Chauhan and Ammendra A. Verma.

7.	C - 101	Agreement dated 25 th November 2008 bearing Reg. No. 10408/2008 executed by Respondent No.2 (Nitin Mehta, Proprietor of M/s. Shree Siddhivinayak Builders) with Proman Multitraders Pvt Ltd.
8.	C - 304	Agreement dated 22 nd May 2002 bearing Reg. No. 3308/2002 executed by Respondent No.2 (Nitin Mehta, Proprietor of M/s. Shree Siddhivinayak Builders) with Pushpa L. Daswani.
9.	C – 504	<ul style="list-style-type: none"> • Agreement dated 3rd June 2002 bearing Reg. No. 3355/2002 executed by Respondent No.2 (Nitin Mehta, Proprietor of M/s. Shree Siddhivinayak Builders) with Sumati L. Daswani, • Agreement dated 29th November 2008 bearing Reg. No. 10407/2008 executed by Respondent No.2 (Nitin Mehta, Proprietor of M/s. Shree Siddhivinayak Builders) with Proman Multitraders Pvt Ltd.
10.	C – 602	<ul style="list-style-type: none"> • Agreement dated 29th November 2008 bearing Reg. No. 10406/2008 executed by Respondent No.2 (Nitin Mehta, Proprietor of M/s. Shree Siddhivinayak Builders) with Proman Multitraders Pvt Ltd. • Agreement dated 20th August 2010 bearing Reg. No. 9872/2010 executed by Respondent No.2 (Nitin Mehta, Proprietor of M/s. Shree Siddhivinayak Builders) with Gulam Haider Vohara.
11.	C – 604	<ul style="list-style-type: none"> • Agreement dated 21st May 2002 bearing Reg. No. 3307/2002 executed by Respondent No.2 (Nitin Mehta, Proprietor of M/s. Shree Siddhivinayak Builders) with Lachmandas G. Daswani.

		<ul style="list-style-type: none"> • Agreement dated 29th November 2008 bearing Reg. No.10405/2008 executed by Respondent No.2 (Nitin Mehta, Proprietor of M/s. Shree Siddhivinayak Builders) with Proman Multitraders Pvt Ltd.
12.	C – 701	Agreement dated 29 th November 2008 bearing Reg. No. 10410/2008 executed by Respondent No.2 (Nitin Mehta, Proprietor of M/s. Shree Siddhivinayak Builders) with Proman Multitraders Pvt Ltd.
13.	C – 703	<ul style="list-style-type: none"> • Agreement dated 24th September 2010 bearing Reg. No. 9329/2010 executed by Respondent No.2 (Nitin Mehta, Proprietor of M/s. Shree Siddhivinayak Builders) in favour of Gulam Haider Vohara.
14.	C – 704	<ul style="list-style-type: none"> • Agreement dated 21st May 2002 bearing Reg. No. 3309/2002 executed by Respondent No.2 (Nitin Mehta, Proprietor of M/s. Shree Siddhivinayak Builders) with Sumiran L. Daswani. • Agreement dated 20th August 2010 bearing Reg. No. 9869/2010 executed by Respondent No.2 (Nitin Mehta, Proprietor of M/s. Shree Siddhivinayak Builders) with Shabnam G. Vohara.

17. Let the aforesaid exercise be carried out within a period of two weeks. The costs, charges and expenses of the same be borne and paid for by the Respondents.

18. As regards, the deed of mortgage dated 5th April 2005 is concerned, Mr. Vaidya states on instructions that the said deed of

mortgage will be cancelled within a period of two weeks. The statement is accepted as an undertaking to this Court.

19. Let the Respondents No.3 and 4 be positively remained present in Court on the next.

(ABHAY AHUJA, J.)