



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO.3644 OF 2022

IN
SUIT NO.273 OF 2021
WITH
SUIT NO.273 OF 2021

Nitin Chandrakant Patel,
a senior citizen of India aged 69 years,
being the sole proprietor of M/s.
Mahalaxmi Land Development,
residing at 501 & 502, Pran Ashish CHS
Ltd., Seven Bungalow, Versova Andheri
(West), Mumbai – 400 061

...Applicant/
Original Plaintiff

In the matter between:

Nitin Chandrakant Patel,
a senior citizen of India aged 69 years,
being the sole proprietor of M/s.
Mahalaxmi Land Development,
residing at 501 & 502, Pran Ashish CHS
Ltd., Seven Bungalow, Versova Andheri
(West), Mumbai – 400 061

...Plaintiff

Versus

1. **Pariwar Co-operative Housing Society Ltd.,** a society registered under the Provision of Maharashtra Co-operative Societies Act, 1960 under Registration No. BOM/WS/HSG/(TO)/8668-2001, through its Secretary, having its address at Nehru Nagar, P. G. Godbole Marg, Kanjur Marg (E), Mumbai – 400 042
2. **Vasant Shinde,** being an adult Chairman of Pariwar Co-operative

Housing Society Ltd., having
address at Nehru Nagar, P. G.
Godbole Marg, Kanjur Marg (E),
Mumbai – 400 042

3. **Jaywant Patil**, being an adult
Secretary of Pariwar Co-operative
Housing Society Ltd., having
address at Nehru Nagar, P. G.
Godbole Marg, Kanjur Marg (E),
Mumbai – 400 042
- ...Defendants

Mr. Rohaan Cama a/w Ms. Ayushi Anandpara, Mr. Gaurav Gopal and
Mr. Mohit Goyal i/by Wadia Ghandy & Co. for the Applicant/Plaintiff.
Mr. Vatsal Shah i/by Mr. Abhishek Patil for the Defendants.

CORAM : JITENDRA JAIN, J.

DATE : 17 OCTOBER 2025

ORAL JUDGMENT:

1. The plaintiff has made an application under Order XII Rule 6 of the Civil Procedure Code, 1908 (CPC) for passing a decree in its favour and against defendant nos.1 to 3 with a direction to these defendants to execute the deed of conveyance and power of attorney with respect to land admeasuring 5,412 sq.mtrs. bearing CTS No.1196-E Village Kanjur, Taluka Kurla, Mumbai Suburban District and to handover possession of the said suit property to the plaintiff. The present suit is only with respect to property bearing CTS No.1196-E which is referred to as the “suit property”.

2. Order XII Rule 6(1) of the CPC deals with judgment on admissions. It provides that where admissions of fact have been made either in the pleading or otherwise, the Court may at any stage of the suit and without waiting for the determination of any other question

between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.

3. Order XII Rule 6(2) states that whenever a judgment is pronounced under sub-rule (1), a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.

4. In short, Order XII Rule 6 provides that where the case of the plaintiff has been admitted by the defendants then instead of proceeding with the trial, the Court can pronounce the judgment on the admission itself. Therefore, it is necessary to ascertain from the pleadings and judicial proceedings whether defendant no.1 has admitted the claim of the plaintiff.

5. At the outset, the learned counsel for the plaintiff states that he is only pressing prayer clauses (a), (b) and (c) of the suit and not prayer clause (d). Therefore, the application and judgment is restricted only to prayer clauses (a), (b) and (c) of the suit which read as under:-

“(a) that this Hon'ble Court be pleased to declare that said Development Agreement dated 16th April 2003 (Exhibit 'D' hereto) is valid, subsisting and binding on Defendant No.1;

(b) that this Hon'ble Court be pleased to order Defendant Nos. 1 to 3 or any of them to specifically perform the said and, inter-alia, to execute the conveyance with respect to the Suit Property being a plot of land admeasuring 5,412 square meters and bearing CTS No. 1196-E situate lying and being at Village Kanjur, Taluka Kurla, Mumbai Suburban District_ and admit the execution before the relevant authorities.

(c) this Hon'ble Court be pleased to order and direct the Defendant Nos. 1 to 3 to handover the possession of the Suit Property being a plot of land admeasuring 5,412 square meters and bearing CTS No. 1196-E situate lying and being at Village Kanjur, Taluka Kurla, Mumbai Suburban District, to the Plaintiff.”

6. Mr.Cama, learned counsel ably assisted by Ms.Ayushi Anandpara made submissions on behalf of the plaintiff and Mr. Shah made submissions vehemently opposing the application and suit on behalf of defendant no.1-society.

7. On 15 December 2001, defendant no.1 passed a resolution for development of the larger property including the suit property. In paragraph 11 of the said resolution, it is agreed amongst the members of defendant no.1-society that for creating interest of contractor over the suit property, society shall give power of attorney to contractor and after fulfilling all the terms in this regard, **society shall have no right over this land and the contractor shall have right to make use of this land as desired by him.** The total consideration agreed upon for development of whole property including the suit property was Rs.3,34,16,726/- out of which Rs.50 lakhs pertained to the suit property.

8. As per the resolution dated 29 March 2003, it was agreed by the members of defendant no.1-society that the land will be developed by the plaintiff, who is a sole proprietor of Mahalaxmi Land Development.

9. On 16 April 2003, plaintiff and defendant no.1 executed an agreement wherein it was agreed that the plaintiff will pay Rs.3,34,16,726/- and handover fully constructed 500 flats to defendant no.1. Out of the said monetary consideration, as per clause 11, the monetary consideration attributable to the suit property was Rs.50 lakhs. As per Clauses 16 and 17 of the said agreement, it was agreed by defendant no.1-society that they shall not claim over the two plots reserved for District Center and Private School (private school property being the

subject matter of the present suit bearing CTS No.1196-E) and the developer shall be entitled to deal with and/or dispose of the same after paying the consideration as mentioned in clause 1 and 11. The said agreement of 2003 was for larger land bearing CTS Nos.1196-A, 1196-B, 1196-C, 1196-D and 1196-E.

10. As per paragraph 3.14 of the plaint, the plaintiff has stated that full consideration of Rs.50 lakhs has been paid in two tranches in respect of the suit property on 29 January 2007 and 20 February 2007 and the plaintiff has thereafter requested defendant no.1 to execute and register deed of conveyance. There is no denial by defendant no.1 that they have not received the said amount but on the contrary, in other collateral proceedings they have admitted the receipt. The plaintiff has enclosed receipt signed by defendant no.1 at page 85 of the plaint evidencing the payment of Rs.50 lakhs and its acknowledgment by defendant no.1-society.

11. There is also no denial by defendant no.1 that plaintiff has not handed over fully constructed flats. There is no averments that the plaintiff is in breach of any of the terms and conditions of the 2003 agreement.

12. On 13 April 2017, defendant no.1 informed the plaintiff that due to pendency of certain civil suits in the City Civil Court *inter alia* SC Suit Nos.3470 of 2004 and 4939 of 2003, they are unable to execute the conveyance and, therefore, requested the plaintiff to deploy their security/watchmen on the suit property in order to safeguard the plaintiff's rights and interest. This letter admits the entitlement of the plaintiff by defendant no.1-society. The case which was referred to in the said letter is with respect to a suit by Shamji Dayabhai Shah

Educational Trust having possession of structure over the suit property. In the said suit, an order came to be passed by the City Civil Court that the Shamji Dayabhai Shah Educational Trust cannot be dispossessed without due process of law. However, the issue of the land belonging to the plaintiff or defendant no.1 was not an issue before the City Civil Court. The appeal from the said order is pending in this Court. In the present suit before me, claim is made only for conveyance of the suit property on as is where is basis.

13. The plaintiff, thereafter, sent reminders on various occasions requesting defendant no.1 to execute the conveyance in respect of the suit property but since the same was not executed, the present suit is filed.

14. In the written statement filed by defendant no.1, the only effective ground raised is that the suit is barred by law of limitation without advertng as to how and under which Article of the Limitation Act, the suit is barred. Defendant no.1 has not denied that the terms and conditions of the agreement dated 16 April 2003 have been complied with by the plaintiff. As observed above, the consideration of Rs.50 lakhs with respect to the suit property has also been paid and admitted, and the constructed flats have also been handed over and there is no denial to this fact also.

15. In other litigations which are pending or were pending before various Courts, defendant no.1 has made various admissions with respect to the fact that they are required to convey the whole property including the suit property in favour of the plaintiff.

16. In the written statement filed by defendant no.1-society in Civil Suit No.4939 of 2003 which is a suit by one Virendra Vasant Kapdi

and Others, defendant no.1 has agreed that the suit property and other properties are agreed to be sold to the plaintiff Mahalaxmi Land Development. In the examination-in-chief in the said proceedings, defendant no.1 has admitted that deed of conveyance with respect to property bearing CTS No.1196-B has been granted in favour of the present plaintiff. This forms part of same 2003 agreement. It is also stated that the whole of larger property has been handed over to the present plaintiff. The Civil Suit No.4939 of 2003 was not the subject matter of property bearing CTS No.1196-E.

17. Similar admissions admitting the rights of the plaintiff are made in Civil Suit No.5569 of 2007.

18. In the written statement filed in Civil Suit No.3470 of 2004 which is filed by Shamji Dayabhai Shah Educational Trust, defendant no.1-society has admitted that they have assigned the right in respect of the suit property to the plaintiff and the plaintiff has paid huge amount to the society and defendant no.1-society has no right, title, interest over the suit property. Similarly, in the said written statement, the receipt of consideration has been admitted.

19. I have not reproduced the relevant paragraphs of the above admissions since I did not wish to burden the present order and it is also not disputed that such admissions are not made. In my view, there is an express admission by defendant no.1-society in the above suits. There is no denial in the written statement filed in the present suit or any other document that the plaintiff has not complied with the terms and conditions of the agreement dated 16 April 2003. In my view, these admissions are sufficient to exercise the powers under Order XII Rule 6 of the CPC for allowing the relief sought for in the suit in terms of prayer clauses (a), (b) and (c).

20. The learned counsel for the plaintiff is justified in relying upon the decision of the Hon'ble Supreme Court in the case of ***Nagindas Ramdas vs. Dalpatram Ichharam @ Brijram & Ors.***¹ wherein the Hon'ble Supreme Court has observed that the admissions are the best proof of the facts admitted. In this case, defendant no.1 has made express admissions in various suit proceedings with respect of the suit property and, therefore, the plaintiff is entitled to the relief sought for under Order XII Rule 6 of CPC.

21. The contention of defendant no.1 that the suit is barred by limitation appears to be based on Article 54 of the Schedule to the Limitation Act, 1963 reads as under:-

	<i>"Description of suit</i>	<i>Period of limitation</i>	<i>Time from which period begins to run</i>
54	<i>For specific performance of a contract</i>	<i>Three years</i>	<i>The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused."</i>

22. In this case, the first limb of Article 54 provides for date fixed for the performance which is not applicable. Similarly, the second part of Article 54 also is not applicable since there is no refusal on the part of defendant no.1. The learned counsel is justified in relying upon the following two decisions, viz., ***Ahmadshah Abdul Mulla (2) (Dead) By Proposed LR's vs. Bibijan & Ors.***² and ***Venunath vs. Limbabai & Ors.***³ which states that provisions of Article 54 of the Limitation Act are not applicable when no date is fixed for performance and also, there is no refusal date for performance. In the present case also, there is no refusal by the defendant to honour the 2003 agreement nor is there a date provided for performance.

¹ (1974) 1 SCC 242

² (2009) 5 SCC 462

³ 2014 SCC OnLine Bom 1734

23. I make it clear that any observations made herein are not to be constructed as views of this Court in respect of matters not before me today. It is made clear that the conveyance in favour of the plaintiff as per 2003 agreement was/is only with respect to property bearing CTS No.1196-B and 1196-E.

24. In view of above, the Interim Application is allowed and the Suit is decreed in terms of prayer clauses (a), (b) and (c). Decree to be drawn up in terms of present order. The Suit is disposed of.

[JITENDRA JAIN, J.]