



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

INTERIM APPLICATION (LODG.) NO. 30513 OF 2025
IN
SUIT (LODG.) NO. 30486 OF 2025

Ambit Life Style Homes LLP

}*Applicant/
Orig.Plaintiff*

: *Versus* :

Parekh Market Premises Co-operative Ltd.

}....*Defendant*

Mr. Ravi Kadam, Senior Advocate with Mr. Gauraj Shah, Mr. V.A. Joshi, Mr. Vir Patel and Mr. Yogesh Patel i/b. Chitnis Vaithy & Co. for the Plaintiff.

Mr. Ashish Kamat, Senior Advocate with Mr. Kunal Mehta and Mr. Amit Shroff i/b. Harish Shroff & Co., for Defendant No.1.

Mr. Manoj Shirsat with Mr. Kishor D. Shah, Ms. Shubhra Swami and Mr. Priyansh R. Jain i/b. K.D. Shah & Co., for Defendant Nos.2 and 3.

Mr. Mayur Khandeparkar with Mr. Tejas Agrawal, Mr. Hrishikesh Tajane and Tejaswi Pania i/b. IC Legal, for Defendant Nos.6 & 13.

Mr. Vikramjit Singh Garewal with Mr. Harshil Parekh and Mr. Rahul Agrawal i/b. Purnanand & Co., for Defendant Nos.4, 5, 7 to 12 and 14 to 16.

CORAM : SANDEEP V. MARNE, J.
DATED : 16 OCTOBER 2025.

Oral Judgment:

1) This is an Interim Application filed by the Plaintiff seeking temporary injunction in a Suit filed for enforcement of a

registered Development Agreement dated 11 November 2022 executed in its favour by Defendant No.1-Society for redevelopment of property known as 'Parekh Market' situated at M.G. Road, Ghatkopar (East), Mumbai. Plaintiff has encountered a situation where, though 70 out of 88 occupants have already vacated and surrendered possession of their respective premises and 3 out of 5 building are already pulled down, Defendant Nos. 2 to 16 have refused to vacate and handover possession of their respective premises. By way of temporary injunction, Plaintiffs are seeking direction against Defendant Nos.2 to 16 to vacate possession of their respective premises and for appointment of Court Receiver in respect of those premises.

2) Brief facts leading to filing of the case are that by an Indenture of Conveyance dated 8 February 1979, Kanji Khatau Trust (**Trust**) conveyed the suit land and the structure standing therein to M/s. Shri Padmanabh Builders (**Padmanabh**). One building constructed by the Trust of ground plus one floor comprising of 9 shops on ground floor and 4 offices on first floor already existed on the plot (**trust building/Wing D**). Tenancies were created in respect of nine shops, whereas four offices on first floor were sold on ownership basis. Padmanabh constructed three Wings A, B and C in two phases. Padmanabh constructed G+2 Building No. 2 comprising of shops offices and residential flats (**Wing A**); G+3 Building No. 3 comprising of shops offices and residential flats (**Wing B**) and G+2 Building No. 4 comprising of shops and offices (**Wing C**). The shops, offices and flats were sold by Padmanabh to purchasers on ownership basis. By Agreement dated 1 October 1989, Padmanabh granted development

rights in favour of another developer viz. Kanaiyalal Madhavji Thakkar (Defendant No.2) to the extent of FSI admeasuring 2455 sq.ft. As per the terms and conditions of that Agreement, the purchasers of the wing/building constructed by Defendant No.2 were to become members of the Society formed by unit purchasers of buildings constructed by Padmanabh. Defendant No. 2 constructed Building No. 5 of G+ 6 (**Wing E**) comprising of shops and offices. In addition to undertaking construction of an additional building, Defendant No.2 purchased the nine tenanted shops in the Trust building from Padmanabh by Agreement dated 11 November 1991. This is how Defendant No.2 acquired ownership of 9 Shops in the old building of Trust and also secured a right to construct a building by use of FSI to the extent of 2455 sq.ft. Defendant No.2 contends that in addition to the Agreement dated 1 October 1989, there was another Supplemental Agreement dated 31 December 1992, and Power of Attorneys, under which he became entitled to exploit the entire FSI potential in respect of land admeasuring 3,578 sq.mtrs.

3) On 5 June 1992, Defendant No.1-Society was formed by the flat purchasers of buildings constructed (Wings B to D) by Padmanabh. By the year 2000, Defendant No.2 completed construction of Wing-E building comprising of ground plus 6 floors having 11 commercial units and 2 commercial shops aggregating to 13 commercial units. Defendant No. 3 is the proprietary concern of second Defendant. Defendant Nos. 2 and 3 sold 8 commercial offices and 2 commercial shops by executing Agreements with the purchasers. Defendant No. 2 retained ownership of 3 offices in Wing E. This is how, Defendant No. 2 is owner of 9 shops in Wing D/trust

building and 3 offices in Wing E. Defendant No. 2 has inducted tenants in respect of 8 out of 9 shops in Wing D and has retained possession of one shop. It is the case of Defendant No.1 that all other purchasers, except Defendant No.2 and 3 became members of Defendant No.1-Society and that the Society had called upon Defendant Nos.2 and 3 to apply for membership who refused to do so.

4) It appears that disputes arose between Padmanabh and Defendant No. 2 with regard to exploitation of development potential of FSI of 2455 sq. ft assigned vide Agreement dated 1 October 1989. Padmanabh accused Defendant No. 2 of carrying out construction in excess of FSI of 2455 sq. ft. Accordingly Padmanabh terminated Articles of Agreement dated 1 October 1989 and filed Suit No. 1330/2000 against Defendant No.2 in this Court to restrain Defendant No. 2 from carrying out any construction in the land exceeding FSI admeasuring 2455 sq.ft. In addition to defending the Suit filed by Padmanabh, Defendant No.2 filed Counterclaim (St.) No. 2508 of 2004 seeking specific performance of various Agreements allegedly executed in his favour entitling him to exploit development potential in land admeasuring 3578 sq.mtrs. Padmanabh filed Application under Order 7 Rule 11 of the Civil Procedure Code, 1908 **(Code)** seeking rejection of Plaintiff in the Counterclaim on the ground that the same was time barred. By order dated 24 November 2006, Single Judge of this Court rejected the plaintiff in the Counterclaim under Order 7 Rule 11 of the Code. The order passed by the learned Single Judge was confirmed in Appeal by the Division Bench on 23 November 2010. Special Leave Petition No.

6910 of 2011 filed against the order passed by the Appeal Court was also rejected on 21 November 2014. This is how litigation initiated by Defendant No.2 seeking specific performance of various Agreements allegedly executed in its favour for exploitation of FSI in respect of the land admeasuring 3578 sq.mtrs attained finality upto the Supreme Court.

5) Defendant No.1-Society applied for and secured an order for unilateral deemed convenience of the entire land in its favour on 27 May 2014. In pursuance of that order, a registered instrument of unilateral deemed conveyance has been executed in favour of the first Defendant society on 20 August 2015, which has been rectified vide deed of rectification on 2 January 2024. Padmanabh, as well as Defendant No.2 have filed Writ Petitions in this Court challenging the order of the Competent Authority dated 27 May 2014 granting unilateral deemed conveyance in society's favour, which are pending.

6) In the above background, Defendant No.1-Society executed Development Agreement dated 11 November 2022 in favour of the Plaintiff for carrying out redevelopment of its buildings. The Supplementary Agreement is executed on 19 December 2022. Plaintiff accordingly called upon the occupants to vacate the premises in their occupation after issuance of the Letter of Intent dated 22 October 2024 (LoI) by the Slum Redevelopment Authority (SRA). Amended Intimation of Approval dated 11 August 2025 (IOA) has been issued by the SRA. It is the case of the Plaintiff that out of 88 units in Wings-A to E, 70 occupants have vacated possession of their

respective premises. Since Defendant Nos.2 to 16 have failed to vacate occupation of their possession of the respective premises, the present Suit is filed essentially for enforcement of the Development Agreement dated 11 November 2022.

7) In its Suit, Plaintiff has filed the present Interim Application seeking temporary injunction in terms of the following prayers :-

(a) Pending the hearing and final disposal of the Suit, this Hon'ble Court be pleased to pass a temporary order and injunction restraining the Respondent Nos. 2 to 16 and all person/s claiming through and under them from in any manner obstructing the redevelopment of the said Property;

(b) Pending the hearing and final disposal of the Suit, this Hon'ble Court be pleased to direct the Respondent Nos. 2 to 16 to vacate the said suit Premises and hand over vacant and peaceful possession thereof to the Applicants;

(c) In the alternative to prayer clause (b), pending the hearing and final disposal of the Suit, this Hon'ble Court be pleased to appoint the Court Receiver, High Court, Mumbai, with all powers under Order XL Rule 1 of the Civil Procedure Code, 1908 with respect to the Suit Premises presently occupied by Respondent Nos. 2 to 16 and to issue necessary directions to the Court Receiver to take possession of the Suit Premises from the Respondent Nos. 2 to 16 with the help of local Police, if necessary, and to hand over the peaceful possession of the suit Premises to the Applicants;

(d) Pending the hearing and final disposal of the Suit, this Hon'ble Court be pleased to direct Respondent Nos.2 to 16 to sign, execute and register the Agreements for Permanent Alternate Accommodation and all other documents from time to time in respect of the Suit Premises with the Applicants and the Respondent No. 1 as and when called upon to do so by the Applicants;

e) In the alternative to prayer clause (d), should Respondent Nos.2 to 16 fail in executing the Agreements for Permanent Alternate Accommodation, then this Hon'ble Court be pleased to direct the Court Receiver, High Court, Mumbai, to sign, execute and register the Agreements for Permanent Alternate Accommodation and all other documents from time to time in respect of the Suit Premises

with the Applicants and the Respondent No. 1 as and when called upon to do so by the Applicants;

(f) Ad-interim and interim reliefs in terms of prayer clause (a) to (e) above;

(g) Costs;

(h) Any other reliefs as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case be granted.

8) Defendant Nos. 2 and 3 have filed Affidavit-in-Reply opposing the Interim Application.

9) I have heard Mr. Kadam, the learned counsel appearing for the Plaintiffs. He would submit that Defendant Nos.2 to 16, who are obstructionists, would receive same benefit under the Development Agreement which includes *inter-alia* 22% additional carpet area, monthly displacement compensation etc. He would submit that despite securing development permission, Plaintiff is unable to commence construction work on account of refusal on the part of Defendant Nos.2 to 16 to vacate premises in their occupation. He would submit that Plaintiffs have complied with all the statutory obligations under the Development Agreement. That Defendant Nos.2 to 16 form a minuscule minority who otherwise cannot oppose the redevelopment process. That by now Plaintiff has paid monthly hardship compensation of Rs. 1.40 crores to 70 occupants. That Plaintiff has the liability to pay monthly hardship compensation to the tune of Rs. 27 lac every month. That the expenditure incurred by Plaintiff on the project till date is Rs. 10.04 crores. That all necessary permissions for commencement of construction are in place. That Petition filed by Defendant No. 2 challenging the LOI/IOA has been withdrawn. That due to non-cooperation by few occupants, the

redevelopment work is held up. He would accordingly pray for temporary injunction in terms of prayer clauses (b), (c), (d) and (e) of the Interim Application.

10) Mr. Kamat, the learned Senior Advocate appearing for Defendant No.1-Society would support the Suit. He would submit that three out of the five buildings in the compound have already been pulled down in pursuance of notices issued by the Municipal Corporation since they were in dilapidated condition and around 77% of the occupants have already vacated possession of their respective structures. He would submit that Defendant Nos.2 and 3 have no semblance of right to oppose the redevelopment of Society's building. That Defendant Nos.2 and 3 are already admitted as members of the First Defendant-Society vide Resolution adopted in Special General Body Meeting held on 3 August 2025 and their names have been entered in the I & J Register. He would submit that even otherwise, Defendant Nos.2 and 3 are under obligation to become members of Defendant No.1 by virtue of covenants of the Articles of Agreement dated 1 October 1989 as well as Agreement dated 11 November 1991. Mr. Kamat would further submit that in account of dismissal of Counterclaim filed by Defendant No. 2, he can no longer oppose the redevelopment on the basis of his alleged claim to exploit development potential in land admeasuring 3578 sq.mtrs. He would further submit that Defendant Nos.2 and 3 have engaged the Society and the Developer in numerous litigations and Writ Petition No. 2863/2025 filed challenging the IOD and IOA issued by the Slum Rehabilitation Authority has been withdrawn with liberty to approach AGRC. Mr. Kamat would support the prayer of the Plaintiff for grant of temporary injunction as sought for in the Interim Application.

11) The application is opposed by Mr. Shirsat, the learned counsel appearing for Defendant Nos. 2 and 3. He would submit that the Society has unauthorisedly executed Development Agreement in favour of the Plaintiff by ignoring the position that Defendant Nos.2 and 3 are entitled to exploit balance FSI potential in land admeasuring 3578 sq.mtrs. He would rely upon letter dated 27 June 1994 sent by Padmanabh to MCGM and letter dated 20 June 1994 sent to advocate of occupants admitting that the entire development rights in respect of the land are transferred in favour of Defendant No.2. That grant of any relief in the present suit in favour of the Plaintiff would negate the vested rights of Defendant Nos.2 and 3 to exploit development potential in land admeasuring 3578 sq.mtrs. He would submit that Defendant No.2 has already filed a petition in this Court challenging the order of the Competent Authority dated 27 May 2014 granting unilateral deemed conveyance. That mere passing of order by the Competent Authority of unilateral deemed conveyance does not amount to finality of title dispute. That therefore Defendant No.2 can continue to agitate his title in the FSI potential of land admeasuring 3578 sq.mtrs notwithstanding passing of order of deemed conveyance by the Competent Authority. That the said order is subject matter of challenge in pending Petitions filed by Defendant No 2 and by Padmanabh, who is also aggrieved by the Defendant No.1-Society claiming rights in respect of the entire land.

12) Mr. Shirsat would further submit that the Society is also impleaded as party Defendant to Suit instituted by Padmanabh which is pending in this Court. That Padmanabh's Suit seeks restraint order against Defendant No.2 to carry out construction in excess of FSI

admeasuring 2455 sq.ft. and that in the event of the Suit of Padmanabh being dismissed, Defendant No.2 would be in a position to exploit the entire FSI potential in land admeasuring 3578 sq.mtrs. He would therefore submit that it would be premature to permit Plaintiff and Defendant No.1 to go ahead with the development of the building before adjudication of rights of Defendant Nos. 2 and 3 in the land.

13) Mr. Shirsat would further submit that the Society has adopted a reverse engineering method by first executing Development Agreement in favour of the Plaintiff and thereafter granting so called membership to Defendant Nos. 2 and 3 on 3 August 2025. That no efforts were made by the Society to admit Defendant Nos.2 and 3 as members for over 32 years since 1992. That Defendant Nos. 2 and 3 who are also developers and are better equipped to understand the actual development potential of the land are deliberately kept out of the redevelopment process. That Defendant Nos. 2 and 3 are also capable for redeveloping the land. He would invite my attention to Clause-13 of the Development Agreement which contains disclosure of all pending litigation's in respect of the land. That the Suit suffers from the vice of misjoinder of parties as Padmanabh has not been impleaded as a party Defendant. That if not Defendant No.2, Padmanabh is definitely entitled to carry out further construction in the plot. He would further submit that there is an arbitration clause in the Development Agreement and therefore the Suit is not maintainable. Lastly, Mr. Shirsat would submit that Plaintiffs are seeking final relief in the IA during pendency of the Suit and that nothing would survive in the suit if temporary injunction is granted at

this stage. He would accordingly pray for dismissal of the Interim Application.

14) Mr. Khandeparkar and Mr. Garewal, the learned counsel appearing for Defendants would submit that some of their clients are unit owners and members of the Society and are not opposed to the redevelopment process and are willing to handover possession of their respective units after Diwali. They would further submit that they also represent some of unit occupiers who are tenants of Defendant Nos.2 and 3 and that they would subject themselves to the jurisdiction of the court. However, in respect of those tenants, Mr. Khandeparkar and Mr. Garewal would submit that an arrangement be made for payment of transit rent, as well as, for putting them back in possession of permanent alternate accommodations (**PAA**) on completion of the new building. They would also pray that in respect of shop occupiers, it be ensured that the PAAs have the necessary road frontage.

15) Rival contentions of the parties now fall for my consideration.

16) This is a classic dispute relating to redevelopment of building of a housing society, where the redevelopment work is held up due to non-cooperation by few members/occupants. The only twist in the present case is that the main obstructor to the redevelopment process is the old developer, who has constructed one of the five buildings/wings and who owns substantial units in the society's buildings. The old developer believes that he is yet to exploit the full development potential in the plot and is therefore opposing redevelopment of society's old and dilapidated buildings. Thus the

expectation of the old developer to further milk the development potential in the land is pitted against the hopes of residents of the old and dilapidated buildings, three of which are already pulled down after being classified as dangerous by MCGM, to receive new homes in the reconstructed buildings

17) The Suit has been instituted by the Plaintiff, who is the developer appointed by the society for executing the redevelopment work, for enforcing the Development Agreement. Under the Development Agreement, the Plaintiff has promised an additional carpet area to the extent of 22% and monthly displacement compensation during currency of redevelopment process to each occupant, including to the main obstructor being the old developer. There is no dispute to the position that out of 88 units, occupants of 70 units have already vacated possession of their respective units. Out of the five buildings in the plot, three buildings have already been pulled down. What now stands today is only the oldest trust building (Wing D) in which Defendant Nos.2 and 3 own 9 shops and Wing-E building which is constructed by Defendant No. 2 in which he/his firm owns 3 offices. Thus, on account of non-vacation of $9+3=12$ units by the Defendant Nos. 2 and 3, the work of redevelopment is held up. Thus, the main opposition to the redevelopment process is by Defendant Nos.2 and 3. Defendant Nos. 2 and 3 have inducted tenants in respect of various premises purchased or constructed by them. The possession of the premises in respect of which occupants have refused to vacate is as under :-

Sr.No.	Defendant	Shop/Office No.	Wing/Phase/Floor
1.	Defendant No.2 (Self-occupied)	Shop No.3	Wing D, (Old Phase), Ground Floor
2.	Defendant No.2 (self-occupied)	Office No.601	Wing E, (Phase III), 6 th Floor
3.	Defendant No.3 (self-occupied)	Office Nos.101 & 102	Wing E, (Phase-III) 1 st Floor
4.	Defendant No.4 & 5	Office No.4	Wing D, (Old Phase), 1 st Floor
5.	Defendant No.6 (Tenant of D2)	Shop Nos.1 & 2 (as tenant) Shop No.13 (as owner and member)	Wing D, (Old Phase), Ground Floor Wings 'A' and 'B' (Phase I), Ground floor
6.	Defendant Nos.7 & 8 (Tenants of D2)	Shop Nos.4 & 5	Wing D, (Old Phase), Ground Floor
7.	Defendant Nos.9, 10, 11 & 12 (Tenants of D2)	Shop Nos.6 & 7	Wing D, (Old Phase), Ground floor
8.	Defendant No.13 (Tenant of D2)	Shop Nos.8 & 9	Wing D, (Old Phase), Ground floor
9.	Defendant No.14 (Owner and members in respect of these premises)	Shop Nos.1 & 2	Wing E, (Phase III), Ground floor
10.	Defendant No.15 & 16 (Owner and members in respect of these premises)	Office Nos.401 & 402	Wing E, (Phase III), Fourth Floor

18) So far as the non-co-operative members (unit purchasers) of the First Defendant-Society who are yet to vacate possession of their premises are concerned, now they have shown willingness to vacate the possession after Diwali festival. So far as the tenants of Defendant Nos. 2 and 3 (i.e Defendant Nos 6,7,8,9,10,11,12,13) are concerned, subject to non-invitation of any eviction proceedings on account of showing any support to the Plaintiff or Defendant No.1

for redevelopment process, they do not have any serious objection for vacating possession of their respective premises, subject to the condition of payment of transit rent and subject to grant of possession of PAAs. Thus, it is now clear that the real obstructor to the redevelopment process are only Defendant Nos. 2 and 3. Though Defendant Nos. 2 and 3 own about 12 units in the five wings, their tenants are willing to vacate their respective premises. Now the dispute boils down to possession of only 4 units viz. Shop No. 3 in old Wing-D building and 3 offices in the Wing E building which remain in possession of Defendant Nos. 2 and 3.

19) The main objection of Defendant Nos.2 and 3 to the redevelopment process is their belief that they are yet to exploit the development potential in the land. Defendant Nos.2 and 3 believe that Padmanabh has granted right in their favour to exploit the full FSI potential of land admeasuring 3578 sq.mtrs and that they have so far constructed only Wing-E to the limited extent of 2455 sq.ft. They believe that the plans for effecting further construction on land admeasuring 3578 sq.mtrs were already sanctioned by the planning authority and that therefore the Society cannot go ahead with the redevelopment process based on order of deemed conveyance granted by the Competent Authority till they exploit the entire FSI potential in respect of land. No doubt, the settled legal position is that mere passing of an order of deemed conveyance by the Competent Authority under Section 11 of the Maharashtra Ownership of Flats (Regulation of the Promotion of Construction Sale Management and Transfer Act 1963 (**MOFA**)) does not amount to final adjudication of issues relating to title between the parties (*SEE Arunkumar H. Shah*

HUF Versus. Avon Arcade Premises Co-operative Society Limited and Ors.¹⁾. Ordinarily therefore, it is open for a disputant to institute Suit and claim declaration of title in respect of land, notwithstanding passing of order of deemed conveyance. The Defendant Nos. 2 and 3 in the present case is however that they cannot do so as they have already failed in their attempt of securing a declaration of title in the counterclaim filed before this Court.

20) As observed above, Padmanabh has filed Suit No. 1330/2000 in this Court against Defendant No.2 seeking following prayers :-

a) That this Honourable Court be pleased to declare that -

- i) the Defendant never had and does not have any right, title or interest in respect of the Additional FSI that may be available in respect of the said property in excess of 2455 sq.ft. already consumed by the Defendant under the Agreement dated 1st October, 1989
- ii) that the Defendant never had any right to sell or enter into any Agreement for Sale of the units beyond 2455 sq.ft. granted under the Agreement dated 1.10.1989 and the Agreement if any, entered into by the Defendants the same are null and void and not binding upon the Plaintiffs.

b) that this Hon'ble court be pleased to pass a permanent injunction for restraining the Defendant, his servants, agents, contractors, workmen, representatives or any other person claiming by or through or under the Defendant-

- i) from carrying on any further construction work whereby the additional FSI of about 192 sq.mtrs. is consumed or sought to be consumed by the Defendant; and
- ii) from entering into Agreements for sale, selling, alienating, encumbering, using, parting with possession or, or creating any third party rights in respect of the additional party rights in respect of the additional construction sought to be put up by the Defendant;
- iii) From disturbing the possession of the Plaintiffs or exercising any rights of the Plaintiffs and/or possession of the said property;
- iv) From acting on the basis of the said Power of Attorney executed by the Plaintiffs in favour of the Defendant,

¹ (2025) 7 SCC 249

and/or representing the Plaintiffs and/or acting on behalf of the Plaintiffs on the basis of the said Power of Attorney, executed by the Plaintiffs in favour of the Defendant;

c) That the Defendant be ordered and decreed to demolish/pull down the additional construction put up/sought to be put up by the Defendant by consuming FSI in excess of the FSI on 2455 sq.ft.

d) In the event this Hon'ble Court comes to the conclusion that relief in terms of prayer (c) cannot be granted then in the alternative to prayer (c), this Honourable Court be pleased to order and decree the Defendant to pay to the Plaintiffs a sum of Rs.1,77,97,500/- as set out in the particulars of claim, Exhibit 'N' hereto for the loss/damages caused by the Defendant to the Plaintiffs along with interest @ 18% p.a. from the date of filing of the suit till payment or realisation.

e) That this Hon'ble Court be pleased to direct the Defendants to deliver up the power of Attorneys executed by the Plaintiffs in favour of the Defendants and cancel the same;

f) Pending the hearing and final disposal of the suit, this Honourable Court be pleased to appoint the Court Receiver, High Court, Bombay or such other fit and proper person as the Receiver of the additional floors being constructed by the Defendant with all the powers under Order XL, Rule 1 of the Code of civil Procedure, including the power to appoint an Architect to determine the additional FSI available on the said property (in excess of 2455 sq.ft. already consumed by the Defendant) and to determine such part of the additional FSI as has been consumed utilized by the Defendant;

g) That pending the hearing and final disposal of the suit, this Honourable Court be pleased to pass an order and temporary injunction for restraining the Defendant, his servants, agents, contractors, workmen, representatives or any other person claiming by or through or under the Defendant -

i) from carrying on any further construction work whereby the additional FSI of about 192 sq.mtrs. is consumed or sought to be consumed by the Defendants;

ii) from entering into Agreements for Sale, selling, alienating, encumbering, using parting with possession or, or creating any third party rights in respect of the additional party rights in respect of the additional construction sought to be put up by the Defendant by consuming the additional FSI in excess of 2455 sq.ft.

iii) From disturbing the possession of the Plaintiffs or exercising any rights of the Plaintiffs and/or possession of the said property;

iv) From acting on the basis of the said Power of Attorney executed by the Plaintiffs in favour of the Defendant and/or representing the Plaintiffs and/or acting on behalf of the Plaintiffs on the basis of the said Power of Attorney executed by the Plaintiffs in favour of the Defendant.

h) for interim and ad-interim reliefs in terms of prayers (f) and (g);

i) that the costs of the suit be provided to the Plaintiffs;

j) for such further and other reliefs as the nature and circumstances of the case may require.

21) In Suit filed by Padmanabh, Defendant No.2 apart from filing a Written Statement opposing the Suit, was advised to file a Counterclaim bearing Counterclaim (St.) No. 2508/2004 seeking following prayers:-

a) That this Hon'ble Court be pleased to declare that the Plaintiff is entitled to all rights, title and interest and benefit of suit property and Development Agreement dated 1st October 1989 and the Conveyance of nine shops dated 11th November 1991 and receipts of Rs.1 lac for balance/residual right of Defendants and various Power of Attorney dated 1st October 1989, 8th June 1990 and 20th September 1992 read with letter dated 20th June 1994 at Exhibit "B" are valid, subsisting and binding on the Defendants and Defendants have no right title or interest left in Suit property i.e. Survey No.77, Hissa No.10, C.T.S. No.4648 to 4667 admeasuring 4399.25 sq.yds. together with structures standing thereon situated at Village Kirole, District of Bombay Suburban district, Kurla, Mahatma Gandhi Road, Ghatkopar (East), Mumbai 400 077 known as Kanjui Khatau Wadi now known as Parekh Market.

b) That this Hon'ble Court be pleased to order and decree to Defendant to specifically perform the said Agreements between the Plaintiff and Defendants for transferring all right, title and interest and benefit in the suit property i.e. Survey No.77, Hissa No.10, C.T.S. No.4648 to 4667 admeasuring 4399.25 sq.yds. together with structures standing thereon situated at Village Kirole, District of Bombay Suburban district, Kurla, Mahatma Gandhi Road, Ghatkopar (East), Mumbai 400 077 known as Kanji Khatau Wadi now known as Parekh Market and for that purpose be pleased to

direct the Defendants to execute the aforesaid Powers of Attorneys and Deed of Assignment being Exhibit "G" and "H" hereto and such other agreement and/or documents and/or deeds and/or to do such acts, deeds, things and matter that may be necessary to specifically perform the Agreement between the parties and register the above documents by signing and executing and admitting the documents before the Sub-Registrar of Assurance and do all acts, deeds and things for effectively transferring/assigning right in the said suit property from the names of the Defendants to the name of the Plaintiff.

c) That this Hon'ble Court be pleased to declare that the Defendants have no right, title or interest in the suit property in view of the aforesaid Agreement and full and final payment made by the Plaintiff to the Defendants.

d) Pending the hearing and final disposal of the above suit this Hon'ble Court be pleased to grant injunction restraining the Defendants, his servants, agents, representative and/or person or persons claiming through or under him from interfering with, disturbing the peaceful use, occupation, enjoyment and development of the property with the help of balance F.S.I. or T.D.R. in future.

e) for interim and ad-interim reliefs in terms of prayers (d);

f) for cost of this suit; and

g) for such other and further reliefs as this Hon'ble Court deems fit and proper.

22) Thus, the Counterclaim was filed by Defendant No.2 for the sole purpose of seeking declaration of ownership of right to exploit the entire development potential in respect of land admeasuring 3578 sq.mtrs. Padmanabh filed Application under Order 7 Rule 11 of the CPC seeking rejection of Plaint in the counterclaim. By order dated 24 November 2006, the Single Judge of this Court allowed Padmanabh's application and rejected the Plaint in the Counterclaim on the ground that the counterclaim was barred by limitation. It would be relevant to

reproduce the order dated 24 November 2006 passed in Counterclaim (St.) No. 2508/2004, which reads thus:-

1. This is a notice of motion taken out by the original plaintiffs who are defendants in the counter claim for dismissal of the counter claim filed by the original defendants on the ground that the decree claimed in the counter claim is barred by the law of limitation. Perusal of the counter claim shows that by prayer clause (a), the defendants who are plaintiffs in the counter claim are claiming a decree of declaration that the plaintiffs are entitled to all rights, title and interest and benefit of suit property and development agreement dated 1st October 1989 and the conveyance of nine shops dated 11th November 1991 and receipts of Rs.1/- lac for balance / residual right of defendants and various power of attorneys dated 1st October 1989, 8th June 1990 and 20th September 1992 read with letter dated 20th June 19994 at Exh.'B' are valid, subsisting and binding on the defendants and defendants have no right, title or interest left in suit property i.e. Survey No.77, Hissa No.10, C.T.S. No.4648 to 4667 admeasuring 4399.25 sq.yds. Together with structures standing thereon situated at Village Korole, District of Bombay Suburban District, Kurla, M.G. Road, Ghatkopar (East), Mumbai 400 077 known as Kanjui Khatau Wadi now known as Parekh Market. By prayer clause (b), the plaintiffs seek a decree of specific performance of the agreement which is referred to in prayer clause (a) i.e. agreement dated 1st October 1989. The relief claimed by prayer clause (c) makes a very interesting reading.

Prayer clause (c) reads as under :-

“(c) that this Hon’ble Court be pleased to declare that the defendants have no right, title or interest in the suit property in view of the aforesaid agreement and full and final payment made by the plaintiffs to the defendants.”

Thus, by prayer clause (c), the plaintiffs claim a decree of declaration that the defendants have no right, title or interest in the property because they have entered into the agreement and because they have accepted payment from the plaintiffs. One wonders if the defendants do not have any right, title or interest in the property, how can a decree of specific performance be passed against them in relation to the property which they do not own. According to the defendants – original plaintiffs, in the suit, principal relief claimed is a decree of specific performance of the agreement of the year 1989 which was erminated in any case by the defendants – original plaintiffs by notice dated 24th February 2000 and therefore the suit is barred by the law of limitation/ Perusal of the plaint filed by the original plaintiffs in suit No.1330 of 2000 shows that the original plaintiffs are seeking a decree of declaration that the defendants in suit do not have right, title or interest in respect of the additional F.S.I. The plaintiffs are claiming permanent injunction restraining the defendants from making any further construction, entering into any agreement, disturbing possession of the plaintiff and acting on the basis if the power of attorney executed by the plaintiffs. According to the original plaintiffs,

the plaintiffs are owners of the property, they had granted development rights in respect of part of the property in favour of the original defendants. Pursuant to that agreement, according to the plaintiffs, construction was carried out by the original defendants. For that purpose, a power of attorney was also executed by the original plaintiffs in favour of the defendants. According to the original plaintiffs, in the month of December 1999, they came to know that the original defendants were intending to take the steps contrary to the agreement between the parties. Thereafter, there were some negotiations between the parties, ultimately by letter dated 24th February 2000 they terminated the entire arrangement including the power of attorney and in March 2000, the plaintiffs filed the suit seeking the reliefs which have been mentioned in the suit. The defendants in the civil suit filed the present counter claim on 18th August 2004. According to the counter claim, the defendants had agreed to sell, transfer and assign all their right, title and interest in the future development of the property to the plaintiffs for utilisation of the balance F.S.I. According to the plaintiffs in the counter claim, there was a writing executed between the parties dated 1st October 1989 to this effect and also another writing of June 1994 confirming the existing arrangement between the parties. According to the plaintiffs in the counter claim, they made full payment to which the defendants in the counter claim were entitled in the year 1993. According to the plaintiffs, the defendants in the counter claim also executed power of attorney in favour of the plaintiffs. In paragraph 16 of the plaint, the plaintiffs in the counter claim state that the defendants in the counter claim have no right, title or interest in the property. According to the plaintiffs in the counter claim, by notice dated 23rd June 2004, the defendants in the counter claim expressed their willingness to terminate the power of attorney. So far as the aspect of accrual of cause of action is concerned, there are no averments made in the plaint or about the article in the schedule of the Limitation Act which will cover the period of limitation. However, at the hearing of the motion, the learned counsel appearing for Plaintiffs in the counterclaim submits that the cause of action accrued to the Plaintiffs when they received the Notice dated 23 June 2002 and according to him, two articles of the Limitation Act are applicable and those are Articles 54 and 58. Perusal of Article 54 shows that the suit for specific performance of the contract can be filed within a period of three years from the date fixed for performance of that contract and if no such date fixed, within three years from the date when the plaintiffs noticed that performance is refused. As per Article 58, a right to institute a suit for decree of declaration accrues when the right to sue is accrued and the suit has to be instituted for such decree within a period of three years from the accrual of the cause of action. Perusal of the notice dated 23rd June 2004 shows that it is a notice issued by the defendants in the counter claim to the plaintiffs in the counter claim. in paragraph 1 of that notice, it is stated that the Defendants in the counter claim have executed a Power of Attorney in favour of the Plaintiffs. Then it is alleged that the Power of Attorney has been misused by the Plaintiffs in the counter claim and

therefore, the defendants have terminated that power of attorney and called upon to return the same. The relevant paragraph reads thus :

“You are aware that on account of various illegal acts done by you pursuant to the said power of attorney, our clients have terminated the power of attorney and called upon you to return the same.”

It is thus clear that if according to the plaintiffs in the counter claim, termination of power of attorney granted in their favour gives cause of action to them, then the power of attorney is not terminated by the letter dated 23rd June 2004. The original plaintiffs who are defendants in the counter claim have claimed that the power of attorney was terminated by letter dated 7th February 2000. That letter is to be found at Exh.'J' to the original plaint. The relevant paragraph of that letter reads as under :

“Our client also hereby terminate the agreement dated 1-10-89 as well as the power of attorney executed in pursuance of the said agreement in favour of your client and call upon your client to return the said power of attorney duly cancelled. Your client is also called upon not to take any steps in pursuance to the said power of attorney.”

Thus, if cancellation of power of attorney gives cause of action to the plaintiffs in the counter claim, that cause of action will accrue in February 2000 and not in the year 2004 as claimed by the plaintiffs in the counter claim. It was submitted that the letter dated 7th February 2000 referred to above terminating the agreement as also the power of attorney was not acted upon. If that is so, then firstly it ought to have been specifically plead. Perusal of the counter claim shows that the notice of February 2000 is not even referred to in the plaint. Secondly, when power of attorney given by a person is terminated by him, the termination does not require to be acted upon to make the termination effective. The termination becomes effective when the letter terminating the power of attorney was given. Therefore, accepting the case of the plaintiffs in the counter claim themselves at face value that termination of power of attorney gives cause of action to the plaintiffs in the counter claim to file the counter claim, then the cause of action will accrue in February 2000. Therefore, the counter claim filed on 18th august 2004 will not be maintainable in terms of the provisions of the Limitation Act. In so far as the counter claim is concerned, the date of filing of the counter claim is the date of instituting the suit. In the result therefore, the notice of motion is granted in terms of prayer clauses (a) and (b). Notice of motion is disposed off.

Parties to act on copy of this order duly authenticated by the Associate/Private Secretary as true copy.

Certified copy expedited.

23) Rejection of the Plaintiff in the counterclaim resulted in a decree against the Defendant No. 2. Aggrieved by that decree in the Counterclaim, Defendant No.2 filed Appeal No. 274/2010, which has been dismissed by the Division Bench by judgment and order dated 23 November 2010, which reads thus:-

This appeal arises out of an order of a Learned Single Judge dated 24 November 2006 by which a Motion for the rejection of a plaintiff under Order 7 Rule 11(d) of the Code of Civil Procedure, 1908 was made absolute. The motion proceeded on the foundation that the claim of the Plaintiff to the counter claim (the original Defendant to the Suit) was ex-facie barred by limitation.

2. On 27 March 2000, Shri Padmanabh Builders (the original Plaintiff) instituted a suit against Kanayalal Madhavji Thakkar (the original Defendant) inter alia seeking a declaration that the Defendant does not have any right, title or interest in respect of the additional F.S.I. that may be available in respect of the suit properties in excess of 2455 sq.ft. already consumed by the Defendant under an agreement dated 1 October 1989 and that the Defendant does not have any right to sell or enter into any agreement for sale of units beyond 2455 sq.ft. Granted under the aforesaid agreement. Injunctive relief was sought against the Defendant from carrying out any further construction and from entering into agreements for sale. The case of the Plaintiff was that the agreement dated 1 October 1989 was terminated by a letter dated 7 February 2000. By a further letter dated 24 February 2000, the Defendant was informed that in view of the circumstance that the Defendant had unauthorisedly consumed F.S.I. in excess of what was authorised under the agreement, the Plaintiff was entitled to terminate the agreement and that in any event, both the agreement and the Power of Attorney granted to the Defendant had automatically come to an end upon the completion of the construction by consuming a quantified F.S.I. of 2455 sq.ft.

3. A counter claim was lodged by the Defendant to the suit on 9 August 2004. The Motion which has been made absolute by the Learned Single Judge is for the rejection of the counter claim on the ground that it is barred by limitation. Hence, for convenience of reference, it would be appropriate to refer to the parties to the counter claim as the Plaintiff to the counter claim and the Defendant to the counter claim. The relief that has been sought by the Plaintiff to the counter claim is (i)A declaration that the Plaintiff is entitled to all rights, title and interest emanating from the development agreement dated 1 October 1989 and that the Power of Attorney executed by the Defendant to the counter claim

continued to be subsisting and binding; (ii) A decree for specific performance to transfer all rights, title and interest in the suit property; and (iii) A declaration that the Defendant to the counter claim has no right or interest in the suit property. In paragraph 17 of the counter claim, the Plaintiff stated that in 1998-99 when he was in the process of carrying out further development in the suit property, one of the newly inducted partners of the Defendant tried to cause obstruction, taking advantage of the fact that the conveyance and Power of Attorney were unsigned documents. The counter claim adverts to the suit instituted in this Court and to the circumstance that an application for interim relief has been made in the suit. The counter claim contained a statement that by a notice dated 23 June 2004, the Defendant in collusion with the Co-operative Society tried to terminate the Power of Attorney and wanted to further develop the property with the balance loadable FSI. According to the Plaintiff, it appears that Defendants are trying to take control of the property by giving a notice dated 23 June 2004. In paragraph 26 of the counter claim, it has been averred that the cause of action for filing a counter claim is not barred by the law of limitation and it was lodged along with the Written Statement and after issuing a legal notice dated 27 July 2004.

4. The Defendant to the counter claim moved a Motion under Order 7 Rule 11(d) which was made absolute by a Learned Single Judge. The Learned Single Judge noted that the counter claim would according to Counsel for the Plaintiff thereto, be governed by Articles 54 and 58 of the Limitation Act. Under Article 54, a suit for specific performance of a contract has to be instituted within three years of the date fixed for the performance of the contract and if no such date is fixed, within three years from the date of notice that performance was refused. Under Article 58, a right to institute a suit for a declaration arises when the right to sue first accrues and the suit has to be instituted within a period of three years from the accrual of the cause of action. The Learned Single Judge noted that the notice dated 23 June 2004 which is annexed to the counter claim contained a categorical averment that the Defendants to the counter claim had on account of the illegal acts of the plaintiff terminated the Power of Attorney and called upon the Plaintiff to return the same. As a matter of fact, the agreement and the Power of Attorney were terminated by a letter dated 7 February 2000 which is annexed at Exhibit 'J' to the original Plaint. Consequently, if the cancellation of the Power of Attorney gives the cause of action for the counter claim, the Learned Single Judge was of the view that the cause of action would accrue in February 2000 and not in 2004 as claimed by the Plaintiff to the counter claim. On these grounds, the Learned Single Judge held that accepting the statements of the Plaintiff in the counter claim on their face, the termination of the Power of Attorney on 7 February 2000 furnished a cause of action to the

Plaintiff to file a counter claim. Hence, the counter claim which was filed on 18 August 2004 was held to be barred by limitation.

5. On behalf of the Appellant, the judgment of the Learned Single Judge is called into question on the following submissions:

- (i) The letter dated 7 February 2000 addressed by the Defendant to the counter claim to the Plaintiff has not been referred to in the counter claim. The letter, it is urged, has been annexed as Annexure-J to the original Plaint instituted before this Court by the Defendant to the counter claim. Hence, it was urged that the letter dated 7 February 2000, in so far as it does not form part of the counter claim, cannot be adverted to, having regard to the plain language of Order 7 Rule 11(d);
- (ii) It was urged that a plea of limitation would not amount to a plea that the suit is barred under any law within the meaning of Order 7 Rule 11(d).

6. On the other hand, it was urged on behalf of the Respondent that:

- (i) The suit which the Respondent has instituted in this Court on 27 March 2000 was itself a repudiation of the right of the Plaintiff to the counter claim to avail of any right over and above the FSI of 2455 sq.ft. that has already been consumed under the agreement dated 27 October 1989. In the original Plaint in the suit, it is the case of the Plaintiff (the Defendant to the counter claim) that the agreement dated 1 October 1989 had been terminated on 7 February 2000. The counter claim which has been instituted on 9 August 2004 would, therefore, clearly be beyond the period of three years of the accrual of the right to sue;
- (ii) The Plaintiff to the counter claim by a process of clever drafting cannot avoid the plain consequence of the circumstance that the agreement was terminated on 7 February 2000 by failing to advert to that letter specifically in the counter claim. The Plaintiff to the counter claim is aware of the suit instituted by the Defendant thereto in this Court which sets out the case of the Defendant that the agreement has been terminated on 7 February 2000 and the institution of the suit would itself amount to a notice of refusal to perform;
- (iii) The Supreme Court has held in several cases that the question as to whether a plaint is liable to be rejected under Order 7 Rule 11(d), is a decision which has to be arrived at on the facts of each case. When, on the face of the averments they stand in the counter claim, it is evident that the claim is barred by limitation, the Court was within its jurisdiction to exercise its power to reject the Plaint.

7. While dealing with the rival contentions, it is of some significance in the facts of this case that the counter claim was lodged by the Plaintiff on 9 August 2004 with clear notice and knowledge of the case which has been set out by the Defendant to the counter claim in the suit instituted before this Court. As a matter of fact, the counter claim contains in paragraph 1, a reference at the outset to the institution of the suit. The documents which are relied upon in the counter claim include all correspondence prior to the date of the filing of the counter claim. In the suit which was original instituted before this Court on 27 March 2000, the case of the original Plaintiff was that the agreement dated 1 October 1989 stood terminated on 7 February 2000. The letter dated 7 February 2000, which is annexed at Exhibit 'J' to the Plaint states in plain and unmistakable terms that the agreement as well as all Powers of Attorney stand cancelled. On 24 February 2000, the original Plaintiff addressed a further letter calling upon the original Defendant not to act on the basis of the Power of Attorney. The Defendant was intimated that the Plaintiff is entitled to terminate the agreement dated 1 October 1989 as well as Power of Attorney in view of the unauthorised consumption of FSI by the Defendant and that in any event the agreement as well as the Power of Attorney have automatically come to an end upon the completion of the construction by consuming FSI quantified at 2455 sq.ft. under the agreement. It was in this background that the relief that is sought in the Plaint is a declaration that the original Defendant does not have any right, title or interest in respect of FSI in excess of 2455 sq.ft. consumed under the agreement dated 1 October 1989 and that the Defendant would have no right to sell any units beyond the aforesaid extent under the agreement. Injunctive and other reliefs were also sought. The Defendant to the suit has, in the counter claim, in this background and with the knowledge of the termination and of the refusal to perform sought a decree for specific performance of the development agreement dated 1 October 1989 and a declaration that the agreement entered into between the parties continues to subsist. The Plaintiff to the suit has founded the suit on the termination of the original agreement dated 1 October 1989. Faced with the claim of the Plaintiff in the suit, the Defendant to the suit has filed his counter claim seeking a declaration that the agreement continues to subsist and for a decree for specific performance. The counter claim contains an averment in paragraph 17 that in 1998-99, an obstruction was caused by a newly inducted partner of the Defendant to the counter claim during the course of development. The Plaintiff to the counter claim relies upon the notice dated 23 June 2004. The notice dated 23 June 2004 refers to the prior termination of the agreement. As a matter of fact, the notice upon which reliance has been placed in the counter claim, states as follows:

“You are further aware that on account of various illegal acts done by you pursuant to the said power of attorney, our clients have terminated the power of attorney and called upon you to return the same.”

It appears that in spite of the termination of the said power of attorney, you are representing before the Society and other people as constituted attorney of our clients.” (emphasis supplied).

8. The issue before the Court is as to whether the Plaintiff to the counter claim can by a clever act of draftsmanship escape from the consequence of the counter claim being barred by limitation by omitting to refer to the termination dated 27 February 2000. The answer to this is in the negative. Order 7 Rule 11(d) of the Code of Civil Procedure, 1908 provides for the rejection of the Plaint inter alia whether the suit appears from the statements in the Plaint to be barred by any law. Now, it is a well settled position in law that it is the statements in the Plaint which have to be accepted on their face in arriving at a determination as to whether the suit is barred by any law. No amount of evidence can be let in for the purpose of making that determination. In this case, the Plaintiff to the counter claim has instituted the counter claim cognizant of the case of the Defendant who was the Plaintiff in the original suit and to the circumstance that it is the contention of the Defendant to the counter claim that the agreement of 1 October 1989 has been terminated on 7 February 2000. Both the letter dated 7 February 2000 as well as the very institution of the suit in this Court on 27 March 2000 constitute a notice of refusal to perform to the Defendant to the suit. A suit for a declaration had to be filed within a period of three years of the accrual of a right to sue while a suit for specific performance had to be filed within a period of three years of a notice of the refusal to perform. The suit has been filed beyond a period of three years. Hence, on the basis of the counter claim as it stands, and without adding or detracting anything from it, it is ex-facie clear that the claim is barred by limitation.

9. Counsel appearing on behalf of the Appellant, however, sought to urge that the issue as to whether limitation can be a ground for rejecting a plaint under Order 7 Rule 11(d) is not by settled.

10. In this context, it would be necessary to advert to some of the well settled principles underlying the interpretation of Order 7 Rule 11 of the Code. In **Sopan Sukhdeo Sable vs. Assistant Charity Commissioner** (AIR 2004 SC 1801), the Supreme Court held that the real object of Order 7 Rule 11 is to keep out of Courts irresponsible law suits. For the purpose of deciding an application under clauses (a) and (d) of Order 7 Rule 11, the averments in the Plaint are germane. The plea taken by the Defendant in the Written Statement would be wholly irrelevant at that stage. In exercise of its

jurisdiction under Order 7 Rule 11 what is required is a meaningful and not a formal reading of the Complaint and clever drafting which creates an illusion of a cause of action ought not to detract from the jurisdiction of the Court on an application for rejection. In **Popat and Kotecha Property vs. State Bank of India Staff Association** ((2005) 7 SCC 510), the earlier judgments on the subject were revisited and the Supreme Court held that under Order 7 Rule 11 an independent remedy is made available to the Defendant to challenge the maintainability of the suit irrespective of his right to contest it on merits. The use of the word “shall” casts a duty on the Court to perform its obligations in rejecting the complaint when it is hit by any of the infirmities provided in the four clauses of Rule 11. For that purpose, the statement of claim without addition or subtraction must show that it is barred by any law to attract the application of Order 7 Rule 11. A Bench of two Learned Judges of the Supreme Court in **Balasaria Construction (P) Ltd. vs. Hanuman Seva Trust** ((2006) 5 SCC 662) referred the question as to whether the rejection of Complaint on the bar of limitation is within the scope of Rule 11(d) to a larger Bench. When the case came up before a Bench of three Learned Judges, Counsel for both the parties stated that it was not the case of either side that as an absolute proposition under Order 7 Rule 11(d) that an application can never be based on the law of limitation. Both the sides stated before the Court that the impugned judgment was based on the facts of that particular case. In view of the statement, the question which was referred to a larger Bench was rendered academic and the case was sent back to the Bench for disposal on merits. Thereafter in **Balasaria Construction (P) Ltd. vs. Hanuman Seva Trust** ((2006) 5 SCC 658), the Bench of two Learned Judges of the Supreme Court held that “the present suit could not be dismissed as barred by limitation without proper pleadings, framing of an issue of limitation and taking of evidence” Holding that the question of limitation was a mixed question of law and fact, the Supreme Court held that ex-facie in that case on a reading of the complaint, it could not be held that the suit was barred by time. In **Hardesh Ores (P) Ltd. vs. Hede and Company** ((2007) 5 SCC 614), a Bench of two Learned Judges of the Supreme Court accepted a plea that the Complaint was liable to be rejected on the ground that the claim was barred by limitation. This was in the context of a suit for specific performance where under Article 54 of the Limitation Act, the suit should have been filed within three years from the date on which the Plaintiff had notice that the renewal of the agreement was refused by the Defendant.

11. In **Kamala Vs. K.T.Eswara Sa** (AIR 2008 SC 3174), the Supreme Court held that the broad principle which has been laid down by the Court is that the Court would not consider any evidence or enter into a disputed question.

12. In view of the law laid down by the Supreme Court, on an application under Order 7 Rule 11(d), the issue as to whether the claim of the Plaintiff to the counter claim is barred by limitation must be decided on the face of the counter claim as it stands. There is no question at this stage of leading or letting in any evidence. This is one of those cases where on the face of the counter claim it is evident that the Plaintiff to the counter claim had notice of the termination of the agreement on 7 February 2000 and of the refusal of the Defendant to the counter claim to perform the agreement both by the notice of termination and from the reliefs claimed in the suit against him, which was instituted on 27 March 2000. Hence, the counter claim which was lodged on 9 August 2004 was well beyond the period of limitation and was barred by limitation.

13. For the reasons aforesaid, we do not find any infirmity in the judgment of the Learned Single Judge. The appeal shall stand dismissed.

24) Defendant No.2 thereafter made an unsuccessful attempt of challenging the decree passed by the Division Bench by filing Special Leave Petition No. 6910 of 2011 before the Supreme Court, which came to be dismissed by order dated 21 November 2014. Thus, a decree passed dismissing the Counterclaim has attained finality upto the Supreme Court. In that view of the matter, Defendant Nos.2 and 3 can no longer buttress their claim for exploiting development potential in respect of the land admeasuring 3578 sq.mtrs. Consequently, the opposition raised by them to the redevelopment process on that count cannot be a reason for not granting temporary injunction in favour of the Plaintiff.

25) The contention raised by Defendant Nos.2 and 3 that dismissal of Suit filed by Padmanabh would enable them to carry out further construction in the plot, apart from highly ambitious, is completely misplaced. What is expected by Defendant Nos. 2 and 3 could have been correct if Defendant No. 2 was not to file

counterclaim in Padmanabh's Suit. After dismissal of his counterclaim seeking declaration of right to exploit full development potential in the land, he or his firm (Defendant No. 3) cannot expect anything even if Padmanabh's suit is dismissed. Defendant Nos. 2 and 3 therefore cannot carry out any further development on the land in question. With dismissal of SLP by the Supreme Court there is a stamp of approval on the decree passed against Defendant No. 2. Reliance of Defendant Nos. 2 and 3 on letters dated 27 June 1994 issued by Padmanabh, allegedly admitting development rights of Defendant No. 2 in respect of whole land, is meaningless. Those letters could have been useful for Defendant No. 2 in establishing his title in respect of development rights in the counterclaim. However the counterclaim has been dismissed.

26) Thus, the main objection of Defendant Nos. 2 and 3 for obstructing the redevelopment process is found to be completely baseless. Faced with this situation, they have raised few technical objections to put a spoke in the redevelopment process. It would be necessary to summarily deal with the same. The objection of Defendant Nos. 2 and 3 that Padmanabh is not impleaded as party to the present Suit again does not cut any ice. Plaintiff does not have any *lis* with Padmanabh and therefore Padmanabh does not appear to be a necessary party to the present Suit. The objection of existence of arbitration clause in the development agreement raised by Defendant Nos. 2 and 3, is essentially to somehow scuttle the present suit rather than seeking resolution of disputes through arbitration. They are blowing hot and cold in the same breath. They believe that they are not members of the society and are not bound by the development agreement. This is clear from following pleadings in their reply to IA:

7. At the outset Defendant no 2 and 3 state that they are not members of Defendant No. 1 Society and Defendant No.2 and 3 challenges and reserve their right to challenge the existence and veracity of the alleged special general body meeting as purported to be held on 3rd August 2025 as alleged in the body of the plaint. Defendant no. 2 and 3 reserve its right to amend, alter and elaborate their stand on this pleading in written statement which is to be filed in response to the plaint.

9. Defendant no. 2 and 3 state that the cause of action as stated in the plaint is of non vacation of the premises despite being served a vacation notice as a member of the Defendant no. 1 society; without prejudice to their rights and contentions in the suit, Defendant No 2 and 3 state that they are not members of the Defendant No. 1 society and the alleged admission of the Defendant No. 2 and 3 to the membership of Defendant No. 1 society is later to the issuance of the notice, the notices as they stand and admitted by the Plaintiff are issued to a non member of society and hence the cause of action stated in the plaint is untenable in law and on this point alone suit should be dismissed with cost as it is abuse of process of law.

Thus it is not the desire of Defendant Nos. 2 and 3 to resolve the dispute by arbitration. But they are raising the objection of existence of arbitration agreement with ulterior objective of somehow scuttling the present suit. If Defendant Nos.2 and 3 believe that there is an arbitration agreement between Plaintiff-Developer, Defendant No.1 and them, it would be open for them to file an application under Section 8 of the Arbitration and Conciliation Act, 1996. As of now, I do not see any reason why the present Interim Application cannot be decided merely on the basis of oral submissions made on behalf of Defendant Nos.2 and 3 about existence of arbitration agreement.

27) The objection raised by Defendant Nos.2 and 3 about grant of belated membership by First Defendant-society on 3 August 2025 again cannot be a reason for not granting any temporary injunction in favour of the Plaintiff. *Prima facie*, induction of Defendant Nos. 2 and 3 as members of the first Defendant society

appears to be in order. In the Articles of Agreement dated 1 October 1989, by which Defendant No. 2 had acquired right to construct upto 2455 FSI, following covenants are incorporated:

Developers shall complete the development within a period of 12 months from the date hereof and within such further time as may be mutually agreed between Owners and Developers. Owners further agree that they will ensure that Purchase of the shops/office/ other tenaments in the building to be constructed by the Developers are admitted as member of the Co-op. Housing Society that may be formed by the Purchasers of the remaining building on the said land.

The Developer shall incorporate a suitable clause in the Agreement that may be entered into by the Developer with the various shop/office Purchasers informing that the Conveyance of the said property along with buildings and structure including the structure to be constructed by the Developer shall be executed by the Owners in favour of Cooperative Society that may be found by the Owners alongwith the Purchasers of various shop/flats/Office premises in the building already constructed by the Owners and known as "Parekh Market". The Agreement that may be entered into by the Developer shall also incorporate a clauses that Purchasers of the Shop/Flat/other tenants shall become members of the co-operative society that may be found by the Owners along with the Purchasers shops/flats/office in the remaining building and shall also pay proportionate costs, charges and expenses.

13 Upon the completion of the development and upon the payment of consideration, the Owners shall execute necessary Deeds of Conveyance in favour of Co-op. Housing Society that may be forced by the Purchasers of building known as Parekh Market as well tenants of the others structures to whom the Owners have agreed to grant the ownership rights as well as the shop/flat/offices Purchasers in the buildings that may be constructed by the Developers.

28) Even in the Agreement dated 11 November 1991 by which Defendant No. 2 purchased 9 shops, there are similar covenants for becoming compulsory members of the first Defendant Society. Therefore, prima facie I do not find any error in society making Defendant Nos. 2 and 3 as its members. However, if Defendant Nos.2 and 3 are aggrieved by Resolution adopted by the Society in meeting held on 3 August 2025 or by inclusion of their

names in Register I & J, it would be open for them to adopt appropriate proceedings in that regard.

29) The objection that the cart is put before the horse by first executing the development agreement and thereafter admitting Defendant Nos. 2 and 3 as members is stated only to be rejected. Defendant Nos. 2 and 3 have to blame themselves for not securing membership of the society and for not participating in decision making process relating to redevelopment. Though obliged to become members of the society under the agreements of 1989 and 1991, they failed to apply for membership. Even today, they are averse to membership of society as is apparent from the averments in their reply. Belated grant of membership by society is thus another pretext set up by them to put a spoke in the redevelopment process. In fact, from this submission, the real intention of Defendant Nos. 2 and 3 in delaying the redevelopment process is apparent. It is contended on their behalf that they are also capable of redeveloping the societies buildings. Thus their real intention in scuttling the development agreement appears to secure the redevelopment rights for themselves.

30) The next objection of Defendant Nos. 2 and 3 is that they want to challenge the IOA dated 3 June 2025 and that therefore till the challenge is decided, they cannot be made to vacate the preemies, again deserves outright rejection. It appears that they had filed WP 2863 of 2025 before the Division Bench challenging the IOA, which has been withdrawn on 8 October 2025 with liberty to challenge the same before the Apex Grievance Redressal Committee. I am of the view that the redevelopment of the buildings cannot be delayed till Defendant Nos. 2 and 3 exhaust their last possible or available

remedy in respect of their alleged claim of exploitation of balance FSI potential in the land. This is particularly because the counterclaim filed by Defendant No. 2 to seek declaration of right of exploitation of balance FSI potential in the land has already been dismissed. Thus, the substantive proceedings seeking declaration are already decided against the Defendant Nos. 2 and 3 and therefore mere filing or pendency of auxiliary proceedings by them cannot be a ground for permitting them to hold on to the possession of premises and delay the redevelopment process.

31) Considering the overall conspectus of the case, I am of the view that *prima-facie* case is made out by the Plaintiffs for grant of temporary injunction during pendency of the Suit. Irreparable loss would be caused not only to the Plaintiff but mainly to Defendant No.1 and its members in the event temporary injunction is not granted. The LOI for new building is issued way back on 22 October 2024 and IOA has been issued on 11 August 2025. Three buildings in the compound are already demolished. The Plaintiff has the liability to pay transit rent to the members of the Society/Occupants. It is claimed that by now Plaintiff has incurred expenditure to the tune of Rs.10.04 crores on the Project. Any delay in commencement of construction would create difficulties not only for the Plaintiff but also for members of the First Defendant-Society. The claim of Defendant Nos. 2 and 3 of effecting further construction in the land is negated long back by dismissal of the counterclaim by this Court, which order has attained finality upto the Apex Court. Therefore, baseless expectation of Defendant Nos. 2 and 3 of milking further potential in the land cannot be a ground for indefinitely delaying the redevelopment process. The three buildings of the First Defendant-

Society have already been demolished, and the residents have lost their shelters. They have reasonable expectation of securing their new homes in an expeditious manner. The balance of convenience is thus clearly tilted in favour of the Plaintiffs and against Defendant Nos.2 and 3. In my view therefore a perfect case is made out for grant of temporary injunction in Plaintiff's favour.

32) The Interim Application succeeds, and I accordingly proceed to pass the following order:-

(i) During pendency of the Suit, there shall be temporary injunction in favour of the Plaintiff in terms of prayer clauses (b), (c), (d) and (e) of the Interim Application which read thus :-

(b) Pending the hearing and final disposal of the Suit, this Hon'ble Court be pleased to direct the Respondent Nos. 2 to 16 to vacate the said suit Premises and hand over vacant and peaceful possession thereof to the Applicants;

(c) In the alternative to prayer clause (b), pending the hearing and final disposal of the Suit, this Hon'ble Court be pleased to appoint the Court Receiver, High Court, Mumbai, with all powers under Order XL Rule 1 of the Civil Procedure Code, 1908 with respect to the Suit Premises presently occupied by Respondent Nos. 2 to 16 and to issue necessary directions to the Court Receiver to take possession of the Suit Premises from the Respondent Nos. 2 to 16 with the help of local Police, if necessary, and to hand over the peaceful possession of the suit Premises to the Applicants;

(d) Pending the hearing and final disposal of the Suit, this Hon'ble Court be pleased to direct Respondent Nos.2 to 16 to sign, execute and register the Agreements for Permanent Alternate Accommodation and all other documents from time to time in respect of the Suit Premises with the Applicants and the Respondent No. 1 as and when called upon to do so by the Applicants;

e) In the alternative to prayer clause (d), should Respondent Nos.2 to 16 fail in executing the Agreements for Permanent Alternate Accommodation, then this Hon'ble Court be pleased to direct the Court Receiver, High Court, Mumbai, to sign, execute and register the Agreements for Permanent Alternate Accommodation and all other documents from time to time in respect of the Suit Premises with the Applicants and the Respondent No. 1 as and when called upon to do so by the Applicants;

(ii) Defendant Nos. 2 to 16 shall vacate and hand over possession of their respective premises on or before 10 November 2025. In the event of failure by them to do so, the Court Receiver appointed shall forthwith take over possession as directed while allowing prayer clause (c) of the IA.

(iii) Plaintiffs shall ensure that transit rent in respect of the tenants of Defendant Nos.2 and 3 is paid to the tenants till handing over possession of PAAs to them.

(iii) Plaintiffs shall also ensure that possession of PAAs to such tenants is also handed over to them. However, Agreements for PAAs in respect of the Units occupied by the tenants shall be executed in the names of Defendant Nos.2 and/or 3. In the event of Defendant Nos. 2 or 3 or any other Defendant not cooperating with execution of PAAs, the directions issued while allowing prayer clause (e) of the IA shall be followed.

33) With the above directions, the Interim Application is **allowed and disposed of.**

34) After the order is pronounced, Mr. Shirsat would pray for stay of order for 8 weeks. The request is opposed by Mr. Kadam, as well as by Mr. Kamat. Considering the nature of findings recorded in the order, the request for stay is rejected.

[SANDEEP V. MARNE, J.]