



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO. 4450 OF 2026

Manas Shelters Pvt. Ltd.

.....Applicant

In the matter between:

Manas Shelters Pvt. Ltd.

.....Plaintiff

: **Versus** :

Vivek Madhavlal Pittie

.....Defendant

WITH

INTERIM APPLICATION (L) NO. 15824 OF 2023

WITH

INTERIM APPLICATION (L) NO. 34188 OF 2023

IN

COMMERCIAL SUIT NO. 344 OF 2015

Manas Shelters Pvt. Ltd.

.....Plaintiff

: **Versus** :

Vivek Madhavlal Pittie

.....Defendant

Mr. Aloukik R. Pai with Mr. Suryajeet Ravrane, Mr. Saharsh Sakhare and Ms. Rashmi Nikam i/b. Bina R. Pai, for the Plaintiff.

Mr. Zal Andhyarujina, Senior Advocate and Mr. Naushad Engineer, Senior Advocate with Mr. Hursh Meghani, Ms. Shreya Jha, Mr Abhay Jadeja, Mr. Arun Unnikrishnan and Ms. Urvi Gulechha i/b. Jadejas & Partners, for Defendant No.1A.

CORAM : SANDEEP V. MARNE, J.

JUDG. RESD. ON : 20 August 2026.

JUDG. PRON. ON : 02 September 2026.

ORDER:

1) Interim Application No. 4450 of 2026 is filed by the Plaintiff seeking summary judgment and preliminary decree in terms of provisions of Order XIII-A of the Civil Procedure Code, 1908 (**the Code**) as well as judgment on admission under Order XII Rule 6 in a suit filed essentially for specific performance. Preliminary decree is sought declaring that the notice dated 16 July 2013 terminating the Development Agreement, Power of Attorney and other connected documents is illegal. A decree is also sought in the sum of Rs.31,10,00,449/- along with interest. The Plaintiff further seeks a declaration that it has charge over the the suit property for a sum of Rs. 31,10,00,449/-.

2) Land bearing C.S. No. 321 of Tardeo division admeasuring about 1538.7 sq.mts, Pathe Baburao Marg, Falkland Road, Mumbai together with Building No. 15 consisting of ground plus one upper floor and Building No. 17 comprising of ground plus one upper floor standing thereon is the '**suit property**'.

3) One Maheshchandra Agarwal had filed Suit No. 224 of 1961 against the family members of Pittie Family seeking partition of ancestral properties of Narayanrlal Pittie (HUF). This Court appointed

Court Receiver in respect of the properties, which included the suit property forming part of the present suit. By order dated 21 July 1967, Shri. Madhavlal Narayanrlal Pittie (Defendant No.1) was appointed as a private Receiver in place of Court Receiver of this Court. By the year 2002, Buildings Nos. 15 and 17, which were constructed prior to 1940, required urgent repairs as the same were in precarious and dilapidated conditions. Defendant No.1 approached this Court by filing Court Receiver's report seeking permission for redevelopment of the property. By order dated 10 April 2002, this Court granted permission for redevelopment of the suit property. Accordingly, Plaintiff was appointed as the developer for redevelopment of the suit property. The Development Agreement dated 16 December 2003 was executed in favour of the Plaintiff. Plaintiff was also required to accommodate the tenants of the two buildings in the rehabilitation building. There was also obligation to handover certain constructed portion in favour of MHADA in lieu of grant of NOC which condition was apparently deleted. To incorporate the various changed conditions, the Supplemental Agreement dated 25 February 2003 was executed. Another supplemental agreement dated 15 March 2004 was executed between Plaintiff and Defendant No.1. A Power of Attorney dated 22 May 2002 is also executed by Defendant No.1 in favour of the Plaintiff. The Development agreement, Supplemental Agreements and the Power of Attorney executed between Plaintiff and the Defendant No. 1 are described as the **'development documents'**.

4) Considering the limited controversy involved in the application, it is not necessary to narrate developments that had occurred post execution of the development documents. It appears that in pursuance of the Development Agreement executed in its favour, Plaintiff was able to complete construction of the suit property only till the plinth level. Defendant No.1 terminated the Development Agreement by notice dated 16 July 2013 accusing Plaintiff of not complying with the contractual obligations. Plaintiff has accordingly filed the present suit seeking a declaration that the development documents are valid, subsisting and that the letter dated 16 July 2013 terminating the development documents is illegal and does not bind the Plaintiff. Plaintiff has sought specific performance of the Development Agreement dated 16 December 2003. Plaintiff has sought injunction against Defendant No. 1 from disturbing possession of the Plaintiff on the suit property. Plaintiff has also sought decree in the sum of Rs.48.13 crores in addition to prayers for setting aside termination letters and for specific performance. In the alternative, Plaintiff has sought a decree for damages/compensation in lieu of specific performance in the sum of Rs.120 crores. Plaintiff has sought prayer for creation of charge over the suit property in the sum of Rs.168.13 crores.

5) Plaintiff filed Notice of Motion (L) No. 2370 of 2014 in the Suit seeking temporary injunction. By order dated 15 June 2015, the Single Judge of this Court allowed the Motion in terms of prayer clauses (a) and (c) thereby restraining Defendant No.1 from acting upon the termination notice and from obstructing development of the suit property. Defendant No.1 filed Appeal before the Division Bench

challenging order dated 15 June 2015, which was withdrawn with a liberty to file an application under Order XXXIX Rule 4 of the Code for vacation of the interim injunction. Accordingly, Defendant No.1 took out application for vacation of interim injunction under Order XXXIX Rule 4 of the Code, which was dismissed by order dated 14 March 2017. An Appeal preferred by Defendant No.1 challenging the order dated 14 March 2017 was also dismissed. The Special Leave Petition challenging the order of the Appellate Court was also dismissed by the Hon'ble Supreme Court on 6 August 2018.

6) In the meantime, Defendant No.1 passed away and his son Vivek Madhavlal Pittie was apparently appointed as a private receiver in terms of orders dated 14 December 2021 and 29 December 2021 passed by this Court. Accordingly, he was impleaded as Defendant No.1A in the suit. Defendant No.1A filed Interim Application No. 4794 of 2022 once again seeking vacation of interim injunction granted vide order dated 15 June 2015 under Order XXXIX Rule 4 of the Code alleging that the Plaintiff did not take any steps for redevelopment of the suit property despite passage of long time after grant of temporary injunction. By order dated 27 March 2024, Single Judge of this Court allowed Interim Application No. 4794 of 2022 and vacated the interim injunction. Plaintiff filed Commercial Appeal (L) No. 14951 of 2024 challenging the order dated 27 March 2024. By judgment and order dated 24 June 2025, Division Bench of this Court dismissed the appeal preferred by the Plaintiff. Special Leave Petition filed challenging the order of the Division Bench was dismissed by the Apex Court by order dated 19 February 2026.

7) On 10 January 2023 Plaintiff has filed the present Interim Application (Interim Application No. 4450 of 2026) under the provisions of Order XIII-A, as well as Order XII Rule 6 of the Code seeking following substantive prayers:

(a) this Hon'ble Court be pleased to pass a Judgment and Decree thereby declaring that the Notice dated 16/07/2013 sent by the Defendant No. 1 terminating the Development Agreement dated 16/12/2003 r/w Supplementary Agreement dated 25/02/2003 r/w Supplementary Agreement dated 15/03/2004 and Power of Attorney dated 22/05/2002 and other connected documents referred therein is in breach of Clause 16 of the said Development Agreement dated 16/12/2003 and/or the said Notice of Termination is issued beyond the authority/power of the Defendant No. 1 in his capacity as the Private Court Receiver appointed by Order of this Hon'ble Court dated 21/07/1967 in Suit No. 224of1961;

(b) in furtherance or independently of the preceding prayer this Hon'ble Court be pleased to pass a Judgment and Decree against the Defendant No.1 in his capacity as the Private Court Receiver appointed by Order of this Hon'ble Court dated 21/07/1967 in Suit No. 224of1961 claiming through him in Suit No. 224 of 1961, for an amount in a sum of Rs. Rs.31,10,00,449/- (Rupees Thirty-One Crore Ten Lakhs Four Hundred and Forty-Nine Only) in terms of the chart of particulars of claim at Exhibit-"~ hereto along with further interest @ 12 % from 31/12/2022 till payment or realization of the said amount, on such terms and conditions as this Hon'ble Court may deem fit and proper;

(c) this Hon'ble Court be pleased to pass a Judgment and Decree thereby declaring that the Plaintiff has a charge over the suit properties and/or any other right title interest of the Defendant No. 1 in any other movable/immovable properties directly or beneficially held by him in his capacity as the Private Court Receiver appointed by Order of this Hon'ble Court dated 21/07/1967 in Suit No. 224 of 1961 for a sum of Rs. Rs.31, 10,00,449/- (Rupees Thirty-One Crore Ten Lakhs Four Hundred and Forty-Nine Only) in terms of, the chart of particulars of claim at Exhibit-K hereto along with further interest @ 12 % from 31/12/2022 till payment or realization of the said amount, on such terms and conditions as this Hon'ble Court may deem fit and proper;

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(e) pending the hearing final disposal of the above suit, this Hon'ble Court be pleased to pass an order for attachment and sale before

judgment the properties of the Defendant No. 1A held by him in his capacity as the Private Court Receiver appointed by Order of this Hon'ble Court dated 21/07/1967 in Suit No. 224 of 1961 as well as his rights and entitlement in the suit property or benefits thereof receivable under the said Development Agreement dated 16/12/2003 and/or all other properties disclosed in terms of the preceding prayer under the provisions of Order XL Rule 4 of CPC, 1908 for recovering and paying to the Plaintiffs dues as claimed in the present Application and retain the balance sums by depositing it in this Hon'ble Court for securing the claim of the Plaintiff in the above suit;

(f) pending the hearing final disposal of the above suit, this Hon'ble Court be pleased to pass an order for appointment of fit and proper person as the Court Receiver with all powers under Order XL of Civil Procedure Code, 1908 in place and stead of the Defendant No. 1A, for the purpose of the present suit on such terms and conditions this Hon'ble Court may deem fit;

8) The Application is opposed by Defendant No.1A by filing Affidavit in reply.

9) Plaintiff has filed two more applications viz. Interim Application (L) No. 15824 of 2023 and Interim Application (L) No. 34188 of 2023 seeking amendments in Interim Application No. 4450 of 2026 filed under Order XIII-A and Order XII Rule 6 of the Code. Since this Court is proposing to finally dispose of Interim Application No. 4450 of 2026, though the amendment applications are not opposed, with a view to facilitate decision of Interim Application No. 4450 of 2026 on merits, it is considered appropriate to allow both the applications for amendment. Accordingly, Interim Application (L) No. 15824 of 2023 and Interim Application (L) No. 34188 of 2023 deserve to be allowed.

10) Mr. Pai, the learned counsel appearing for the Plaintiff submits that the termination notice dated 16 July 2013 is clearly in the

teeth of Clauses-16 and 30 of the Development Agreement. That under Clause-16, the Development Agreement could have been terminated only after giving one month's notice to the Plaintiff. That under Clause 30 it was necessary to give prior notice of 2 months calling upon the Plaintiff to cure the alleged breaches. That since no prior notice is issued before terminating the Development Agreement, the termination notice dated 16 July 2013 is clearly bad in law and that the Defendants have no real prospect of successfully defending the claim in terms of prayer clause (a) of the plaint. That therefore summary judgment needs to be passed in the present Commercial Suit under Order XIII-A Rule 2 of the Code. He further submits that the parties had specifically agreed to issuance of prior notice under Clauses 16 and 30 of the Development Agreement and, since no prior notice was admittedly issued, Defendant No. 1A is bound to fail in respect of its grievances. That no real evidence is required to be led for determining the issue of validity of termination notice.

11) Mr. Pai further submits that since the private receiver was appointed with express permission of the Court for carrying out redevelopment of the suit property, the Development Agreement could not have been terminated by him without seeking prior permission of the Court. That appointment of the Plaintiff as a developer was in pursuance of specific order passed by this Court on 10 April 2002 and that before terminating the appointment of Plaintiff, it was mandatory to secure permission of the Court.

12) Mr. Pai further submits that the claim for damages under the prayer clauses (e) and (f) of the plaint is independent of the prayer clause (b) for specific performance. That alternate relief of damages is sought in prayer clause (f) which is not being pressed at this juncture. That once termination notice is declared invalid, the Plaintiff would automatically be entitled to seek damages in the sum of Rs.31,10,00,449/-. He submits that the amount is determined by taking into consideration the most conservative and the least value of development rights granted in favour of the Plaintiff. That if termination notice is declared invalid, this is the minimum that the Plaintiff must secure from the Defendants. He submits that no oral evidence is required to be led for granting claim for damages in the sum of Rs.31,10,00,449/-.

13) In support of his contentions, Mr. Pai relies on judgments of the Delhi High Court in **Deepali Designs and Exhibits Private Limited Versus. Encompass Events Private Limited¹** and **Su-Kam Power Systems Ltd. Versus. Kunwer Sachdev And Another²** and of this Court in **Ashok Commercial Enterprises and another Versus. Rajesh Jugraj Madhani³**.

14) Mr. Pai further submits that independent of the provisions of Order XIII-A, the Plaintiff is also entitled to a decree on admission under Order XII Rule 6 of the Code. In support, he relies on judgments of the Apex Court in **Uttam Singh Duggal and Co. Ltd. Versus. United Bank of India and others⁴** and **Karam Kapahi and others Versus. Lal**

1 2022 SCC Online Del 3269

2 2019 SCC Online Del 10764

3 2023 SCC Online Bom 248

4 2000 (7) SCC 120

Chand Public Charitable Trust and another⁵. Mr. Pai further submits that the observations made by this Court while vacating the temporary injunction are of little relevance while deciding the prayers for summary judgment. That the inquiry in six proceedings was restricted to Plaintiff's readiness and willingness to perform the contract. That the issue of readiness and willingness may have some bearing on the issue for prayer of specific performance in which decree is not currently sought. That for claiming damages, it is not necessary to prove readiness or willingness. On the basis of the above submissions, Mr. Pai would pray for summary judgment in terms of the prayers sought in the Interim Application. Mr. Pai prays for alternate relief of making an order for deposit of an amount of Rs. Rs.31,10,00,449/- in the event this Court does not make a summary judgment in that amount at this stage.

15) Mr. Andhyarujina and Mr. Engineer, the learned Senior Advocates have opposed the Interim Application submitting that the Suit is for specific performance which requires establishment of readiness and willingness on the part of the Plaintiff to perform the contract and which requires leading of oral evidence. That even for claiming damages, readiness and willingness must be established. In support, they rely on judgments of the Privy Council in **Abdullah Bey Chedid and others. Versus. Tenenbaum**⁶ and **Tan Ah Boon Versus. State of Johore**⁷ in support of their contention that Plaintiff must aver and prove readiness and willingness from the date of contract to the date of the decree. Reliance is also placed on judgment of the Apex Court in

5 2010 (4) SCC 753

6 1933 SCC Online PC 48

7 1936 SCC Online PC 34

N.P. Thirugnanam (dead) by LRS. Versus. Dr. R. Jagan Mohan Rao and others⁸. That there cannot be automatic award of compensation even if termination is held to be wrongful and in order to claim compensation, the Applicant will have to establish that it suffered losses by leading appropriate evidence. In support, reliance is placed on judgment of this Court in **Bharat Sanchar Nigam Ltd Versus. Media Marketing Services (MMS)⁹**.

16) It is further submitted on behalf of Defendant No. 1A that the valuation presented by the Applicant is not an admitted one. That the valuer needs to be examined as a witness. That ready reckoner rates can sometimes be higher than the actual market rates and cannot be an accurate guide for valuation of damages and compensation. In support, reliance is placed upon judgments in **Bharat Sanchar Nigam Ltd Versus. Nemichand Damodardas and another¹⁰** and **Jawajee Nagnatham Versus. Revenue Divisional Officer, Adilabad A.P. and others¹¹**. It is further submitted that Defendant No.1A has several valid defenses in the present case. That additionally a counterclaim is filed claiming sums against the Plaintiff. That therefore it cannot be contended that Defendant No.1A has no real prospect of successfully defending the claim. In support of the contention of scope of inquiry under Order XIII-A, reliance is placed on judgments in **Northern ARC Capital Ltd. Versus. Sambandh Finserve Private Limited and others¹²** and **Reliance Eminent Trading and Commercial Private Limited Versus. Delhi Development**

8 1995 (5) SCC 115

9 2015 (2) Mh.L.J. 281

10 2022 SCC Online SC 815

11 1994 (4) SCC 595

12 2022 SCC Online Mad 2904

Authority¹³. In support of the contention that summary judgments should be refused if there are compelling reason to conduct a trial, reliance is placed on judgments in **ED&F Man Liquid Products Limited Versus. Patel and ANR¹⁴, Elite Property Holdings Ltd. and another Versus. Barclays Bank PLC¹⁵** and **Sze Ming Yeung Versus. Jeckz Investment Ltd. and others¹⁶**.

17) Mr. Andhyarujina and Mr. Engineer would further submit that nonperformance on the part of the Plaintiff is actually an anticipatory breach and a ground to terminate the contract. That therefore the termination in the present case is not only in terms of contractual clauses but also by virtue of provisions of Section 39 of the Indian Contract Act, 1872 (**Contract Act**) and that the termination therefore is statutory and not contractual. In support, he relies on judgments in **Frost Versus. Night¹⁷, Maredelanto Compania Naviera S.A. Versus. Bergbau-Handel G.m.b.H. The Mihalis Angelos¹⁸** and **Geden Operations Ltd. Versus. Dry Bulk Handy Holdings Inc; The M/V Bulk Uruguay¹⁹**. That in any case, Clause-16 contemplated seeking of extension, which was never sought by the Plaintiff and that therefore it was not necessary to serve prior notice before terminating the contract.

18) Lastly, it is submitted on behalf of Defendant that Plaintiff has no wherewithal of completing the project and adverse observations

13 2026 SCC Online SC 744

14 2003 EWCA Civ 472

15 2019 EWCA Civ 204

16 2024 EWCA Civ 1413

17 (L.R.) 7 Exch 111

18 (1970) 2 WLR 907

19 (2014) 2 ALL ER (Comm) 196

are made against it by the learned Single Judge and the Division Bench while vacating the interim injunction. That the order of vacation of interim injunction has attained finality upto the Hon'ble Apex Court. That no permission was required to be obtained from this Court since Suit No.224 of 1961 was disposed of on 2 May 2008. It is accordingly prayed on behalf of Defendant No.1A that the Interim Application be dismissed with costs.

19) Rival contentions urged on behalf of the parties now fall for my consideration.

20) The development documents executed in favour of the Plaintiff during the years 2003-04 are terminated by Defendant No.1 on 16 July 2013 since Plaintiff was unable to construct the building beyond plinth level during 9 long years. As observed above, though initially injunction was granted in favour of the Plaintiff, the same has ultimately been vacated by the Single Judge of this Court under the provisions of Order XXXIX Rule 4 of the Code by order dated 27 March 2024. Vacation of interim injunction is upheld by the Appeal Court on 24 June 2025, and the Special Leave Petition has also been dismissed on 19 February 2026.

21) The present Application was filed by the Plaintiff in January 2023 when it had the protection of interim injunction. After filing of the present Application, the temporary injunction came to be vacated by order dated 27 March 2024, which order has attained finality on account of order passed by the Hon'ble Apex Court on 19 February 2026. The

situation has thus dramatically changed after filing of the present Interim Application. The Interim Application is for seeking summary judgment under the provisions of Order XIII-A read with Order XII Rule 6 of the Code. The same was filed when the Plaintiff was enjoying an injunction restraining Defendant No. 1/1A from obstructing it from carrying out redevelopment activities at the suit property. After filing of the present Interim Application, the temporary injunction granted in favour of the Plaintiff has been withdrawn by making adverse observations about failure to take any steps for carrying out construction of the building for a considerable time after grant of temporary injunction, primarily due to lack of financial wherewithal.

22) Plaintiff has sought summary judgment in terms of Order XIII-A of the Code, which applies to a commercial dispute of a specified value. Order XIII-A provides thus:

ORDER XIII-A

1. Scope of and classes of suits to which this Order applies. —

- (1) This Order sets out the procedure by which Courts may decide a claim pertaining to any Commercial Dispute without recording oral evidence.
- (2) For the purposes of this Order, the word “claim” shall include— (a) part of a claim;
(b) any particular question on which the claim (whether in whole or in part) depends; or
(c) a counterclaim, as the case may be.
- (3) Notwithstanding anything to the contrary, an application for summary judgment under this Order shall not be made in a suit in respect of any Commercial Dispute that is originally filed as a summary suit under Order XXXVII.

2. Stage for application for summary judgment.—

An applicant may apply for summary judgment at any time after summons has been served on the defendant:

Provided that, no application for summary judgment may be made by such applicant after the Court has framed the issues in respect of the suit.

3. Grounds for summary judgment.—

The Court may give a summary judgment against a plaintiff or defendant on a claim if it considers that—

(a) the plaintiff has no real prospect of succeeding on the claim or the defendant has no real prospect of successfully defending the claim, as the case may be; and

(b) there is no other compelling reason why the claim should not be disposed of before recording of oral evidence.

4. Procedure.—

(1) An application for summary judgment to a Court shall, in addition to any other matters the applicant may deem relevant, include the matters set forth in sub-clauses (a) to (f) mentioned hereunder:—

(a) the application must contain a statement that it is an application for summary judgment made under this Order;

(b) the application must precisely disclose all material facts and identify the point of law, if any;

(c) in the event the applicant seeks to rely upon any documentary evidence, the applicant must,—

(i) include such documentary evidence in its application, and

(ii) identify the relevant content of such documentary evidence on which the applicant relies;

(d) the application must state the reason why there are no real prospects of succeeding on the claim or defending the claim, as the case may be;

(e) the application must state what relief the applicant is seeking and briefly state the grounds for seeking such relief.

(2) Where a hearing for summary judgment is fixed, the respondent must be given at least thirty days' notice of:—

(a) the date fixed for the hearing; and

(b) the claim that is proposed to be decided by the Court at such hearing.

(3) The respondent may, within thirty days of the receipt of notice of application of summary judgment or notice of hearing (whichever is earlier), file a reply addressing the matters set forth in clauses (a) to (f) mentioned hereunder in addition to any other matters that the respondent may deem relevant:—

(a) the reply must precisely—

(i) disclose all material facts;

(ii) identify the point of law, if any; and

- (iii) state the reasons why the relief sought by the applicant should not be granted;
- (b) in the event the respondent seeks to rely upon any documentary evidence in its reply, the respondent must—
 - (i) include such documentary evidence in its reply; and
 - (ii) identify the relevant content of such documentary evidence on which the respondent relies;
- (c) the reply must state the reason why there are real prospects of succeeding on the claim or defending the claim, as the case may be;
- (d) the reply must concisely state the issues that should be framed for trial;
- (e) the reply must identify what further evidence shall be brought on record at trial that could not be brought on record at the stage of summary judgment; and
- (f) the reply must state why, in light of the evidence or material on record if any, the Court should not proceed to summary judgment.

5. Evidence for hearing of summary judgment.—

- (1) Notwithstanding anything in this Order, if the respondent in an application for summary judgment wishes to rely on additional documentary evidence during the hearing, the respondent must:—
 - (a) file such documentary evidence; and
 - (b) serve copies of such documentary evidence on every other party to the application at least fifteen days prior to the date of the hearing.
- (2) Notwithstanding anything in this Order, if the applicant for summary judgment wishes to rely on documentary evidence in reply to the defendant's documentary evidence, the applicant must:—
 - (a) file such documentary evidence in reply; and
 - (b) serve a copy of such documentary evidence on the respondent at least five days prior to the date of the hearing.
- (3) Notwithstanding anything to the contrary, sub-rules (1) and (2) shall not require documentary evidence to be:—
 - (a) filed if such documentary evidence has already been filed; or
 - (b) served on a party on whom it has already been served.

6. Orders that may be made by Court.—

- (1) On an application made under this Order, the Court may make such orders that it may deem fit in its discretion including the following:—
 - (a) judgment on the claim;
 - (b) conditional order in accordance with Rule 7 mentioned hereunder;
 - (c) dismissing the application;
 - (d) dismissing part of the claim and a judgment on part of the claim that is not dismissed;
 - (e) striking out the pleadings (whether in whole or in part); or

- (f) further directions to proceed for case management under Order XV-A.
- (2) Where the Court makes any of the orders as set forth in sub-rule (1) (a) to (f), the Court shall record its reasons for making such order.

7. Conditional order.—

(1) Where it appears to the Court that it is possible that a claim or defence may succeed but it is improbable that it shall do so, the Court may make a conditional order as set forth in Rule 6 (1) (b).

(2) Where the Court makes a conditional order, it may:—

(a) make it subject to all or any of the following conditions:—

(i) require a party to deposit a sum of money in the Court;

(ii) require a party to take a specified step in relation to the claim or defence, as the case may be;

(iii) require a party, as the case may be, to give such security or provide such surety for restitution of costs as the Court deems fit and proper;

(iv) impose such other conditions, including providing security for restitution of losses that any party is likely to suffer during the pendency of the suit, as the Court may deem fit in its discretion; and

(b) specify the consequences of the failure to comply with the conditional order, including passing a judgment against the party that have not complied with the conditional order.

8. Power to impose costs.—

The Court may make an order for payment of costs in an application for summary judgment in accordance with the provisions of sections 35 and 35A of the Code.

(underlining added)

23) Thus, under Rule 2 of Order XIII-A, an applicant can apply for summary judgment at any time after the summons has been served on the Defendant. The application for summary judgment cannot be made after the Court has framed issues in the suit. Under Rule 3, the Court can give summary judgment against the Plaintiff or Defendant on a claim if it is satisfied that Plaintiff has no real prospect of succeeding in the claim or the Defendant has no real prospect of successfully defending the claim and that there is no compelling reason why the

claim should not be disposed of before recording oral evidence. That when Plaintiff seeks summary judgment under Order XIII-A Rule 3, the same can be given by the Court only on satisfaction of two conditions viz. (i) the defendant has no real prospect of successfully defending the claim and (ii) there is no other compelling reason why claim should not be disposed of before recording of oral evidence. The nature of inquiry to be made in an application for summary judgment has been subject matter of several decisions. In ***Reliance Eminent Trading and Commercial Private Limited*** (supra), the Apex Court has dealt with the scope of enquiry under Order XIII-A of the Code and has held in paragraphs 50, 51 and 59 of the judgment as under:

50. Coming back to the Order necessary for adjudication of the present case, Rule 3 of Order XIII-A of the CPC provides that the Court, while adjudicating an application for summary judgement, has to bear in mind two things –

(i) the Court considers –

(a) whether the plaintiff has any real prospect of succeeding on the claim or issue; or

(b) whether the defendant has any real prospect of successfully defending the claim or issue; and

(ii) there is no other reason why the case or issue should be allowed to go to trial.

51. This brings us to the expression ‘real prospect of success’, as used in Rule 3 of Order XIII-A of the CPC. This phrase is, by its very nature, self-explanatory and admits of no further interpretation. It postulates that the likelihood of success must be real and substantial, as opposed to being merely fanciful or speculative. In other words, the standard envisages a degree of certainty higher than that of a claim which is merely arguable. **Accordingly, where the Court finds that a claim or defence is so weak that it prima-facie discloses no reasonable prospect of success, it is neither necessary nor desirable to subject the parties to the rigours of a full-fledged trial.** The provision, thus, empowers the Court to arrest such proceedings at the threshold, thereby preventing undue expenditure use of judicial time and resources. At the same time, the provision reflects the broader obligation of the Court to ensure expeditious delivery of justice. In this

regard, reference can be made to the decision of the England and Wales Court of Appeal in **Swain v. Hillman**, [2001] 1 All ER 91, which set the standard for summary judgement under Part 24 of the Civil Procedure Rules, 1998 of the United Kingdom. **In this case, it was held that the power of summary judgement is to be exercised where it is just and expedient to do so, enabling parties to know their legal position without being compelled to endure a trial.**

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59. Therefore, while considering an application for summary judgment under Order XIII-A of the CPC, the following non-exhaustive guidelines have to be complied –

- (i) That the procedural mandate under Order XIII-A, CPC be strictly complied.
- (ii) The Court should consider, (a) Whether Plaintiff has no real prospect of succeeding on the claim or issue; or (b) **Whether the defendant has no real prospect of successfully defending the claim or issue;** and
- (iii) **The Court should also consider whether there is no other reason why the case or issue(s) should be allowed to go to trial.**
- (iv) While ascertaining above, the Court does not have to take everything on the face value, but it must also not conduct a mini trial at the same time.
- (v) That the Court has to differentiate between a cause of action/defence respectively, which is real as opposed to fanciful prospect.
- (vi) That the Court ought to grasp the nettle, when dealing with the summary judgment applications to decide short points of law and interpretations.
- (vii) The Court must take into account not only the evidence before it but also the evidence that can reasonably be expected to be led/available at the trial.
- (viii) **That the Court's usage of power under Order XIII-A, CPC is exceptional as it cuts short the process of trial and ought to be exercised where oral evidence and full trial is not required.**
- (ix) In order to ascertain the need for full trial over summary judgment, the Court has to see whether, in the interest of justice, it is more suited to conduct trial to –
 - (a) Weigh the evidence,
 - (b) Evaluate the credibility of a deponents,
 - (c) Draw reasonable inferences from the evidence.

(emphasis added)

24) Since the judgment of the Apex Court in ***Reliance Eminent Trading and Commercial Private Limited*** lays down the principles of inquiry while deciding an application for summary judgment under Order XIII-A, it is therefore not necessary to discuss the ratio of the judgments of various High Courts [***Northern ARC Capital Ltd., Deepali Designs and Exhibits Private Limited, Su-Kam Power Systems, Ashok Commercial Enterprises*** (supra)] relied upon by the parties dealing with the scope of such inquiry.

25) In the present case, the Plaintiff believes that Defendant No. 1/1A has no real prospect of successfully defending the claim seeking a declaration that the termination notice is invalid. Plaintiff has placed reliance on Clause-16 of the Development Agreement which reads thus:

16.The time for completion of the re-development of the said Property within the time stipulated in para 9 Clauses (x) and (xi) hereinabove, is of the essence. If the Party of the Second Part fails to commence and complete there-development of the said Property within the said stipulated time as mentioned hereinabove, the Party of the First Part will, at the request in writing of the Party of the Second Part for extension of time, give to the Party of the Second Part, six months further time for completion of the re-development of the said Property. However, if the re-development of the said Property is still not completed within the said extended period of six months, **the Party of the First Part shall be entitled to terminate this Agreement by giving one month's written Notice in that behalf to the Party of the Second Part** and on such termination, the Party of the Second Part shall forfeit all their rights under this Agreement and also in and over any structures erected by them in the said Property and shall immediately remove themselves alongwith their contractors, employees, etc from the said property and the Party of the First Part shall be entitled to stop their entry into the said property and to take such steps as required for the purposes of completing the redevelopment of the said property and the Party of the First Part will also be entitled to claim damages from the Party of the Second Part for any loss and/or damage that he and/or the co-owners and/or the

Tenants/Occupants of the said Property may suffer thereby. Provided that in the event of such earlier determination of this Agreement by the Party of the First Part, then and in such case, if after providing fully for all the costs, charges and expenses (including any loss and damages suffered by the Party of the First Party) and which the First Party may have to incur for completing the construction of the said buildings and redevelopment of the said property in its entirety, any surplus is actually left thereafter in the hands of the Party of the First Part, the Party of the Second Part would be entitled to have the same reimbursed to them towards the net costs of construction of the flats in the new buildings, (that is, after setting off the amounts realised by the Party of the Second Part from the prospective flat purchasers) incurred by them till such earlier determination of this Agreement.

(emphasis added)

26) A careful perusal of Clause-16 of the Development Agreement would indicate that the same makes the time stipulated in the contract the essence of the contract. Under Clause-16, if Plaintiff failed to commence and complete redevelopment of the property within the time so stipulated, he could request for extension of time and Defendant No.1 could grant such extension by 6 more months. It is only in the event of non-completion of redevelopment within the extended time of 6 months that Defendant No.1 was required to give one month's notice in writing. It is the case of Defendant No.1A that no extension of time was sought by the Plaintiff and therefore Clause-16 does not apply in the present case. Thus, there is some defence raised by Defendant No.1A *qua* contractual stipulation under Clause-16. Correctness of defence of the Defendant needs to be examined at the time of final disposal of the Suit. It therefore cannot be contended that Defendant No.1A has no real prospect of successfully defending the claim of the Plaintiff based on Clause-16 of the Development Agreement.

27) Plaintiff had never relied upon Clause-30 of the Development Agreement either in the plaint or in the Interim Application as originally drafted. Today, I have allowed amendment permitting the Plaintiff to rely upon Clause-30, which reads thus:

30. Subject to what is stated hereinabove, in the event of any of the parties hereto committing breach or default of any of the terms and conditions of these presents, the party aggrieved shall after giving two months written notice to the defaulting party calling upon them to rectify/remedy the default/breach and, if within the said period of two months the default/breach is not rectified and/or remedied, then and in such case the aggrieved party will be entitled to the specific performance of the terms and conditions contained herein or to terminate, rescind and cancel these presents and recover the costs, charges, expenses and damages from the party committing such breach or default.

28) Thus, under Clause-30 of the Development Agreement, upon breach or default being committed by either of the parties, the opposite party was entitled to give 2 months' notice to the defaulting party for rectification of the default/breach and thereafter the aggrieved party is entitled to specify performance of terms and conditions as contained in the Agreement or to terminate, rescind or cancel the same. In the present case, the Plaintiff has crossed the time limit agreed in the Development Agreement and despite passage of 9 long years, he could construct building only up to plinth level.

29) It is the case of Defendant No.1A before me that termination of the Development Agreement is on account of anticipatory breaches committed by the Plaintiff. It is contended that since Plaintiff did not construct the building beyond the plinth and failed to perform the promise within the meaning of Section 39 of the Contract Act, the

contract has been put to an end. It is contended that Defendant No.1 has exercised statutory right under Section 39 of the Contract Act and not merely a contractual right and therefore Clauses-16 and 30 of the Development Agreement may not strictly apply for determining validity of the termination notice. Reliance is placed on English judgments in ***Frost Versus. Night, Maredelanto Compania Naviera S.A. and Geden Operations Ltd.*** (supra) in support of the contention that non-performance of the contract can be treated as an anticipatory breach and a ground to terminate the contract. I need not delve deeper into the question as to whether Defendant No. 1 was justified in treating the conduct of the Plaintiff as constituting a breach of the contract or a refusal to perform the promise, and whether Defendant No.1 was consequently entitled to terminate the contract under Section 39 of the Contract Act. Suffice it to observe at this juncture that Defendant No.1A has raised a defence in respect of the termination notice. Therefore, it is difficult to arrive at a finding that there is no real prospect for Defendant No.1/1A in successfully defending the claim *qua* the termination.

30) So far as claim for damages of Rs.31,10,00,449/- is concerned, the same is premised on valuation made by Plaintiff by taking into account the ready reckoner rates. The valuation report dated 16 July 2013 is appended to the application at Exh.I. Here again, I see multiple difficulties standing in the way of the Plaintiff. In the plaint, there are two types of damages sought. In prayer clause (e) of the plaint, damages of Rs.48,13,00,000/-are sought in furtherance or in addition to a decree for specific performance. In prayer clause (f) of the plaint, damages in

the sum of Rs.120 crores are claimed as an alternate relief to the prayer for specific performance. It is now contended that Plaintiff is not claiming the alternate relief of damages as of now and would press both the reliefs of specific performance and alternate relief of damages at the time of trial of the suit. This Court, therefore, enquired as to whether a claim for summary judgment in the sum of Rs. 31,10,00,449/- could fit within the scheme of the suit? Mr. Pai has clarified that the amount of Rs. 31,10,00,449/- forms part of the claim made in prayer clause (e) of the plaint. The figures however do not match. Be that as it may. Even otherwise, there are multiple reasons why this Court cannot make a summary judgment at this stage in the sum of Rs.31,10,00,449/-. The first and foremost reason is that this Court is unable to make a summary judgment declaring the termination notice to be invalid. If validity of termination notice cannot be decided at this juncture, there is no question of awarding damages to the Plaintiff by way of summary judgment. In fact, this reason is sufficient for declining summary judgment towards damages. Secondly, even if this Court was to declare the termination notice to be invalid, the Plaintiff will have to prove sufferance of loss and quantification thereof cannot be presumed in absence of evidence. In this regard, observations made by this Court in ***Bharat Sanchar Nigam Ltd Versus. Media Marketing Services (MMS)*** in para-23 of the judgment are apposite in which it is held thus:

23. In my view since the termination of contract in the facts and circumstances of this case effected by the petitioners was valid, the question of awarding any compensation to the respondents did not arise. Be that as it may, even if there was wrongful termination of the contract on the part of the petitioners, the respondents would not have become entitled to claim any compensation unless the respondents

would have suffered loss in view of such wrongful termination and such loss would have been proved by the respondents by leading appropriate evidence before the learned arbitrator. There is no automatic award of compensation even if there was finding of wrongful termination rendered by the learned arbitrator in absence of any proof of such loss alleged to have been suffered by the respondents.

31) Therefore, even if Plaintiff was to succeed in securing the summary judgment declaring termination notice to be invalid, it will have to prove sufferance of loss and the quantum thereof. Even otherwise, it is well settled position of law that Plaintiff will have to ultimately prove its readiness and willingness to perform the contract even *qua* the prayer for damages. The law in this regard is well settled and reference on judgments of the Privy Council in ***Abdullah Bey Chedid*** and ***Tan Ah Boon*** is apposite. Even for claiming damages as the main or alternate relief, Plaintiff must prove that it was ready and willing to perform the contract. For proving so, trial of the suit is necessary.

32) The next difficulty in seeking summary judgment for damages is that the Plaintiff will have to also prove the correctness of the valuation report. In the absence of the valuer being examined as a witness by Defendant No. 1A, this Court cannot readily accept the contents thereof. Whether the methodology adopted for determining the valuation is correct or not would again be subject matter of trial in the suit.

33) In my view, therefore no case is made out for grant of summary judgment in favour of the Plaintiff.

34) Even otherwise, it is too optimistic for the Plaintiff to expect a summary judgment holding termination notice to be invalid and for damages in the sum of Rs. 31,10,00,449/- when it has lost upto the Apex Court in respect of withdrawal of temporary injunction. When Plaintiff could not convince the learned Single Judge and Division Bench of this Court and the Apex Court that it has any *prima-facie* case on merits, it is too much to expect that this Court would grant a summary judgment in Plaintiff's favour by holding that Defendant No.1A has no real prospect of successfully defending the claim. On the contrary, the findings recorded while withdrawing the temporary injunction would indicate that Plaintiff was unable to establish a *prima-facie* case. Though it is sought to be contended that Mr. Pai that the inquiry under Order XXXIX Rule 4 was restricted to readiness and willingness aspect only, ultimately Plaintiff was unable to demonstrate a strong *prima-facie* case for presuming that he is likely to succeed in the suit. In these circumstances, this Court cannot readily presume that Defendant has no real prospect of defending the suit on merits. In my view, therefore the Interim Application is totally baseless and deserves to be dismissed.

35) I accordingly proceed to pass the following order:

- (i) Interim Application (L) No. 15824 of 2023 and Interim Application (L) No. 34188 of 2023 for amendment of Interim Application No. 4450 of 2026 are allowed. Necessary amendments be formally carried out within two weeks. Reverification dispensed with.

- (ii) Interim Application No. 4450 of 2026 for summary judgment is dismissed.
- (iii) Costs in the Applications shall be costs in the suit.

[SANDEEP V. MARNE, J.]