IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO.31 OF 2024
WITH
CIVIL APPLICATION NO. 96 OF 2024
WITH
MISC. CIVIL APPLICATION NO. 475 OF 2024
WITH
MISC. CIVIL APPLICATION NO. 92 OF 2025
IN
APPEAL FROM ORDER NO. 31 OF 2024

Diana Buildwell Private Limited,
A Company incorporated under the
Indian Companies Act, 1956,
Having registered office at F-60,
Malhotra Building, Second Floor,
Connaught Place, New Delhi, 110001
Represented herein by
Its Authorized Representative
Mr. Ajit Luthra, duly authorized
Vide Board Resolution dated 3rd September 2024
Having address at 262, Bund Garden Road,
Pune-411001. … Appellant

Versus

1. M/s Sterling Holidays Resorts (India) Limited,
A Public Limited Company
Incorporated under the Companies Act, 1956
Having its registered office at No.7,
3rd Cross Street, Kasturibai Nagar,
Adyar, Chennai-20,
Duly represented by its authorized signatory,
Shri s. Ramesh, aged 50 years,
Indian National,
R/o No. 3, II Avenue,

Sastri Nagar, Adyar, Chennai-20.

2. Yes Bank Limited,
Having its office at India Bulls Finance Centre,
Tower II, 26th floor, Senapati Bapat Marg,
Elpinstone Road,
Mumbai 4000013.

3. The Saraswat Co-op. Bank Limited,
Having its office Atc-2,
Kohinoor Estate Co-op. Housing Society,
Plot No. 12, Mula Road, Sangamwadi,
Pune-411003.

4. Vijaya Bank Limited,
Having its office at Corporate Banking branch,
Vinayak Bonde Sankul,
1st floor, 1206/a-32, Shirol Road,
Opp. Shambaji Park,
Pune-411004.

5. Starwood Hotels & Resorts India Private Ltd.,
4th Floor, Tower "A", Vatika Business Park,
Sector 49, Sohna Road, Gurgaon,
Haryana-122 001.

… Respondents

Mr. J. E. Coelho Pereira, Senior Advocate with Mr. Vilas Pavitran, Mr. Jeet Volvoikar and Mr. Pancham Phadte, Advocates for the Appellant.

Mr. Shivan Dessai with Ms. Riya Amonkar, Advocates for Respondent No. 1.

Mr. U. R. Timble with Ms. Yadika Mandrekar, Advocates for Respondent No. 3.

Mr. Vinod Korgaonkar, Advocate for Respondent No. 5

CORAM: VALMIKI MENEZES, J.

RESERVED ON: 23rd APRIL, 2026

PRONOUNCED ON: 4TH SEPTEMBER, 2026

JUDGMENT:

1. This Appeal from Order under Order 43 CPC has been filed to challenge order dated 09.08.2024 passed by the Civil Judge Senior Division at Mapusa on Exhibit 3, a temporary injunction application in Special Civil Suit No. 11/2015/A; the Appellant is the original Defendant No. 1 in the suit whilst the Respondent No.1 is the Plaintiff therein. Respondent Nos. 2, 3, 4 and 5 are the Defendant Nos. 2, 3, 4 and 5 respectively. For convenience, the parties shall be referred to by the nomenclature used before the Trial Court. The impugned order has partly granted the application in terms of prayers (a), (b) and (d) thereof, whilst rejecting the reliefs sought in prayers (c), (e) and (f). The Plaintiff have not challenged the impugned order so far as it rejects prayer clause (c) (e) and (f) of the application.

The impugned order restrains the Defendant No. 1, during the pending disposal of the suit, from in any manner dealing with the suit property, changing its nature or parting with its possession or creating third party rights in respect of the same; it further restrains Defendant no.1 from creating further mortgage, charge, lien or any encumbrance on the suit property. It also restrains Defendant No. 2, a Bank in whose favour the suit property has been mortgaged, from parting with the custody and possession of the title documents/Deeds of the suit property deposited with it to secure a loan advanced to Defendant No.1, without prior permission of the Court.

2. The impugned order has been assailed by the Defendant No.1, mainly on the following grounds which were elaborately argued by Sr. Advocate Mr C. Pereira:

3. **SUBMISSIONS**

(a) It was submitted that the entire suit is premised upon a Deed of Sale dated 11.05.2007 by which the Plaintiff has transferred the suit property to the Defendant No. 1; the transfer was of four parcels of land which were described in Schedule I, a separate parcel of agricultural property under Schedule II and yet another parcel of land under Schedule III for consideration, which was specified for each of these parcels of land in the deed itself. According to the Defendants, from the reading of the recitals and the specific covenants in one of the Deed, the transfer was absolute and without any reservations and, there was no contract to the contrary, by which any part of the Deed could be interpreted as reserving unto to seller any right of lien or charge over the property. According to the learned Counsel, the language deployed in the Deed unequivocally records the intention of the vendor to transfer the suit property without any reservation and consideration was received in full for the property, which had passed under the Deed on the date of the transaction.

(b) It was then contended, that on the basis of the Deed of Sale, and on the reading of the Sections 54 and 55 of the Transfer of Property Act, there was total absence of the contract to the contrary to be read to the Deed; it was contended that for the provisions of Section 55(4) (b) of the Transfer of Property Act to apply, there must be a specific clause to create a charge, and such charge cannot be read into the Deed, unless specifically provided for.

(c) It was further submitted that the suit was filed by the Plaintiffs with gross, unexplained delay and on this count alone the application for temporary injunction ought to have been dismissed. The findings of the trial Court are perverse and entirely based on the judgment dated 02.06.2020 of this Court passed in a Revision Application No. 39 of 2015 against an order of the trial Court dated 14.10.2015 in this very suit, on an application for rejection of plaint filed by Defendant No.1; it was submitted that this judgment was in the context of an application under order 7 Rule 11, the considerations of which being different from an application for temporary injunction, findings given in the said judgment could not be considered as findings to operate against and bind the parties whilst deciding an application for interim relief. It was further submitted that the considerations for deciding an application for temporary injunction have been well settled, and in the present case have not been followed by the trial Court since the trial Court has given a finding of prima facie case which is not based upon settled principles of law. It was further submitted that since prima facie case is a substantial question and includes the questions of conduct of the Plaintiff, the trial Court not having addressed itself to the issue of delay and laches has passed an order that suffers from perversity and is in violation of three settled principles for grant of injunction. Reliance is placed to buttress these submissions on ***Mandali Ranganna and others versus T. Ramachandra and Others***[1], and ***UTO Nederland B.V & Anr versus Tilaknagar Industries Ltd***[2] and ***Bloomberg Television Production Services India Private Limited and others versus Zee Entertainment Enterprises Limited***[3].

4. Mr. Shivan Dessai, learned Counsel appearing for Respondent No.1 has advanced the following submissions:

[1] (2008) 11 SCC 1
[2] *2025 SCC OnLine Bom 6140*
[3] *(2025)1 SCC 741*

(a) It was submitted that the impugned order has been passed after considering the provisions of Section 55 of the Transfer of Property Act, the covenants in the Deed of Sale, correspondence between the parties, and its conclusions on the "prima facie" case being a view taken based on the record, cannot be termed as perverse or without considering the material before it. The prima facie conclusions of the Trial Court do not call for interference on the principles laid down by the Supreme Court and the scope of an Appeal from Order, which is very limited; it was contended that the discretion having been exercised by the Trial Court on the basis of material before it did not call for any interference.

(b) It was then submitted that a reading of Clause 1 of Deed of Sale dated 11.05.2007 read with Clause 8 and Clause 9 of the same clearly make out a case of a specific lien set out in favour of the Plaintiff over the suit property, till the payment of Rs. 6,00,00,000/- was paid additionally towards consideration by the purchaser of the property i.e. Defendant No. 1; according to the learned Counsel, a conjoint reading of Clause 8 and 9 clearly makes out a contract to the contrary under Section 55 of the Transfer of Property Act, creating a seller's lien over the suit property. It was submitted that the Trial Court's reliance on the observations made by this Court in paras 19 and 20 of its Judgment dated 02.06.2020 in Civil Revision Application No. 39/2015 to hold that the Deed of Sale does create a seller's lien, cannot be held to be perverse, and as such the impugned order does not call for any interference.

(c) It was then submitted that from the correspondence between the parties, between 11.05.2007, when the Deed of Sale was executed and 03.10.2012, when Legal Notice was sent by the Plaintiff, there was no delay or any laches on the part of the Plaintiff as these facts were considered by the Trial Court at para 23; it was submitted that the Trial Court, after considering that the High Court has passed its Judgment on the Revision Application against the rejection of the application of the Defendant No. 1 under Order 7 Rule 11 CPC, accepted on facts, delay in arguing that application cannot be attributed to the Plaintiff, due to pendency of the proceeding before the High Court.

Reliance was placed on ***Delhi Development Authority versus Skipper Construction Co.(p) Ltd and others [4], Rajasthan State Industrial Development and Investment Corporation and another versus Diamond & Gem Development Corporation Limited and Another[5], V.T.S. Thyagasundaradoss Thevar and others versus V.T.S. Sevuga Pandia Thevar and another[6].***

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[4] (2000)10 SCC 130
[5] (2013) 5 SCC 470
[6] AIR 1965 SC 1730

5. Mr. U. R. Timble, learned Counsel appearing for Respondent No.3, supporting the Defendant No. 1 has advanced the following submissions:

(a) Mr. Timble has contended that after execution of the Deed of Sale dated 11.05.2007, a Mortgaged Deed dated 23.12.2013 was executed by the Defendant No. 1 in favour of a Consortium of Banks i.e. Defendant Nos. 2, 4 and Defendant No. 3, under which the Defendant No. 1 deposited the title Deed of Sale with the Defendant No. 2, YES Bank; the particulars of the money advanced as loan by each of this Bank to the Defendant No. 1 was stated in the first schedule of the Deed. It was contended that the Deed of Mortgage was executed after issuing a public notice and conduct of due diligence into the title of Defendant No. 1, including examination of Deed of Sale. According to the learned Counsel, once Mortgage was created over the suit property in favour of Defendant Nos. 2 to 4, and they had the first charge over the property, there was no question of the Trial Court granting an order of Temporary Injunction to restrain the Defendants from dealing with the property or creating further mortgaged thereon or parting with its possession and creating third party rights.

(b) It was then contented by the learned Counsel for Defendant No. 3 that the perusal of the recitals in the Deed, and the covenants contained in Clauses 1, 4, 5(a to h) of the Deed would reveal that the property had been transferred without any reservation, and declaring that the seller has no right or lien over the property and the purchaser was free to sell, mortgage or deal with the same; it was then submitted that in effect, the Deed does not create any reservation of a right, including a seller's lien over the suit property under Section 55of the Transfer of Property Act, as there is no contract to the contrary that can be read into these Clauses. Reliance is placed on the Judgments of the Counsel to support these contentions.

(c) It was then submitted that the sale consideration is expressed, in a Sale Deed i.e. Rs. 49,11,00,000/-, which is for different parcels of land; each parcel had a specific consideration and the Deed itself was registered and Stamp Duty paid on this consideration. It was submitted that the amount of Rs. 6,00,00,000/- stated in Clause 9 cannot be towards the consideration, as the consideration in a Deed of Transfer of Property cannot be waived. It was further submitted that the Deed of Sale was for full consideration and was not on a part payment, and in fact the Clause 5(q) of the Deed, does not constitute a contract to the contrary under Section 55 of the Transfer of Property Act, since it specifically empowers the purchaser and grants it the right to mortgage the purchased property. The interpretation given to these Clauses by the Trial Court is therefore perverse.

(d) The learned Counsel has taken me through the Judgment of this Court, delivered by Justice Bhadang on 02.06.2020, where the observations made therein as to the Clauses made therein and whether they constitute a clause covenant to the contrary, were in the context of an application under Order 7 Rule 11 CPC. These observations do not bind the parties in an application for temporary injunction as they must be read in context.

CONSIDERATIONS

6. At the outset, it must be emphasized that this, being an Appeal from an Order granting a temporary injunction, the Appellate Court would not interfere with the exercise of discretion of the Court of the first instance, and substitute its own discretion. The Appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the Trial Court, if the Trial Court has reached this conclusion in a manner that was reasonably possible, based on the material before it. This has been held by the Supreme Court in ***Wander Ltd. V/s Antox India P. Ltd.***[7].

The same Judgment, however, holds that the exception to this Rule is where the Trial Court has exercised discretion, whilst granting a temporary injunction in a manner which is arbitrary, or capricious or when the order suffers from perversity due to the

[7] (1990) (Supp) SCC 727

Court having ignored the settled principles of law, regulating grant or refusal of interlocutory injunctions. Such Appeals being on principle, the Appellate Court can interfere with the exercise of such discretion, if it has been exercised contrary to the aforementioned principles.

7. The cardinal principles of grant of interlocutory orders of injunctions are also well settled. The Plaintiff has to make out a prima facie case, demonstrate that balance of convenience lies in its favour and that it would suffer irreparable injuries if the interlocutory injunction is refused. What constitutes a strong prima facie case may vary, based on the facts of each case, but the Court must be satisfied that the claim is not frivolous, vexatious and there is a serious question to be tried. In ***Martin Burn Limited V/s R. N. Banerjee***[8]**,** the Supreme Court has explained what constitutes a "prima facie case" and held that a prima facie case does not need a case proved to the hilt, but a case which can be said to be established, if evidence led in support of the same were believed.

In a later Judgment of the Supreme Court in ***Dalpat Kumar V/s Pralhad Singh & Ors.***[9], it has been held that prima facie case is a substantial question raised bonafide, which needs investigation and a decision on merits. It was further held therein

[8] (1957) 2 SCC 741
[9] (1992) 1 SSC 719

that at the stage of consideration of an application for temporary injunction, the Plaintiff, in order to establish prima facie case, has to prove that there is serious question to be tried in the suit. Such question, should lead to a probability that the Plaintiff obtaining the relief at the conclusion of the trial, is likely to succeed.

8. A full Bench of this Court in ***UTO Nederland B. V & anr***. (supra) has considered two questions referred to in view of conflicting decisions taken in two Judgments. The questions considered by the full Bench were the following:

> *"1. ………(i) Whether order passed on an application for temporary injunction is prima facie adjudication and not an exercise of discretion (ii) Scope of appeal from an order of the trial court on an application of injunction."*

After considering the application of the trinity test in matters for grant of interlocutory reliefs, it has considered the scope of an Appeal against an order granting such reliefs and examined what constitutes "perversity" in such an order, which would be one of the grounds for setting it aside. It also examines what constitutes arbitrariness after considering what is held in ***Wander Ltd.*** (supra).

9. In ***Mandali Rangana and Ors*** (supra), the Supreme Court held that besides considering basic elements for prima facie case to exist the conduct of the parties should be also looked in and has held as under:

"21. While considering an application for grant of injunction, the court e will not only take into consideration the basic elements in relation thereto viz, existence of a prima façie case, balance of convenience and irreparable injury it must also take into consideration the conduct of the parties.

22. Grant of injunction is an equitable relief. A person who had kept quiet for a long time and allowed another to deal with the properties exclusively, ordinarily would not be entitled to an order of injunction. The f court will not interfere only because the property is a very valuable one. We are not, however, oblivious of the fact that grant or refusal of injunction has serious consequence depending upon the nature thereof. The courts dealing with such matters must make all endeavors to protect the interest of the parties. For the said purpose, application of mind on the part of the courts is imperative. Contentions raised by the parties must be determined objectively.

23. This Court in M. Gurudas v. Rasaranjan[1] noticed: (SCC p. 374, para 19)

"19. A finding on 'prima facie case' would be a finding of fact. However, while arriving at such a finding of fact, the court not only must arrive at a conclusion that a case for trial has been made out but also other factors requisite for grant of injunction exist. There may be a debate as has been sought to be raised by Dr. Rajeev Dhavan that the decision of the House of Lords in American Cyanamid Co. v. Ethicon Ltd.2 would have no application in a case of this nature as was opined by this Court in Colgate Palmolive (India) Ltd. v. Hindustan Lever Ltd.3 and S.M. Dyechem Ltd. v. Cadbury (India) Ltd. 4 but we are not persuaded to delve thereinto."

25. In Seema Arshad Zaheer v. Municipal Corpn. of Greater Mumbais this Court held: (SCC p. 294, para 30)

"30. The discretion of the court is exercised to grant a temporary injunction only when the following requirements are made out by the plaintiff: (i) existence of a prima facie case as pleaded, necessitating protection of the plaintiff's rights by issue of a temporary injunction; (4) when

> *the need for protection of the plaintiff's rights is compared with or weighed against the need for protection of the defendant's rights or likely infringement of the defendant's rights, the balance of convenience tilting in favour of the plaintiff; and (iii) clear possibility of irreparable injury being caused to the plaintiff if the temporary injunction is not granted. In addition, temporary injunction being an equitable relief, the discretion to grant such relief will be exercised only when the plaintiff's conduct is free from blame and he approaches the court with clean hands."*
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> *[See also Transmission Corpn. of A.P. Ltd. v. Lanco Kondapalli Power (P) Lid.]"*

10. Summing up the principles laid down in the Judgments referred above, if the Trial Court, whilst considering whether the Plaintiff had made out a prima facie case, has failed to consider the Plaintiff's conduct, which if considered would have disentitled the Plaintiff to a discretionary relief of temporary injunction, such an order, can be interfered with in an Appeal under Order 43, as it suffers from the perversity of "non consideration".

11. I would therefore examine the conduct of the Plaintiff, prior to approaching the Court with its suit, which is based upon a plea that he has a seller's lien over the suit property. The Deed of Sale was executed on 11.05.2007. The suit was filed on 22.02.2015. According to Clause 9 of the Deed of Sale, if the Plaintiff obtained renewal of the construction license, which was to expire on 13.09.2007, before that date, it could receive an additional amount of Rs. 6,00,000,00/-. According to the pleadings in

paragraph Nos. 8 and 9, the Plaintiff complied with this Clause by obtaining renewal of the license on 17.07.2007, which made it entitled to receive the additional amount. According to the Plaintiff, it is Clause 9 that operates as the seller's lien over the suit property, based on which the Trial Court was asked to grant a temporary injunction. It was therefore incumbent upon the Plaintiff to plead and produce material before the Trial Court to demonstrate its conduct between 07.07.2007, when the license was obtained and 22.02.2015 (7 ½ years) in diligently pursuing its claim for recovery of this amount and in enforcing what it considered as a seller's lien over the suit property.

12. Perusal of the plaint reveals that between 17.07.2007 and 03.10.2012 (5 years), there appears to be no correspondence from the Plaintiff to the Defendant No. 1 seeking enforcement of its claim. The first piece of correspondence is a Legal Notice dated 03.10.2012, in which it claims an amount of Rs. 6,00,000,00/- with interest at 18% per annum. Further perusal of the Legal Notice shows that it is totally devoid of reference to any earlier correspondence or demand of the Plaintiff on the Defendant No. 1 to enforce, what it claims was seller's lien under Clause 9 of the Deed of Sale. This unjustified period of delay to enforce its right for five straight years, clearly amounts to laches which would by itself disentitle the Plaintiff to any equitable relief of injunction.

13. The above fact notwithstanding, the Legal Notice dated 03.10.2012 was replied to by the Defendant No. 1 on 20.10.2012, in which the Defendant denied the Plaintiff's claim of lien over the property or that it owed any amounts to the Plaintiff; on the contrary, the reply specifically records in para 5 thereof that the Plaintiff has not addressed a single piece of correspondence making such a demand prior to the such notice. In answer to this reply, the Plaintiff spent another seven months to send a rejoinder on 10.05.2013, which is mainly restricted to denials. It took the Plaintiff almost another two years, until 20.02.2015, to file the suit, and even then the Plaintiff has not produced any further communications between itself and the Defendant No.1 during this period. This conduct further confirms the fact that the Plaintiff has slept over its rights or its claims for a period of almost eight years, after it had completed renewal of construction license on 17.07.2007.

14. There is yet another dimension to these facts that needs to be considered on the question of delay and laches, disentitling the Plaintiff to discretionary relief of injunction. After issuing the Legal Notice on 03.10.2012, and after the Plaintiff communicated a rejoinder to the Reply of Defendant No.1, on 10.05.2013, the suit property was mortgaged in favour of a Consortium of lenders comprising Defendant Nos. 2, 3 and 4 on

23.12.2013. There is no dispute on this fact and the Deed of Mortgaged is part of the record of the Trial Court.

According to the plaint, in para 29 thereof, it is pleaded that the Defendant No.1 approached Defendant No. 2 to 4 for availing of financial help, and the suit property was mortgaged as security against the finance obtained by the Defendant No. 1, which is in excess of Rs. 1,00,00,00,000/-. It is also averred that the Plaintiff has obtained documents of Memorandum of Entry from the Registrar of Companies which confirmed this fact. Para 30 and 31 reiterated this fact and claim that the Plaintiff under Clause 9 of the Deed of Sale, would have first charge over the suit property and charge of Defendant Nos. 2 to 4 would be subsequent thereto. What is surprising is that there is absolutely no pleading as to the date of knowledge of the Plaintiff of the execution of the mortgage and when the cause of action arose to seek relief of declaration in prayer Clause (c) that the charge and mortgage of the suit property in favour of Defendant No. 4 is subject to prior charge created in favour of the Plaintiff. It is on the basis of the final relief sought in prayer Clause (c) that the order of temporary restrain has been pressed for and granted by the Trial Court against Defendant No. 1 from handing over possession of the suit property or from creating further mortgage, charge or lien; the Trial Court, has on this basis also restrained Defendant No. 2 from parting with the custody/possession of the suit property without prior permission of the Court on the basis of the claim contained in prayer Clause (c) of the suit. The plaint is devoid of any pleadings and material particulars of when the Plaintiff gained knowledge from the documents i.e. Memorandum of Entry obtained from the records of the Registrar of the Companies, or when and how they became aware of the execution of the Mortgage Deed. None of these crucial facts been examined by the Trial Court or taken note of, whilst examining the question of prima facie case and conduct of the Plaintiff, prior to filing of the suit.

15. On perusal of the impugned order, the reasoning on the question of prima facie case starts at para 23 and culminates at para 29. In none of these paragraphs has the Trial Court considered the question of delay, laches and conduct of the Plaintiff prior to the filing of the suit, i.e. from the year 2007, when the Deed of Sale was executed till 2015, when the suit was filed.

16. In ***Bloomberg*** (supra), the Supreme Court has considered the scope of interference in Appeal under Order 43 Rule 1(r) CPC and has made the following observations:

> *"11. Undoubtedly, the grant of an interim injunction is an exercise of discretionary power and the appellate court (in this case, the High Court) will usually not interfere with the grant of interim relief. However, in a line of precedent, this Court has held that appellate courts must interfere*

> *with the grant of interim relief if the discretion has been exercised "arbitrarily, capriciously. perversely, or where the court has ignored settled principles of law regulating the grant or refusal of interlocutory injunctions". The grant of an ex parte interim injunction by way of an unreasoned order, definitely falls within the above formulation, necessitating interference by the High Court. This being a case of an injunction granted in defamation proceedings against a media platform, the impact of the injunction on the constitutionally protected right of free speech further warranted intervention.*
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> *12. In view of the above, the High Court ought to have, in our view, also at least prima facie assessed whether the test for the grant of an injunction was duly established after an evaluation of facts. The same error which has been committed by the trial Judge has been perpetuated by the Single Judge of the High Court. Merely recording that a prima facie case exists, that the balance of convenience is in favour of the grant of injunction and that an irreparable injury would be caused, would not amount to an application of mind to the facts of the case. The threefold test cannot merely be recorded as a mantra without looking into the facts on the basis of which an injunction has been sought. In the absence of such a consideration either by the trial Judge or by the High Court, we have no option but to set aside both the orders of the trial Judge dated 1-3-2024 and of the Single Judge of the High Court dated 14-3-20244. We do so accordingly."*

17. Applying what is held in ***Bloomberg*** (supra), it would be the duty of the Appellate Court to examine whether the Trial Court has exercised its discretion whilst granting an injunction by following settled principles of law regulating grant or refusal of interlocutory injunctions and whether it has applied these principles in its final conclusions on whether a prima facie case exists. In fact, this Judgment records that the three-fold test must be demonstrated from the Judgment and in the absence of such

considerations by the Trial Court, interference in Appellate jurisdiction would be justified.

18. Applying what is held by the Supreme Court in ***Mandali*** (supra) and ***M. Gurudas v/s Rasaranjan and others***[10], had the Trial Court considered that there was no justification offered by the Plaintiff for the delay of almost eight years before the suit was filed, it would have dismissed the application for temporary injunction. To this extent, and in the light of there being absolutely no finding given on the absence of facts pleaded in the plaint for the delay, the considerations of the Trial Court on the question of whether a prima facie case was made out by the Plaintiff are rendered perverse and must be set aside. I hold, that the conduct of the Plaintiff referred above does not entitle the Plaintiff to a discretionary relief or a temporary injunction and on this count alone the impugned order must be set aside in exercise of appellate jurisdiction under Order 43 CPC of this Court.

19. The Trial Court appears to have based its entire Judgment on the question of prima facie case having being made out by the Plaintiff, on the Judgment dated 02.06.2020, passed by this Court in Civil Revision Application bearing No. 39 of 2015 which was filed by Defendant No. 1 on the Trial Court having rejected an

[10] (2006) 8 SCC 367

application under Order 7 Rule 11(a) (d) CPC. The application for rejection of plaint came to be dismissed on two grounds pressed therein, one being that there was no cause of action disclosed and the second that the suit was filed beyond limitation. In deciding the Revision Application, which was restricted to examining the plaint and the Deed of Sale for the sole purpose of deciding whether the plaint should be rejected, this Court, in its Judgment, formulated two questions which are recorded in para 19 of the Judgment; the first was whether the amount of Rs. 6,00,00,000/- referred to in Clause 9 of the Agreement forms part of the consideration, so that it represents unpaid purchase price, giving the Plaintiff a cause of action to file a suit; the second question was whether the cause of action for filing the suit arose in the year 2007, when the renewal of license was obtained or latest by 2011, as claimed by the Plaintiff, bringing the suit within Article 18 of the Limitation Act, and therefore it was not barred by limitation.

20. In answering these two questions, this Court examined the Clauses of the Agreement and came to a prima facie conclusion that the amount of Rs. 6,00,00,000/- was towards additional consideration agreed by the parties and not towards services rendered for obtaining renewal of license. It also concluded on the second point that from the averments in the plaint, prima facie the suit was within limitation and these questions would

require to be decided by trial. The Judgment also specifically records at para 30 that the observations made in the Judgment are for the limited purpose for examining the issue of rejection of plaint, and further recorded that the Trial Court shall not be influenced by the same at the trial. Considering this last observation therefore, the Trial Court ought to have been rather careful in bodily lifting the observations of this Court on Clauses 8 and 9 of the Sale Deed, which it did in para Nos. 26 and 27 of the impugned order; the Trial Court ought to have been mindful of the legal difference in the requirements for rejecting a plaint under Order 7 Rule 11 and the legal requirements and considerations for grant of a temporary injunction, which is an equitable and discretionary relief under Order 39 CPC.

21. A reading of the impugned order would show that the Trial Court has been totally oblivious to the difference in the two jurisdiction, the first under Oder 7 Rule 11 and second under Order 39, where the first one requires consideration of only the plaint and documents referred to or relief upon therein, whilst the second, requires a full consideration of pleadings in the plaint, written statement, affidavits and all other materials, which had to be considered before granting a discretionary relief. This was even more so in the light of the specific observations of this Court in para Nos. 19 and 30 where this Court was cautious to

record that its observations were only prima facie and for the purpose of examining whether the plaint required to be rejected.

22. In ***M. Gurudas*** (Supra), Supreme Court was considering the difference between considerations by Court for deciding an application under Order 7 Rule 11 CPC and those for deciding an application under Order 39 CPC for a grant or refusal of a temporary injunction. The difference in the approach of a Court to decide the prima facie case for the aforementioned two situations has been discussed in the following paragraphs:

> *"18. While considering an application for injunction, it is well settled, the courts would pass an order thereupon having regard to:*
>
> *(i) Prima facie case*
>
> *(ii) Balance of convenience*
>
> *(iii) Irreparable injury.*
>
> *19. A finding on "prima facie case" would be a finding of fact. However, while arriving at such a finding of fact, the court not only must arrive at a conclusion that a case for trial has been made out but also other factors requisite for grant of injunction exist. There may be a debate as has been sought to be raised by Dr. Rajeev Dhavan that the decision of the House of Lords in American Cyanamid Co. v. Ethicon Ltd (1975) 1 All ER 504. would have no application in a case of this nature as was opined by this Court in Colgate Palmolive (India) Ltd. v. Hindustan Lever Ltd. (1999) 7 SCC 1 and S.M. Dyechem Ltd. v. Cadbury (India) Ltd. (2000) 5 SCC 573 but we are not persuaded to delve thereinto.*
>
> *21. While considering the question of granting an order of injunction one way or the other, evidently, the court, apart from finding out a prima facie case, would consider the question in regard to the balance of convenience of the parties as also*

> *irreparable injury which might be suffered by the plaintiffs if the prayer for injunction is to be refused. The contention of the plaintiffs must be bona fide. The question sought to be tried must be a serious question and not only a mere triable issue. (See Dorab Cawasji Warden v. Coomi Sorab Warden (1990) 2 SCC 117, Dalpat Kumar v. Prahlad Singh(1992) 1 SCC 719, United Commercial Bank v. Bank of India(1981) 2 SCC 766, Gujarat Bottling Co. Ltd. v. Coca Cola Co(1995) 5 SCC 545, Bina Murlidhar Hemdev v. Kanhaiyalal Lokram Hemdev(1999) 5 SCC 222 and Transmission Corpn. of A.P. Ltd. (2006) 1 SCC 540."*
>
> *30. At the stage of grant of injunction, however, the effect of dismissal of an application under Order 7 Rule 11 of the Code of Civil Procedure would not be of much significance. The plaint in question could not have been rejected under Order 7 Rule 11 of the Code of Civil Procedure. The court at that stage could not have gone into any disputed question of fact but while passing an order on grant of injunction indisputably it can. In other words, while making endeavours to find out a prima facie case, the court could take into consideration the extent of plaintiffs' shares in the property, if any."*

23. The Madhya Pradesh High Court, referring to ***M. Gurudas*** (supra), whilst deciding an Appeal against an order of Temporary injunction, where observations in a previous order rejecting an application under Order 7 Rule 11 was dismissed has observed thus:

> *"23. There is vast difference of considerations while adjudicating the applications filed under Order 7 Rule 11 of CPC and application under Order 39 Rule 1 & 2 of CPC. It is well settled by catena of judgments of the Apex Court that while considering application under Order 7 Rule 11 CPC only plaint allegations and documents filed therewith are to be looked into. Neither any*

pleading in written statement nor any other document which is not related to W.S. can be looked into while adjudicating application filed under Order 7 Rule 11 CPC. Recently, this view has been reiterated by the Apex Court in case of Mukund Bhawan Trust & Ors. Vs. Shrimant Chhatrapati Udayan Raje Pratapsinh Maharaj Bhonsle & Anr, (2024) 15 SCC 675. Relevant para-13 runs as under:-

"13. As settled in law, when an application to reject the plaint is filed, the averments in the plaint and the documents annexed therewith alone are germane. The averments in the application can be taken into account only to consider whether the case falls within any of the sub-rules of Order. VII Rule 11 by considering the averments in the plaint. The Court cannot look into the written statement or the documents filed by the defendants. The Civil Courts including this Court cannot go into the rival contentions at That stage."

Hon'ble the Apex Court in para-30 case of M. Gurudas & Ors. Vs. Rasaranjan & Ors. (2006) 8 SCC 367 has taken cognizance of difference of considerations while adjudicating application under Order 7 Rule 11 of CPC and application for grant of injunction. Relevant paragraph 30 is aptly reproduced as under:-

"30. At the stage of grant of injunction, however, the effect of dismissal of an application under Order 7 Rule 11 of the Code of Civil Procedure would not be of much significance. The plaint in question could not have been rejected under Order 7 Rule 11 of the Code of Civil Procedure. The court at that stage could not have gone into any disputed question of fact but while passing an order on grant of injunction indisputably it can. In other words, while making endeavours to find out a prima facie case, the court could take into consideration the extent of plaintiffs' share in the property, if any."

25 In the light of aforesaid view of the Apex Court, contentions raised on behalf of plaintiff by learned Sr. Counsel Shri Chhabra cannot be accepted. All legal and factual arguments are permissible while arguing these Miscellaneous Appeals and order dated 06/04/2023 in Civil Revision No. 391/2021 (Shrimant Gayatriraje Puar & Ors. Vs. Shrimati

> *Shailajaraje Puar & Ors) cannot be considered as prohibition to raise points already raised by defendants while arguing there application under O 7 R 11 CPC."*

24. Applying the observations in the aforementioned Judgments to the facts of the present case, and on examining the impugned Judgment in relation to the basis on which it records "prima facie case" having being made out by the Plaintiff, I note the following; the entire basis of the Trial Court's conclusion of prima facie case are founded upon the observations of this Court in its Judgment dated 02.06.2020 in Civil Revision Application No. 39 of 2015 and the Trial Court has not considered prima facie case on examination of the pleadings in the plaint and the written statement or the documents annexed therein. Instead of examining first, whether the Plaintiff's conduct justify the grant of the injunction and applying the principles underlined grant of equitable temporary relief i.e. the triple test, the Trial Court has entirely based its conclusion of prima facie case and the findings rendered by this Court in its Judgment dated 02.06.2020 which records "prima facie case" only for the purpose of Order 7 Rule 11 CPC. To that extent, the Trial Court has completely ignored the principles embodied in the triple test whilst granting the impugned order and therefore the same must be quashed and set aside.

25. Further, the mere fact that this Court in its Judgement dated 02.06.2020, on examination of the Clauses of the Agreement for

the purpose of deciding whether the plaint was to be rejected, concluded "prima facie", for that purpose, the Clauses 8 and 9 operated as entitling the Plaintiff to additional consideration, this finding would not preclude the Trial Court from examining all Clauses in the Deed of Sale to conclude whether a prima facie case of entitlement under Section 55 of the Transfer of Property Act of creation of the seller's lien had been made out.

26. Section 55 of the Transfer of Property Act reads as under:

> ***"55. Rights and liabilities of buyer and seller***.—
> *In the absence of a contract to the contrary, the buyer and the seller of immoveable property respectively are subject to the liabilities, and have the rights, mentioned in the rules next following, or such of them as are applicable to the property sold:*
>
> *(1) The seller is bound—*
>
> *(a) to disclose to the buyer any material defect in the property 3 [or in the seller's title thereto] of which the seller is, and the buyer is not, aware, and which the buyer could not with ordinary care discover;*
>
> *(b) to produce to the buyer on his request for examination all documents of title relating to the property which are in the seller's possession or power;*
>
> *(c) to answer to the best of his information all relevant questions put to him by the buyer in respect to the property or the title thereto;*
>
> *(d) on payment or tender of the amount due in respect of the price, to execute a proper conveyance of the property when the buyer tenders it to him for execution at a proper time and place;*
>
> *(e) between the date of the contract of sale and the delivery of the property, to take as much care of the property and all documents of title relating thereto*

which are in his possession as an owner of ordinary prudence would take of such property and documents;

(f) to give, on being so required, the buyer, or such person as he directs, such possession of the property as its nature admits;

(g) to pay all public charges and rent accrued due in respect of the property up to the date of the sale, the interest on all incumbrances on such property due on such date, and, except where the property is sold subject to incumbrances, to discharge all incumbrances on the property then existing.

(2) The seller shall be deemed to contract with the buyer that the interest which the seller professes to transfer to the buyer subsists and that he has power to transfer the same:

Provided that, where the sale is made by a person in a fiduciary character, he shall be deemed to contract with the buyer that the seller has done no act whereby the property is incumbered or whereby he is hindered from transferring it.

The benefit of the contract mentioned in this rule shall be annexed to, and shall go with, the interest of the transferee as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

(3) Where the whole of the purchase-money has been paid to the seller, he is also bound to deliver to the buyer all documents of title relating to the property which are in the seller's possession or power:

Provided that, (a) where the seller retains any part of the property comprised in such documents, he is entitled to retain them all, and, (b) where the whole of such property is sold to different buyers the buyers, of the lot of greatest value is entitled to such documents. But in case (a) the seller, and in case (b) the buyer, of the lot of greatest value, is bound, upon every reasonable request by the buyer, or by any of the other buyers, as the case may be, and at the cost of the person making the request, to produce the said documents and furnish such true copies thereof or extracts therefrom as he may require; and in the meantime, the seller, or the buyer of the lot of greatest value, as the case *may be, shall keep the said documents safe, uncancelled and undefaced, unless prevented from so doing by fire or other inevitable accident.*

(4) The seller is entitled—

(a) to the rents and profits of the property till the ownership thereof passes to the buyer;

(b) where the ownership of the property has passed to the buyer before payment of the whole of the purchase-money, to a charge upon the property in the hands of the buyer, [any transferee without consideration or any transferee with notice of the non-payment,] for the amount of the purchase-money, or any part thereof remaining unpaid, and for interest on such amount or part [from the date on which possession has been delivered].

(5) The buyer is bound—

(a) to disclose to the seller any fact as to the nature or extent of the seller's interest in the property of which the buyer is aware, but of which he has reason to believe that the seller is not aware, and which materially increases the value of such interest;

(b) to pay or tender, at the time and place of completing the sale, the purchase-money to the seller or such person, as he directs: provided that, where the property is sold free from incumbrances, the buyer may retain out of the purchase-money the amount of any incumbrances on the property existing at the date of the sale, and shall pay the amount so retained to the persons entitled thereto;

(c) where the ownership of the property has passed to the buyer, to bear any loss arising from the destruction, injury or decrease in value of the property not caused by the seller;

(d) where the ownership of the property has passed to the buyer, as between himself and the seller, to pay all public charges and rent which may become payable in respect of the property, the principal moneys due on any incumbrances subject to which the property is sold, and the interest thereon afterwards accruing due.

(6) The buyer is entitled—

> *(a) where the ownership of the property has passed to him, to the benefit of any improvement in, or increase in value of, the property, and to the rents and profits thereof;*
>
> *(b) unless he has improperly declined to accept delivery of the property, to a charge on the property, as against the seller and all persons claiming under him to the extent of the seller's interest in the property, for the amount of any purchase-money properly paid by the buyer in anticipation of the delivery and for interest on such amount; and, when he properly declines to accept the delivery, also for the earnest (if any) and for the costs (if any) awarded to him of a suit to compel specific performance of the contract or to obtain a decree for its rescission.*
>
> *An omission to make such disclosures as are mentioned in this section, paragraph (1), clause (a), and paragraph (5), clause (a), is fraudulent."*

This provision essentially sets out the rights and liabilities of a buyer and seller and the entitlement of the seller to unpaid moneys.

27. In contrast Section 100 of the Transfer of Property Act provides for the manner in which a charge is created over an immovable property, by the Act of parties or by operation of law, to secure payment of money. The provision reads as under:

> ***"100. Charges**.—Where immoveable property of one person is by act of parties or operation of law made security for the payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property; and all the provisions hereinbefore contained [which apply to a simple mortgage shall, so far as may be, apply to such charge].*

> *Nothing in this section applies to the charge of a trustee on the trust property for expenses properly incurred in the execution of his trust, [and, save as otherwise expressly provided by any law for the time being in force, no charge shall be enforced against any property in the hands of a person to whom such property has been transferred for consideration and without notice of the charge]"*

28. In the present case, it is not in doubt that the mortgage created over the suit property by Defendant No. 1 in favour of Defendant Nos. 2 to 4 is in terms of Section 100 and Defendant. Nos. 2 to 4 would have a charge of the suit property. As opposed to this, the Plaintiff have set out a case that Clauses 8 and 9 of the Deed of Sale operates, both as a charge over the property under Section 100 and as a seller's lien under Clause (b) of Sub Section 4 of Section 55 of the Transfer of Property Act. The provisions of Section 55 are clear, in that, unless a specific contract creating a vendor's lien towards unpaid consideration in a Deed of Sale is recorded in the Deed, and such right is specifically reserved, the vendor would not be entitled to claim a seller's lien. In this context, it would be worthwhile reproducing an observation of the Privy Council in ***Webb V/s Macpherson***[11]:

> *"With reference to the conveyance a number of English cases were cited. No doubt English cases might be useful for the purpose of illustration, but it must be pointed out that the charge which the vendor obtains under the Transfer of Property Act is different in its origin and nature from the vendor's lien given by the Courts of Equity to an unpaid vendor. That lien was a creation of the Court of Equity, and could be modified to the circumstances of the case by the Court of Equity. But in the present case there is a statutory charge.*

[11] 1903 SCC OnLine PC 25

> *The law of India, speaking broadly, knows nothing of the distinction between legal and equitable property in the sense in which that was understood when equity was administered by the Court of Chancery in England, and the Transfer of Property Act gives a statutory charge upon the estate to an unpaid vendor unless it be excluded by contract. Such a charge, therefore, stands in quite a different position from a vendor's lien. You have to find something, either express contract, or at least something from which it is a necessary implication that such a contract exists, in order to exclude the charge given by the Statute. In their Lordships' opinion there is no ground whatever for saying that charge is excluded by a mere personal contract to defer payment of a portion of the purchase-money, or to take the purchase-money by instalments, nor is it, in their Lordships' opinion, excluded by any contract, covenant, or agreement with respect to the purchase-money which is not inconsistent with the continuance of the charge. It is quite clear that the agreement by Mr. Tucker, the purchaser, to pay the balance of the purchase-money (Rs. 51,210) in three annual instalments with interest was in no way inconsistent with the existence of a Charge to the vendor for the amount of the instalments with interest to become due from time to time."*

29. Examination of the Deed of Sale would reveal the following:

The schedule of the Deed specifies different parcels of land, their areas and survey nos., transferred under the Deed; the covenants contained in Clause 1 specify this. Clause 2 of the Deed specifies the total consideration for all the properties and the break-up of consideration for each of the parcels referred to in the schedule. Neither of these Clauses contained any reservations of rights unto the seller. Clause 3 of the Deed records vacant possession of the suit property being handed over to the Defendant No. 1 whilst Clause 4 specifically records that the seller seizes to have any right, tittle or interest in the suit property; Clause 5 specifically records the declarations of the seller that the property is not subject to any previous encumbrance or subsisting rights; sub Clause (c) of Clause 5 specifically records that the transfer by the seller includes the assignment of all its rights, title, clear from all mortgages, encumbrances, liens, charges or claims. Sub Clause (f) (g) and (h) of Clause 5 record that the seller has received full consideration of the sale price and that the seller is now left with no right, title, interest, claim <u>or lien</u> of any nature over the property and has agreed that the purchaser shall have possession, enjoyment and the right to sell, gift, mortgage, lease and transfer the property. Clause (h) thereof records that the rights created in favour of the purchaser are without impediment to prevent transfer of the property.

30. Reading these Clauses would clearly establish no contract to the contrary in terms of Section 55 of the Transfer of Property Act, creating a seller's lien or charge over the property has been agreed by the parties; the property is recorded to be totally clear, and the purchaser is given a free hand to even mortgage the property.

The only question remains then is whether the statement in Clause 8 where the seller records that the construction license was valid up to 13.09.2007 and the seller would undertake obtaining renewal of this license, read with Clause 9 where an amount of Rs. 6,00,00,000/- would be paid additionally towards consideration, would operate as a contract to the contrary. The fact remains that Clause 9 nowhere records that the amount of Rs. 6,00,00,000/- is paid as part of the sale consideration.

31. In fact, the sale consideration as recorded in Clause 5(f) read with Clause (1) records payment of full sale consideration; the stamp duty and registration charge were calculated on the full consideration and not on an additional amount of Rs. 6,00,00,000/-. The document was registered and transferred for full consideration of Rs. 49,11,00,000/-. Clauses 8 and 9 therefore cannot be construed to operate as a contract to the contrary and reservation of a seller's lien under Section 55, where all other clauses in the Deed of Sale point to the clear declaration by the seller that there was no reservation of any right to the seller.

In my opinion, therefore, prima facie, the seller, i.e. the Plaintiff, would have no case, at the stage of temporary injunction, to enforce a lien claimed over the suit property. This is more so in the light of the fact that an equitable mortgage has been created over the suit property as far back as the year 2013, with no explanation as to why the Plaintiff has approached the Court, on these facts only in the year 2015.

32. In conclusion therefore, and in the light of all the observations made above, the Appellant/Defendant No. 1 has made out a clear case for interference with the impugned order under Order 43 Rule 1(r) CPC in Appellate jurisdiction of this Court. For all the reasons stated above, the impugned order dated 09.08.2024 passed on Exhibit 5 by the Civil Judge Senior Division at Mapusa in Special Civil Suit No. 11/2015/A is quashed and set aside and the application stands dismissed. In the circumstances, there shall be no order as to costs. In view of the above, Miscellaneous Civil Application No. 92/2025, Miscellaneous Civil Application No. 457/2024 and Civil Application No. 96/2024 stand disposed of.

VALMIKI MENEZES, J.

JUDGMENT CONTINUED

33. At this stage, the learned Advocate for the Respondent No. 1 seeks a stay of the impugned order. For the reasons stated in the impugned order, stay of this order cannot be granted; the request is therefore rejected.

VALMIKI MENEZES, J.