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

INTERIM APPLICATION NO. 5241 OF 2025
IN
SUIT NO. 250 OF 2023

Babasaheb Neelkanth Kalyani
Aged : 76 years, having his address
at Plot No. 221/A, Central Avenue,
Kalyani Nagar, Yerawada,
Pune – 411 006. ..Applicant/
Ori. Defendant No. 1

IN THE MATTER OF

1. **Sugandha Hiremath**
Aged : 73 years, having address at
191-A, Maker Tower, (Maker
Towers A & B Co-operative Housing
Society Limited), Cuffe Parade,
Mumbai – 400 005.

ANAND SUDHAKAR SUDAME
Digitally signed by ANAND SUDHAKAR SUDAME
Date: 2026.05.04 21:36:40 +0530

2. **Jaidev Hiremath**
Aged : 76 years, having address at
191-A, Maker Tower, (Maker
Towers A & B Co-operative Housing
Society Limited), Cuffe Parade,
Mumbai – 400 005. ..Plaintiffs

Versus

1. **Babasaheb Neelkanth Kalyani**
Aged : 76 years, havng his address
at Plot No.221/A, Central Avenue,
Kalyani Nagar, Yerawada,
Pune – 411 006.

2. **Kalyani Investment Company Limited**
A company incorporated under the
Companies Act, 1956 having its

registered office at Mundhwa,
Pune Cantonment,
Pune – 411 036.

3. **BF Investment Limited**
A company incorporated under the Companies Act, 1956 having its registered office at Mundhwa,
Pune Cantonment,
Pune – 411 036.

4. **Amit Kalyani**
Aged : 49 years, having address at "Amrit", 221/A, Avenue Road No. 3,
Kalyani Nagar, Yerawada,
Pune – 411 036.

5. **Gaurishankar Neelkanth Kalyani**
Aged : 69 years, having address at "Parvati Niwas", 221/D, Kalyani Nagar, Yerawada,
Pune – 411 026.

6. **Rohini Gaurishankar Kalyani**
Aged : 59 years, having address at "Parvati Niwas", 221/D, Kalyani Nagar, Yerawada,
Pune – 411 026.

7. **Hikal Limited**
A company incorporated under the Companies Act, 1956 having its registered office at 717/718,
Maker Chamber V, Nariman Point,
Mumbai – 410 021. ..Defendants

Mr. Janak Dwarkadas, Senior Counsel a/w. Mr. Kunal Dwarkadas, Counsel, Mr. Rahul Dwarkadas, Ms. Sukhada Wagle, Ms. Shireen Mistri and Mr. Aniket Kharote i/b. RJD and Partners, for the Plaintiffs

Dr. Virendra Tulzapurkar, Senior Counsel a/w. Mr. Simil Purohit, Senior Counsel, Mr. Farhan Khan, Mr. Munaf Virjee, Mr. Swapnil Khatri and

Ms. Shruti Salian i/b. AMR Law, for Defendant No. 1

Mr. Yash Chokshi a/w. Ms. Taha Mirza and Ms. Kanika Sharma i/b. Khaitan & Co., Advocates, for Defendant Nos. 2, 3 and 4

Mr. Prabhav Shroff a/w. Ms. Aditi Bhansali and Ms. Deepti Prabhu i/b. AZB and Partners, Advocates, for Defendant Nos. 5 and 6

Ms. Kavita Sharma a/w. Mr. Harsh Shah i/b. Ganesh and Co., Advocate, for Defendant No. 7

CORAM : RAJESH S. PATIL, J.

RESERVED ON : 29 April, 2026

PRONOUNCED ON : 04 May, 2026

J U D G M E N T

"The question before me is to decide, whether the parties who are closely related should be referred to mediation, when one of them is not willing to go for mediation."

1. The present Suit is filed for specific performance of a family arrangement of 1994. Plaintiff No. 1 is the sister of Defendant Nos. 1 and 5. In the Suit, an Interim Application has been preferred by Defendant No. 1 under the provisions of Order VII, Rule 11 of the Code of Civil Procedure, 1908 (for short "**CPC**"). Plaintiffs have filed their reply to the said Interim Application. Defendant No. 1 further filed his Affidavit in re-joinder. Hence, the pleadings in the Interim Application are complete.

2. On 27 March, 2026, when the Interim Application was listed for hearing, after the Counsel for Defendant No. 1 initially narrated the facts, this Court suggested the parties to consider the option of mediation as the parties are closely related to each other. On the said suggestion, Dr. Tulzapurkar, learned Senior Counsel for Defendant No. 1 submitted that, he will take instructions from his client on the suggestion which has fallen from the Court. Hence, the matter was adjourned to 15 April, 2026.

3. When the matter was called out on 15 April, 2026, Mr. Dwarkadas, Ld. Sr. Counsel appeared for the Plaintiffs and made his submissions on the issue of dispute between the parties to be referred to mediation as Dr. Tulzapurkar was not available. Mr. Dwarkadas submitted that he would talk to Dr. Tulzapurkar on the issue about the parties opting for mediation. Hence, the matter was adjourned to 16 April, 2026.

4. On the next day, when the matter was called out, after hearing the parties following Order was passed :-

> *"1. Heard Mr. Dwarkadas, learned Senior Counsel for some time. By consent, stand over to* ***28.04.2026.*** *The matter to come up under the caption "For Directions".*
>
> *2. Post lunch, Mr. Purohit, learned Senior Counsel for Defendant No. 1 orally submitted that a news item is published online, which supports the concern raised by him in the morning session. He tendered a photocopy of the news item. He submitted that it is the Plaintiff who only can publish this news. On instructions, he submits that he would like to go on with the matter*

on merits. He further submits that if the Plaintiffs genuinely want to give an offer for settlement, they can do so and his client will immediately respond to the same.

3. Mr. Janak Dwarkadas, learned Senior Counsel for the Plaintiffs that the news item which has been tendered by Defendant No. 1 is not published by his client and they have no role in the publishing the same. If Defendant No. 1 is not interested to settle the dispute amicably, he will proceed with his arguments on the next date of hearing.

*4. Let this matter to come up on board on **28.04.2026** at **1.00 p. m.**, in the meanwhile, parties are free, without prejudice to their rights and contentions to exchange their settlement proposal."*

[Emphasis Supplied]

5. Thus, the parties were at liberty without prejudice, to exchange their settlement proposals. Dr. Tulzapurkar, Ld. Sr. Counsel for Defendant No.1, submitted that on the previous hearing i. e. 16 April, 2026, the Plaintiffs were directed to give their offer without prejudice to the rights and contentions of both the parties. However, there was no offer given and only a communication in the form of an email was sent by the Plaintiffs on 28 April, 2026 around 12.00 noon. He submitted that it is not Defendant No. 1, who has come to Court, but it is the Plaintiff who has instituted the present Suit, against Defendant No.1, who has to defend himself in this Hon'ble Court. Similarly, though the Plaintiffs mention about amicably settling the matter, however, before the District Court, Pune, after 16 April, 2026, the Plaintiffs have proceeded with the hearing. He submitted that if the Plaintiffs were genuinely desirous for settlement of this matter, they

would not have proceeded with the hearing before the District Court, Pune. In any case, they would not have filed the present Suit before this Court, and the occasion would not have arisen for Defendant No. 1 to file an Interim Application under Order VII, Rule 11 of the CPC. The Plaintiffs are now speaking of settlement; however, if they were genuinely desirous of settlement, after 16 April, 2026, they could have in a sealed packet without prejudice to the rights and contentions of both the parties given their offer for settlement to Defendant No.1. What has been tendered to the Defendant No.1 yesterday, is merely a three lines letter referring to the properties in the present proceeding and apart from that, no settlement proposal has been given. He submitted that even earlier attempts were made for settlement before the Supreme Court amongst the family members; however, nothing concrete came up and after eight months, the parties were again litigating in the Court. He further submitted that on the last two occasions, when suggestions were made by this Court for mediation, immediately news reports were published in the local new papers, at behest of the Plaintiffs, thereby causing very embarrassing position for Defendant No. 1 to respond to his investors. According to him, the Plaintiffs' intention is to merely prolong the whole litigation and thereafter, capitalize on it by publishing the news on various media

platforms. Therefore, he has specific instructions from Defendant No. 1 that he should argue the matter on merits.

6. Mr. Dwarkadas, Ld. Sr. Counsel appearing for the Plaintiffs, submitted that if the Court is of the view that the matter ought to be referred to the mediation then consent of Defendant No. 1 would not be necessary. He submitted that if the parties are referred to the mediation, there is no harm to either of the parties, at the most, what can happen in that, there will be failure report from the Mediator. However, even if there exists only a 1% possibility of mediation being successful, this Court should refer the matter to mediation. He relied upon the following authorities in support of his submissions :-

(i) *Afcons Infrastructure Ltd. vs. Cherian Varkey Constructions Company Pvt. Ltd. - (2010) 8 SCC 24*;

(ii) *Mahendra Nath Soral & anr. vs. Ravindra Nath Soral & ors., - 2024 SCC OnLine SC 765*;

(iii) *R. Ravindranath vs. Greater Hyderabad Municipal Corporation & ors. - 2026 SCC OnLine SC 150*;

(iv) *Maxwell Partnership Firm Regd. vs. National Insurance Co. Ltd. and anr. - 2024 SCC OnLine Del 3340 – Delhi High Court*;

(v) *Smt. Amalapooh Mary and ors. vs. Sri. V. Ravindra – Writ Petition No. 51491 of 2016 – Karnataka High Court*.

6.1. He also referred to two news articles, wherein the Supreme Court has opined that the Court should try to make an attempt and parties should be referred to mediation, if the dispute is between the family members.

7. I have heard the Ld. Sr. Counsel for both the sides. Generally, this Court is of the view that in family disputes, parties should try to amicably reach out to a settlement by themselves or if required, through a trained mediator. However, to reach at that stage, the Court must first be satisfied that there exists a possibility of settlement and that mediation would serve a useful purpose.

Scope of Mediation :-

8. By an amendment of the year 1999 to the CPC, Rule 1-A was inserted in Order X, which came into effect from 01.07.2002, it directed the Court to choose for any mode of ADR. The said amended Rule 1-A reads as under :-

> "**1-A. Direction of the court to opt for any one mode of alternative dispute resolution.—** After recording the admissions and denials, the court shall direct the parties to the suit to opt either mode of the settlement outside the court as specified in sub-section (1) of section 89. On the option of the parties, the court shall fix the date of appearance before such forum or authority as may be opted by the parties."

8.1 The Mediation Bill, 2021 was introduced in the Rajya Sabha on 20 December, 2021 and the Chairman of Rajya Sabha referred the said bill to the Department-related Parliamentary Standing Committee on

personal, public grievances, law and justice for examination and report on 21 December, 2021. The Committee held extensive deliberation on the Bill with the stake holders. The Committee prepared it's Report which was then presented to the Chairman, Rajya Sabha and forwarded to the Speaker, Lok Sabha. In the said Mediation Bill, Clause 6 reads as under :-

> "**Clause 6 - Pre-litigation mediation**
>
> (1) Subject to other provisions of this Act, whether any mediation agreement exists or not, any party before filing any suit or proceedings of civil or commercial nature in any court, **shall** take steps to settle the disputes by pre-litigation mediation in accordance with the provisions of this Act:"

8.2 The Standing Committee had also discussed on Clause 6 pre-litigation mediation and thereafter, Clause 6 which became Section 5 in the Mediation Act, 2023, the word "**shall**" was replaced with a phrase "**may voluntarily and with mutual consent**". The Mediation Act, 2023 was enacted by the parliament on 14.09.2023. However, by a Notification dated 09.10.2023, the Central Government in exercise of its powers conferred by sub-section (3) of Section 1 of the Mediation Act, 2023 appointed 9 October, 2023 as date on which the provisions of only certain sections of the Mediation Act, 2023 were brought into force, namely Sections 1, 3, 23, 31 to 38, 45 to 47, 50 to 54, 56 & 57. Hence, as of date Section 5 of the Mediation Act, 2023 is not into force. The said Section 5 reads as under :-

> "**5. Pre-litigation mediation**
>
> (1) Subject to other provisions of this Act, whether any mediation agreement exists or not, the parties before filing any suit or proceedings of civil or commercial nature in any court, **may voluntarily and with mutual consent** take steps to settle the disputes by pre-litigation mediation in accordance with the provisions of this Act:"
>
> [Emphasis Supplied]

8.3 Even though Section 5 of Mediation Act, 2023 has not been notified yet, I am referring to the said section, only to establish the legislative intent behind it while passing the Mediation Act, 2023. After considering the Draft Bill and the Standing Committee's Report, it is clear that legislature in its wisdom wanted mediation to be kept as an voluntary act with consent of the parties and not something which is mandatory in nature.

8.4 Section 89 of CPC was substituted by amended Section 89 of CPC in the year 2023, which omitted group of words from earlier Section 89 of CPC namely "shall formulate the terms of settlement and give them to the parties for their observation and after receiving the observations of the parties the Court may re-formulate the terms of a possible settlement and referred the same for". However, the words "<u>which may be acceptable to the parties</u>" which stood in the earlier Section 89 of CPC are retained.

8.5 The Section 89 of CPC earlier to its amendment in the year 2023, and amended Section 89 of CPC are reproduced below :-

Old Section 89	New Section 89
"89. Settlement of disputes outside the Court.— (1) Where it appears to the Court that there exist elements of a settlement which may be acceptable to the parties, the Court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observations of the parties, the Court may reformulate the terms of a possible settlement and refer the same for:— (a) arbitration; (b) conciliation; (c) judicial settlement including settlement through Lok Adalat; or (d) mediation. (2) ……"	"89. Settlement of disputes outside the Court.-Where it appears to the court that the dispute between the parties may be settled and there exists elements of settlement which may be acceptable to the parties, the Court may- (a) refer the dispute to arbitration, and thereafter, the provisions of the Arbitration and Conciliation Act, 1996(26 of 1996) shall apply as if the proceedings for arbitration were referred for settlement under the provisions of that Act; or (b) refer the parties to mediation, to the court-annexed mediation centre or any other mediation service provider or any mediator, as per the option of the parties, and thereafter the provisions of the Mediation Act, 2023 shall apply as if the proceedings for mediation were referred for settlement under the provisions of that Act; or (c) refer the dispute to Lok Adalat, in accordance with the provisions of sub-section (1) of section 20 of Legal Services Authorities Act, 1987(39 of 1987) and thereafter, all other provisions of that Act shall apply in respect of the dispute; (d) effect compromise between the parties and shall follow such procedure as deemed fit for judicial settlement."

9. At the same time, in the year 2023, in the Commercial Courts Act of 2015, a new chapter, namely Chapter III-A was introduced in which Section 12-A was newly inserted. Said Section 12-A reads as under :-

> "12-A. Pre-Institution Mediation and Settlement —
>
> (1) A suit, which does not contemplate any urgent interim relief under this Act, shall not be instituted unless the plaintiff exhausts the remedy of preinstitution mediation in accordance with such manner and procedure as may be prescribed by rules made by the Central Government.
>
> (2) The Central Government may, by notification, authorise the Authorities constituted under the Legal Services Authorities Act, 1987 (39 of 1987), for the purposes of pre-institution mediation.
>
> (3) Notwithstanding anything contained in the Legal Services Authorities Act, 1987, the Authority authorised by the Central Government under sub-section (2) shall complete the process of mediation within a period of three months from the date of application made by the plaintiff under sub-section (1):
>
> Provided that the period of mediation may be extended for a further period of two months with the consent of the parties:
>
> Provided further that, the period during which the parties remained occupied with the pre-institution mediation, such period shall not be computed for the purpose of limitation under the Limitation Act, 1963 (36 of 1963).
>
> (4) If the parties to the commercial dispute arrive at a settlement, the same shall be reduced into writing and shall be signed by the parties to the dispute and the mediator.
>
> (5) The settlement arrived at under this section shall have the same status and effect as if it is an arbitral award on agreed terms under sub-section (4) of section 30 of the Arbitration and Conciliation Act, 1996 (26 of 1996).]"
>
> [Emphasis Supplied]

10. Hence, as far as Commercial Suits are concerned, a specific provision is introduced in the Commercial Courts Act, 2015, which states that before institution of the Suit, pre-litigation mediation becomes compulsory. However, no such compulsion is introduced in a

Civil Suit which is not a Commercial Suit and even if the Government by it's further Notification brings into force Section 5 of the Mediation Act, 2023, in the said Section, there will be no compulsion since the words used are "**may voluntarily**" and "**with mutual consent**".

Earlier Mediation Attempts :-

11. The Plaintiff No. 1 in the year 2023, filed present Suit against the Defendant No. 1, and apart from filing the present Suit she has also filed a Suit before the District Court, Pune in the year 2012 and in the year 2025 has filed one more Suit for partition before the District Court, Pune, wherein the Defendant No. 1 is a party. The children of the Plaintiffs have also filed partition Suit in the District Court, Pune, where Defendant No. 1 herein is added as a party.

11.1 Apart from these four Suits, Probate Petitions are pending before the District Court, Pune. So also father of Plaintiff No. 1 and Defendant No. 1 had filed Suit for recovery of immovable properties before Karad and Satara Courts against Gaurishankar (Original Defendant No. 5), who is brother of Plaintiff No. 1 and Defendant No. 1. The said Suits are pending for hearing.

12. The Supreme Court by it's Order dated 19 February, 2018, in the proceedings between Gaurishankar and his mother, directed parties to make an attempt to sort out their disputes outside Court and none

other than renowned mediator Mr. Shriram Panchu, Ld. Sr. Counsel was appointed as a mediator to make an attempt to resolve the disputes. By an order dated 07 May, 2018, pursuant to the report of the mediator, time of mediation was extended and it was made clear that it will be open to the mediator to make attempt for settlement of the entire family dispute. However, the mediation failed. By an order dated 22 October, 2019, the Supreme Court recorded the said fact and directed the matter to proceed on merits.

12.1 Similarly, mediation attempts were made by the District Court, Pune in the Suit filed by children of the Plaintiffs. However, the mediation failed.

12.2 Dr. Tulzapurkar, Ld. Sr. Counsel appearing for Defendant No. 1 showed me correspondences exchanged between the parties in the year 2025, which shows that the Defendant No. 1 initiated discussions to reconcile differences and offered to meet and resolve the pending issues with the Plaintiffs. In response, Plaintiff No. 1 addressed an Email to the Advocate of Defendant No. 1 which records that on account of the past act of violence and/or aggression and/or physical intimidation, Plaintiff No. 1 was reluctant to meet at Amit Bungalow.

13. <u>The authorities on the issue of mediation referred by the parties</u> :

(i) In the latest Judgment of the Supreme Court in the case of

Rupa and Co. Ltd. & anr. vs. Firhad Hakim & ors., reported in ***2025 SCC OnLine SC 355,*** the Court held that once the proposal of mediation is opposed by one of the parties, mediation cannot be thrusted upon such a party. Paragraphs 8.9 and 9 read as under :-

> " **8.9.** An interesting turn takes place thereafter. When the very same contempt petition was listed before the High Court on 9th February 2024, the High Court vide impugned order observed that, considering the submission of the parties it would be appropriate that the matter is settled through mediation. It, accordingly, appointed a former Judge of the High Court as a Mediator. It will be relevant to note that the said proposal for mediation was specifically opposed by the learned counsel for the appellants. Aggrieved by the same, the appellants have filed the present appeals by way of special leave.
>
> **9.** We find that the approach of the High Court in passing the impugned order is totally untenable. When the High Court itself, on more than one occasions in the contempt proceedings, had found that the State was bound to comply with the writ of mandamus issued by it vide judgment and order dared 10thFebruary 2020 and had also issued notice to the Chief Secretary of the State for complying with the directions issued by it, it could not have referred the matter for mediation. It is further to be noted that mediation has to be by the consent of both the parties. Mediation cannot be thrusted upon either of the parties. The learned Division Bench of the High Court in the present case, in spite of the resistance of the learned counsel for the appellants herein, only on the basis of the statement of the learned Advocate General appearing in the matter whereby it was submitted that the State was willing to offer the appellants an alternative piece of land, has referred the matter to mediation."
>
> [Emphasis Supplied]

(ii) In ***Afcons Infrastructure Ltd.*** (supra), the Supreme Court was considering the scope of old Section 89 of CPC and the question whether the said Section empowers the Court to refer the parties to a Suit to arbitration without the consent of both the parties. Para 44(v) reads as under :-

> "44. The Court should also bear in mind the following consequential aspects, while giving effect to Section 89 of the Code:
> (i) ….
> (ii) ….
> (iii) ….
> (iv) ….
> (*v*) If the court refers the matter to an ADR process (other than arbitration), it should keep track of the matter by fixing a hearing date for the ADR report. The period allotted for the ADR process can normally vary from a week to two months (which may be extended in exceptional cases, depending upon the availability of the alternative forum, the nature of case, etc.). Under no circumstances the court should allow the ADR process to become a tool in the hands of an unscrupulous litigant intent upon dragging on the proceedings."
>
> [Emphasis Supplied]

Considering the fact that ***Afcons Infrastructure Ltd.*** (supra) was delivered in the year 2010, after which date Section 89 of CPC was amended and the Mediation Act, 2023 has come into force partly and amendment was also to the Commercial Courts Act in the year 2023 and also considering the contents of para 44(v) of the ***Afcons Infrastructure Ltd.*** (supra), I have no doubt that where one of the parties is opposing to go to mediation, the Court has to first form an opinion that even though one of the parties is opposing mediation, the matter needs to be sent to the mediation.

(iii) Supreme Court in the Judgment of ***R. Ravindranath*** (supra), reported in ***2026 SCC OnLine 150*** held that they are still of the firm view that the party should sit, talk and reach to an equitable settlement. Otherwise, this is going to be long drawn legal proceeding. Hence, the Court appointed a Mediator.

(iv) In the Judgment of ***Mahendranath Soral vs. Ravindranath Soral***, reported ***2024 SCC OnLine SC 765,*** from the bare reading of the Judgment, it seems that the parties were referred to mediation for the first time and the Court on the facts of that case was of the view that there existed some kind of an element for settlement.

(v) A Single Judge of the Delhi High Court in the case of ***Maxwell Partnership Firm Regd.*** (supra) was dealing with the commercial court suit hence, any finding recorded in the Commercial Court suit as far as mediation is concerned would not be applicable to a Civil Suit which is not a Commercial Suit, like the present proceeding. In the Judgment referred by the Plaintiffs of a Single Judge of the Karnataka High Court in ***Smt. Amalapooh Mary and ors.*** (supra) the Court was dealing with the Order dated 18.08.2016 passed by the City Civil Judge. The date of the Judgment itself suggests it was prior to the Mediation Act, 2023 came into force partly, so also Section 89 of CPC was not amended. Neither the Commercial Courts Act, 2015 was amended by inserting Section 12-A. Therefore, as the facts of these two cases are completely different, the ratio laid down cannot be considered in the present proceeding.

Illustration :-

14. Considering the entire law of mediation, if by way of illustration, it is to be explained, in a given case if one party in a proceedings has given an offer and other party has not accepted it in full but is very close to the offer given by the first party, in such a case, just to *bridge the gap* the Court can come to an opinion that this is a matter where there is an element of settlement and refer the parties to mediation. In the present proceeding, this situation has not arisen.

Conclusion :-

15. The Mediation Act, 2023 does not provide for any mandatory mediation nor does it confer any power on the court to order mediation without consent of all parties. The procedure prescribed under the Act is for a mediation agreement to be executed in writing to submit to mediation. Thus, the mediation contemplated by the Mediation Act is not compulsory but a consensual mediation.

16. As far as the present proceeding is concerned, earlier two attempts of settlement made by the Apex Court and the District Court, Pune have failed. Even then in the present proceeding, on the first date of hearing before this Court, I suggested that the parties can opt for mediation. However, thereafter, on two dates of hearing, Defendant

No.1's Counsel has come with a case that certain news articles were published which has made his client uncomfortable, as they started receiving calls from their investors.

16.1 Even then on 26 April, 2026 as the matter was adjourned, I granted parties one more chance without prejudice to their rights and contentions, to exchange their settlement proposal. However, on the next date of hearing, after 12 days, no such proposal was exchanged between the parties.

17. In the light of the above analysis, in my view, I have no doubt that their does not exist any possibility of settlement through mediation between the parties. Hence, request made by the Plaintiffs to refer the matter to the mediation **stands rejected**.

(RAJESH S. PATIL, J.)