Reserved On : 13/07/2026
Pronounced On : 23/07/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/APPEAL FROM ORDER NO. 97 of 2026

With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2026
In R/APPEAL FROM ORDER NO. 97 of 2026

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE MAULIK J.SHELAT

==

Approved for Reporting	Yes	No
		√

==
RAJULBEN PARESHBHAI SHAH & ANR.
Versus
THE PATIDAR GINNING AND PRESSING COMPANY LTD. & ORS.
==
Appearance:
MR. PERCY KAVINA, SENIOR COUNSEL WITH
MR JAMSHED KAVINA(11236) for the Appellant(s) No. 1,2
MR SP MAJMUDAR(3456) for the Appellant(s) No. 1,2
MR. RASHESH SANJANWALA, SENIOR COUNSEL WITH
MR. AADIT SANJANWALA, & MS SIMRAN PAHWA(12846) for the Respondent(s) No. 12,13
==

CORAM:**HONOURABLE MR. JUSTICE MAULIK J.SHELAT**

CAV JUDGMENT

1. The present Appeal from Order is filed under Order XLIII Rule 1(r) of the Civil Procedure Code, 1908 (CPC) by the original plaintiffs against the order dated 27.01.2026 passed by the Principal Senior Civil Judge and Additional Chief

IBC Laws | www.ibclaw.in
Uploaded by () on Downloaded on : Fri Jul 31 11:20:46 IST 2026

Judicial Magistrate, Bardoli at Surat below Exhibit-5 in Special Civil Suit No.3 of 2024, whereby the Trial Court has rejected the injunction application.

2. For the sake of convenience, the parties will be referred to hereinafter as per their original status in the suit. The appellants are the original plaintiffs, whereas the respondent Nos.12 & 13 (caveator) are original defendant Nos.12 and 13. The rest of the respondents are original defendant Nos. 1 to 11.

<u>FACTS OF THE CASE</u>:-

3. The short facts of the case appear to be that Special Civil Suit No. 3 of 2024 is filed by the plaintiffs against defendant Nos.1 to 11 seeking specific performance of an oral agreement to sell executed between the parties, whereby it has been alleged by the plaintiffs that original defendant Nos.1 to 11 agreed to sell the suit property situated at Bardoli, District: Surat, T.P. Scheme No. 2, Sheet No.19 having Survey No.4613, admeasuring 1697 Sq. mtrs, and Survey No.4588/A, admeasuring 4676.53 Sq. mtrs, out of which admeasuring 1091 Sq. mtrs; in all 2788 Sq. mtrs (1697 + 1091).

IBC Laws | www.ibclaw.in
Uploaded by () on Downloaded on : Fri Jul 31 11:20:46 IST 2026

3.1 The defendant Nos.1 to 11 appeared and contested the suit by filing their respective written statements. Defendant Nos.1, 3, 7, 8, 10, and 11 jointly filed their written statements at Exhibit-16, whereas defendant Nos.4 and 5 have filed their written statement at Exhibit-22 and defendant No.2 filed his written statement at Exhibit-30.

3.2 Further, the defendant Nos.1 to 3 have executed a registered sale deed in favour of defendant Nos.12 & 13, thus, during the pendency of the suit whereby defendant Nos. 12 & 13 were joined as party defendants in the suit. Defendant Nos.12 & 13 subsequently filed their written statement below Exhibit-66. According to the contesting defendants, there was neither any oral nor written agreement to sell executed with the plaintiff. As per the say of the defendant Nos. 12 & 13 that they are bonafide purchaser value without notice and after purchase of one parcel of the suit land, they have developed it and construction works almost reached the final phase.

3.3 After hearing the parties, the Trial Court, vide its impugned order, has rejected the injunction application. Hence, this Appeal from Order.

IBC Laws | www.ibclaw.in
Uploaded by () on Downloaded on : Fri Jul 31 11:20:46 IST 2026

<u>SUBMISSIONS OF THE APPELLANTS (ORIGINAL PLAINTIFFS)</u>:-

4. Mr. Percy Kavina, learned Senior Counsel assisted by Mr. Jamshed Kavina, learned advocate for the appellants-plaintiffs, has made the following submissions: -

4.1 The Trial Court has committed a serious error by applying wrong principles of law while adjudicating the impugned injunction application, which ultimately resulted into the rejection of the injunction application.

4.2 The Trial Court could not have applied the principle of *res ipsa loquitur* while interpreting the terms of the agreement. It is unknown in law that said principle can be applied for interpretation of terms of document. Likewise, the Trial Court had also wrongly applied the principle of approbate and reprobate, which would apply only in the case of pleadings of the parties.

4.3 The Trial Court has also misdirected itself by observing that since defendant Nos.4 and 5 are supporting defendants to the plaintiffs, the principle of *lis pendens,* as provided under Section 52 of the Transfer of Property Act, 1882 (for

IBC Laws | www.ibclaw.in
Uploaded by () on Downloaded on : Fri Jul 31 11:20:46 IST 2026

short ***'the Act, 1882'***) is not applied to the case at hand.

4.4 The Trial Court has also committed a serious error in law by observing that defendant Nos.12 & 13 are bona fide purchasers, value without notice. The burden to prove that they were bona fide purchasers value without notice, is upon defendant Nos.12 & 13. The Trial Court has completely lost sight of Section 19(b) of the Specific Relief Act, 1963 (for short ***'the Relief Act, 1963'***).

4.5 The findings recorded by the Trial Court in the impugned order are not in consonance with the settled principles of law and had it applied correct principles of law, what would have been the view of the Trial Court is in realm of conjectures and surmises.

4.6 The Trial Court has not properly appreciated the facts in their correct perspective and ignoring the fact that there were several exchanges offers between the parties, which otherwise a matter of trial as to what was agreed between the parties and upon wrong premise, based on conjuncture and surmises, the Trial Court has in fact erroneously rejected the impugned application.

IBC Laws | www.ibclaw.in
Uploaded by () on Downloaded on : Fri Jul 31 11:20:46 IST 2026

NEUTRAL CITATION
2026:GUJHC:46442

4.7 The Trial Court could not have discarded the Memorandum of Understanding (MoU) executed by some of the defendants, who happen to be the Directors of the defendant No.1 – Company, in favour of the plaintiffs and considering the Board Resolutions passed by defendant No.1, coupled with the MoU executed by its Directors, a *prima facie* case was made out by the plaintiffs to proceed for trial and to avoid any multiplicity of proceedings, the Trial Court ought to have granted an injunction in favour of the plaintiffs by directing the defendants to maintain *status quo,* as defendant Nos. 12 & 13, after they purchased the one of parcel of land, are changing the nature of suit property-land, which would seriously prejudice the interest of the plaintiffs who definitely suffer irreparable injury.

4.8 To buttress his arguments, Mr. Kavina, learned Senior Counsel would rely upon the following decisions: -

> *(i)* ***Julien Educational Trust Vs. Sourendra Kumar Roy*** reported in ***2010 (1) SCC 379***;
>
> *(ii)* ***Maheshbhai Chaganbhai Patel Vs. Jarin Naushir Dalal D/o Jalambahi Rustamji*** reported in ***2011 (0) AIJEL-HC 226232 (Appeal From Order No.335 of 2010*** decided on 10.11.2011).

IBC Laws | www.ibclaw.in
Uploaded by () on Downloaded on : Fri Jul 31 11:20:46 IST 2026

4.9 Making the above submissions, Mr. Kavina, learned Senior Counsel would request this Court to allow the present Appeal.

<u>SUBMISSIONS OF RESPONDENT NOS. 12 & 13 – ORIG. DEFENDANT NOS. 12 AND 13</u>:-

5. Mr. Rashesh Sanjanwala, learned Senior Counsel assisted Mr. Aadit Sanjanwala, learned advocate & Ms. Simran Pahwa, learned advocate for respondent Nos.12 & 13 – Orig. Defendant Nos.12 & 13 - Caveators, vehemently opposed the present Appeal from Order by making the following submissions:-

5.1 There is no error, much less any gross error of law, committed by the Trial Court while rejecting the injunction application filed by the plaintiffs and as such, no interference is required of this Court who exercise its limited power while adjudicating the Appeal filed under Order XLIII Rule 1(r) of the CPC.

5.2 The foundation of the case of plaintiffs that they had entered into an oral agreement to sell itself is not established on record, inasmuch as there is no offer made by defendant No.1 – titleholder, in favour of the plaintiffs, to come forward

IBC Laws | www.ibclaw.in
Uploaded by () on Downloaded on : Fri Jul 31 11:20:46 IST 2026

for execution of any agreement to sell or sale deed for any fixed amount; rather board resolution of defendant No.1, as referred by the Trial Court in its impugned order, would clearly show that subject to performing certain acts by the plaintiffs, defendant No.1 agreed to enter into sale agreement with plaintiffs.

5.3 The Trial Court correctly observed that the MoU dated 14.11.2022 (Mark 3/4), upon which heavy reliance placed, is not beyond doubt as the plaintiffs never whispered about said MoU when issued legal notices dated 17.01.2023 & 10.05.2023, expressed their concern about backing out from the commitment to execute sale deed and thereby, called upon the defendants to execute the sale deed. The reference of MoU came for the first time in the suit. The execution of MoU by some of the Directors (defendant Nos.4 to 6) who were never authorized to execute the MoU which was in fact undated. The stamp paper was purchased in the name of advocate at Ahmedabad, its alleged execution was at Bardoli and notarized it at Surat. All these acts would *prima facie* prove that said MoU is nothing but a got-up document.

5.4 There is no purchase money fixed between the parties

IBC Laws | www.ibclaw.in
Uploaded by () on Downloaded on : Fri Jul 31 11:20:46 IST 2026

and the Trial Court has correctly observed that the plaintiffs have failed to prove that they have performed their part of the contract, as the plaintiffs were unable to show that they got a title-clearance of suit land at their expense and / or they shifted the family members of the peon staying at suit land by offering them an alternative place. The plaintiffs though referred in their aforesaid notice about guarantee agreement executed by defendant Nos.1 & 2 in their favour, but no such guarantee agreement is produced on record, even not produced a notice dated 02.01.2024, whereby they issued a notice to advocate of defendants in connection with public notice.

5.5 There is neither any perversity nor any gross error committed by the Trial Court while disbelieving the case of the plaintiffs and as such, ultimate conclusion drawn by the Trial Court against the plaintiffs is upon appreciation of documentary evidence made available on record. Therefore, this Court should not interfere with the well-reasoned order passed by the Trial Court.

5.6 There is a substantial delay in filing the suit, inasmuch as first notice was issued by the plaintiffs on 17.01.2023,

IBC Laws | www.ibclaw.in
Uploaded by () on Downloaded on : Fri Jul 31 11:20:46 IST 2026

followed by another on 10.05.2023 and the suit in question filed on 04.07.2024, in such circumstances, the plaintiffs are not entitled to receive any interim injunction in their favour, as sought for.

5.7 Defendant Nos.12 & 13, after purchasing the one of the suit lands, have developed the suit land substantially and the construction carried out by them reached in the final phase, then this Court may not disturb such development at the instance of the plaintiffs who failed to even show any *prima facie* case in their favour.

5.8 To buttress his arguments, Mr. Sanjanwala, learned Senior Counsel would rely upon the following decisions:-

(i) ***Ambalal Sarabhai Enterprise Limited Vs. KS Infraspace LLP Limited & Anr.*** reported in ***(2020) 5 SCC 410;***

(ii) ***Veetrag Holding Co Ltd Vs. Gujarat State Textile Corporation Ltd.*** reported in ***1996 (3) GLR 1996; and***

(iii) ***Brij Mohan & Ors. v. Sugra Begum & Ors,*** reported in ***(1990) 4 SCC 147.***

5.9 Making the above submissions, Mr. Sanjanwala, learned Senior Counsel would request this Court to dismiss the present appeal.

IBC Laws | www.ibclaw.in
Uploaded by () on Downloaded on : Fri Jul 31 11:20:46 IST 2026

6. No other and further submissions are being made by the learned Senior Counsel appearing for the respective parties.

7. Heard Mr. Percy Kavina, learned Senior Counsel with Mr. Jamshed Kavina, learned advocate for the appellants-plaintiffs as also Mr. Rashesh Sanjanwala, learned Senior Counsel with Mr. Aadit Sanjanwala, learned advocate & Ms. Simran Pahwa, learned advocate for respondents – Orig. Defendant Nos.12 & 13 – Caveators, at length.

ANALYSIS AND REASONS:-

8. I have minutely gone through the impugned order / judgment passed by the Trial Court as well as documents submitted before the Trial Court which are placed before this Court in the form of paper-book.

9. Having gone through the impugned judgment and documents on record, following would emerge: -

9.1 Defendant No.1 is a Company registered under the Companies Act, which appears to have passed Resolution Nos.3 and 4 on 07.05.2022, whereby resolved that to do certain acts in relation to the company's property and to offer

IBC Laws | www.ibclaw.in
Uploaded by () on Downloaded on : Fri Jul 31 11:20:46 IST 2026

an alternate accommodation to the family of its peon namely Mohan, the plaintiff No.2 was assigned the work. It was also agreed that once plaintiff No.2 obtained clear title to the land, he should be called in board meeting for negotiating the price of the land and the entire amount shall be received through cheque and fulfilling such condition, the company's land can be sold. It is also mentioned that the fees of plaintiff No.2 to carry out the aforesaid act, shall be adjusted against the sale consideration.

9.2 Defendant No.1, vide its letter dated 15.10.2022, informed the plaintiffs about its Resolution No.7 passed on 02.09.2022, whereby defendant No.1 resolved that to execute the agreement to sell with plaintiffs qua the suit land, plaintiffs should be called. There is a footnote in the aforesaid letter that as per earlier arrangement, plaintiff No.2 is required to ensure that that the room possessed by the family of Company’s peon is vacated and offer them an alternate place of residence. The said act was to be done by the Plaintiff No.2. There is nothing on record to show that it was done by him. Rather, the plaintiffs appear to have relied upon MoU, allegedly executed on 14.11.2022, which was signed by

IBC Laws | www.ibclaw.in
Uploaded by () on Downloaded on : Fri Jul 31 11:20:46 IST 2026

defendant Nos. 4 to 6, who happen to be Directors of defendant No.1. However, a bare perusal of said MoU shows that the it is not only undated but its stamp was purchased in the name of one advocate Zahurkhan Latifkhan Pathan and appears to have been purchased from Ahmedabad, it was executed at Bardoli and notarized at Surat. Even, as per the terms of the MoU also, there is no agreed amount fixed between the parties. Neither plaintiffs nor defendant Nos.4 to 6 who are supporting defendants, would bring on record any board resolution or any authority, whereby defendant Nos.4 to 6 could have executed the said MoU in favour of the plaintiffs. Though, as per the case of the plaintiffs, there is MoU dated 14.11.2022 executed by defendant Nos.4 to 6 (Directors of defendant No.1) in their favour, but surprisingly, while issuing legal notice to defendant No.1 on 17.01.2023 and 10.05.2023, called upon them to execute sale deed, there is no whisper about the said MoU. In view of said facts, *prima facie*, the Trial Court has correctly observed that there is a serious doubt about execution of said MoU on behalf of the defendant No.1-company-title holder.

9.3 Furthermore, defendant No.1 appears to have issued a

IBC Laws | www.ibclaw.in
Uploaded by () on Downloaded on : Fri Jul 31 11:20:46 IST 2026

public notice in the month of December, 2023 against which the plaintiffs sent their reply on 02.01.2024 but same was neither disclosed in the plaint nor submitted with plaint; rather, contesting defendants along with their written statements, have submitted said reply to public notice sent by the plaintiffs. As observed by the Trial Court's in para 15 of impugned order that despite calling upon the plaintiffs to supply necessary documents referred in the reply, it was neither supplied nor submitted on record.

9.4 Apart from aforesaid, the plaintiffs sought specific performance of an oral agreement to sell qua two parcels of land – suit lands, i.e., Survey No. 4613 and a part of Survey No. 4588/A, but while sending the aforesaid notices dated 17.01.2023 and 10.05.2023, referred the agreement qua one of the suit lands, i.e., Survey No.4613. This parcel of land appears to have been purchased by the defendant No.12 & 13 by registered sale deed on 20.02.2025.

9.5 The plaintiffs have also not produced on record any material to show that how they have spent Rs.1,50,00,000/-, as mentioned in the aforesaid MoU; rather in their aforesaid notices, they have stated that they have spent around

IBC Laws | www.ibclaw.in
Uploaded by () on Downloaded on : Fri Jul 31 11:20:46 IST 2026

Rs.39,66,500/-. The suit in question was filed on 04.07.2024, and *lis pendens* was already registered on 02.12.2024, whereas the sale deed qua suit land situated at survey No.4613 was executed by defendant No.1 – Company in favour of defendant Nos.12 & 13 on 20.02.2025.

9.6 In view of the aforesaid facts and circumstances and also taking note of the documents exchanged between the parties, the Trial Court, vide its impugned order, has not believed the case of the plaintiffs and accordingly, refused to grant the injunction in favour of the plaintiffs.

10. Even after appreciating the assiduous arguments advanced by Mr. Kavina, learned senior counsel, I am not able to agree with him that impugned order is so grossly erroneous, perverse and passed in contravention of settled principles of law, whereby interference of this Court in its limited jurisdiction under Order XLIII Rule 1(r) of the CPC is required. Rather, I am in complete agreement with ultimate conclusion of the Trial Court, whereby it has refused to grant injunction in favour of the plaintiffs. My reasons for saying so as follows:

IBC Laws | www.ibclaw.in
Uploaded by () on Downloaded on : Fri Jul 31 11:20:46 IST 2026

10.1 Apart from the oral agreement to sale as alleged by the plaintiffs, the foundational fact upon which the suit has been instituted by the plaintiffs is MoU dated 14.11.2022 produced at Mark 3/4. As referred hereinabove, there is no reference of said MoU made in the previous notices issued by the plaintiffs prior to filing of the suit, though such notices were undisputedly issued subsequent to the alleged MoU. The reasons assigned by the Trial Court in regards to genuineness of MoU cannot be said to be either perverse or grossly erroneous, inasmuch as such MoU was neither signed by authorized person of defendant No.1 – Company. The defendant Nos.4 to 6 happen to be Directors of defendant No.1 in absence of holding any authority (at least not made available on record of the suit) to execute such MOU for and on behalf of defendant No.1-Company, the circumstances under which such MoU was executed having no dates, seal of defendant No.1 – Company and its stamp purchased by the lawyer etc., at this stage, create reasonable doubt in the mind of the prudent to accept the MoU.

10.2 The suit is filed seeking specific performance of an oral agreement coupled with MOU. *Prima facie*, the plaintiffs have

IBC Laws | www.ibclaw.in
Uploaded by () on Downloaded on : Fri Jul 31 11:20:46 IST 2026

failed to show that they have already performed their part of the contract, then sought for the performance of the defendants. The Trial Court has correctly observed that the plaintiffs have failed to show that they have performed their part of the contract, whereby cleared the title of the suit land and gave an alternate accommodation to company's peon by vacating their possession from the suit land, then naturally cannot allow to seek performance of the defendants.

10.3 The plaintiffs have also failed to show the expenses incurred by them, i.e., Rs. 1,50,00,000/, as claimed in said MoU, which is otherwise contrary to their own notices wherein they claimed that they have incurred expenses of Rs.39,66,500/-.

10.4 Moreover, in the aforesaid notices, the plaintiffs referred about guarantee agreement executed by defendant No.1 in their favour, but no such guarantee agreement is produced on record.

10.5 It is worth to note that in their aforesaid notices, the plaintiffs referred having an agreement to purchase only about one land situated at Survey No.4613, admeasuring 1697

IBC Laws | www.ibclaw.in
Uploaded by () on Downloaded on : Fri Jul 31 11:20:46 IST 2026

Sq.mtrs, which is purchased by defendant Nos.12 & 13, but in the suit, they also referred that defendant Nos.1 to 10 have agreed to sell a land situated at survey No.4588/A, admeasuring 1091 Sq. mtrs, out of 4676.52 Sq.mtrs. Even the description of the said property, which is additionally made part of the suit, is also not properly defined as to which side of the land they have agreed to purchase.

10.6 It is true that while adjudicating the injunction application, the Trial Court has referred to certain principles, more particularly, *res ipsa loquitur,* while judging the genuineness of the MoU. The mere reference to the aforesaid principles would not, by itself, render the impugned order perverse, inasmuch as the Trial Court has given its reason that how the aforesaid MoU cannot be believed and why it is not appeared genuine. Likewise, the principle of approbate and reprobate might not have been correctly applied so far as acts of plaintiffs are concerned, but the fact remains that the plaintiffs have not acted as per the above referred board resolution passed by defendant No.1, whereby they have neither cleared the title to the suit land nor removed the family of the defendant No.1 company's peon. Thus, in the

IBC Laws | www.ibclaw.in
Uploaded by () on Downloaded on : Fri Jul 31 11:20:46 IST 2026

above referred context, the Trial Court has referred those principles. According to me, after perusing the impugned order in entirety, there is no reason for this Court to either interfere or to disturb the impugned order by sending the matter back to the Trial Court for its fresh look.

10.7 The plaintiffs have also failed to prove on record that they were and are ready and willing to perform their part of contract and in absence of any such case made out, plaintiffs failed to prove their *prima facie* case. Over and above, the plaintiffs are unable to *prima facie* prove that there was any oral agreement to sell executed by defendant No.1 – Company - (Titleholder), in their favour.

10.8 So far as aspect of *lis pendens* is concerned, the plaintiffs have already registered such *lis pendens*. Nonetheless, the Trial Court has arrived at a conclusion that in view of the fact that the defendant Nos.4 to 6, some of the Directors of defendant No.1, executed alleged MoU in favour of the plaintiffs, and when there is a collusion between plaintiffs and some of the defendants, benefit of *lis pendens* cannot be granted in favour of the plaintiffs. According to my view, when the plaintiffs have failed to show *prima facie* case,

IBC Laws | www.ibclaw.in
Uploaded by () on Downloaded on : Fri Jul 31 11:20:46 IST 2026

balance of convenience and irreparable loss in their favour, it pales into insignificance that any benefit of *lis pendens* can be granted in favour of the plaintiffs at this stage. Yet, it can be observed that any one consciously entered into an agreement with the defendants, are not in a position to say that they are not aware about the pending litigation qua suit lands.

10.9 Likewise, whether defendant Nos.12 & 13 are bona-fide purchasers, value without notice or not, is requires to be decided by the Trial Court as per the evidence forthcoming on record of the suit. The Trial Court at end of para 15 of its impugned order itself clarified this position. Thus, I would not like to add anything more on this point.

11. So far as decisions cited by Mr. Kavina, learned Senior Counsel, in support of his submissions are concerned, according to this Court, none would be applicable to the case at hand.

11.1 In the case of ***Julien Educational Trust (supra),*** the Hon'ble Apex Court has *prima facie* believed that there was an agreement to sell in favour of the appellant – Trust, which had to go to trial and in such factual scenario, the order of status *quo* granted in favour of the appellant – Trust, which is

IBC Laws | www.ibclaw.in
Uploaded by () on Downloaded on : Fri Jul 31 11:20:46 IST 2026

not the case here. In the case at hand, the plaintiffs are unable to *prima facie* prove that there was any agreement to sell by defendant No.1 in their favour, i.e., oral or written. Rather, it is evident from the resolutions passed by the defendant No.1-company, its subsequent communication letter dated 15.10.2022 etc., that there was as such no oral agreement between the plaintiffs and defendant No.1/its authorized person to sale the suit lands. No purchase priced even fixed when those resolutions and letter issued.

11.2 In the case of ***Maheshbhai Chaganbhai Patel (supra)***, again the coordinate Bench of this Court has accepted that there is an agreement to sell between the parties and the plaintiffs have performed their part of contract and subsequently, sale deed executed is of much lower price than what was agreed for agreement to sell. In such factual scenario, order of status quo was granted to avoid further multiplicity of proceedings. Again, in absence of existence of any agreement to sell, *prima facie* proved on record by the plaintiffs, they cannot seek any relief of injunction much less an order of status quo. Moreover, the plaintiffs have failed to prove their part of the contract as per the said resolutions &

Uploaded by () on Downloaded on : Fri Jul 31 11:20:46 IST 2026

letter, at this stage, it can be gainsaid that plaintiffs have not performed their part of the contract.

12. At this juncture, it would be apt to observe that the plaintiffs first issued a legal notice dated 17.01.2023 expressing concern about cancelling the agreement of sale by the defendant No.1, it appears to have been responded by the company through its lawyer on 29.04.2023, then again another legal notice dated 10.05.2023 issued by the plaintiffs, whereby called upon the defendants to execute sale deed, whereas, through public notice issued in month of December, 2023, defendant No.1 declared its intention to sale the suit land, yet, the suit was filed on 04.07.2024. The documents on record of the suit suggests that the suit land purchased by the defendant No. 12 & 13 is substantially developed by now and there are no good reasons, for this Court to stop the development work at this stage, especially when the plaintiffs unable to show their *prima facie* case. Thus, considering the series of events as recorded above and nature of dispute, though the suit filed within limitation but there is a considerable delay on the part of the plaintiffs to file suit.

12.1 At this stage, it would be apt to refer the ratio laid down

IBC Laws | www.ibclaw.in
Uploaded by () on Downloaded on : Fri Jul 31 11:20:46 IST 2026

by the Hon'ble Apex Court in the case of ***Ambalal Sarabhai Enterprise Limited (supra),*** wherein it has been held that conduct of the party seeking equitable relief of injunction is also essential to be considered and in a case of delay or otherwise, it will be inequitable to grant discretionary relief. The relevant observations made in aforesaid decision read thus:

> *"**19.** In a matter concerning grant of injunction, apart from the existence of a prima facie case, balance of convenience, irreparable injury, the conduct of the party seeking the equitable relief of injunction is also very essential to be considered as observed in Motilal Jain [Motilal Jain v. Ramdasi Devi, (2000) 6 SCC 420] holding as follows : (SCC p. 424, para 6)*
>
> > *"6. The first ground which the High Court [Ramdasi Devi v. Motilal Jain, 1990 SCC OnLine Gau 120 : (1991) 2 Gau LR 195] took note of is the delay in filing the suit. It may be apt to bear in mind the following aspects of delay which are relevant in a case of specific performance of contract for sale of immovable property:*
> >
> > *(i) delay running beyond the period prescribed under the Limitation Act;*
> >
> > *(ii) delay in cases where though the suit is within the period of limitation, yet:*
> >
> > *(a) due to delay the third parties have acquired rights in the subject-matter of the suit;*
> >
> > *(b) in the facts and circumstances of the case, delay may give rise to plea of waiver or otherwise it will be inequitable to grant a discretionary relief."*
>
> ***22.*** *In M.P. Mathur v. DTC [M.P. Mathur v. DTC, (2006) 13 SCC*

IBC Laws | www.ibclaw.in
Uploaded by () on Downloaded on : Fri Jul 31 11:20:46 IST 2026

706] , this Court observed : (SCC p. 716, para 14)

> *"14. The present suit is based on equity. ... In the present case, the plaintiffs have sought a remedy which is discretionary. They have instituted the suit under Section 34 of the 1963 Act. The discretion which the court has to exercise is a judicial discretion. That discretion has to be exercised on well-settled principles. Therefore, the court has to consider—the nature of obligation in respect of which performance is sought, circumstances under which the decision came to be made, the conduct of the parties and the effect of the court granting the decree. In such cases, the court has to look at the contract. The court has to ascertain whether there exists an element of mutuality in the contract. If there is absence of mutuality the court will not exercise discretion in favour of the plaintiffs. Even if, want of mutuality is regarded as discretionary and not as an absolute bar to specific performance, the court has to consider the entire conduct of the parties in relation to the subject-matter and in case of any disqualifying circumstances the court will not grant the relief prayed for (Snell's Equity, 31st Edn., p. 366)."*
>
> *(Emphasis supplied)*

12.2 A similar ratio was laid down by a Coordinate Bench of this Court in the case of ***Veetrag Holding Co Ltd (supra),*** wherein considering the decision of the Hon'ble Apex Court in the case of ***Dalpat Kumar And Anr. vs Prahlad Singh And Ors*** reported in ***AIR 1993 SC 276,*** held that once the contract was terminated, it was expected from plaintiffs to move for specific performance at the earliest if they were serious about the same. Though, they may not be non-suited

IBC Laws | www.ibclaw.in
Uploaded by () on Downloaded on : Fri Jul 31 11:20:46 IST 2026

on the ground of limitation, inasmuch as their suit is within time, however, when it comes to grant of equitable relief that the suit is filed after lapse of time, it cannot be said that the remedy of interim injunction was a necessary remedy and there was no other remedy available to the parties concerned in this behalf. The relevant observations made by a Coordinate Bench in the case of ***Veetrag Holding Co Ltd (supra),*** read as under***:-***

> *"8. Even so, in any case, inasmuch as this contract was terminated on 6th December 1993, it was expected of the appellant to move for specific performance at the earliest, if they were serious about the same. The appellants certainly cannot be non-suited on the ground of limitation inasmuch as their suit is within time. However, when it comes to grant of equitable relief when the suit is filed after such a lapse of time, it cannot be said that the remedy of interim injunction was the necessary remedy and there was no other remedy available to the party concerned in this behalf. Shri Gupta relied upon the Apex Court judgment rendered in Dalpat Kumar and Anr. v. Prahlad Singh and Ors. thereof the Courts are cautioned and required to exercise sound judicial discretion. They are required to find out that no other remedy is available to the party concerned and then as stated by the Honourable Supreme Court (and again relied upon by Shri Gupta) in para 20 of the judgment of the Apex Court rendered in State of Maharashtra v. Digambar ; for approaching a Court of equity, the blameworthy conduct of a person approaching a Court of equity, for obtaining discretionary relief disentitles him for grant of such relief. Para 20 of the above judgment reads as under:*
>
> > *Laches or undue delay, the blameworthy conduct of a person in approaching a Court of equity in*

IBC Laws | www.ibclaw.in
Uploaded by () on Downloaded on : Fri Jul 31 11:20:46 IST 2026

England for obtaining discretionary relief which disentitled him for grant of such relief was explained succinctly by Sir Barnes Peacock, long ago, in Lindsay Petroleum Co. v. Hurd, thus:

Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation, in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute or limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as it relates to the remedy.

9. Shri Naik submitted that the appellant was all throughout ready and willing to perform its part of the contract. But as provided in the agreement itself, the payments were to be made on certain specified dates starting from 28th September 1992 until 28th November 1993. Apart from paying the initial earnest money, the appellant has not paid any amount thereafter and certainly not after raising the dispute about the part of the land not being available to it. Shri Gupta submitted that this was so inspite of Clause 2 of the agreement

IBC Laws | www.ibclaw.in
Uploaded by () on Downloaded on : Fri Jul 31 11:20:46 IST 2026

which clearly provided as follows:

> *The area of the property is approximately 2,41,875 sq. mtrs. according to the vendor's records and the same shall be taken as correct and accepted by the purchaser. The price of the said property has been agreed to between the parties on a lumpsum basis without any reference to the said area and if the said area is ultimately found to be more or less the same shall not be a ground for any increase or decrease of price or for rescinding this agreement.*
>
> *As stated above the respondent-Corporation is in financial difficulties and is in dire need of money. The respondent-Corporation had entered into long correspondence with the appellant from time to time and there was no positive response from the appellant in that behalf. In those circumstances, the respondent-Corporation had no option but to terminate the contract. The appellant has not moved immediately thereafter and was silent for nearly two years after termination of the contract. These facts are gross enough to disentitle the appellant to the remedy of injunction."*

(Emphasis supplied)

12.3 Thus, in light of the aforesaid facts and circumstances, the impugned injunction application was correctly rejected by the Trial Court. The submissions made by Mr. Sanjanwala, learned senior counsel is accepted that the plaintiffs is not entitled to any reliefs as prayed in the impugned injunction application filed below Exhibit 5.

IBC Laws | www.ibclaw.in
Uploaded by () on Downloaded on : Fri Jul 31 11:20:46 IST 2026

13. It is well settled position of law that the present Appeal from Order is appeal on principle unlike regular First Appeal wherein the Appellate Court has power to re-appreciate the evidence. This Court, while exercising its powers under Order XLIII, Rule 1(r) of CPC, has a limited jurisdiction to interfere with the discretionary order passed by the Trial Court. Unless and until it has been shown to this Court that the impugned order passed by the Trial Court while exercising its discretion in a manner which is not akin to law and / or any perversity on the face of the order, merely because another view is possible in the matter, this Court should not substitute its view over the view taken by the Trial Court (See:- ***Ramakant Ambalal Choksi vs Harish Ambalal Choksi*** reported in ***(2024) 11 SCC 351***).

14. Before parting with, it is made clear that any of the observations so made either by this Court herein above or by the Trial Court's in its impugned order passed by below Exhibit 5 would not come in the way of the parties. The Trial Court is required to decide *lis* between the parties as per the evidence forthcoming on the record of the suit without being influenced by this order or the impugned order in this appeal.

IBC Laws | www.ibclaw.in
Uploaded by () on Downloaded on : Fri Jul 31 11:20:46 IST 2026

15. In view of the foregoing observations, discussions, and reasons, I do not find any merit in this appeal. Accordingly, the present Appeal from Order is dismissed in *limine*. As a sequel, the connected Civil Application is also disposed of. No order as to costs.

(MAULIK J.SHELAT,J)

Lalji Desai

IBC Laws | www.ibclaw.in
Uploaded by () on Downloaded on : Fri Jul 31 11:20:46 IST 2026