IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.627 OF 2026
WITH
INTERIM APPLICATION NO.4389 OF 2026

M/s.Sada Anand Developers, through its Partner
Mr.Sadanand K.Shetty, 10, Padmajee Classic,
Mahaparvez Road, Near Pasamjee Park,
Nana Peth, Pune-411002. Appellant

versus

Shree Balaji Realty, through Partner
Meenamni Ganga Builders LLP, through partner
Anju Umesh Goel,
Opp.Poona Club, Bund Garden Road,
Pune-411001. Respondent

Mr.Sanjeev Kadam, Senior Advocate, i/by Mr.Swapnil R.Chopade for Appellant.

Mr.Jaydeep Deo for Respondent.

CORAM : AARTI SATHE, J.

DATE : 18th August 2026

ORAL JUDGMENT :-

1. This Appeal from Order under Order XLIII, Rule 1(r) read with Section 104 of the Code of Civil Procedure, 1908 takes an exception to the order dated 14th February 2025 passed by the 5th Joint Civil Judge, Senior Division, Pune (`the Trial Court') passed below Exhibit-5 (`impugned order') in Special Civil Suit No.387 of 2024 (`the suit'), *inter-alia*, temporarily restraining the Appellant (Original Defendant) either by itself or through agents, servants, power of attorney holders, representatives and anybody claiming for and on behalf of the Appellant (Original Defendant) from transferring, alienating, or any way creating third party

interest in any part of the Transferable Development Rights (TDR) i.e. admeasuring 5200 sq. mtrs. which is subject matter of agreement dated 13th July 2022 till disposal of the suit.

2. Briefly the facts are as follows:

i. The Appellant (Original Defendant) approached the Respondent (Original Plaintiff) with a proposal regarding a project under Slum Rehabilitation Scheme on final plot no.57 situated at Mangalwar Peth, Pune. The Appellant (Original Defendant) also informed the Respondent (Original Plaintiff) that the project had been duly sanctioned by the Pune Municipal Corporation and by Competent Authority under the The Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 ('Slum Act') and further the Appellant (Original Defendant) had obtained appropriate rights for development and sale of the said property. The Appellant (Original Defendant) also represented to the Respondent (Original Plaintiff) that after completion of the project, it was entitled to obtain Floor Space Index (`FSI') credit of built-up area of approximately 5,808 sq. mtrs. in the form of Development Rights Certificate (`DRC'). On 6th July 2022, upon negotiations for purchase of TDR potential of 5,200 sq. mtrs. from the Appellant (Original Defendant), the Respondent (Original Plaintiff) initially paid Rs.2,47,50,000/- through RTGS from HDFC Bank, Pune to the Appellant (Original Defendant).

ii. Pursuant thereto, on 13th July 2022, a Memorandum of Understanding (`MOU') was executed between the two parties for a total consideration of Rs.8,23,05,600/- pursuant to which the Respondent (Original

Plaintiff) had agreed to purchase from the Appellant (Original Defendant) the TDR to the extent of 5,200 sq. mtrs. out of the total area of DRC issued by the Competent Authority.

iii. On 25th August 2022, the Respondent (Original Plaintiff) made further payment of Rs.1,48,50,000/- and also made further payment of Rs.40,000/- towards Tax Deductible at Source (TDS) under Section 194(Q) of the Income Tax Act 1961. It is the Respondent's (Original Plaintiff's) contention that the Appellant (Original Defendant) has accepted and received Rs.4,00,00,000/- from the Respondent (Original Plaintiff).

iv. It is the contention of Appellant (Original Defendant) that as per clause 4A and 4B of the MOU, the Appellant (Original Defendant) was supposed to obtain DRC from the Competent Authority on or before 13th October 2022, however, on account of certain technical difficulties, the Appellant (Original Defendant) was unable to obtain the DRC from the Competent Authority. On 18th October 2023, the Appellant (Original Defendant) issued a notice to the Respondent (Original Plaintiff) cancelling the MOU dated 13th July 2022 in view of the fact that DRC had not been received by the Appellant (Original Defendant). Thereafter on 12th November 2023 and 28th November 2023, replies and rejoinders were exchanged between the Appellant (Original Defendant) and the Respondent (Original Plaintiff) pursuant to the notice dated 18th October 2023. It is not in dispute that the amount of Rs.4,00,00,000/- has been paid by the Respondent (Original Plaintiff) to the Appellant (Original Defendant).

v. On 16th February 2024, the Respondent (Original Plaintiff) filed a suit bearing Special Civil Suit No.387 of 2024 before Civil Judge, Senior Division, Pune praying for a declaration that the notice dated 18th October 2023 terminating the MOU dated 13th July 2022 is illegal and also for specific performance of the MOU against the Appellant (Original Defendant). An application for temporary injunction was filed praying that the Appellant (Original Defendant) be restrained from creating third party rights in respect of TDR. On 25th June 2024, the Respondent (Original Plaintiff) filed another application, *inter-alia*, seeking temporary injunction against the Appellant (Original Defendant) along with list of documents annexed thereto. The Appellant (Original Defendant) filed reply to the aforesaid application opposing the grant of temporary injunction on 9th July 2024 and further on 12th July 2024 the Appellant (Original Defendant) filed their written statement and also an application for list of documents. On 25th July 2024, the Respondent (Original Plaintiff) filed their counter affidavit and thereafter on 14th February 2025, by the impugned order, the Trial Court allowed Exhibit-5 of the Respondent (Original Plaintiff) thereby temporarily restraining the Appellant (Original Defendant), either by itself or through agents, servants, power of attorney holders, representatives and anybody claiming for and on behalf of the Appellant (Original Defendant) from transferring, alienating, or any way creating third party interest in any part of the TDR i.e. admeasuring 5200 sq. mtrs. which is subject matter of MOU dated 13th July 2022 till disposal of the suit, as aforesaid.

vi. Being aggrieved by the impugned order the Appellant (Original Defendant) has filed present Appeal from Order.

3. Mr. Sanjeev Kadam, Senior Advocate instructed by Mr. Swapnil Chopade appeared on behalf of the Appellant (Original Defendant). Mr. Jaydeep Deo appeared on behalf of the Respondent (Original Plaintiff).

4. It is submitted by Mr. Kadam, learned Senior Advocate, appearing for the Appellant (Original Defendant) that, the impugned order suffers from non-consideration of relevant facts and also of the applicable legal provisions, inasmuch as, the Trial Court has erred in not appreciating that by filing the said suit, the Respondent (Original Plaintiff) is seeking specific performance of the MOU dated 13th July 2022, which cannot be sustained, as the MOU is not an agreement or a contract and, hence, not enforceable under Specific Relief Act, 1963 ('the Act'). It is further his submission that the impugned order has not taken into consideration the relevant clauses of the MOU dated 13th July 2022, which very categorically provide that in the event the MOU is cancelled due to any reason whatsoever or due to lapse of time period agreed between the parties to procure the proposed DRC, the Appellant (Original Defendant) would issue cheques towards repayment of the amount tendered by the Respondent (Original Plaintiff) as mentioned in clauses 4A and 4B of the MOU. Since the Appellant (Original Defendant) was unable to procure the DRC in the stipulated time, the Appellant (Original Defendant) had intimated the Respondent (Original Plaintiff) its inability to procure the DRC and hence sought to cancel the said MOU dated 13th July 2022.

5. It is his submission that at that time when the Appellant (Original Defendant) sought to cancel the MOU, the Respondent (Original Plaintiff) voluntarily extended the time to procure the DRC by six months to perform its

part under the said MOU. He further submitted that the Appellant (Original Defendant) had accorded its irrevocable consent to deposit the security cheques given to the Respondent (Original Plaintiff) and the same were not being deposited by the Respondent (Original Plaintiff) on account of insistence of the Respondent (Original Plaintiff) to specifically perform the obligations as envisaged under the MOU by the Appellant (Original Defendant). He submitted that such an approach on the part of the Respondent (Original Plaintiff) is an erroneous approach as the MOU by its very nature is a determinable document and once that being the position, the same becomes an unenforceable document, as contemplated under Section 14(d) of the amended Act. He, therefore, submitted that filing of the suit itself under the provisions of the Act is bad in law and not maintainable.

6. It was further his submission that the Trial Court in the impugned order has not rendered any finding in respect of this vital provision regarding unenforceability of the MOU under the provisions of Section 14(d) of the Act, which strikes at the very root of the matter thereby vitiating the impugned order. He, therefore, submitted that considering that the impugned order was silent on the aforesaid issue, grant of injunction against the Appellant (Original Defendant) could not be sustained. He also submitted that the sole ground given by the Trial Court for allowing Exhibit-5 is that the Respondent (Original Plaintiff) had paid almost Rs.4,00,00,000/- to the Appellant (Original Defendant), and therefore after obtaining the DRC from the Competent Authority, the Appellant (Original Defendant) would be in a position to create third party rights/interests or sell or transfer or alienate the TDR on account of which the Respondent (Original

Plaintiff) would suffer irreparable loss. This finding, in his submission, was an erroneous finding, inasmuch as, the Appellant (Original Defendant) had issued cheques to the Respondents (Original Plaintiffs) towards refund and had also given their irrevocable consent to encash them which option had not been exercised by the Respondent (Original Plaintiff). In view of the aforesaid, he submitted that the impugned order has completely failed to take into consideration the relevant facts and thus is liable to be set aside. He also sought to place reliance on the decision of **Narendra Hirawat and Company Vs. Sholay Media Entertainment Pvt. Ltd. and another**[1], passed by this Court to contend that an agreement which by very nature is determinable, cannot be enforceable through specific performance. He submitted that in the facts of the present case, on the reading of clauses 4A and 4B of the MOU, it was clear that the MOU was determinable in nature and hence specific performance of that MOU could not be insisted upon by the Respondent (Original Plaintiff).

7. *Per contra*, learned counsel for the Respondent (Original Plaintiff) submitted that the impugned order has been rightly passed by the Trial Court and the MOU was a contract which could be terminated only by the Respondent (Original Plaintiff) under Clauses 4A and 4B of the said MOU. He submitted that Clause 4B of the MOU specifically gave a right to the Respondent (Original Plaintiff) to terminate the MOU. He submitted that in the event the Appellant (Original Defendant) was unable to obtain the DRC within the stipulated time i.e. on or before 13th October 2022, then the Respondent (Original Plaintiff) would

1 2020(5)-Mh.L.J.-173

have option to claim from the Appellant (Original Defendant) compound interest for the delayed period @ 12% p.a. on the amount paid by the Respondent (Original Plaintiff) to the Appellant (Original Defendant) and the said amount of interest would be deducted from the balance consideration to be paid by the Respondent (Original Plaintiff) to the Appellant (Original Defendant). He further submitted that Clause 4B gives a right to the Respondent (Original Plaintiff) to terminate the agreement and in that event the Appellant (Original Defendant) would unconditionally and without any delay refund the entire amount paid by the Respondent (Original Plaintiff) to the Appellant (Original Defendant) as per terms set out in the said clause. He further submitted that since the amount of Rs.4,00,00,000/- had already been paid to the Appellant (Original Defendant), there was a high chance that the Appellant (Original Defendant) would create third-party rights after obtaining DRC from the Competent Authority. In view thereof, he submitted that the impugned order had rightly restrained the Appellant (Original Defendant) from creating any third-party rights in respect of 5,200 sq. mtr. of TDR till disposal of the suit.

ANALYSIS AND FINDINGS

8. I have considered the rival submissions and perused the impugned order along with relevant documents. At the very outset, since the dispute revolves around the interpretation of the clauses of the MOU dated 13th July 2022 as to whether the same would be a contract which would be specifically performed, it would be pertinent to reproduce the relevant clauses of the said MOU.

> **"4A) It has been agreed by and between the parties that, in case this agreement is cancelled due to any reason whatsoever or due to lapse of time period agreed**

herein to procure the proposed DRC, the Party of the First Part shall issue two cheques towards the Security towards the re-payment of the amount tendered by the Second Party as mentioned hereinabove para 3(a)and 3(b), on execution of these presents as follows which shall be kept with the Party of the Second Part :
A) Demand Draft (DD) bearing no.________ dated ______ amount of Rs.2,50,00,000/- to be handed over at the time of present execution hereof;

B) Cheque bearing no._____ dated __________ amount of Rs.1,50,00,000/- to be handed over at the time of receipt of 2nd Part/Installment Payment;

#NOTE : The Party of the First Part has accorded its irrevocable consent to deposit the said cheques without any further written or oral consent. However, the said cheques shall be returned on execution of the proposed Deed of Transfer as decided between the parties.

4B) Without prejudice to any of the rights of the Party of the First Part/Transferor herein or as available in law the Party of the First Part shall in the event of failure to obtain the Development Right Certificate (DRC) within the stipulated time as stated herein i.e. on or before 30/09/2022 OR due to any circumstances if the Party of the First Part/Transferor fail to obtain the said proposed T.D.R on or before 30/09/2022 then, the Party of the Second Part/Proposed Transferee shall have option to claim from the Party of the First Part compound interest for the delay period @ 12% per annum on the amount paid by the Party of the Second Part to the Party of the First Part under these presents, which amount of interest shall be deducted from the balance consideration to be paid by the Party of the Second Part/Proposed Transferee under these presents OR the Party of the Second Part/Proposed Transferee can opt to terminate this Agreement. In the circumstances, if the Party of the Second Part/Proposed Transferee opt to terminate this Agreement then the Party of the First Part/Transferor shall unconditionally and without any delay refund the entire amounts paid by the Proposed Transferee/Party of the Second Part to the Party of the First Part/ Transferor under these presents along with compound interest to be calculated @ 12% per annum from the date of payment of the said amount by the Proposed Transferee/Party of Second Part to the Party of the First Part/Transferor till the date of repayment of the said amounts by the Party of the First Part to the proposed Transferee/Party of the Second Part and till such amounts are fully repaid the Proposed Transferee/Party of the Second shall have charge for the said amounts on the other assets and properties of the First Part/Transferor herein."

(emphasis supplied)

9. On a plain reading of the aforesaid clauses it is clear that both the clauses have to be given a holistic interpretation and cannot be read in isolation with each other. Clause 4-A specifically envisages that it is agreed by and between the parties that in case this agreement is cancelled due to any reason whatsoever or due to lapse of time period agreed therein to procure the proposed DRC by the Appellant (Original Defendant), the Appellant (Original Defendant) would issue

two cheques towards security towards repayment of the amount paid by the Respondent (Original Plaintiff) as mentioned in paragraph 3(a) and 3(b) of the said MOU. It further contemplates that the said amounts would be kept by the Respondent (Original Plaintiff) and that the Appellant (Original Defendant) would accord irrevocable consent to deposit the said cheques without any written or oral consent. The only condition being that those cheques would be returned on execution of the proposed deed of transfer as decided between the parties. Thereafter clause 4B stipulates that if the DRC does not come on or before 13th October 2022, then the Respondent (Original Plaintiff) would be entitled for compound interest for the delay period @ 12% p.a. on the amount paid and if the Respondent (Original Plaintiff) opts to terminate the MOU, then the Appellant (Original Defendant) will be duty bound to unconditionally refund the entire amount to the Respondent (Original Plaintiff).

10. Therefore, on a reading of the aforesaid two clauses, it is clear that the MOU is of such a nature that the same is determinable, inasmuch as, the same would be inherently determinable as the parties do not have to assign any reason to terminate the same and the terms of termination are envisaged in the contract itself. Once that being the position, then the provisions of the Act cannot be pressed into to specifically perform the obligations contained therein. I am, therefore, in agreement with the contention as canvassed by learned counsel for the Appellant (Original Defendant) that the impugned order does not consider the effect of clause 4A while interpreting the provisions of Clause 4B and the Trial Court has not applied its mind or come to a prima facie view regarding specific

performance of the MOU dated 13th July 2022. This to my mind goes to the root of the matter and had to be adjudicated upon by the Trial Court before granting injunction. The provisions of Order XXXIX, Rule 1 of CPC are to protect the property in dispute if it is in danger of being wasted, damaged or alienated by any party to the suit or wrongfully sold in execution of a decree or if the Defendant threatens or intends to remove or dispose of his property with a view to defrauding his creditors and that the Defendant threatens to dispossess the Plaintiff or otherwise cause injury to the Plaintiff in relation to any property in dispute in the suit. In the facts of the present case, there is no existence of the property or a threat of dispossessing the Respondent (Original Plaintiff) from any property and hence question of exercising the jurisdiction under Order XXXIX, Rule 1 of CPC by the Trial Court without first giving its prima facie view on the issue of enforceability of the MOU dated 13th July 2022, is an incorrect approach adopted by the Trial Court.

11. I am further of the view that reliance by learned counsel for the Appellant (Original Defendant) on the decision in case of **Narendra Hirawat and Co. (supra)** is correct to contend that the MOU is a determinable document by its very nature and hence specific performance thereon cannot be granted. The relevant paragraphs of the aforesaid decision are reproduced below:

> "8. The question now is whether the plaintiff deserves any interim, protection pending such trial. Dr. Saraf, for defendant No. 1, submits, and he is joined in this by Mr. Andhyarujina, who appears for defendant No. 2, that the suit agreements being in the nature of a licence, and accordingly, by their very nature being determinable, their specific performance cannot prima facie be granted. Learned Counsel rely on the provisions of section 14(d) of the amended Specific Relief Act. (Amended section 14(b) is in pari materia with old section 14(1)(c) of the un-amended Specific Relief Act.) The word "licence" used in the suit agreements is not some special term of art so as to give rise to any particular consequence, as a

matter of law, so far as revocability or determinability of the agreements is concerned; the consequence would rather depend on the agreements read as a whole. Apropos the agreements and having regard to the particular term of determination thereunder, Dr. Saraf and Mr. Andhyarujina argue that the contract is clearly determinable and if that is so, no specific performance is permissible. Learned Counsel rely on the cases of Indian Oil Corporation Ltd. vs. Amritsar Gas Service, (1991) 1 SCC 533, Jindal Steel and Power Limited vs. M/s SAP India Pvt. Ltd., (2015) 221 DLT 708 and Spice Digital Ltd. vs. Vistass Digital Media Pvt. Ltd., 2012 MhLJ Online 105 (2012) 114 (6) Bom LR 3696. Relying on these cases, it is submitted that since the subject agreements contain a termination clause, they must be treated, as, by their very nature, determinable and accordingly, no specific performance should be granted. Learned Counsel are not right there. **When the relevant provision section 14(d) of the Specific Relief Act] uses the words "a contract which is in its nature determinable", what it means is that the contract is determinable at the sweet will of a party to it, that is to say, without reference to the other party or without reference to any breach committed by the other party or without reference to any eventuality or circumstance. In other words, it contemplates a unilateral right in a party to a contract to determine the contract without assigning any reason or, for that matter, without having any reason. The contract in the present case is not so determinable; it is determinable only in the event of the other party to the contract committing a breach of the agreement. In other words, its determination depends on an eventuality, which may or may not occur, and if that is so, the contract clearly is not "in its nature determinable".**

9. The cases cited by learned Counsel for the defendants are clearly distinguishable on facts. In Indian Oil Corporation (supra), the contract (clause-28 of the distributorship agreement) gave right to either party to determine the agreement by giving 30 days' notice and the only relief that was permissible in such a case was award of a compensation for the period of notice, that is to say, 30 days. It is in the context of this clause that the Supreme Court held that the respondent before it (original plaintiff) was not entitled to restoration of its distributorship terminated by the appellant (original defendant) but only entitled to compensation for loss of earning for the notice period of 30 days, since such notice was not given by the defendant to the plaintiff. Likewise, in Jindal Steel and Power Ltd. (supra), the relevant clause of the contract gave right to the respondent before the Court (original defendant) to terminate the licence after giving 30 days' notice to the petitioner (original plaintiff). In pursuance of this clause, a learned Single Judge of Delhi High Court held that the contract was determinable by its very nature. In Spice Digital Ltd. (supra), the relevant contract (clause 6.2 of the agreement before the Court) gave right to either party to the contract to terminate the agreement upon a 30 days' prior written notice to the other party without assigning any reason for such termination. Once again, it is in the context of such unilateral right of termination that the Court came to a conclusion that the contract was, by its very nature, determinable and no specific performance could be claimed. All these cases are clearly distinguishable and do not support the defendants' case here.

10. I am fortified in the view I am taking by a Division Bench judgment of Kerala High Court in the case of T. O. Abraham vs. Jose Thomas, (2018) 1 KLJ 128. The learned Judges, in paragraph-18 of the judgment, considered the question of determinability "in its nature" of a contract in the following words:

"The question thus before us is whether this contract is determinable. Before we answer this, we deem it necessary to understand clearly what is meant by determinable contracts. In the now repealed Specific Performance Act, 1877, section 21(d) stipulated that a contract, which in its nature is revokable, cannot be enforced to unenforceable contracts. The provision of the old Act corresponds to section 14(1)(c) of the Specific Relief Act, 1963 (which will, hereinafter be referred to as the "Act' for convenience), the only difference between the two being that the word 'revokable' has been substituted with the word 'determinable. This was done because the word 'revokable' was inaccurate and it was felt that a more accurate word for it be substituted. Therefore, it is indubitable that a contract which in its nature is revokable or determinable, as described in the provisions of the sections afore referred, is definitely not enforceable through specific performance. ***For a contract to become determinable, it has to be first shown by the defendant that its clauses and terms are such that it would become possible for either of the parties to determine and terminate it without assigning any reason. The words used in section 14(1)(c) is 'inherently determinable'. The effect of the use of the word 'inherently' in the section is to make it unambiguously clear that a contract which can be terminated by either of the parties on their own will without any further reason and without having to show any cause, would ones are inherently determinable. However, if an agreement is shown to be determinable at the happening of an event or on the occurrence of a certain exigency, then it is incluctable that on such event or exigency happening or occurring alone that the contract would stand determined. In order to see if a particular contract is inherently determinable or otherwise, we have to first see whether the parties to the said contract have the right to determine it or to terminate it on their own without the junction of any other party and without assigning any reason. This is akin to a partnership at will, where one of the partners can notify the others of his intention not to continue in the said firm and the partnership itself then dissolves. The analogy we think is appropriate because a contract, to be inherently determinable, will have to specifically provide competence to the parties to it to terminate it without assigning any reason and merely by indicating that he does not intend to comply with the same."***

(emphasis supplied)

12. This Court in the case of **Chetan Iron LLP vs. NRC Ltd.**[2] in an Arbitration Petition which also involved an issue on specific performance of the contract has held that a contract which by its very nature is determinable, specific performance thereof cannot be insisted upon. Relevant paragraphs of the aforesaid decision are reproduced below-

18. **Having heard learned Counsel for the parties and having perused the record, it is quite clear that the contract as awarded by the respondent to the petitioner has not been terminated and/or that the contract is partly performed by the petitioner by lifting some material on payment of the price to the respondent. However, even in these circumstances, when a question arises before the Court, to consider granting of reliefs in the nature as prayed for by the petitioner, in my opinion, the basic**

2 2022 SCC OnLine Bom 159

consideration for the Court would be to examine as to what is the nature of the contract between the parties. Perusal of the contract and the general terms and conditions as appended thereto, more particularly, Clause (5) thereof, clearly indicate that the parties have provided that either of the parties can terminate the contract with a fifteen days notice to be served on the other party. Further such clause also provides for the validity of the contract up to 30 June, 2022. It is thus clear that nature of the contract in question is determinable. If that be so, then Mr. Nankani would be correct in his contention that the provisions under sub-clause (d) of section 14 of the Specific Relief Act which provides that a contract which is in its nature determinable, cannot be specifically enforced becomes applicable.

19. In the context of section 14(1)(d) of the Specific Relief Act, another provision which would become relevant is section 41 of the Specific Relief Act, which provides as to when an injunction would be refused or when it cannot be granted. Section 41(e) provides that an injunction cannot be granted by the Court to prevent the breach of a contract, the performance of which would not be specifically enforced. Thus once the nature of the contract itself is such, that it cannot be specifically enforced, section 41(e) of the Specific Relief Act would stare at the petitioner when the petitioner claims a relief of an injunction. Certainly, the principles which are embodied in section 14(d) read with section 41(e) of the Specific Relief Act are applicable even when the Court considers an application under section 9 of the Act for interim measures. It is a settled principle of law that although section 9 is a remedy available to the parties having an arbitration agreement between them, however, when a relief for grant of an injunction is prayed for, certainly the Court would be guided by the principles as contained in the Specific Relief Act read with the provisions of Order 39 of the Code of Civil Procedure.

20. In the above context, it would be apposite to consider the position in law. In the celebrated commentary of Pollock and Mulla on "The Indian Contract Act and the Specific Relief Act", (Nth Edn, Volume II, page 1939), the views of the learned authors on 'determinable contracts' being not enforceable as per the provisions of section 14(1) (c)(pre 2018 amendment) of the Specific Relief Act need to be noted, which read thus:

> "Clause (c) : Determinable Contracts
>
> ……….
>
> A contract, which is in its nature revocable, or determinable as described in Specific Relief Act, is not enforceable by specific performance. <u>Specific performance is not decreed if the defendant would be entitled to revoke or dissolve a contract when executed, as in the case of a contract containing an express power of revocation, since it would be idle to do that which might instantly be undone by one of the parties,</u>
>
> (emphasis added)

21. The following decisions would throw light on the principles of law the Courts have consistently followed in refusing injunctory reliefs and specific performance of the contract, when the nature of the contract is determinable.

In Indian Oil Corporation Ltd. v. Amritsar Gas Service, (1991) 1 SCC 533 the Supreme Court was considering a dispute between the parties as arising under a distributorship agreement which, permitted either party to terminate the agreement by 30 days' notice to the other party without assigning any reason for the termination. A dispute had arisen between the parties on wrongful termination of the agreement. The dispute was referred to arbitration. The arbitral tribunal in its award granted restoration of the distributorship as one of the reliefs to the claimant. This relief granted by the arbitral Tribunal was challenged by the appellant under

section 34 asserting the applicability of section 14 (1)(c) of the Specific Relief Act contending that when the arbitral tribunal having noted that the contract was determinable, it could not have proceeded to grant a relief of specific performance of the contract. In such context, the Supreme Court held that the contract in question by its nature was determinable, hence granting the relief of restoration of the distributorship was contrary to the mandate of section 14(1)(c) of the Specific Relief Act. In paragraph 12 it was observed thus:—

> "12.........The finding in the award being that the Distributorship Agreement was revokable and the same being admittedly for rendering personal service, the relevant provisions of the Specific Relief Act were automatically attracted. **Sub-section (1) of section 14 of the Specific Relief Act specifies the contracts which cannot be specifically enforced, one of which is 'a contract which is in its nature determinable'. In the present case, it is not necessary to refer to the other clauses of sub section (1) of section 14, which also may be attracted in the present case since clause (c) clearly applies on the finding read with reasons given in the award itself that the contract by its nature is determinable. This being so granting the relief of restoration of the distributorship even on the finding that the breach was committed by the appellant-Corporation is contrary to the mandate in section 14(1) of the Specific Relief Act and there is an error of law apparent on the face of the award which is stated to be made according to 'the law governing such cases.' The grant of this relief in the award cannot, therefore, be sustained.**
>
> (emphasis added)"

22. In Spice Digital Ltd. v. Vistaas Digital Media Pvt. Ltd., 2012 SCC OnLine Bom 1536 : 2012 Mah LJ OnLine 105, learned Single Judge of this Court was considering an appeal filed under section 37 of the Act against an order of the arbitral tribunal passed under section 17 of the Act, refusing a relief of interim injunction to the applicant on the ground that the contract between the parties was determinable. It was held that the tribunal was right in refusing to grant injunction under section 17 of the Act, as the same would have amounted to granting a relief against the provisions of the Specific Relief Act. The Court, accordingly, rejected the appeal. Mr. Justice R.D. Dhanuka speaking for the bench observed thus:

> "20. In my view, the arbitral tribunal was right in its prima facie view that clause 6.2. read with clause 12.1 shows that the contract is determinable during the lock in period. Section 14(1) (c) provides that the contract which in its nature is determinable, cannot be specifically enforced. The Judgments of the Supreme Court in the case of Indian Oil Limited (supra), Delhi High Court and also the judgment of the Supreme Court in the case of Cox and Kings are clearly applicable to the facts of this case. **In my view, the arbitral tribunal has interpreted the terms of the contract and has recorded prima facie finding that the contract is determinable and thus no specific performance of such contract can be enforced in view of section 14(1)(c). This interpretation of the arbitral 'tribunal is a possible interpretation and thus no interference is warranted at this stage.**
>
> **21. In my view, the injunction sought by the Appellant under section 17 of the Arbitration Act, 1996 for the contract which is terminated even according to the appellant, such injunction is statutorily prohibited**. In my view, at the interim stage, the arbitral tribunal while deciding application under section 17 and the court deciding application under section 9 of the Arbitration Act, 1996 cannot continue operation of such determinable contract or the same having been terminated otherwise it would amount to re-writing the contract. In my view the arbitral tribunal was thus right in refusing to grant injunction under section 17 of the Arbitration Act, 1996. Even otherwise, the arbitral tribunal has given a

finding of fact after considering the facts, provisions of the agreement and the provisions of Specific Relief Act and thus no interference is warranted by this court with such finding of fact recorded by the arbitral tribunal at this stage."

23. In Mittal Services v. Escotel Mobile Communication Ltd., AIR 2003 Del 410, learned Single Judge of Delhi High Court in the context of a franchisee agreement, observed that the prayer of the plaintiff therein, that the defendant be restrained by an injunction from appointing another franchisee in the concerned territory, could not have been granted, as the contract in the said case contained a clause which provided for termination of the agreement with a ninety days advance notice in writing. It was also observed that the agreement was for a specific period of five years and that too determinable by any party, by serving a 90 days advance notice. In these facts, the Court observed that section 41(e) of the Specific Relief Act would get attracted which provided that no injunction can be granted to prevent breach of the contract, the performance of which is not specifically enforceable. It was observed that as the agreement in its nature was determinable by giving a 90 days advance notice in writing, the agreement obviously was one which could not have been specifically enforceable. The Court also referring to the decision of the Division Bench of the Delhi High Court in Rajasthan Breweries Ltd. v. Stroh Brewery Company, AIR 2000 Del 450 wherein the Division Bench had upheld the findings of the learned Single Judge which were to the effect that when an injunction prayed for was statutorily prohibited on a conjoint reading of section 41 and 14(1)(c)1 of the Specific Relief Act, as the contracts in question were determinable in nature, no injunction could be granted, and this would be the mandate of law. I am in complete agreement with a view taken by the learned Single Judge of this Court in Spice Digital Ltd. (supra) as also the decision of the learned Single Judge of the Delhi High Court in Mittal Services (supra).

24. The position in law as laid down in the above decisions is fully applicable to the facts of the present case which in my clear opinion, dis-entitles the petitioner for any reliefs as prayed for. It needs to be observed that an exception to section 41(e) of the Specific Relief Act as carved out in section 42 of the Specific Relief Act is also not applicable in the facts of the present case. In any event the petitioner cannot be granted any relief applying the well settled principle that an interim relief can be granted only in aid of and ancillary to the main relief. It is prima facie seen that a relief of specific performance or an injunction cannot be granted to the petitioner, hence, a relief of a temporary injunction as an interim measure cannot be granted to the petitioner, pending the arbitral proceedings.

25. Now to discuss the reliefs as prayed for by the petitioner, it is seen that the reliefs as prayed for, in terms of the prayer clause (a) and (d) are in the nature of a final relief, that is, they are as good as in the nature of granting a specific performance of the contract, which for the aforesaid reasons, certainly cannot be granted. Insofar as prayer clause (b) and (c) are concerned, they are in the nature of an injunction which cannot be granted to the petitioner in the context of the contract in question, which cannot be ordered to be specifically performed.

(emphasis supplied)"

13. In the facts of the present case, the MOU by its very nature being determinable, the specific performance of the same cannot be insisted upon. The

Trial Court has not rendered any finding in respect thereof and has proceeded to straight away grant injunction under the provisions of Order XXXIX, Rule 1 of CPC which to my mind is an incorrect approach adopted by the Trial Court. Considering the aforesaid facts and settled position of law, I am of the view that the Trial Court has not correctly applied the settled principles governing grant of temporary injunction and not given a prima facie view on the contentions as raised by the Appellant (Original Defendant). Non granting of injunction in respect of the property which is not in existence, would not cause any harm or loss to the Respondent (Original Plaintiff) and balance of convenience therefore is in favour of the Appellant (Original Defendant).

14. I find, therefore, that the impugned order has been passed without appreciating the facts and law and therefore, the impugned order is not sustainable and consequently deserves to be quashed and set aside. Hence, I pass the following order:

ORDER

(i) The impugned order dated 14th February 2025 passed by the 5th Joint Civil Judge, Senior Division, Pune below Exhibit-5 in Special Civil Suit No.387 of 2024 is quashed and set aside;

(ii) The learned 5th Joint Civil Judge, Senior Division, Pune is directed to decide the pending suit as expeditiously as possible and in accordance with law;

(iii) The Appeal from Order stands allowed in the aforesaid terms. No costs.

(iv) Interim Application No.4389 of 2026 does not survive and stands disposed of.

(AARTI SATHE, J.)