IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER (F) NO.662 OF 2023
WITH
CIVIL APPLICATION (F) NO.663 OF 2023

Peter Fernandes
aged 53 years, son of late Camilo
Fernandes, Businessman, Indian
National, Resident of H.No.1403,
Bamon Vaddo, Anjuna, Bardez,
Goa - 403 509 **...Appellant**

Versus

1. Mark Cordeiro,
   Aged 47 years, son of late
   John Joseph Cordeiro,
   married, businessman.

2. Sarah Cordeiro,
   aged 44 years, wife of Marc
   Cordeiro, married, housewife,

   both Indian Nations,
   residing at H. No.499,
   Calizor, Moira, Bardez, Goa - 403 507.

3. Kara Homes
   A partnership firm registered
   under The Indian Partnership
   Act, 1932, With registered
   Office at E-5, Kailash Colony,
   Second Floor, New Delhi - 110 048.

   Represented by its Partnership

3A. Mr. Kewal Garg, Son of Mr.
   Chiranji Lal Garg, aged 53 years,
   And

3B Mr. Shikhir Dhingra,
aged 33 years,
Both Indian Nations, having
Office at E-5, Kailash Colony,
Second Floor, New Delhi - 110 048. **...Respondent**

....

Adv. Deep Shirodkar for the Appellant.

Adv. Parag Rao with Adv. Akhil Parrikar and Adv. Sommaya Drago for Respondent Nos.1 & 2.

Adv. Somnath Karpe with Adv. Abhishek Sawant for Respondent No.3.

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CORAM : PRAKASH D. NAIK, J.

Date of Reserving the Judgment : 2nd NOVEMBER 2023.

Date of Pronouncing the Judgment : 25th APRIL 2024.

JUDGMENT :

1. This appeal is preferred under order XLIII, Rule 1(r) of the Code of Civil Procedure, 1908, challenging the order dated 4th January 2023 passed by the learned Ad-hoc Civil Judge Senior Division Mapusa in Special Civil Suit No. 25/2022/B.

2. Appellant is the original Plaintiff in Special Civil Suit No. 25/2022/B. The respondents are the original Defendants. The suit was filed for seeking specific performance of the oral agreement by which the Defendant Nos.1 & 2 in exchange for the rights of the Plaintiff in five flats and another property that were taken over by the Defendants, had agreed to give the Plaintiff one 3 bedroom

villa in the first suit property and 400 sq.Mtrs. plot in the second suit property. The Plaintiff has also prayed for cancellation of Sale Deed executed by the said Defendant Nos. 1 & 2 in favour of the Defendant No.3 in respect of first suit property, during the subsistence of pre existing agreement in favour of the Plaintiff.

3. The suit filed by the Appellant refers to the details of the transaction between the Plaintiff and Defendant Nos.1 & 2 and the transaction between Defendant Nos.1 & 2 and Defendant No.3. The

4. factual matrix reflected in the plaint filed by the Appellant can be narrated in a concise form as follows:

(i) The suit was filed for specific performance, permanent injunction and cancellation of sale deed dated 7th September 2021 registered in office of Sub-Registrar and for specific performance of the agreement between the Plaintiff and Defendant Nos.1 & 2 and to direct them to comply with there part of the agreement entered into in July 2020 and to execute the Sale Deed in favour of the Plaintiff in relation to the villa and plot and to restrain the Defendants from carrying on any construction or changing the status quo and/or creating third party rights in respect of the suit properties pending the final disposal of the suit.

(ii) The Plaintiff claimed that there was an oral agreement between Defendant Nos.1 and 2 on 2nd July 2020 and that he is entitled for specific performance of the oral contract.

(iii) The Plaintiff and Defendant Nos.1 & 2 were having business relations. They jointly purchased the property at Mapusa vide Sale Dead dated 18th November 2011 for Rs. 45,00,000/- out of which the Plaintiff contributed an amount of rupees 25,00,000/- and Defendant No.1 contributed Rs.20,00,000/-.

(iv) The Plaintiff purchased the property at Nachinola bearing Survey No. 21/1 for Rs.1.5 Crores for which brokerage was paid to Defendant No.1.

(v) On 24th December 2012, the Plaintiff and Defendant Nos.1 & 2 entered into Development Agreement with developer for MICASA project wherein the Plaintiff was to get 2 regular flats and one studio flat and a monetary consideration of Rs.30,00,000/-.

(vi) The Plaintiff and Defendant Nos.1 & 2 signed a Memorandum of Understanding ("MOU") dated 21st January 2013 with the owner Mr. Julian Nazareth with respect to two properties situated at village Nachinola

bearing survey No. 34/10 and 67/10 and the Plaintiff made part payment of Rs. 20,00,000/- to Christopher Nazareth.

(vii) The parties decided to revise the terms of the Development Agreement of MICASA project dated 24th December 2012 and in the year 2013, Agreement for Development dated 31st August 2013 was executed whereby it was mutually agreed upon that the monetary consideration of Rs.60,00,000/- would be reduced to Rs.45,00,000/- and the built-up area and flats were increased from 4 flats with 370 Sq. Mtrs. super built up area to 5 flats with 480 Sq. Mtrs. super built-up area. The Defendant No.1 represented the Plaintiff in the Agreement for Development dated 31st August 2013 as his attorney. The Defendant Nos.1 & 2 sold the entire ownership of the Plaintiff in the flats in MICASA project. The Defendant Nos.1 & 2 took over the rights of Plaintiff in the Memorandum of Understanding dated 21st January 2013 in respect of Nachinola property and subsequently sold the same as confirming parties to M/s. Takshila Education Society.

(viii) In-2018 the Defendant No.1 along with his associate

attempted to purchase first Nachinola property by entering into Memorandum of Understanding dated 18th July 2018 after paying a consideration of Rs.30,00,000/- out of which the Defendant No.1 paid a sum of Rs.10,00,000/-. The Defendant No.1 and his associate failed to pay anything and thereby abandoning the Memorandum of Understanding dated 18th of July 2018.

(ix) In-2019, the Defendant No.1 along with his two partners approached the Plaintiff to purchase the property bearing survey No. 21/1 that was under litigation for consideration of Rs.5.40 crores. The Memorandum of Understanding dated 9th November 2019 was executed by advancing a sum of Rs.90,00,000/- to the Plaintiff. On account of their inability to handle the pending litigation and failure to pay the balance consideration, they abandoned the Memorandum of Understanding in March 2020 and in the month of July 2020 demanded refund of sum of Rs.90,00,000/- paid to the Plaintiff.

(x) The Plaintiff claimed that the Defendant No.1 had taken a lot of money from him and sold his shares without giving anything in return except promises and assurances.

The Plaintiff informed the Defendant No.1 that he would refund the amount of Rs.90,00,000/- only when the Defendant Nos.1 & 2 would execute a written document defining in clear terms what properties would be given to to the Plaintiff in exchange for all the earlier sales of the Plaintiff's share appropriation of the sale proceeds by the Defendant Nos. 1 & 2.

(xi) The Defendant Nos.1 & 2 and his partners agreed to the same and offered the Plaintiff 3 bedroom Villa in the development project consisting of 11 identical villas which was to come up in the first suit property with corresponding undivided rights in that property and a plot admeasuring 400 Sq. Mtrs. surveyed under No. 54/15-A in the second suit property.

(xii) The offer was in full and final settlement, superseding all previous offers. The Plaintiff claimed that the Defendant No.1 then handed over a copy of the gift deed dated 1st July 2013, approval plan showing 11 identical villas with respect to the first suit property and the Deed of Sale dated 14th February 2018 with respect to the second suit property, thus confirming that there was

consensus ad-idem with respect to the concluded contract. This contract was finalized in 3rd week of July 2020 in a meeting held at the residence of the Plaintiff in presence of Defendant Nos.1 & 2. Based on the oral agreement, the oral contract concluded in July 2020.

5. The Defendant No.3 filed a written statement on 25th April 2022. The Defendant No.1 filed Written statement on 13th June 2022.

6. The Plaintiff preferred an application for temporary injunction before the trial court under order 39 read with section 151 of the Code of Civil Procedure on 9th March 2022. The Defendant No.1 filed reply to the application for injunction on 4th May 2022. The Defendant Nos.1 & 2 filed reply to the injunction application on 4th May 2022 and Defendant No.3 filed reply to the injunction application on 25th April 2022. The Defendant No.1 filed rejoinder to reply. The Plaintiff filed rejoinder to reply of Defendant Nos. 1, 2 & 3. The Defendant Nos.1 & 2 filed rejoinder on 10th of June 2022 and Defendant No.3 filed sur-rejoinder on 14th June 2022. Written arguments were filed at the instance of Plaintiff in support of the application for injunction.

7. The learned Civil Judge vide order dated 4th January 2023 rejected the application for temporary injunction. The court held that no irreparable loss and injury will be caused to the Plaintiff if temporary injunction is not granted as the Plaintiff has failed to establish concluded oral contract. In case the Defendant Nos.1 & 2 owe any money to the Plaintiff, then the Plaintiff can be adequately compensated in terms of money. The Defendant No.3 has commenced the project of construction of villa in the name and the style of "ZED POINT BY ZAAVI" in the suit property upon obtaining necessary approvals and licenses from the competent authority. The Defendant No.3 has spent substantial amount on the construction. The Defendant No.3 has commitment to sell 4 villas in respect of which the purchasers have made advance payments. The Defendant No.3 is required to complete the project within the stipulated time. Therefore irreparable loss and injury will be caused if injunction is granted. It was also observed that the balance of convenience does not tilt in favour of the Plaintiff as the Plaintiff did not establish existence of a concluded oral contract.

8. The submissions of learned Advocate for the Appellant Mr. Deep Shirodkar can be summarized as under:

i. The impugned order is perverse on account of non consideration of evidence on record; findings are based on no

evidence and findings are contrary to law.

ii. In the year 2013, the Respondent Nos.1 & 2 had taken over the rights of the Appellant in five flats in the MICASA project, which was constructed by the Developer pursuant to the Development Agreement dated 24.12.2012 as revised by the Agreement dated 31.08.2013 and the rights of the Appellant in the second Nachinola property and promised to give the Appellant good clear title plots in return. The Appellant was made to wait for the property in the third week of July-2020, when the Appellant informed the Respondent Nos.1 & 2 and the two associates of Respondent No.1 that the amount of Rs.90,00,000/- which was to be returned to them after they had abandoned the MOU dated 09.11.2019 and demanded the return of the amount, would be retained until the Respondent Nos.1 and 2 entered into a written document, upon which the Respondent Nos.1 and 2 agreed to give the Appellant the 3 bedroom villa in the 11 villa development project along with corresponding built-up area in the first suit property and 400 Sq. Mtrs. partitioned plot in the second suit property in exchange for the rights of the Plaintiff which were taken over by Respondent Nos.1 & 2.

iii. The Appellant had produced on record, the approval plan of the 11 villa development project consisting of identical Villas; Gift Deed dated 01.07.2013 in respect of the first suit property, Sale Deed dated 14.02.2018 of the second suit property; Deeds of Sale and Agreements for Sale by which the Respondent Nos.1 & 2 sold five flats in which the Appellant had half share which was taken over by the Respondent Nos.1

& 2; Sale Deed dated 08.11.2016 by which the second Nachinola property was sold by the owner with Respondent Nos.1 & 2 and received Rs.57.50 Lakhs, which property is the subject matter of MOU dated 21.01.2013 by which the Appellant and the Respondent No.1 were to buy that property. The first three documents were given to the Appellant by Respondent Nos.1 & 2 upon entering into the oral contract and the 4th and 5th documents were procured by the Appellant in October-2021.

iv. The Respondent Nos.1 & 2 had tried selling the suit properties in March-2021 to which the Appellant had objected upon perusing the public notice and in August-2021 to the Public notice issued by Respondent No.3.

v. In reply to notice sent by Appellant to Respondent No.1 there was reference of oral contract between Appellant and Respondent Nos.1 & 2.

vi. The Respondent Nos.1 & 2 requested the Appellant not to file a suit and they would ensure that the villa and the plot is given to the Appellant. The Respondent Nos.1 & 2 admitted that the rights of the Appellant were taken over orally without any document in writing, however, contended that there was no such oral agreement and the accounts were squared off in the year 2013 in view of the fact that the Appellant owed Rs.41.25 Lakhs to Respondent No.1.

vii. The trial Court ignored the fact that the RERA portal of Respondent No.3 shows the estimated cost of the project as Rs.13,00,58,620/- and based on that the Appellant had shown that the value of the villa works out to Rs.83,62,692/-.

viii. The Sale Deed dated 14.02.2018 by which the Respondent No.1 purchased the second suit property, which shows that 1450 Sq. Mtrs. of the property was purchased for Rs.6.45 Lakhs. Thus, the 400 Sq. Mtrs. plot would be valued at about Rs.1.78 Lakhs. The findings of the trial Court that the valuation of the villa and plot is about 4 Crores and hence there is no consensus ad-idem on price are perverse.

ix. The approval plans of 11 villas development project shows that all 11 villas are identical with area of 226.91 Sq. Mtrs. each.

x. The findings of the Court about valuation of the villas and plot being 4 Crores is based on no evidence. The findings of the Court that without partition and approvals for construction of the villas, there could not have been a concluded contract is contrary to law. The law does not require that the permission should have first been obtained for concluding a contract. There is no bar to enter into the contract while approvals were yet to be obtained. The Appellant and Respondent No.1 were parties to the development agreement dated 24.12.2012 where the approvals were yet to be obtained.

xi. The squaring off theory is a moonshine defence. In August-2021, after the Appellant pointed out the oral contract there was no reply or denial by respondents. The defence of squaring off is false which is evident from inconsistent case of the respondents.

xii. The Appellant had stated in the rejoinder that the final cost of the villa works out to Rs.60-70 Lakhs. This is not

disputed by Respondent Nos.1 & 2. The Appellant had relied upon the documents of Respondent No.3 uploaded on RERA Portal which shows the valuation of villa would be about Rs.83 Lakhs.

xiii. The Appellant had invested Rs.25 Lakhs and the Respondent No.1 had invested Rs.20 Lakhs in the purchase of MICASA project. The Appellant had invested Rs.15 Lakhs in the MOU of the second Nachinola property. The Respondent No.1 & 2 made property of Rs.1.83 Lakhs by sale consideration of 5 flats and monetary consideration of Rs.30 Lakhs and Rs.57.50 Lakhs total into Rs.2.70 Crores and the Appellant had received Rs.15 Lakhs.

xiv. It is unbelievable that the two associates of Respondent No.1 would agree to their 60 Lakhs being retained until the written agreement was executed. There has been no demand by said Associates for money of Rs.90 or 60 Lakhs and no steps taken after the reply to their notice dated 21.07.2021 pointing out oral contract and retention of amount.

xv. Once it is clear that the case is that of an exchange in lieu of the rights of the Appellants in five flats and Second Nachinola property which were taken over by Respondent Nos.1 & 2, the question of the Appellant undertaking the exercise of valuation does not arise. When two parties enter into a contract in exchange for something, the party is given something in return, the same is a transaction which is agreed between the parties and question of undertaking actual valuation when what was taken over for the shares of the Appellant does not arise.

xvi. The Appellant has given elaborate details of the facts disclosed to him by Respondent No.2. The attempts made by Respondent No.2 to sell her grand uncle's property to the Appellant in 2012 and the rights of the Appellant which were taken over by her.

xvii. It cannot be said that the oral contract is a counterblast to notice dated 21.07.2021 issued by Respondent No.1. The Respondent No.3 came into existence in December-2020 and cannot say anything about the facts transpired before that and also about the contract between Respondent Nos.1 & 2 and the Appellant.

xviii. The Appellant has produced Technical Clearance Order dated 10.03.2021 obtained by Respondent No.2, which shows that the application for technical clearance with the plans was submitted to the Authority on 24.06.2019.

xix. The contention of Respondent no.3 that they have spent Rs.4 Crore is irrelevant. The question is whether he is a bonafide purchaser. The evidence on record does not indicate that the Respondent No.3 is bonafide purchaser. Due diligence and legal opinion would have been a must once the objection was received. The Respondent No.3 hurriedly concluded the transaction in spite of being aware about the pre-existing rights of the Appellant and the same would be defeated. He paid more than Rs.2.50 crores within span of two days of receipt of notice.

xx. There was no delay in filing suit. The delay was explained. There was death in the family. The Appellant was required to collect documents. There were assurances from

Respondent No.1 that the Villa would be given as promised.

xxi. After receipt of second notice, the Appellant realized that the Respondents were trying to backout from the assurances and filed a suit on 09.03.2022. The construction in the suit property had commenced in February-2022.

xxii. The Appellant had established balance of convenience and irreparable loss and injury.

xxiii. The matter involves pleading of two rival oral contracts by the Appellant and Respondent Nos.1 & 2. The case of Appellant is that in exchange for the rights of the Appellant in the five flats and the second Nachinola property which were taken over by Respondent Nos.1 & 2, they agreed to give one Villa and 400 Sq. Mtrs. plot and the Respondent Nos.1 & 2 have pleaded that the accounts were squared off in the year 2013 on execution of Power of Attorney. Thus, one component is oral contract, is common in as much as it is admitted that the rights of the Appellant had been taken over.

xxiv. The entire consideration in exchange for the plot and Villa to be given to the Plaintiff is admittedly received by Defendant Nos.1 and 2. Though the Defendant No.1 had already squared off in relation to the rights of the Plaintiff in MICASA property, there is no explanation whatsoever about taking over rights in the second Nachinola property.

xxv. The Defendants Nos.1 and 2 are in habit of entering into oral agreements. In respect of first suit property, the Defendant No.3 has pleaded that there was oral agreement with Defendant Nos.1 & 2 and in December 2020 and Rs.50 Lakhs were paid to them. One Achala Dewan had claimed

that she had oral agreement with Defendants Nos.1 and 2 to purchase first suit property at the rate of Rs.18,000/- per sq. Mtrs.

xxvi. The entire consideration is received by Respondent Nos.1 & 2 from the Appellant viz. the rights of the Appellant in the five flats and the second Nachinola property. The Respondent Nos.1 & 2 admitted that the rights have been taken over and pleaded that the accounts were squared off for an amount of Rs.41.25 Lakhs in 2013. The oral contract has bee proved.

xxvii. The Defendants Nos.1 and 2 has made false statements. 400 Sq. Mtrs. plot was worth Rs.50 Lakhs on conservative estimate by which the Respondent No.1 purchased the second suit property, itself shows that the 400 Sq. Mtrs. plot would be valued at the rate of Rs.1.78 Lakhs. Area and specifications of the villas differ and the approval plan produced by the Plaintiff shows that 11 Villas were identical. Claim of the Plaintiff was for Rs.99 Lakhs being due to him which was raised on 13.08.2021. Factually the letter dated 13.08.2021 does not make any claim for money. False statements are also made by Defendant No.3. According to him Sale Deed would have been executed in April-2021, but due to Covid Pandemic execution of Sale Deed was delayed. Defendant No.3 has denied that the pre-suit Notice dated 30.08.2021 was addressed to its Advocate. Plaintiff has subsequently produced the communications proving that notice dated 30.08.2021 was served on the Advocate for Defendant No.3. According to Defendant No.3 they were to

be in possession of the property in December-2020 upon payment of Rs.50 Lakhs. Sale Deed dated 07.09.2021 states that possession is handed over on 07.09.2021. According to Defendant No.3 Achala Dewan agreed to purchase three villas. The receipt produced by Defendant No.3 shows that only two villas. It was contended by Defendant No.3 that oral contract raised in reply dated 13.08.2021 was afterthought and counterblast in reply to notice dated 21.07.2021. The Plaintiff had filed objections in March-2021 that the Plaintiff had an oral contract for one villa and the plot much before the notice dated 21.07.2021.

xxviii. The Respondent No.3 is not a bonafide purchaser. The Respondent No.3 suppressed the fact that after it had paid Rs.50 Lakhs to the Respondent Nos.1 & 2 in December-2020, the Respondent Nos.1 and 2 were trying to sell the first suit property to a third party and the Respondent No.3 had objected to a public notice by E-mail dated 08.03.2021. The Respondent No.3 in its reply has stated that Sale Deed was delayed due to Covid and approval were to be obtained.

xxix. In the Sale deed dated 07.09.2021, the Respondent No.3 has stated that no objection was received in response to the public notice. Only after the objection of the Appellant were received, the Respondent No.3 has acted with undue haste by making payment of Rs.2,50,00,000/-. The Respondent No.3 did not disclose the pendency of litigation on the RERA portal.

xxx. There is not a single agreement entered into by Respondent No.3 with any party in relation to the Villas. If

the development is allowed to be continued, innocent purchasers would have entered into Agreements, Sale Deeds and will then claim to be a bonafide purchasers, citing conduct of Respondent No.3 of mentioning in the Sale Deed that no objections were received in response to the public notice and that the RERA portal did not disclose any details in the litigation section.

xxxi. The Appellant had made a case for grant of injunction. The Appellant demonstrated that the order and findings are perverse.

9. Learned Advocate for the Appellant has relied upon the following decisions:

i. **Kollipara Sriramuli Vs. T. Aswatha Narayana[1].**

ii. **Smt. Sohbatdei Vs. Deviplal and Ors[2].**

iii. **Julien Educational Trust Vs. Sourendra Kumar Roy[3].**

iv. **Maharwal Kewaji Trust Vs. Baldev Dass[4].**

v. **N. Srinivasa Vs. Kuttkukaran Machine Tools Ltd[5].**

vi. **Dev Prakash and Anr. Vs. Indra[6].**

vii. **Vijay A. Mittal and Ors. Vs. Kulwant Rai and Anr[7].**

viii. **Ratnavati and Anr. Vs. Ganshyamdas[8].**

ix. **Dorab Cawasji Warden Vs. Coomi Sorab Warden and**

1 AIR 1968 SC 1028.
2 (1972) 3 SCC 495.
3 (2010) 1 SCC 379.
4 (2004) 8 SCC 488.
5 (2009) 5 SCC.
6 (2018) 14 SCC 292.
7 (2019) 3 SCC 520.
8 (2015) 5 SCC 223.

Ors[9].

x. **MMS Investments Madurai and Ors. Vs. V. Veerapan and Ors[10].**

xi. **Bharatkumar Ishwarlal Miterani and Ors. Vs. Grishbhai Manubhai and Ors[11].**

10. Learned Advocate for Respondent Nos.1 and 2 Mr. Parag Rao submitted as under:

i. The Plaintiff's case is based on oral contract.

ii. The Plaintiff has not established the oral contract.

iii. The Plaintiff claims entitlement of villa and a plot of 400 Sq. Mtrs., the value whereof together would be about Rs.3.50 Crores on a conservative estimate. In a commercial project of 11 Villas the Plaintiff has not specified the number of villa out of the said 11 Villas specifications differ.

iv. The plans were approved on 10.03.2021 and claim of Plaintiff in respect of Villa in suit property No.1 without the approval or sanction for 11 Villas being there is on the face of it preposterous. There could never have been a concluded contract in respect of a project which had not received technical clearance.

v. By Sale deed dated 07.09.2021, the suit property 1 is sold to Defendant No.3 with no condition for retention of a villa.

9 (1990) 2 SCC 117.
10 (2007) 9 SCC 660.
11 Manu(Gj)1124/2013.

vi. The trial Court has rejected the application for injunction by assigning cogent reasons.

vii. Thee is no oral contract between the Plaintiff and Defendant Nos.1 and 2. The Plaintiff has approached the Court by suppressing the material facts and documents.

viii. There is no concluded oral contract between the Plaintiff and Defendant Nos.1 & 2 as alleged in the plaint.

ix. The claim of the Plaintiff/Appellant on a oral contract is false.

x. The claim of the oral agreement in July-2020 is on the face of it incredulous and unbelievable.

xi. The Plaintiff is a man of commerce and has been entering into agreements, MOU and Sale Deeds. The first Memorandum was entered into by the Plaintiff with Defendant No.1 in 2008. It is expected that the Plaintiff would enter into written agreement, if the same pertains to his entitlement to a villa.

xii. The execution of three written MOUs' of 2008, 2018 and 2019 would indicate that the parties are accustomed to and in the normal course of business, enter into written concluded contracts. This state of affairs belies the claim of Appellant regarding oral contract of July 2020 between him and the Defendants.

xiii. The apartments in project MICASA were sold by

Defendant No.1, pursuant to the Power of Attorney dated 30.03.2013 executed by Plaintiff in favour of Defendant No.1. The apartments were sold between 2015 to 2018. Pursuant to public notice issued by prospective purchasers. The Project MICASA was fully completed in 2016 and occupancy certificate was obtained in 2017.

xiv. The claim of the Appellant about the oral contract of July 2020 is on account of amounts due to him, but allegedly appropriated by Defendant No.1 in respect of project MICASA and Plaintiffs investment of Rs.15,00,000/- for purchase of second Nachinola property. The MOU dated 18.07.2018 or 19.11.2019 and in any case, at any time prior to communication of 13.08.2021. issued by the complainant to Defendant No.1 and his associates. In response to claim of specification of MOU dated 19.11.2019 made by them vide notice dated 21.07.2021, no reference has ever been made to the amount allegedly due to and payable by Defendant No.1 to Plaintiff on account of sale of apartments in the project MICASA. The very basis for oral contract of July-2020 is nullified and negative. The claim of the Plaintiff/Appellant is that a sum of Rs.99,00,000/- was due and payable to him on account of sale of apartments in the project MICASA. It is unfathomable that the Plaintiff would make a claim towards the amount being due and payable to him on 13.08.2021 for the first time between 2016 to 2021 for a period of five years there is neither any

written demand nor oral demand nor any written acknowledgment by Defendant No.1 to the Plaintiff.

xv. The oral contract is a creation of Appellant to pressurize the Respondent Nos.1 & 2 and to misappropriate amount of Rs.90,00,000/- lying with the Plaintiff pursuant to MOU dated 19.11.2019.

xvi. The value of villa and plot would be about Rs.3.50 crores. The plea of oral contract as against written contract stands demolished. No one would enter into an oral contract in respect of an entitlement to the extent of the said value.

xvii. On account of Covid-19 pandemic at its peak the meetings as claimed by the Appellant could never have been held.

xviii. The Appellant has alleged that his share of monetary consideration on sale of apartments would be Rs.99,00,000/-. The Appellant also claims his share of consideration at Rs.1,11.60,000/- and has also claimed at another place the entire monetary consideration of Rs.1,83,00,000/-. The half share of the Plaintiff would be Rs.91,50,000/-. The contradictory stand speaks volumes of doubt about the claims of Plaintiff.

xix. The Appellant borrowed sum of Rs.9,25,00,000/- from Respondent No.1 on 30.10.2008. The respondent No.1 advanced a sum of Rs.9,25,00,000/- to the Appellant which was not returned when the investment was jointly made in purchasing the property at Cuchelim Mopusa, Goa wherein the project MICASA came up.

The Respondent No.1 and others were entitled to commission of 30,00,000/- in respect to the property. The Respondent No.1 was entitled for payment towards sale of Colvale property.

xx. The Respondent requested the Appellant to pay sum of Rs.41.25 Lakhs immediately. The Appellant made excuses. The Appellant acknowledging the amount due and payable to respondents since 2007 informed that he will give a Power of Attorney to deal with all the apartments which would come to his share and to appropriate the cash consideration after making necessary adjustments in respect of Project MICASA by paying Rs.15 Lakhs to the Appellant in cash and that upon this the Respondents appropriating the balance amount from Project MICASA their account would stand squared off. The Appellant has deliberately suppressed MOUs' dated 08.07.2008, 18.07.2018 and 19.11.2019. He has suppressed his liability to pay an amount of Rs.41.25 Lakhs to the Defendants.

xxi. This Court cannot conduct mini trial. The Appeal from Order passed by the subordinate Court has to be entertained as appeal on principles.

xxii. There was no protest by the Appellant from 2013 to 2020. There was enormous delay in filing suit and claiming injunction against the Respondent No.1 & 2.

11. Mr. Rao has relied upon the following decisions:

i. Dalpat Kumar and Another Vs. Prahlad Singh and

Others[12].

ii. Mahadeo Savlaram Shelke and Others Vs. Pune Municipal Corporation and Another[13].

iii. Ramdev Food Products (P) Ltd. Vs. Arvindbhai Rambhai Patel and Others.[14]

iv. Laxmikant V. Patel Vs. Chetanbhai Shah and Another[15].

v. Wander Ltd. and Another Vs. Antox India P. Ltd[16].

vi. Anand Prasad Agarwalla Vs. Tarkeshwar Prasad and Ors[17].

vii. Ouseph Varghese Vs. Joseph Aley and Others[18].

12. Learned Advocate for Respondent No.3 Mr. Somnath Karpe submitted that the Plaintiff/Appellant has ventured into commercial transaction for earning profit as set out by the Plaintiff in the plaint and considering the said fact, the question of enforcing any oral agreement under the Specific Relief Act would not arise as an oral agreement cannot be specifically enforced in terms of law. The same being commercial in nature. The Appellant has not pleaded basic ingredients in a suit for specific performance and will not be entitled for any relief. The apartments in MICASA project were sold by Defendant Nos.1 & 2 with the consent of the Plaintiff which is apparent from the fact that the Plaintiff had issued Power

12 (1992) 1 SCC 719.
13 (1995) 3 SCC 33.
14 (2006) 8 SCC 726.
15 (2002) SCC 65.
16 1990 (Supp) SCC 727.
17 (2001) 5 SCC 568.
18 (1969) 2 SCC 539.

of Attorney in favour of Defendant No.1 for execution of sale of such apartment. There is no concluded contract between the Plaintiff and Defendant Nos.1 & 2. The Defendant No.3/Respondent No.3 issued public notice dated 09.07.2021 inviting objections if any, from the general public and making it known to the general public that Defendant No.3 intends to purchase the said property and that if anyone has any interest or claim over the said property to respond to the public notice within 14 days along with supporting documents. If no objections are received than the Defendant No.3 would proceed with sale in respect to the said first suit property and such claims shall be claimed to be waived and/or abandoned. The notice was published in widely circulated newspaper on 09.07.2021. The time to raise objections was over on 23.07.2021. The Defendant No.3 did not receive any objection from any party within stipulated time. After the agreement came to be concluded between Defendant No.1, Defendant No.2 and Defendant No.3 in respect of the first suit property in December-2020, second wave of Covid-19 pandemic erupted in the country and lock-down was declared. There were restrictions on the movement of citizens and as a result of that the Sale Deed in respect to the first property got delayed. The Defendant Nos.1 & 2 were obliged to get the plans approved from

competent authority. It was obtained in March-2021. Due to pandemic, execution of Sale Deed was delayed. The Sale Deed was executed in September-2021. In the month of July-2021, a public notice dated 09.07.2021 was issued on behalf of Defendant No.3. The time given in the public notice dated 09.07.2021 to raise objections was 14 days. The Plaintiff did not raise any objection. More than a month after issuance of notice, letter dated 13.08.2021 was sent and false claim was raised. The Plaintiff raised a false plea of oral contract. On receipt of the letter, the partners of Defendant No.3 contacted Defendant Nos.1 & 2 and informed them about their letter. The Defendant No.1 informed Defendant No. 3 that there is no oral agreement between Defendant Nos.1 & 2 with Defendant No.3 and stated that the apartments in the project MICASA which is projected as a base for claiming the purported oral contract, was sold at the behest and with the consent of the Plaintiff and in fact there is Power of Attorney which was issued by the complainant in favour of Defendant Nos.1 & 2 to sale apartments in MICASA project and as such the question of claiming any oral agreement in lieu of any amount purportedly due and payable to the Plaintiff in MICASA apartment would not arise. The Defendant No.1 pointed out that in fact the said letter is a counterblast to the notice issued by

Defendant No.1 to the Plaintiff in respect of another property situated in the village of Nachinola in respect of which the Plaintiff had executed an MOU for sale with the said Defendant and as the Plaintiff for some or other reason was delaying the execution of sale in respect of the said property in favour of the Defendant, the Defendant had called upon the Plaintiff to comply with the terms of MOU. As a counterblast the said objections were sought to be raised by the Plaintiff to pressurize the Defendant No.1. The Defendant No.1 also pointed out that the objections were issued in the month of August after receipt of notice issued by Defendant No.1. The Defendant No.1 further informed that during the period quoted by Plaintiff to claim oral agreement there was lock-down imposed due to Covid-19 and Defendant No.2 was unwell during the said period and there was no occasion for Defendant No.1 to meet the Plaintiff during that period. The Defendant No.1 informed the Defendant No.3 that the construction in the said property will be undertaken by the Defendant No.3 out of its own funds upon purchase of the property and as such the question of Defendant No.1 committing to allot one villa to the Plaintiff which do not belong to Defendant Nos.1 & 2 would not arise. The Defendant No.1 categorically stated that there is no oral contract ever entered with the Plaintiff. The Defendant No.3 being satisfied

with the clarity given by Defendant Nos.1 & 2 in respect of all the issue raised by the Plaintiff in the objections, completed the transaction by executing a Deed of Sale in respect of the first suit property. Even otherwise by that time the Defendant No.3 has spent substantial amount on the said first property and was in fact in possession of the same immediately after effecting payment of Rs.50 Lakhs to Defendant Nos.1 & 2 in the month of December-2020, as the said Defendants allowed Defendant No.3 to enter the said first property. The Defendant No.3 upon entering the said property in the month of December-2020, conducted survey and determined the boundaries of the property as per the survey plan and also got their architects and engineers at site to design the project as per the requirement of Defendant No.3. It is further submitted that the transaction between Defendant Nos.1 & 2 and the Plaintiff commenced somewhere in December-2020 and even part consideration was paid by Defendant No.3 to Defendant Nos.1 & 2. In December-2020 itself, the Defendant Nos.1 & 2 were obliged to fulfill the conversion Sanad in respect of the first suit property and obtained approvals in respect of the first suit property that the Sale Deed was deferred and immediately upon obtaining approval and Sanad, the Sale Deed came to be executed on 07.09.2021. The deal for purchase of the first suit property was

finalized in December-2020 as the Defendant No.3 intended to have project High and Villas in the first suit property. Accordingly, after the purchase of the first suit property, the Defendant No.3 floated a project comprising of Villas with an intention to market the Villa and in fact as per the approvals granted by the competent authorities commenced with the construction of Villas in the first suit property in January-2022. The defendant No.3 is marketing the Villas constructing by them in the property for a consideration of Rs.3,75,00,000/- per villa. The Defendant No.3 has sold four villas in January - 2022 and Defendant No.3 has commitments with its purchasers to sell villas constructed on the said property. The Defendant No.3 has spent substantial amount to the tune of Rs.4,62,15,200/- on the property. If any injunction is granted in respect to the said property great loss and prejudice will be caused to Defendant No.3, who is a bonafide purchaser. The Defendant No.3 has firm commitment to sell the villas in respect of which the parties have made advance payments which are duly recorded. The Defendant No.3 has agreed to sell some of the villas and the advances in respect of the same has been received by them against which receipts are issued to the respective parties. The Defendant No.3 is well within their rights to undertake development and construction activities in the said property. The Plaintiff contends

that he has claim over some apartments in MICASA project office there was some written agreement to which the Respondent No.3 is not a party. The Plaintiff has claimed that he surrendered his right in respect to the said apartments at the request of Defendant Nos.1 & 2 and has refund of the consideration paid by the purchaser for sale of the said apartment in MICASA project to Defendant No.1 and in lieu thereof the Defendant Nos.1 & 2 had purportedly assured him one villa in the first suit property and area of 400 Sq. Mtrs. in the second suit property. The claim is baseless, the question of Defendant Nos.1 & 2 committing on the first property which is agreed to be sold to Defendant No.3 does not arise. No relief as sought by the Appellant/Plaintiff be granted. The Plaintiff/Appellant has not made out a case for grant of injunction.

13. Mr. Karpe has relied upon the following decisions:

i. **IG Builders and Promoters Pvt. Ltd Vs. Dr. Ajit Singh and Ors[19].**

ii. **Ouseph Varghese Vs. Joseph Aley and Ors[20].**

iii. **Brij Mohan and Ors. Vs. Sugra Begum and Ors[21].**

iv. **Pravin D. Thakker and Ors. Vs. Rita J. Shah and Ors[22].**

v. **Dalpat Kumar and Ors. Vs. Pralhad Singh and Ors[23].**

19 ILR (2011) IV DELHI 734
20 MANU/SC/0493/1969.
21 (1990) 4 SCC 147
22 2020 (2) BomCR 757
23 AIR 1993 SC 276

vi. **Wander Ltd. and Ors. Vs. Antox India P. Ltd[24].**

vii. **Ambalal Sarabhai Enterprise Limited and Ors. Vs. KS Infraspace LLP Limited and Ors[25].**

viii. **Mannalal Vs. Upendrakumar and Ors[26].**

14. From the discussion as above it is apparent that the Appellant/Plaintiff had filed a suit against the Defendants/ Respondents for specific performance of the agreement between the Appellant and Respondent Nos.1 & 2 and to direct them to comply with their part agreement entered into in July-2020 and execute Sale Deed in favour of Plaintiff in relation to 3 bedroom villa and 400 Sq. Mtrs. plot in the first and second suit property respectively. The Appellant has also prayed for declaration that Deed of Sale dated 07.09.2021 registered with office of Sub-Registrar be declared null and void and for cancellation of the same. Pending the suit, the Appellant moved an application for injunction before the learned Civil Judge Senior Division, Mapusa and sought temporary injunction restraining Defendants/ Respondents from carrying on any construction or changing the status quo and or creating any third party rights in respect to the suit properties. The learned Civil Judge vide order dated 04.01.2023 has rejected the application.

24 1990 (Supp) SCC 727
25 AIR 2020 SC 307
26 MANU/MH/1325/2009

15. The learned Judge while rejecting the said application had formulated the question whether the Plaintiff has been able to prove that there was a concluded oral agreement between the parties in the third week of July-2020 in order to seek the relief of injunction. The learned Judge was conscious of the fact that a party is entitled to specific performance based on oral contract for sale but the burden lies heavily upon the Plaintiff to establish the same.

16. It is a settled law that in the case where the Plaintiff seek a decree for specific performance of contract of sale of immovable property on the basis of an oral agreement alone, heavy burden lies on the Plaintiff to prove that there was consensus *ad idem* between the parties for a concluded oral contract for a sale of immovable property. Whether there was a concluded oral contract or not would be a question of fact to be determined in the facts and circumstances of each case.

17. The trial Court considered the fact that there were business relationship between the Plaintiff and Defendant No.1. After analysing the factual matrix of the case, the learned Judge observed that the Plaintiff claim that 50% of the sale proceeds of the MICASA project and 50% of Rs.15 Lakhs due and payable, i.e.

Rs.1.83 Crores + Rs.15 Lakhs equal to Rs.1.98 Crores of his 50% is Rs.99 Lakhs and 50% of Rs.57.50 Lakhs being sale proceeds of the second property totals Rs.28.75 Lakhs, hence Rs.99 Lakhs + 28.75 Lakhs = 1,27,75,000/- is the Plaintiff share which sale proceeds were used by Defendant Nos.1 & 2 to invest in property giving them exponential returns for which the Defendant Nos.1 & 2 promised good clear title property/plots in return. Thus, the claim of Plaintiff is for an amount of Rs.1,27,75,000/-. In this scenario how can the Plaintiff claim a villa and a plot, the cost of which is approximately Rs.4 Crores. The Defendant No.3 is marketing villas in the first suit property for consideration of Rs.3.75 Crores and there are four purchasers, who had responded. It it difficult to believe that the Defendant No.1 would agree to allot properties worth Rs.4 Crores to the Plaintiff. Even if some amount is due and payable to the Plaintiff. As far as price is concerned, there is no consensus *ad idom* between the parties. There is no pleading in the plaint as to which villa out of the 11 villas was to be given to the Plaintiff. In respect to the project and 11 villas in the first suit property, the technical clearance order granted by the town planner is dated 10.03.2021. Thereafter, construction license was granted by village Panchayat on 07.08.2021. Without getting the approvals and permissions from the concerned authorities in respect of the

construction of the villas in the first said property, there could not have been any concluded contract between the parties. Likewise without partition of the plot of 400 Sq. Mtrs, from the second suit property there could be no concluded contract. It was further observed that the Plaintiff claimed that the Defendant Nos.1 & 2 requested for time to draw of the written agreement as they were awaiting construction license from Village Panchayat Siolim in relation to the first suit property and paper work was remaining to be completed with respect to partition of the second suit property. The Defendant Nos.1 & 2 assured the Plaintiff that they would complete the necessary documentation to convey the properties to the Plaintiff and requested for time till October-2021. Without approvals, permissions from the concerned authorities with respect to the construction of the villas in the fist suit property and the partition of the plot in the second suit property, there could be no concluded contract as the identity of the villa and the plot could not have been ascertained in July-2020. At the most it could be said that there were negotiations between the parties but definitely no concluded contract between them. In the present case there was no certainty in respect to the items of properties to be sold in July-2020. The price is at variance and the Plaintiff was not put in possession of the properties. The Plaintiff has prima facie failed to

prove the existence of a concluded contract. The Plaintiff did not react to the sales of the apartments made by the Defendant No.1 since the year-2016 and never made a claim any amount due to him in the MICASA project until 13.08.2021. A sum of Rs.99 Lakhs was due an payable by him on account of sale of apartments in the MICASA project was made for the first time by the Plaintiff on 13.08.2021. In the MOU dated 18.07.2018 or 19.11.2019 or any time prior to the communication of 13.08.2021, issued by the Plaintiff to the Defendant Nos.1 no reference has been made to any amounts due on account of sale of apartments in the MICASA project. Between 2016 to 2021 there is no written demand or communication of any amount due and payable by the Defendant No.1 to the Plaintiff. The Plaintiff objected to the public notice dated 07.03.2021 in respect to first second suit property. In March-2021, the Plaintiff objected to the first and second suit property. The letter dated 10.05.2021 indicated that the Plaintiff has objected on the ground of having concluded oral contract with Defendant Nos.1 and 2 in respect to 3 bedroom villa along with corresponding undivided proportionate share in the first suit property and 400 Sq. Mtrs. Plot in the second suit property. The Plaintiff claimed that after learning about the sale of the first and second properties, he requested for time to complete all the paper

work related to permissions and partitions and it was assured that written agreement would be signed by October-2021. According to Plaintiff when the Defendant No.3 received objection on 14.08.2021, the Defendant No.3 prepared Demand Draft of Rs.2.5 Crores on 16.08.2021 which proves that the Defendant No.3 showed undue haste to buy the first suit property without due diligence and without taking legal advise and without asking Defendant Nos.1 & 2 to rebut Plaintiff's assertion of concluded contract. The trial Court further observed that in the public notice dated 09.07.2021 issued by Defendant No.3, no objections were received within stipulated time. Vide letter dated 13.08.2021, the Plaintiff raised the plea of oral contract without supporting documents. The Defendant No.3 claimed that upon receipt of the letter from Plaintiff, the Defendant No.3 contacted Defendant Nos.1 & 2 who informed that there is no oral contract between Defendant Nos.1 & 2 with the Plaintiff and the apartment in MICASA project were sold at the behest and with the consent of the Plaintiff and for this purpose Power of Attorney was issued in favour of Defendant Nos.1 & 2 to sell the apartments in MICASA Project. Therefore the Defendant No.3 went ahead and executed the Conveyance Deed in respect of the first suit property. The trial Court observed that there was no documentary evidence or concrete evidence produced

by the Plaintiff in support of his claim concluded oral contract and therefore it cannot be said that the Defendant No.3 is a malafide purchaser.

18. The Plaintiff pleaded that the Plaintiff and Defendant No.1 jointly purchased Mapusa property vide Sale Deed dated 18.11.2011 for Rs.45 Lakhs out of which Plaintiff contributed Rs.25 Lakhs and Defendant No.1 contributed Rs.20 Lakhs. Thereafter, the Plaintiff purchased a property in Nachinola bearing Survey No.21/1 for Rs.1.5 Crores and Defendant No.1 was paid brokerage. On 24.12.2012, the Plaintiff, Defendant No.1 and Defendant No.2 entered into Development Agreement with the developer for MICASA project wherein the Plaintiff was to get two regular flats and one studio flat and the monetary consideration of Rs.30 Lakhs. The Plaintiff and Defendant Nos.1 & 2 signed the MOU dated 21.01.2013 with owner in respect to two properties situated at Nachinola bearing Survey Nos.34/10 and 67/10. The Plaintiff made part payment of Rs.15 Lakhs to Khristophar Nazarad. The parties decided to revise terms of Development Agreement of MICASA project dated 24.12.2012. In the year-2013 agreement for development dated 31.08.2013 was executed and it was mutually agreed that the monetary consideration of Rs.60 Lakhs would be reduced to Rs.45 Lakhs and the built-up area and flats were

increased from 4 flats to 370 Sq. Mtrs super built-up area to 5 flats with 480 Sq. Mtrs super built-up area. The Defendant No.1 represented the Plaintiff in the said agreement for development dated 31.08.2013 as his attorney. The Defendant Nos.1 & 2 sold the ownership of the flats in MICASA project. The Defendant Nos.1 & 2 took over the rights of the Plaintiff in the MOU dated 21.01.2013 in respect of the Nachinola property and subsequently sold the same as confirming parties to M/s. Takshina Education Society. In-2018, the Defendant No.1 and his associates Mr. Umesh Kambli attempted to purchase the first Nachinola property and by entering into MOU dated 18.07.2018 after paying a consideration of Rs.30 Lakhs out of which the Defendant No.1 paid a sum of Rs.10 Lakhs. The Defendant No.1 and his associates, failed to pay anything thereby abandoning MOU dated 18.07.2018. In the year-2019, the Defendant No.1 along with his two partners Mayur Savkar and Tukaram Salgaonkar approached the Plaintiff to purchase the property bearing survey No.21/1 that was under litigation for consideration Rs.5.40 Crores. Memorandum of understanding dated 09.11.2019 was executed by advancing a sum of Rs.90 Lakhs to the Plaintiff. On account of their inability to handle the pending litigation and failure to pay the balance consideration, they abandoned the MOU in March-2020 and in the

month of July-2020 ask for a refund of Rs.90 Lakhs paid to Plaintiff. Since the Defendant No.1 had taken a lot of money from Plaintiff and sold his share without giving anything in return. Promises were given to the Plaintiff and hence the Plaintiff informed the Defendant No.1 that he would refund the amount of Rs.90 Lakhs only when the Defendant Nos.1 & 2 execute a written document defining worth properties would given to the Plaintiff in exchange for the earlier sales of Plaintiff's share and appropriation of the sale proceeds by Defendant Nos.1 & 2. According to Plaintiff, the Defendant Nos.1 & 2 and his partners offered to the Plaintiff a 3 bedroom villa in the development project consisting of 11 identical villas which was to come up in the first suit property with corresponding undivided right in that property and a plot admeasuring 400 Sq. Mtrs. surveyed under 54/15/A in the second suit property. According to the Plaintiff the offer was in full and final settlement superseding previous offer. The Defendant No.1 handed over copy of Gift Deed dated 01.07.2013, approved plan showing 11 identical villas with respect to the first suit property and Deed of Sale dated 14.02.2018 with respect to the second suit property thus confirming that there was consensus *ad idem* with respect to the concluded contract. According to the Plaintiff this contract was finalized in the third week of July-2020 in a meeting

held at the residence of Plaintiff in the presence of Defendant Nos.1 & 2. Based on the oral agreement, the Plaintiff is seeking specific performance of the oral contract concluded in July-2020.

19. The case of Defendant No.1 is that the Plaintiff had borrowed a sum of Rs.9.25 Lakhs from Defendant No.1 in the year-2008. On 03.10.2008, the Defendant No.1 advanced the sum of Rs.9.25 Lakhs to the Plaintiff which the Plaintiff did not return when the investment was jointly made by Plaintiff and Defendant No.1 in purchasing the property at Cuchelim, Mapusa wherein the Project MICASA has come up. The Defendant No.1 claimed that he was party to MOU dated 08.07.2008 and entitled to a commission of Rs.30 Lakhs in respect to the property belonging to Mrs.Emilia admeasuring 2500 Sq. Mtrs. situated at Polvale. The Defendant No.1 was entitled to payment of Rs.7 Lakhs on the sale of Polvale property. The Plaintiff by keeping Defendant No.1 and others in the dark organized the sale of Polvale property to a third party on the strength of MOU dated 08.07.2008 and appropriated sum of Rs.35 Lakhs. The Defendant No.1 and others consulted the Plaintiff wherein the promises that he will give due credit to the account of Defendant No.1 and others in future transactions. The Plaintiff promised to give Rs.25 Lakhs each to Defendant No.1 and one Sanjay Lal were instrumental in bringing about sale of first

Nachinola property in favour of Plaintiff in the year-2011. The Defendant No.1 requested the Plaintiff to pay Rs.41.25 Lakhs. The Plaintiff gave excuses but acknowledged the amount due and payable to Defendant No.1 since 2008 and informed that he would give him a Power of Attorney to deal with all apartments which would come to his share and to appropriate the cash consideration after making necessary adjustments in respect of MICASA project by paying a sum of Rs.15 Lakhs to the Plaintiff in cash and that upon the Defendant appropriating the balance amount from project MICASA, their account would stands squared off. Considering the fact that the Plaintiff was due and liable to pay a sum of Rs.16.25 Lakhs to Defendant No.1 since the year-2008, a sum of Rs.25 Lakhs towards first Nachinola property since the year 2011 and considering the opportunity lost by Defendant No.1 at Mapusa property, which he could not purchase on account of failure of the Plaintiff to repay a sum of Rs.41.25 Lakhs in cash to the Plaintiff, the entire account between the Plaintiff and the Defendant No.1 was squared off in the year -2013 itself.

20. The Plaintiff claimed a villa and a plot a cost of which is around Rs.4 Crores. It is difficult to accept that the Defendant No.1 would agree to allot properties worth Rs.4 Crores to the Plaintiff even if some amount was due and payable to the Plaintiff. The

plaint does not specify as to which villa out of the 11 villas was to be given to the Plaintiff. Technical clearance order was granted by office of Senior Town Planner on 10.03.2021 construction license was granted by Village Panchayat to the construction on 07.08.2021. It is difficult to accept that without approvals and permissions from the authorities in respect of construction of villa's in the first suit property there could be concluded contract between the parties. There was no partition of plot of 400 Sq. Mtrs from the second suit property wherein allegedly the plot was agreed to be handed over to the Plaintiff. It is also difficult to accept that the plot could be agreed to be handed over without the partition of the said property. There is no certainty with respect to the terms of the contract. The Plaintiff failed to prove the existence of concluded contract. It is also apparent that the Plaintiff did not react to the sales of apartments made by Defendant No.1 and never made a claim amount due to him in the MICASA project until 13.08.2021. The claim of Rs.99 Lakhs made by the Plaintiff on account of sale of apartment in MICASA project for the first time on 13.08.2021. In MOU dated 18.07.2018, 19.11.2019 or any time prior to the communication of 13.01.2018 issued by Plaintiff to Defendant No.1 there is no reference of any amount due on account of sale of apartment in MICASA project. During the period from 2016-2021

there is no written demand or communication of any amount due and payable by the Defendant No.1 to the Plaintiff. Though prima facie case has been out by the Plaintiff in respect to concluded contract.

21. The assessment of prima facie case in the suit for specific performance of contract based upon the oral agreement has to be different then such a suit based upon the written agreement. The Plaintiff has failed to establish a complete chain of events by pleading material fact and particular the averments in the plaint does not satisfy the claim of the Plaintiff that there was a concluded contract. In the absence of concluded oral contract the affidavits of the witnesses relied upon by the Plaintiff would not be of assistance to the Plaintiff. The trial Court has rightly observed that the Plaintiff has failed to make out a prima facie case for grant of injunction. The trial Court has also held that the Defendant No.3 commenced the project of construction of villas in the suit property after obtaining necessary approvals and licenses from the competent authority and finds substantial amount on the construction. The Defendant has commitment to sell the villas and required to complete the project within stipulated time and hence irreparable loss and injury will be caused to Defendant No.3, if any injunction is granted in favour of Plaintiff.

22. The Defendant Nos.1 & 2 has contended that in July-2020 there was spread of Covid-19 and severe lock-down in the State of Goa hence it is difficult to believe that there would be meeting between the Plaintiff and Defendant and his two associates. The details about the time, the venue of the meeting were not provided by the Plaintiff. Considering the circumstances put-forth by the Defendants, the claim of concluded contract pleaded by the Plaintiff appears to be doubtful. It does not warrant grant of injunction as prayed by him.

23. The Defendant has disputed the claims of the Plaintiff and on the contrary claimed that the accounts were squared off as there was claims and counter claims. According to Defendant considering the fact that the Plaintiff was due and liable to pay the amount to the Defendant, the Plaintiff did not react to the sales of the apartments made by the Defendant since-2016 and never made a claim for any amount due to him qua project MICASA until his response of 13.08.2021 to the claim for specific performance of MOU dated 19.11.209 made by the Defendant and his associates vide communication dated 21.07.2021. The Defendant contended that the basis for the alleged oral contract is non existence in as much as no amount of whatsoever was due and payable to the Plaintiff in respect of sale of apartment in project MICASA. The

contention of the Defendant No.1 and 2 is convincing. It is apparent that the terms of the alleged oral contract are vague. The Plaintiff had not specified the particular number of villa out of the 11 villas. It also appears from the contention of the Defendant No.1 that initially Nameh Housing Pvt. Ltd. was supposed to develop the property No.1 pursuant to MOU dated 18.07.2018. The approvals were obtained by Nameh Housing Pvt. Ltd. though in the name of Defendant No.2 being the owner of Property No.1. In the absence of any representative or director of Nameh Housing being a party to the oral contract of July-2020. It is difficult that such contract existed from Nameh Housing Pvt. Ltd. from the MOU dated 18.07.2018 when it was cancelled in terms of Deed of Sale dated 07.09.2021. The approved plan was not placed on record. The plans were approved on 10.03.2021. The claim of the Plaintiff in respect of the Villa that there was a oral contract was apparently before the approval or sanction of the villa. Thus, the oral contract claimed by the Plaintiff agreed before technical clearance.

24. According to defendant the Plaintiff has deliberately suppressed the MOU dated 08.072008, 18.07.2018 and 19.11.2019. The Plaintiff has suppressed his liability to pay an amount of Rs.41.25 Lakhs to the defendant. According to defendant this clearly establishes that there was no oral contract of

July, 2020 as alleged by the Plaintiff. The defendants have disputed the claims of the Plaintiff. The genuineness of the purported oral contract is under doubt. Based on such assertion, it is difficult to grant injunction in favour of the Plaintiff. The trial Court has declined to grant injunction or the relief prayed by the Plaintiff by assigning the reasons which does not warrant interference.

25. According to Defendant No.3, the defendant no.1 represented that the first suit property was acquired by Defendant No.2 by virtue of Deed of Gift dated 01.07.2013. It was also represented that the first suit property is free from encumbrances and that the title of the said first suit property is clear and marketable. Accordingly, based on the representation made by Defendant Nos.1 and 2 and since the defendant no.3 was interested to have business in the State of Goa, the Defendant No.3 informed the Defendant Nos.1 and 2 that they would revert back and requested for title documents so as to enable the Defendant No.3 to complete all due diligence in respect to the suit property. Documents were submitted by defendant nos.1 and 2. The defendant no.3 visited the suit property and decided to purchase the same for a total consideration of Rs.3,54,00,000/-. The

agreement was crystallized in December-2020 and as a part consideration a payment of Rs.50,00,000/- was made and it has been recorded in Sale Deed dated 07.09.2021 by virtue of which the Defendant No.3 acquired rights to the said property. The Defendant No.3 issued public notice dated 09.072021 inviting objections from the public and making it known to the public that the Defendant No.3 intends to purchase the said property and that if any one has any interest or claim over the property to respond to the public notice. It was published on 09.07.2021. The time to raise objection was over on 23.07.2021. The Defendant No.3 did not receive any objection from any party within the time limit. After the agreement was concluded between the Defendant in respect to the first property in December, 2020. There was second wave of COVID-19 in the country and the lock down was imposed and there was restrictions imposed in the movement of citizens and as a result of that Sale Deed in respect to the property which was to be executed on Defendant Nos.1 and 2 obtaining approval for construction from the competent authorities got delayed. The Defendant Nos.1 and 2 were obliged to get the plans approved which they obtained in March-2021, but due to pandemic the execution was delayed. After the decrease of pandemic, the partners of Defendant No.3 traveled to Goa and completed the

formalities. By way of letter dated 13.08.2021 after more than a month of issuance of notice the Plaintiff raised the claim of oral contract. On receipt of the letter, the Defendant No.3 contacted the Defendant Nos.1 and 2 and informed them about the same, wherein they were appraised that there is no such oral contract with Plaintiff. It was also represented that the apartments in the project MICASA which is projected as a base for claiming the oral contract was sold at the behest and with the consent of Plaintiff and the fact there is a power of attorney which was issued by Plaintiff in favour of the Defendant Nos.1 and 2 to sell the apartment in MICASA project and question of claiming oral contract does not arise. The Defendant No.3 was satisfied with the clarity given by Defendant Nos.1 and 2 and completed the transaction by executing Sale Deed. The Defendant No.3 has spent substantial amount and is in possession of the property after effecting payment of Rs.50,00,000/- in December-2020 to Defendant Nos.1 and 2. The Defendant No.3 finalized the deal of purchase of the property in December-2020 and intended to have a project of High and villas and accordingly after the purchase of the property, the Defendant No.3 floated a project comprising of villas. The project was floated in the name and style of ZED POINT BY ZAAVI. The Defendant Mo.3 is marketing the Villas constructed by

them for a consideration of Rs.3,75,00,000/- per Villa. The Defendant No.3 had sold four Villas in January, 2022 and other Villas were agreed to be purchased by another customers. The Defendant No.3 had spent about Rs.4,62,15,000/- on the said property. The details are provided by the Defendant No.3 in the reply filed to the application for injunction preferred by the Plaintiff.

26. Considering all the aforesaid circumstances, the Plaintiff is not entitled for injunction.

27. In the case of **Julien Educational Trust Vs. Sourendra Kumar Roy & Ors** (Supra), the trust sought specific performance of agreement for purchase of land by extension of school run by it and injunction restraining the Respondents therein from changing nature and character of suit property. The stocks of sell proceeded to an extent where Respondents made over certified copies of that title deeds to the Appellant trust. Separate draft deed of conveyance were sent by the Appellant to the Respondents in receipt of their undivided shares in the suit property for approval. The Appellant had applied to Inspector General and Commissioner of Stamp Revenue for exemption from payment of stamp duty in registering the deeds of conveyance in respect of the suit property.

The Respondent No.1 had approved draft deed sent to him by putting his signatures thereon subject to some rectification made by him in the draft. The final deed of conveyance in respect to share of Respondent No.1 was engrossed on stamp paper. The defendants approved the draft deeds of conveyance which were also engrossed on stamp paper. In this circumstances, the Hon'ble Supreme Court has observed that the material on record prima facie makes out the case for the Appellant trust with regards to agreement for sale. It was held that whether there was concluded contract or not between the trust and the Respondents can be gone into during the trial. As to whether the balance of convenience and inconvenience lay in favour of grant of injunction and as to whether the trust would suffer irreparable loss and injury if no interim order was passed, it was held that although loss, if any to the trust could be compensated in terms of money the sufficient does not appeared to hold good in the said case. If suit property is allowed to be commercially exploited by raising structures the object of the suit filed by the trust will be rendered meaningless. The decision was delivered in the facts of the said case there was several documents in existence which indicated the agreement between the parties and the Appellant therein held made out prima facie case which is not so in the present case.

28. In the case of **Maharwal Kewaji Trust Vs. Baldev Dass** (Supra), it is held that unless and until a case of irreparable loss or damage is made out by party to the suit, the Court should not permit the nature of property being changed which also includes alienation or transfer of property which may lead to loss or damage being caused to the party, who may ultimately succeed and may further lead to multiplicity of the proceedings. It is always open to other party to claim damages if the case of the party pleading maintenance of a status quo in sound to be baseless in an appropriate case. The Court may award damages for loss suffered if any in this regard. It was observed that the contention that the legal proceedings are likely to take long time and therefore the suit property should be permitted to be put to whom was not good enough. The said decision was delivered in the facts of the said case. In the present case the Plaintiff has not made out prima facie case to grant injunction.

29. In the case of **Vijay A. Mittal and Ors. Vs. Kulwant Rai and Anr.** (supra), there was sale in favour of subsequent purchasers, who had notice of prior agreement to sale, after the execution of Agreement to Sale. The Defendant No.1 therein instead of selling the suit property to the Plaintiff in terms of

agreement dated 12.06.1979 sold it to Defendant nos.2 and 3 on 27.11.1981. It was held that the Sale Deed made in favour of Defendant nos.2 and 3 by Defendant no.1 was bad in law exclusive sale made to avoid the agreement of the Plaintiff. The Sale Deed was declared as null an void.

30. In the case of **Ratnavati and Anr. Vs. Ganshyamdas** (supra), it was held that in a contract for sale of immovable property for consideration, if a seller fails to transfer the title to the purchaser for any reason on receipt of consideration towards the sale price then a seller has no right to retain the sale consideration to himself and he has to refund the same to the purchaser.

31. In the case of **MMS Investments Madurai and Ors. Vs. V. Veerapan and Ors** (Supra), the Hon'ble Supreme Court has held that after the conveyance the only question to be adjudicated is whether the purchaser was a *bona fide* purchaser for value without notice. The question whether the Appellant were ready and willing is really of no consequence. Once there is a conveyance, the concept would be different and the primary relief could be only cancellation.

32. In the case of **Kollipara Sriramuli Vs. T. Aswatha**

Narayana (Supra) the Apex Court considered whether there was an oral agreement between the Respondent and all the partners of the firm except the Appellant for sale of their shares and whether the Respondent was entitled to specific performance of the oral agreement. The Respondent No.1 had contended that there was a meeting of partners and there was an agreement reached between them that they should sell to him their shares. A written agreement was to be drawn in two to three days and the mode of payment of purchase money was also to be settled debtor. It was agreed that Sale Deeds were to be executed in three months. In pursuance to the agreement all the co-sharers except Defendant nos.1 to 9 executed Sale Deed and the Plaintiff became the owner of 98 shares. The first witness in proof of the oral agreement was Respondent No.1 himself. The Apex Court observed that a mere reference to a future formal contract will not prevent a binding bargain between the parties. The fact that the parties refer to the preparation of an agreement by which the terms agreed upon are to be put in a more formal set does not prevent the existence of binding contract. There may be cases where reference to the future contract is made in such terms as to show that the parties did not intends to be bound until a formal contract is signed. The question depends upon the intention of the parties. The purchase money

paid by the Appellant was nearly the same as that payable under the agreement in favour of Respondent No.1. The High Court considered the oral agreement and reached the conclusion that the appellant therein had notice of prior oral agreement.

33. In the case of **Smt. Sohbatdei Vs. Deviplal and Ors.** (Supra), the Apex Court considered the oral agreement between the Appellant and the first defendant for execution of sale of suit property and it was noticed that the first defendant was selling the property to second defendant at higher price. The second defendant was having full knowledge of the agreement and therefore it was held that he was not a *bona fide* purchaser. The agreement was declared void.

34. In the case of **N. Srinivasa Vs. Kuttkukaran Machine Tools Ltd** (Supra), the Hon'ble Supreme Court held that one of the main issue for the purpose of deciding the application for injunction was whether time was the essence of the contract or not. The High Court failed to appreciate that in the contract relating to immovable property sign cannot be the essence of the contract. Pending the disposal of arbitration proceedings, interim measures to safeguard the interest were required to be taken.

35. In the case of **Dorab Cawasji Warden Vs. Coomi Sorab Warden and Ors** (Supra), the Apex Court considered the scope of Order 39, Rules 1 and 2 and laid down guidelines for grant of interlocutory mandatory injunction. It was observed that it is just and necessary that a direction should go to the Respondents to undo what they have done with knowledge of the Appellants rights to compel the purchaser or to deny joint possession. It was further observed that the relief of interlocutory mandatory injunction are granted generally to preserve or restore the status quo of the last non-contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. But since the granting of such an injunction party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party to succeeds or would succeed may equally cause great injustice or irreparable harm. It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money. Having regards to the restrictions on the right of transferee for joint possession and the dominant purpose of Section 44, there is a

danger of an injury or violation of the correspondence rights of the other members and irreparable harm to the Plaintiff and the Courts interference is necessary.

36. In the case of **Dev Prakash and Anr. Vs. Indra** (Supra), the Apex Court has observed that the very essence of concept of temporary injunction and receivership during pendency of a civil litigation involving any property is to prevent its threatened wastage, damage and alienation by any party thereto, to immeasurable prejudice to other side or to render situation irreversible not only to impact upon ultimate decision but also to render relief granted illusory.

37. **Bharatkumar Ishwarlal Miterani and Ors. Vs. Grishbhai Manubhai and Ors** (Supra), the High Court of Gujarat has observed that the plain language of Sub-section (b) of Section 19 of transfer of property shows that subsequent transferee can retain the benefit of his transfer by purchase which *prima facie,* he had no right to get only after satisfying two conditions i.e. (1) he must have paid the full value for which he purchase the property and (2) he must have paid it in good faith and without notice of prior contract. The burden of proof is upon the subsequent purchaser to establish existence of these two conditions in order to see that he is right

may prevail over the prior agreement of sale.

38. In the case of **Anand Prasad Agarwalla Vs. Tarkeshwar Prasad and Ors (supra)** the Hon'ble Supreme Court has held that it may not be appropriate for any Court to hold a mini trial at the stage of grant of temporary injunction. When the contesting Respondents were in possession as evidence by the record of rights it cannot be said that such possession was by a trespasser.

39. In the case of **Dalpat Kumar and Another Vs. Prahlad Singh and Others** (Supra), the Apex Court has observed that while granting injunction the Court should cautiously look to the conduct of the party, the probable injuries to either party and whether the Plaintiff could be adequately compensated if injunction is refused. Existence of *prima facie* case must be shown by the Plaintiff. Non-grant of injunction must result in irreparable injury to the party seeking relief. Balance of convenience must be in favour of grant of injunction.

40. In the case of **Mahadeo Savlaram Shelke and Others Vs. Pune Municipal Corporation and Another** (Supra), the Apex Court has observed that the Plaintiff seeking injunction must show a *prima facie* case, triable issue and balance of convenience for

granting the injunction. No injunction can be granted against rightful owner in favour of a person in unlawful possession.

41. In the case of **Ramdev Food Products (P) Ltd. Vs. Arvindbhai Rambhai Patel and Others.** (Supra), it was held that relief by way of interlocutory injunction would be material in a suit for infringement of trade mark. Balance of convenience would have a vital role to play. When a *prima facie* case is made out and balance of convenience is in favour of Plaintiff, it may not be necessary to show more than loss of goodwill and reputation to fulfill the condition of irreparable injury. The expression "irreparable injury" would have established the injury which the Plaintiff is likely to suffer. It was further observed that normally the Appellate Court would be slow to interfere with the discretionary jurisdiction of the trial Court. The grant of an interlocutory injunction is in exercise of discretionary power and hence, the Appellate Courts will usually not interfere with it. However, the Appellant Court will substitute their discretion if they find that the discretion has been exercise arbitrarily, capriciously, perversely or where the Court has ignored the settled principles of law regulating the grant or refusal of interlocutory injunctions. The Supreme Court referred to the earlier decision in the case of **Wander Ltd. and**

Another Vs. Antox India P. Ltd (supra), **Laxmikant V. Patel Vs. Chetanbhai Shah and Another** (supra) and **Seema Arshad Zaheer V. Municipal Corporation of Greater Bombay (2006) 58 SCC 282**. It was observed that the appellate Court may not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion.

42. In the case of **Laxmikant V. Patel Vs. Chetanbhai Shah and Another** (supra) it was held that the Plaintiff must prove a prima facie case, balance of convenience in his favour and his suffering an irreparable injury in the absence of grant of injunction.

43. In the case of **Ouseph Varghese Vs. Joseph Aley and Others** (supra) it is held that the burden of proving agreement in case of suit for specific performance based on oral agreement is upon the Plaintiff. The factual matrix of the said case indicate that a suit for specific performance was filed by the Plaintiff on the basis of alleged agreement between him and the first Defendant under

which the letter was alleged to reconvey the properties sold for the very price. The defendant denied the agreement. After filing the written statement, the Plaintiff did not amend his plaint and pray for any relief on the basis of the agreement pleaded by the defendant. He did not inform the Court that he was ready and willing to accept the agreement pleaded by the defendant or that he was willing to perform his part of the agreement.

44. In the case of **Mannalal Vs. Upendrakumar and Ors.** (supra) The appeal was filed against the order whereby the application of the Appellant for grant of injunction restraining the respondents to create any third party interest over suit property was dismissed. It was held that the Appellant has filed suit for specific performance against the respondents. The documents relied upon by him does not establish or prima facie show that the Respondent No.1 in any way was authorised to enter into transaction of sale. There is no privity of contract was established between the parties. Balance of convenience does not lie in favour of the Appellant and if injunction is refused, the Appellant shall not be put to suffer an irreparable loss. When there is no prima facie case, balance of convenience shall tilt in favour of respondents and if injunction is granted, respondents would suffer an irreparable loss.

45. In the case of **Ambalal Sarabhai Enterprise Limited and Ors. Vs. KS Infraspace LLP Limited and Ors.** (supra) the Court had denied the temporary injunction the Plaintiff filed the suit for declaration and specific performance against the Defendants with regard to the property. The Defendants were restrained by the Court while granting temporary injunction from executing further documents including Sale Deed or creating charge with further property, the High Court confirmed the injunction. The apex Court considered whether any impugned injunction warrant any interference. It was held that in the facts and circumstances of the case and the nature of the materials placed, whether there existed a concluded contract between the parties or not, was itself a matter of trial to be decided on the basis of the evidence that may be led. If the Plaintiff contended a concluded contract and/or an oral contract by inference, leaving an executed document as a mere formality, the onus lay on the Plaintiff to demonstrate that the parties were ad-idem having discharged their obligations. the Plaintiff failed to do so. The balance of convenience was in favour of the defendants on account of intervening developments, without furthermore, by reason of the Plaintiff having waited for seven months to institute the suit.

46. In the case of **IG Builders and Promoters Pvt. Ltd Vs. Dr. Ajit**

Singh and Ors. (supra) it is held by the Delhi High Court that the four ingredients necessary to make an agreement to sell are: (i) particulars of consideration; (ii) certainty as to party i.e. the vendor and the vendee; (iii) certainty as to the property to be sold; and (iv) certainty as to other terms relating to probable cost of conveyance to be borne by the parties, time, etc. The first fundamental, which must be proved if the existence of a valid and enforceable contract. The stipulations and terms of the contract have to be certain and the parties must have been consensus ad idem. The burden of showing the stipulations and terms of the contract and that the minds were ad idem is on the Plaintiff. If the stipulations and terms are uncertain, and the parties are not ad idem, there can be no specific performance, for there was no contract at all. Where there are negotiations, the court has to determine at what point, if at all, the parties have reached agreement.

47. In the case of **Brij Mohan and Ors. Vs. Sugra Begum and Ors.** (supra) the Plaintiff has preferred appeal before the Apex Court against the Judgment of Andhra Pradesh High Court. The suit was for specific performance of oral contract. The High Court's decision was based on the fact that the terms of the contract were not settled and advance money was not received by sellor. Parties not

aware of fact that clearance from income tax department and land ceiling law was required to effect the sale in that area. It was held that the contract was concluded between the parties and consensus not arrived on all terms. The apex Court receives the interfere in the decision of the High Court on the ground that it was based on correct interpretation of law that in case of real contract Plaintiff required to be established existence of contract by effective evidence. The Plaintiff failed to establish existence and conclusion of contract and not entitled to decree passed by Trial Court.

48. In the case of **Pravin D. Thakker and Ors. Vs. Rita J. Shah and Ors.** (supra) this Court has deal with an similar issue. The appeal was challenging the judgment and decree whereby the trial Court decreed suit filed by Respondent No.1 therein for specific performance of contract. It was held that no agreement was signed in respect of suit ship. Plaintiff did not adduce any independent evidence to prove that there was consensus ad idem between the parties for a concluded contract. The Plaintiff having failed to prove existence of a valid and enforceable contract is not entitled for an order of specific relief. Therefore, no concluded contract between the Plaintiff and Defendant No.1. The claim of Plaintiff was based on oral agreement. It was observed that the claim of the Plaintiff is based on the oral agreement. It was observed that in a

suit for specific performance of oral agreement the Plaintiff has to plead the essential terms and conditions of the agreement. The Plaintiff had vaguely stated that the agreement was entered sometime in the year 1988. It was held that the Plaintiff lack other material particulars as to the nature of title of the Defendant No.1, details of the plan, license and location of the suit shop, amenities to be provided, payment of earnest money mode of time frame of payment of sale consideration, liability of each party to pay probable cost of conveyance/registration charge or stamp duty etc. It was observed that the trial Court has not adverted to these discrepancies but has drawn an inference of concluded contract mainly on the basis of the averments in the written statement. The High Court disputed the factum of oral agreement, the burden was on the Plaintiff to prove the case by adducing cogent and convincing evidence.

49. In the light of the judicial pronouncements as stated above and the factual aspects as referred herein above, I do not find any reason to interfere in the impugned order. The Appeal must fail as no case is made out to disturb the findings and the decision of the Court below.

ORDER

i) Appeal from Order (F) No.662 Of 2023 is dismissed and stands disposed off.

ii) In view of disposal of Appeal, Civil Application (F) No.663 OF 2023 stands disposed off accordingly.

(PRAKASH D. NAIK, J.)

VINITA VIKAS NAIK Digitally signed by VINITA VIKAS NAIK
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