

ITEM NO.27

COURT NO.13

SECTION IX

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition for Special Leave to Appeal (C) No. 10058/2020

[Arising out of impugned final judgment and order dated 15-01-2020 in CAST No. 31010/2018 passed by the High Court of Judicature at Bombay]

M/S B.J. ENTERPRISES

Petitioner(s)

VERSUS

SOMNATH MAHADEO NAIK (SINCE DECEASED) THR.
HIS L.R.S. & ORS.

Respondent(s)

IA No. 134633/2020 - EXEMPTION FROM FILING O.T., IA No. 86107/2020 -
PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES

Date : 25-02-2025 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE R. MAHADEVAN

For Petitioner(s) : Mr. Mahendra K.ghelani, Adv.
M/S. K J John And Co, AOR

Ms. Surekha Raman, Adv.
Mr. Amarjit Singh Bedi, Adv.
Mr. Shreyash Kumar, Adv.
Mr. Imilikaba Jamir, Adv.
Mr. Harshit Singh, Adv.
Mr. Sidharth Nair, Adv.

For Respondent(s) : Mr. Sanjay Kumar Visen, AOR

Mr. Shivaji M. Jadhav, AOR
Mr. Shivaji M. Jadhav, Adv.

Mr. Brij Kishor Sah, Adv.
Mr. Adarsh Kumar Pandey, Adv.
Mr. Vignesh Singh, Adv.
Mr. Aditya S. Jadhav, Adv.

UPON hearing the counsel the Court made the following
O R D E R

1. The subject matter of challenge in this petition is an interlocutory order passed by the High Court in a suit filed for specific performance of agreement dated 11.11.2003.
2. The impugned order reads thus:-

"1. The respondent No.1/plaintiff has filed Special Civil Suit No.537 of 2007 for Specific Performance of Agreement dated 11th November 2003 from the respondent Nos.2 and 3 (Original defendant Nos.1 and 2). In the alternative, the respondent No.1/plaintiff has prayed that a sum of Rs.1,70,00,000/- (Rupees One Crore Seventy Lakhs Only) may be paid to it towards compensation. Undoubtedly, the Agreement dated 11th November 2003 entered into between M/s. B. J. Enterprises (respondent No.1/Orig.plaintiff), Shri Somnath Mahadeo Naik (respondent No.2/ Orig. defendant No.1) and Shri Rajan D. Patil (respondent No.3/Orig.defendant No.2) is unregistered agreement. Though the suit was filed in the year 2007, the Trial Court has granted injunction against the applicant/Orig. defendant No.6 in the year 2018, i.e. on dated 31st August 2018.

2. As the original plaintiff has by way of an alternate prayer has prayed for compensation of Rs. 1,70,00,000/- and with a view to have equity in the matter, the applicant/Orig.defendant No.6 is hereby directed to keep lien/charge of the respondent No.1/plaintiff over two floors i.e. second and third floors in the suit building and shall not create any third party right, title or interest over the said two floors during the pendency of the present Appeal.

3. Mr. Sawant, learned counsel appearing for the

applicant/ defendant No.6, on instructions from the partner of the applicant/Orig. defendant No.6 who is personally present in the Court, makes a statement that, the applicant/Orig.defendant No.6 shall keep lien/charge of the plaintiff for entire 2nd and 3rd floors of the suit building being constructed on plot No. 13, Sector 20, Ulve Node, admeasuring 850 sq.mtrs. The said statement is accepted as an undertaking given to this Court.

4. In view thereof, Rule.

5. Interim relief in terms of prayer clause (a).

6. It is however made clear that, admission of this appeal and grant of interim relief shall not be construed as stay to the trial of Special Civil Suit No. 537 of 2007 and the Trial Court to proceed with the hearing of the same.

7. The said suit is of the year 2007. In view thereof, the Trial Court is hereby directed to expedite the hearing of the said suit and to make an endeavour to conclude it within a period of one year from the date of receipt of the present Order.

8. At this stage, learned counsel for the respondent No.1 seeks stay to the present Order. Mr. Sawant, learned counsel for the applicant/Orig.defendant No.6 opposed to the said prayer.

In view thereof and for the reasons stated above, the prayer to stay the present Order is rejected."

3. We are informed that the suit is in progress. Oral evidence is being recorded. At this point of time, almost after five years, we see no good reason to disturb the interlocutory order granting injunction against construction.

4. We clarify that all legal contentions sought to be raised before us may be raised before the trial court.

5. The suit shall be decided strictly on its own merits without being influenced by the interlocutory order passed by the High Court.

6. We are informed that the appeal from order is still pending before the High Court. However, the pendency of the appeal from order should not come in the way of the trial court in proceeding further with the Special Civil Suit No. 537/2007 and deciding the same on its own merits.

7. With the aforesaid this petition stands disposed of.

8. Pending application(s), if any, stand disposed of.

(CHANDRESH)
ASTT. REGISTRAR-cum-PS

(POOJA SHARMA)
COURT MASTER (NSH)