(2019) 06 BOM CK 0075

In the Bombay High Court

Case No : Notice Of Motion No. 1397 Of 2018, Suit No. 1648 Of 2012

Ambaji Developers, a Partnership Firm and (4) Ors APPELLANT

Vs

Mukundrai Dipchand Sanghavi And (1) Anr RESPONDENT

Date of Decision : 19-06-2019

Acts Referred:

Transfer Of Property Act, 1882 — Section 52, 52(1)
Registration Act, 1908 — Section 18
Code Of Civil Procedure, 1908 — Order 7 Rule 11

Citation : (2019) 06 BOM CK 0075

Hon'ble Judges : B.P. Colabawalla, J

Bench : Single Bench

Advocate : Vijendra Kumar Rai, Anush Sequeira, Pravin Mehta, Vasim A. Shaikh

Final Decision : Disposed Off

Judgement

B. P. Colabawalla, J

1. This Notice of Motion has been filed seeking a dismissal of the suit under Order VII Rule 11 of the Code of Civil Procedure, 1908. The ground, on

which dismissal of the suit is sought, is that it discloses no cause of action. The other prayer that is sought in this Notice of Motion is that this Court be

pleased to direct the plaintiff to execute and register a Deed of Cancellation of the lis pendens within such time and period, as this Hon'ble Court may

deem fit and proper.

2. As far as prayer (b) is concerned, the learned Advocate appearing on behalf of defendant No.1 submitted that the actual relief that he seeks is that

defendant No.1 be entitled to deal with the suit property as it may deem fit without the same being subjected to the operation of lis pendens under

Section 52 of the Transfer of Property Act, 1882 subject to whatever terms this

Court may deem fit to impose in its discretion.

3. As far as the prayer for rejection of the plaint is concerned, I am unable to agree with the learned Advocate appearing on behalf of defendant No.1

that no cause of action has been set out in the plaint which would enable me to reject it. The relief sought in the suit is for specific performance of the

Agreement/Minutes of the Meeting dated 8th February, 2011 entered into between the plaintiffs and defendant No.1 for assignment/ transfer of the

plot of land situated at 28A, K.A. Subramanium Road, Matunga, Mumbai-400 019 and admeasuring about 650 square yards, with the building of

ground plus two upper floors along with part third floor formerly known as â??Ashwin Houseâ? and now known as â??Sumatiâ? (for short â??the

suit propertyâ?). In Paragraph 17 of the plaint, it is averred by the plaintiffs that under the Agreement/Minutes of Meeting dated 8th February, 2011,

all the vital terms of the concluded contract in respect of the re-development of the suit property were agreed upon between the parties and their

respective Advocates and Solicitors. It was also agreed that pursuant to the discussion held in the meeting dated 8th February, 2011, the terms agreed

therein would be forwarded by the plaintiff's Advocate to defendant no.1's Advocate for necessary action. It is therefore pleaded that only a formality

of preparing a formal agreement incorporating all the vital terms and conditions of a contract which were agreed upon and recorded in the Minutes of

Meeting/Agreement dated 8th February, 2011 remained to be done.

Accordingly, the Minutes of Meeting dated 8th February, 2011 were sent by an e-mail by plaintiff No.1's Advocate to defendant No.1's Advocate. In

substance, it is the case of the plaintiffs that there was an oral agreement for development of the suit property that was entered into between the

plaintiffs and defendant No.1. Looking at the averments in the plaint as a whole, I do not think that I would be entitled or correct in rejecting the plaint

under Order VII Rule 11 at this stage. The plaintiffs must be given an opportunity, however weak their case may be, to lead evidence at trial to prove

their case. In these circumstances, as far as prayer clause (a) of the Notice of Motion is concerned, the same is rejected.

4. That now only leaves me to deal with the secondary prayer, namely, whether defendant No.1 should be allowed to deal with the suit property as it

may deem fit without the same being subjected to the operation of lis pendens under Section 52 of the Transfer of Property Act, 1882. It is not in

dispute that a lis pendens with reference to the above suit property was registered on 17th August, 2012. The learned Advocate appearing on behalf

of defendant No.1 submitted that prima facie the plaintiffs have no case for specific performance of the agreement for development of the suit

property and in the facts of this case there is no case even for protecting the plaintiffs in respect of any alleged charge in respect thereof. In fact, no

such charge has even been prayed for in the suit. The learned Advocate placed reliance on the ad-interim order passed by this Court dated 31st July,

2012, wherein this Court prima facie found that the entire communication placed on record would reveal that the matter was only at the stage of

negotiations and no final agreement had been arrived at between the parties. Even the claim of the plaintiffs that it had paid Rs. 40 lakhs in cash was

disbelieved by this Court. This Court held that it was difficult to believe that such a huge amount would be paid by cash and that too without any

receipt from the defendants.

5. Over and above these observations, the learned Advocate appearing on behalf of defendant No.1 also placed reliance on a public notice dated 26th

March, 2012 which was given by the plaintiff, which states that the plaintiff has negotiated to acquire and purchase from defendant No.1 the suit

property. This public notice can be found at page 8 to the written statement filed by defendant no.1. The learned Advocate submitted that even

according to the plaintiff, and as per this notice it was clear that the transaction in question were under negotiations and at least prima facie there was

no concluded contract. Thereafter, reliance is also placed on Exhibit â??Jâ? to the plaint which is Minutes of the Meeting dated NIL February, 2011.

The learned Advocate appearing for defendant No.1 took me through the Minutes of the Meeting in great detail and contended that on a holistic

reading of these Minutes it was quite clear that there was no concluded contract and in fact these Minutes have not even been signed by either of the

parties. He submitted that looking to the facts and circumstances of the present case, it was abundantly clear this suit was not bona fide and was

instituted only to somehow block defendant No.1 from re-developing the suit property. It is in these circumstances that the learned Advocate

submitted that defendant No.1 be allowed to deal with the suit property as it may deem fit without the same being subjected to the operation of lis

pendens under Section 52 of the Transfer of Property Act, 1882.

6. In support of this proposition, the learned Advocate relied upon a decision of the learned Single Judge of this Court (Shri S.C. Gupte, J) in the case

of Hilton Builders & Textiles Pvt. Ltd. vs. Special Paints Limited & Anr [(2014) 1 Bom CR 458 : 2013 SCC OnLine Bom 1939]. Relying upon this

decision, the learned Advocate brought to my attention that the facts of this case, as also the ones before me, were very similar and this Court

exercised its discretion in allowing defendant No.1 in that case to deal with the suit property without the same being subjected to the operation of lis

pendens. The learned Advocate submitted that looking at the facts and the circumstances of the present case, a similar discretion ought to be

exercised by me.

7. On the other hand, the learned Advocate appearing on behalf of the plaintiff submitted that there was no merit in the contentions canvassed by

defendant No.1. He submitted that on a holistic reading of the plaint and the correspondence annexed thereto, it was clear that there was a concluded

contract between the parties of which a specific performance was sought. Over and above this, the plaintiff had also sought a prayer for damages in

the sum of Rs.10 crores. Apart from this, the plaintiff had also made payment of Rs.40 lakhs in cash to defendant No.1 as well as an amount of

Rs.11,36,000/- to defendant No.2 who was the Architect appointed for development of the suit property. In these circumstances, the learned

Advocate submitted that if the prayer as sought for by defendant No.1 is granted, the entire suit would virtually become infructuous. In these

circumstances, it was submitted that the Notice of Motion be dismissed with costs.

8. I have heard the learned Counsel for the parties at length and have perused the papers and proceedings in the suit as well as in the Notice of

Motion along with their affidavits. As far as the rejection of the plaint is concerned, I have already held that the plaint cannot be rejected at this stage.

This now only leaves me to deal with the second prayer, namely, whether defendant No.1 ought to be allowed to deal with the suit property without

the same being subjected to the operation of lis pendens under Section 52 of the Transfer of Property Act, 1882. In this regard, and before I advert to the facts, it would be apposite to set out the provisions of Section 52 as amended in the State of Maharashtra, and which read thus:-

â??Transfer of Property pending suit relating thereof....

(1) During the pendency in any Court having authority within the limits of India excluding the State of Jammu and Kashmir or established beyond such

limits by the Central Government of any suit or proceeding which is not collusive and in which any right to immovable property is directly and

specifically in question, if a notice of the pendency of such a suit or proceeding is registered under section 18 of the Indian Registration Act, 1908, the

property after the notice is so registered cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the right of

any other party thereof under the decree or order which may be made therein; except under the authority of the Court and on such terms as it may

impose.â??

(emphasis supplied)

9. What Section 52 (1) (as applicable to the State of Maharashtra) inter alia provides is that during the pendency in any Court of any suit or

proceeding which is not collusive and in which any right to immovable property is directly and specifically in question, if a notice of the pendency of

such a suit or proceeding is registered under Section 18 of the Indian Registration Act, 1908, the property after the notice is so registered, cannot be

transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the right of any other party thereof under the decree or order

which may be passed therein, except under the authority of the Court and on such terms as it may impose. On a plain reading of Section 52 it is clear

that it confers a discretion on the Court as a result of which the operation of the doctrine of lis pendens can be lifted on such terms and conditions as

the Court may think fit to impose. The doctrine of lis pendens does not annul or invalidate a dealing by a party to the suit but renders it subordinate to

the rights of the other party to a litigation. The Court has a discretion, which like all other discretion in law, has to be exercised on judicious

considerations. Whether a party should be relieved from the operation of lis pendens is a matter of discretion. If the Court choses to exercise that

discretion, it is also vested with the power to prescribe the terms and conditions which would sub-serve the interests of justice. Whether to exercise the discretion or otherwise, the Court must necessarily have regard to all the facts and circumstances of the case, including the merits, though the

view of the Court may be only prima facie. To hold that the merits should be completely excluded from consideration would be to put a restriction on

Section 52 which has not been statutorily imposed. Though the operation of lis pendens is as a matter of law, the very same law recognizes that the

doctrine confers on the Court a discretion to relieve a party from the operation of lis pendens. The law confers such a discretion in recognition of the

fact that in a given case, the doctrine will result in serious inequity.

10. In the view that I take, I am supported by a decision of a learned Single Judge (Shri S.C. Gupte, J) in the case of Hilton Builders & Textiles Pvt.

Ltd. (supra). The learned Judge considered the law on the subject which can be found in Paragraphs 9 to 16 thereof (the SCC OnLine report), and

read as under:-

9. Section 52(1) of T.P. Act, as amended in State of Maharashtra, reads as under;

â??Transfer of Property pending suit relating thereofâ?¦â?¦â?¦. (1) During the pendency in any Court having authority within the limits of Indian

excluding the State of Jammu and Kashmir or established beyond such limits by the Central Government of any suit or proceeding which is not

collusive and in which any right to immovable property is directly and specifically in question, if a notice of the pendency of such a suit or proceeding is

registered under section 18 of the Indian Registration Act, 1808, the property after the notice is so registered cannot be transferred or otherwise dealt

with by any party to the suit or proceeding so as to affect the right of any other party thereof under the decree or order which may be made therein;

except under the authority of the Court and on such terms as it may imposeâ??

10. The applicability of section 52 was considered by Privy Council in case of Gouri Dutt Maharaj (supra). After considering the broad purpose of

section 52, Privy Council held as follows;

â??The broad purpose of section 52 is to maintain the status quo unaffected by the act of any party to the litigation pending its determination. The

applicability of the section cannot depend on matters of proof or the strength or weakness of the case on one side or the other in bona fide

proceedings. To apply any such test is to misconceive the object of the enactmentâ??.

11. The principle that the doctrine of lis pendens applies irrespective of strength or weakness of the case on one side or the other was confirmed by

the Supreme Court in the case of Kedarnath v. Sheonarain (supra). In that case, the Supreme Court held as follows;

â??â?¦â?¦. the doctrine of lis pendens applies irrespective of the strength or weakness of the case on one side or other. See Gouri Dutt Maharaj v.

Sukur Mohammed, 75 Ind App 165 : A.I.R. 1948 P.C. 147. There is, however, one condition that the proceedings must be bona fideâ??

12. It is no doubt true, having regard to the law enunciated by the Privy Council and the Supreme Court in the cases noted above, that the doctrine of

lis pendens as contained in section 52 of T.P. Act applies irrespective of the weakness or strength of the plaintiff's case, the only caveat being that the

proceedings filed by the plaintiff must be bona fide. What this means is that in a proceeding filed bona fide the doctrine applies, if the conditions laid

down therein are satisfied, namely, (i) that the suit or proceeding must be pending, (2) that such suit or proceeding must not be collusive, (3) that the

suit or proceeding must be one in which the right to immovable property is directly and substantially in question, and (4) a notice of pendency of the

suit is registered (applicable under the Maharashtra Amendment). Once these conditions are satisfied, the property cannot be transferred or otherwise

dealt with by any party to the suit or proceeding so as to affect any rights of the other party under any decree or order which may be passed therein.

But we are not concerned here with the applicability of section 52 of T.P. Act. Section 52 surely applies in our case. But section 52 itself provides for

the Court granting relief from lis pendens by authorizing a party to transfer the property on such terms as it may deem fit to impose. What we are

concerned with is what are the circumstances in which, and the terms on which, the Court can in an appropriate case grant such relief.

13. This question was considered by our Court in two cases, which will be presently noted. In the case of B.J. Patel (supra), a learned Single Judge of

this Court considered the principles applicable to granting of relief from lis pendens in the following words:

â??4. The principles applicable to granting of relief from lis pendens are not available in any reported case nor are they given in the section. This

being free from any reported case I have to form my own view as to what are the principles which are to be applied. Though, there cannot be an exhaustive enumeration of principles one thing is clear that this is a discretionary order and lis pendens is a rule and relief is an exception and strong

grounds must be made out to deprive the plaintiff of the fruits of litigation.

5. This being a discretionary relief, it must depend on the several circumstances which inter alia, can be, the nature of the plaintiff's case and the

defence, the nature of property market and the circumstances of the defendants. If the Court is convinced on the affidavits and the pleadings that

even if all the evidence was led by the parties there is a very strong probability that the plaintiff will lose the matter, it will be a very important factor,

possibly conclusive for granting relief. The Court will also have to consider the inconvenience and injustice that is likely to be caused to the defendants

if the relief is not granted and balance it with the inconvenience and injustice that is likely to be caused to the plaintiff if the relief from lis pendens is

grantedâ??

14. In the case of Shantilal J. Khona (supra), a learned Single Judge of this Court considered various aspects which are required to be borne in mind

when the Court considers an application for relief from lis pendens. The learned Judge spelt out these aspects as follows:

â??While considering the issue to my mind this Court must pose to itself, atleast the following questions which are not exhaustive:

(i) Is it a requirement of the section that a Party can be relieved of lis pendensonly on a Court imposing conditions. Is imposition of condition a pre-

requisite?

(ii) Whether on the facts as pleaded will the plaintiff prima facie, be entitled to the relief of specific performance of the contract.

(iii) If the Court comes to the conclusion that specific relief cannot be granted, then whether considering the alternative relief of damages which the

plaintiff in the suit for specific performance is entitled to, whether the plaintiff should be secured.

(iv) If to be secured should it only be the market value of the property on the date of the suit at time when the suit is filed be consideredâ??

15. In a recent judgment, the Supreme Court in the case of Vinod Seth v. Devinder Bajaj (supra) held as follows:

â??The principle underlying section 52 of T.P. Act is based on justice and equity. The operation of the bar under section 52 is however subject to the power of the Court to exempt the suit property from the operation of section 52 subject to such conditions it may impose. That means that the Court in

which the suit is pending, has the power, in appropriate cases, to permit a party to transfer the property which is the subject-matter of the suit without

being subjected to the rights of any party to the suit, by imposing such terms as it deems fitâ??.

16. The doctrine of lis pendens confers on the plaintiff a valuable statutory right. If the conditions of applicability of the doctrine are satisfied, the

subsequent transfers of property are not binding on him and he can enforce his rights in the suit against all sub sequent transferees without initiating

any proceedings against the subsequent transferees. This statutory right is, however, subject to the power of the Court to exempt the suit property

from the operation of the doctrine in an appropriate case on such terms and conditions as the Court may deem fit and proper. This essentially means

that the matter of relief from lis pendens is within the discretion of the Court and in an appropriate case, the Court may authorize the defendant to deal

with the suit property without being affected with the plaintiffs' statutory right under the doctrine of lis pendens.â??

11. I must mention that this decision of the learned Single Judge was subjected to an appeal being Appeal (L) No. 397/2013 in Notice of Motion No.

2508/2011 in Suit No. 426/2007 (decided on 9th October, 2013). The Division Bench of this Court (Dr. D.Y. Chandrachud and M.S. Sonak, JJ), after

a detailed discussion on the subject, dismissed the appeal. The relevant Paragraphs of this decision read thus :-

â??9. Section 52 of the Transfer of Property Act, 1882 has been amended in relation to the State of Maharashtra by Act VI of 1939. The Statement

of Objects and Reasons accompanying the introduction of the bill for the amendment provides that there was no provision in Section 52 as enacted,

providing for compulsory registration or giving notice of a pending suit or action by a party claiming benefit under the section. The result was that bona

fide purchasers for valuable consideration may suffer loss for want of notice, that the properties purchased by them had been included in a pending

action. The amendment of Section 52 was intended to supplement the provisions and to make registration of the lis pendens a condition precedent to

the operation of the provisions. Section 52 as amended in relation to this State, provides as follows:-

â??Transfer of property pending suit relating thereof .....(1) During the pendency in any Court having authority within the limits of India excluding the

State of Jammu and Kashmir or established beyond such limits by the Central Government of any suit or proceeding which is not collusive and in

which any right to immovable property is directly and specifically in question, if a notice of the pendency of such a suit or proceeding is registered

under section 18 of the Indian Registration Act, 1808, the property after the notice is so registered cannot be transferred or otherwise dealt with by

any party to the suit or proceeding so as to affect the right of any other party thereof under the decree or order which may be made therein; except

under the authority of the Court and on such terms as it may impose.

10. Now, it is a well settled principle of law ever since the decision of the Privy Council in Gouri Dutt Maharaj vs. Sukur Mohammed, [AIR (35) 1948

PC 147] that the purpose of Section 52 is to maintain status quo in effect by any act of a party to the litigation pending its determination. Similarly, it is

well settled that the operation of the doctrine of lis pendens does not depend upon the strength or weakness of the case of the Plaintiff or, as the case

may be, of the Defendant, in bona fide proceedings. This principle has been recognised in the judgment of the Supreme Court in Kedarnath vs.

Sheonarain [AIR 1970 SC 1717.] Consequently, the doctrine of lis pendens operates as a matter of law subject only to the condition that the

proceedings which have been instituted by the Plaintiff must be bona fide. What Section 52 postulates is that: (i) A suit or proceeding must be pending;

(ii) The suit or proceeding must not be collusive; (iii) A right to immovable property must be directly and specifically in question; and (iv) A notice of

the pendency of the suit or proceeding must be registered under Section 18 of the Indian Registration Act, 1908 (this last requirement being the

amendment applicable to the State of Maharashtra). Once these requirements are satisfied, the property, after a notice is so registered, cannot be

transferred or dealt with by any party to a suit or proceeding, so as to affect a right of any other party under a decree or order which may be made

therein except under the authority of the Court and on such terms and conditions as the Court may deem fit to impose. The doctrine of lis pendens in

other words does not annul or invalidate a dealing by a party to the suit but renders it subordinate to the rights of the other party to a litigation.

11. Section 52 confers a wholesome discretion on the Court as a result of which the operation of the doctrine of lis pendens can be lifted on such

terms and conditions as the Court thinks fit to impose. The Court has a discretion, which like all other discretion in law, has to be exercised on

judicious considerations. Whether a party should be relieved from the operation of lis pendens is a matter of discretion. Similarly, if the Court were to

decide to relieve a party of the operation of the doctrine, it has been vested with the discretion to prescribe the terms and conditions which would sub-

serve the interests of justice. In considering the interests of justice for the purpose of determining as to whether a party should be relieved from the

operation of lis pendens, the Court must necessarily have regard to all the facts and circumstances of the case. The facts and circumstances of the

case must undoubtedly include the merits prima facie. To hold that the merits should be completely excluded from consideration while assessing

whether the discretion should be exercised would be to read a restriction which Section 52 has not statutorily imposed. On the contrary, where the

statute allows the Court under its authority and on such terms and conditions as it may impose to relieve a party of the embargo which is imposed by

the provision, the court should not read restrictions which would substantially dilute the efficacy of the provision. The operation of lis pendens is as a

matter of law. But the same law which recognises the doctrine confers on the Court a discretion to relieve a party of the operation of lis pendens. The

law confers such a discretion in recognition of the fact that in the facts of a given case, the doctrine will result in serious inequity.

12. The reason why the Court has been vested with a discretion to relieve a party of the operation of lis pendens is that the pendency of a suit and the

registration of a lis pendens (as required in Maharashtra) substantially restricts the freedom of a party to secure a buyer at a fair market value. The

Supreme Court has recognised that the mere filing of a suit may be an ingenious way to create a cloud over the title of a party. The suit may remain

pending over a long period of time. This has been recognized in the decision of the Supreme Court in Vinod Seth vs. Devinder Bajaj, [(2010) 8 SCC 1]

in the following observations:-

We also agree with the High Court that having regard to the doctrine of lis pendens embodied in section 52 of the Transfer of Property Act, 1882

('TP Act' for short), the pendency of the suit by the appellant shackled the suit property, affected the valuable right of the second defendant to deal

with the property in the manner she deems fit, and restricted her freedom to sell the property and secure a fair market price from a buyer of her

choice.

When a suit for specific performance is filed alleging an oral agreement without seeking any interim relief, the defendant will not even have an

opportunity to seek a prima facie finding on the validity of the claim. Filing such a suit is an ingenious way of creating a cloud over the title to the suit

property. Such a suit, filed in the Delhi High Court, is likely to be pending for a decade or more. Even if a defendant owner asserts that his property is

not subject to any agreement and the said assertion is ultimately found to be true, his freedom to deal with the property as he likes or to realize its true

market value by sale or transfer is adversely affected during the pendency of the suit. The ground reality is that no third party would deal with a

property in regard to which a suit for specific performance is pending. This enables an unscrupulous plaintiff to cajole and persuade a defendant to

sell/give the property on plaintiff's terms, or force the defendant to agree for some kind of settlement.

Again while emphasizing that the principle underlying Section 52 is based on justice and equity, the Supreme Court held as follows : -

The principle underlying section 52 of the TP Act is based on justice and equity. The operation of the bar under Section 52 is however subject to the

power of the court to exempt the suit property from the operation of section 52 subject to such conditions it may impose. That means that the court in

which the suit is pending, has the power, in appropriate cases, to permit a party to transfer the property which is the subject matter of the suit without

being subjected to the rights of any party to the suit, by imposing such terms as it deems fit. Having regard to the facts and circumstances, we are of

the view that this is a fit case where the suit property should be exempted from the operation of Section 52 of the TP Act, subject to a condition

relating to reasonable security, so that the defendants will have the liberty to deal with the property in any manner they may deem fit, in spite of the

pendency of the suit.

13. A learned Single Judge of this Court in B.J.Patel vs. Vadilal Dolatram and

Sons, (AIR 1982 Bombay 66) had occasion to consider the principles

on the basis of which the discretion under Section 52 is to be exercised. Justice Mody sitting singly held as follows :-

Though, there cannot be an exhaustive enumeration of principles one thing is clear that this is a discretionary order and lis pendens is a rule and relief

is an exception and strong grounds must be made out to deprive the plaintiff of the fruits of litigation.

This being a discretionary relief, it will depend on the several circumstances which inter alia, can be, the nature of the plaintiff's case and the defence,

the nature of property market and the circumstances of the defendants. If the Court is convinced on the affidavits and the pleadings that even if all the

evidence was led by the parties there is a very strong probability that the plaintiff will lose the matter, it will be a very important factor, possibly

conclusive for granting relief. The Court will also have to consider the inconvenience and injustice that is likely to be caused to the defendants if the

relief is not granted and balance it with the inconvenience and injustice that is likely to be caused to the plaintiff if the relief from lis pendens is

granted.

The earlier decision was considered in a subsequent judgment of Mr.Justice F.I.Rebello (as the Learned Judge then was) in Shantilal Jethabai Khona

vs. Anandrai Shivlal Dave. [(2002 (3) Bom.C.R. 346] The learned Judge referred to some of the considerations which must be borne in mind,

clarifying that these were not intended to be exhaustive:-

While considering the issue to my mind this Court must pose to itself, at least the following questions which are not exhaustive:-

(i) Is it a requirement of the section that a party can be relieved of lis pendens only on a Court imposing conditions. Is imposition of condition a

prerequisite?

(ii) Whether on the facts as pleaded will the plaintiff prima facie, be entitled to the relief of specific performance of the contract.

(iii) If the Court comes to the conclusion that specific relief cannot be granted, then whether considering the alternative relief of damages which the

plaintiff in the suit for specific performance is entitled to, whether the plaintiff should be secured.

(iv) If to be secured should it only be the market value of the property on the date of the suit at time when the suit is filed be considered.

12. It is on the touchstone of these principles that I now have to decide whether defendant No.1 would be entitled to the relief of relieving him from

the doctrine of lis pendens under Section 52 of the Transfer of Property Act, 1882. In the present case, the suit is filed seeking specific performance

of the Minutes of the Meeting dated NIL February, 2011. These Minutes can be found at Exhibit- â??Jâ? to the plaint. On going through these

Minutes, at least prima facie, it appears that there was no concluded contract between the plaintiff and defendant No.1. There are several blanks in

the Minutes of the Meeting including the date. Further there are several notes in the Minutes of the Meeting such as in Paragraph 6 which states that

if the period of lease granted by the Municipal Corporation of Greater Mumbai would be for 30 years, then, the commercial repercussions would have

to be considered. Even the stamp duty and registration charges and who was to pay the same was under consideration. Further these alleged Minutes

have not been signed by either the plaintiff or by defendant No.1. On a holistic reading of these minutes, prima facie I am not convinced that there is

any concluded contract between the parties. In fact, when I enquired from the Advocate of the plaintiff that according to the plaintiff on what date the

contract was concluded, he was unable to give any exact date. Prima facie, it appears that these Minutes, at the highest, only record the negotiations

that were going on between the parties and which did not fructify into any concluded contract. In fact, this is also the finding of another learned Single

Judge (as he then was) [B. R. Gavai J.] in this very suit when Notice of Motion No.1794/2012 was pressed for ad-interim reliefs. Paragraph 4 of this

order reads thus:-

â??4. The perusal of the material on record would reveal that claim of the plaintiffs is basically on the basis of the so called minutes of the meeting,

which according to the plaintiffs reduce the terms and conditions of the agreement between them in writing. The perusal of the said minutes would

show that they are signed by none of the parties. Apart from that the entire communication placed on record would reveal that the matter was only at

the stage of negotiations and no final agreement had been arrived at between the parties. It can thus clearly be seen that there was no privity of

contract between the plaintiff and defendant No.1. Insofar as payment of

Rs.40,00,000/-is concerned, it is the case of the plaintiff that the said amount

is paid by cash. It is difficult to believe that such huge amount would be paid by cash and that too without receipt to the defendant. One more fact that

needs to be noted is that in the public notice published by the plaintiffs on 26th March, 2012, the plaintiffs themselves have referred to the transaction

between the plaintiffs and the defendant No.1 to be at the stage of negotiations.â??

13. I must mention that subsequently Notice of Motion No. 1794 of 2012 was unconditionally withdrawn by the plaintiff on 22nd January, 2015. Even

as far as the alleged payment of Rs.40 lakhs by the plaintiffs to defendant No.1 is concerned, there is nothing on record to show that in fact such a

payment was made. No receipts have been produced in respect thereof. In fact, defendant No.1 in its written statement has categorically denied the

receipt of the aforesaid amount. As far as the payment of Rs. 11,36,000/- made to defendant No.2 is concerned, it is the case of defendant No.2 that

this was payment towards professional services rendered to the plaintiff and in fact the plaintiff has not even claimed a refund of this amount in the

suit, even as an alternative prayer.

14. Looking to the totality of the facts of the case and considering that I have come to a prima facie finding that there was no concluded contract, it

would be highly inequitable to continue the cloud on the title of the suit property, which is, admittedly, owned by defendant No.1. I am of the prima

facie view that in the facts of the present case, even after the plaintiff is allowed to lead evidence, his chances of success on the present suit are

dismal to say the least.

15. In the light of the foregoing discussion, I find that it would be in the interest of justice if the following order is passed:-

Defendant No.1 shall be entitled to deal with the suit property as he may deem fit, without the same being subjected to the operation of lis pendens

under Section 52 of the Transfer of Property Act, 1882.

16. The Notice of Motion is accordingly disposed of. There shall be no order as to costs.

17. Place the suit on board for framing issues on 3rd July, 2019.

