

(2024) 10 GUJ CK 0069
In the Gujarat High Court

Case No : Appeal From Order No. 203 of 2024, Civil Application No. 1 of 2024

Jashvantlal Ambalal Patel & Anr. Versus

APPELLANT

Vs

Kanubhai Babulal Patel

RESPONDENT

Date of Decision : 30-10-2024

Acts Referred:

Code of Civil Procedure, 1908 — Section 151, 104, Order 6 Rule 17, Order 39 Rule 1 and 2, Order 43, Rule 1

Citation : (2024) 10 GUJ CK 0069

Hon'ble Judges : Divyesh A. Joshi, J

Bench : Single Bench

Advocate : Mihir Joshi, Nishit P Gandhi, Jay Kansara, Nisha Ozjha, Umang Dave, M/s Wadiaghandy And Co.

Final Decision : Allowed

Judgement

Divyesh A. Joshi, J

1. With the consent of learned advocates for the parties, the present Appeal from Order is taken up for final disposal.
2. By filing present Appeal from Order under Section 104 and Order 43, Rule 1 of the Code of Civil Procedure, 1908 (hereinafter referred to as "the CPC" for short), the appellants have challenged the validity and legality of the order dated 29.06.2024 passed below application, Exh.5 by the learned 5th Additional Senior Civil Judge, Gandhinagar in Special Civil Suit No.120/2020, whereby the injunction application preferred by the appellants has been rejected.
3. Heard learned Senior Counsel, Mr. Mihir Joshi assisted by learned advocate, Mr. Nishit Gandhi for the appellants and learned advocate, Mr. Jay Kansara for M/s. Wadiagandhy & Co. for respondent.
4. Learned Senior Counsel submitted that the appellants are the plaintiffs of Special Civil Suit No.120/2020 filed by them and the respondent is the original defendant. Learned Senior Counsel submitted that aforesaid suit is filed before

the court of learned Civil Judge, Gandhinagar inter alia praying for specific performance and along with the said suit, an application for interim injunction, Exh.5 was also filed, which was rejected by the learned Civil Judge by impugned order and, hence, the present appeal has been preferred. Learned Senior Counsel submitted that an agreement to sell came to be executed between the appellants and the respondent herein for the land bearing Survey Nos.147/2/a, 147/2/b, 147/3, 147/4, 148/2 & 149/1 situated in the sim of Village : Bhat, Tal. & Dist.: Gandhinagar on 19.04.2016 on the terms and conditions mentioned in the said agreement to sell and it was agreed by and between the parties that the validity of the said agreement to sale was 27 months after getting title clearance certificate by the advocate concerned and at the time of execution of the agreement to sale, an amount of Rs.6,00,000/- was given through cheque, details of which are mentioned in the said agreement to sell. Learned Senior Counsel, however, submitted that the respondent herein has failed to perform his part of contract by executing registered sale deed in favour of the plaintiffs within prescribed time limit. Learned Senior Counsel submitted that as per the conditions of the agreement to sale, immediately after obtaining title clearance certificate of the lands, the respondent has to execute the registered sale deed on payment of sale consideration. Learned Senior Counsel submitted that it is an admitted position of fact that the agreement to sale was executed on 19.04.2016 but till September, 2020, the respondent has not taken care to obtain title clearance certificate of the said parcels of land, as a result of which, the registered sale deed could not be executed and during this period also, the appellants were showing their readiness and willingness to make the payment of sale consideration, however one fine day, the respondent has retracted from his version and demanded more amount than what was agreed between the parties, therefore, the appellants were constrained to file suit before the learned Civil Court. Learned Senior Counsel submitted that in fact, during the interregnum period, as the respondent was in need of money, the plaintiffs have paid total amount of Rs.81,71,000/- to the respondent through cheques and, thereafter, as the respondent was in need of money, the appellants have paid Rs.4,00,00,000/- to the respondent and executed the registered sale deed for the land bearing Survey Nos.148/2 & 149/1 despite the fact that the said property was not cleared and disputes are pending before the learned Civil Court regarding the said parcels of land but that does not mean that the appellants have waived their right to seek title clearance certificate for rest of the lands. Learned Senior Counsel submitted that as stated above, it was agreed by and between the parties that as soon as the title clearance certificate is received, the respondent will execute the registered sale deed in favour of the appellants but despite passing of sufficient time, the respondent has not taken any care for obtaining the title clearance certificate and/or could not be able to secure title clearance certificate of the suit property. Learned advocate submitted that as per one of the conditions of the agreement to sale, if any of the party to the contract fails to perform his part, in that event, either of the party is entitled to approach the court for its implementation but there is no clause expressly provided with regard

to termination of terms of the contract in the said agreement. He further submitted that it is settled proposition of law that time is essence of the contract and term of time is mutually decided by the parties at the time of execution of the agreement to sale and as per contract within a period of 27 months and they have to fulfill the terms and conditions of the contract scrupulously. Learned advocate submitted that it is the specific case of the appellants that on number of times, the appellants have demanded title clearance certificate from the respondent but for the reasons best known, the respondent has not given title clearance certificate of the land in question to the appellants and in absence of supplyment of title certificate, the appellants are not in a position to enter into registered sale deed, therefore by no stretch of imagination, it can be said that there was fault on the part of the appellants. Learned Senior Counsel submitted that on the contrary, the appellants have paid huge volume of amount to the defendants and the said fact is clearly found out from the documents produced along with the suit. Learned Senior Counsel submitted that the appellants have already produced on record copies of income tax returns, wherein it is clearly stated that at regular interval, they had paid amount to the respondent to the tune of Rs.81,71,000/- and the said pleadings of the suit have not been denied by the respondent in his written statement. Learned Senior Counsel submitted that the title clearance certificate of the lands is a pre-requisite condition of the contract and in absence and/or non-fulfillment of those conditions, the residual amount of sale consideration could not be paid and after a lapse of four years, as the prices of the lands have already been escalated, the respondent had retracted from terms and conditions mentioned in the registered agreement to sale, therefore, cause of action has arisen to file the suit. Learned Senior Counsel further submitted that this is the second round of litigation because earlier an application, Exh.5 has been considered by the learned trial court and being aggrieved by the said order, the defendant had assailed the said order before this Hon'ble Court by filing Appeal from Order No.127/2023 and with the consensus of the parties, the said Appeal from Order had been disposed of and the matter was remanded back to the concerned trial court for deciding afresh. Learned Senior Counsel submitted that right from the very beginning, the appellants have come with specific case that the appellants are ready and willing to pay residual amount as mentioned in the agreement to sale and they are also ready to deposit the said amount before the court concerned and with an intent to show their willingness at the time of institution of suit, a specific averment to that effect is made in the plaint. Learned Senior Counsel submitted that not only that, thereafter separate purshis declaring that the plaintiffs are willing to deposit the said residual amount of consideration in the court and appropriate order may be passed, however, the said application is still pending but the averments in the plaint and purshis filed by the appellants clearly goes on to show that they were ready and willing to deposit the amount before the court concerned. Learned Senior Counsel submitted that when specific condition is mentioned in the operative part of the contract that within reasonable period of time, the respondent has to obtain title clearance certificate of the said parcels of land and

after obtaining title clearance certificate, the appellants shall have to pay amount of sale consideration, however bare perusal of terms and conditions clearly goes on to show that there was no condition expressly mentioned that if the parties fail to fulfill the conditions in time, in that event, contract would render non-effective and/or cancelled. Learned Senior Counsel has fairly conceded that at the relevant point of time, the respondent was in need of money, therefore, the appellants had paid amount of sale consideration of two parcels of land and sale deed for those lands were executed and, thereafter at regular interval, amount was being given by the appellants to the respondent through cheques but the respondent has failed to provide title clearance certificate of the property and the appellants have not waived their right and the defendant cannot be permitted to absolve to get title clearance certificate and from the condition. Learned Senior Counsel submitted that the respondent has entered into transaction with the appellants at regular interval by receiving the said amount and copies of the said documents produced on record clearly goes on to show that the said amount has already been paid and the said fact is not denied by the respondent, therefore, the principle of equity and balance of convenience is always in favour of the appellants and the appellants have paid huge volume of amount and thus, all the ingredients i.e. pre-requisite conditions are fully satisfied. Learned Senior Counsel submitted that prima facie balance of convenience is in favour of the appellants and if the relief as prayed for is not granted, in that event, it would cause great irreparable loss to the appellants.

5. Learned Senior Counsel submitted that during the pendency of the suit, an application under Order 6, Rule 17 of the CPC was submitted before the court concerned, which was eventually considered and subsequently after certain period of time, the defendant has come with a specific case that the appellants have abandoned from the contract and have also waived their right by doing certain deed, therefore, they are not entitled to get any relief from the Hon'ble Court and at the time of deciding the said application, learned Judge has proceeded only on the ground that as per the terms and conditions of the agreement to sale, the respondent has to remove all encumbrances from the said parcels of land within a period of one month and immediately after that, within a period of 27 months, the appellants have to pay amount of sale consideration and have to enter into registered sale deed and the record clearly goes on to show that the registered agreement to sale is executed in the year 2016 and upto 2020, the appellants had not paid amount of sale consideration to the respondent and, therefore, the appellants have miserably failed to fulfill the terms and conditions of the contract in true sense, therefore, it seems that the appellants have failed to prove his readiness to execute the contract within time framed schedule and thereby rejected the injunction application, Exh.5. Learned Senior Counsel submitted that however the said finding given by the learned Judge is not correct and in fact, right from the beginning, the appellants are ready and willing to pay the sale consideration on execution of the registered sale deed after obtaining Title Clearance Certificate but for the reasons best

known to the respondent, he had not obtained the title clearance certificate and consumed time, for which, the appellants may not be made to suffer. Learned Senior Counsel further submitted that admittedly the suit is pending before the learned Civil Judge, which is filed in the year 2020 and this is second round of litigation before this Hon'ble Court and it would take time to conclude the proceeding of the suit and pending suit, if the respondent may enter into transaction with regard to land in question, in that event, it would be multiplicity of proceeding, that would arise, therefore to avoid such situation, injunction as prayed for is required to be granted.

6. Learned Senior Counsel, Mr. Joshi has put reliance upon the decision of the Hon'ble Supreme Court in case of N. Srinivasa Vs. Kuttikaran Machine Tools Ltd., reported in (2009) 5 SCC 182 and submitted that ratio enunciated in the aforesaid decision is squarely applicable to the case on hand, therefore considering the said ratio, relief as prayed may be granted.

7. Learned advocate, Mr. Jay Kansara, who appears on caveat for the respondent, has opposed the present Appeal from Order with a vehemence and submitted that the impugned judgment and order passed by the learned Civil Judge while rejecting the application for injunction, Exh.5 is just, fair, reasonable and based on sound principle of law and at the time of passing said order, the learned Judge has exhaustively discussed all the points raised by the parties and assigned sound reasons, which do not require any interference at the hands of this Hon'ble Court. Learned advocate submitted that it is the specific case of the appellants in the suit that they had entered into an agreement to sale in the year 2016 for the six parcels of land for an amount of Rs.9,80,11,000/- and the period of said agreement to sale is of 27 months after obtaining title clearance certificate of the land from the advocate concerned and sale deed will be executed subject to fulfillment of the said conditions and accordingly for two parcels of land i.e. land bearing Survey Nos.148/2 & 149/1, registered sale deed came to be executed by the respondent in favour of the original plaintiffs on receiving payment of sale consideration immediately within a period of five months after execution of registered agreement to sale and at that relevant point of time, the appellants have not demanded any title clearance certificate and, therefore, it can be said that the appellants have waived their valuable rights to seek title clearance certificate of remaining parcels of lands, therefore, the terms and conditions so far as obtaining title clearance certificate before registration of sale deed have put to rest. Learned advocate submitted that it is the settled proposition of law that after receiving the notice, if the written statement is filed and, thereafter, subsequently an application for amendment is preferred, which was eventually considered after bi parte hearing, in that event, an application seeking amendment in the prayer merges with the written statement and more particularly, the said order on the amendment application was not challenged before any higher forum and it has attained finality, in that event, at the time of considering the contents of written statement, the contents of amendment application are also required to be seen and in the amended written statement, it

is denied that the respondent had not received any amount during interregnum period. Learned advocate submitted that it is specific case of the appellants that in the month of September, 2020, they had gone to the office of the respondent and at that relevant point of time, the respondent had demanded price of the property as per the existing market rate, due to which, the dispute had cropped up. Learned advocate submitted that however, it is not the case of the appellants that the respondent has refused to perform his part of contract, therefore, the cause of action has not arisen. Learned advocate submitted that nowhere in the plaint, the appellants have stated that during the interregnum period of four years, they had met at particular day on particular place and made discussion about the title clearance certificate of the lands with the respondent and not a single piece of written communication is placed on record along with the suit. Learned advocate submitted that only one piece of paper is prepared in the computer in excel-sheet stating that the appellants have paid Rs.81,71,000/- to the respondent during interregnum period of four years without supplying any substantial supporting piece of evidence to substantiate their claim, therefore, the said contention would not be taken into consideration at the time of deciding application, Exh.5. Learned advocate submitted that it is the specific case of the respondent that during interregnum period, the appellants had never met the respondent and there was no communication whatsoever could have been made between the parties and in absence of any correspondence, it cannot be said that the respondent has failed to perform his part of the contract and after the expiry of the period prescribed in the contract, time to pay the amount of consideration has already been elapsed and during the interregnum period, the respondent had already executed registered sale deed of two parcels of land out of six parcels of land, therefore, it cannot be said that the respondent is not ready to fulfill his part of the contract, whereas the appellant's act and action clearly goes on to show that they had waived their right to seek title clearance certificate of rest of the parcels of land as without obtaining title clearance certificate, they had executed registered sale deed for two parcels of lands out of bunch of six parcels of land by paying the amount of sale consideration, in that event, they could have to execute the registered sale deed by paying amount of sale consideration to the defendants for rest of the parcels of land at the relevant point of time but now the prices of the land have been escalated at such a high level, in that event, after a period of more than 8 years in the year 2024, the appellants have come with a case that they are ready and willing to pay amount of sale consideration as agreed by and between the parties in the year 2016, therefore, the said view adopted by the appellants is not digestable, palatable, believable and considerable. He further submitted that it is also settled proposition of law that at the time of preferring the suit for specific performance of the contract, without prayer for declaration of the property, suit for specific performance is not maintainable. Learned advocate submitted that at the time of deciding the application, Exh.5, learned Judge has rightly held that two words "readiness" and "willingness" are not same and the appellants have already shown readiness but the conduct of the appellants clearly goes on to show that they were not willing

and if they are interested in the lands, in that event, they could have executed the registered sale deed for remaining parcels of land on payment of sale consideration and there was no objection on the part of the respondent to execute the sale deed at the relevant point of time but now after a lapse of four years, they have come with a specific case that they are ready to pay and agree to deposit amount before the court as per the amount agreed by the parties as per the contract executed in the year 2016. He further submitted that if the Hon'ble Court would go through the papers, it is clearly found out that by executing the registered sale deed of two parcels of land, the appellants have waived their right to seek title clearance certificate and they have not fulfilled/performed the terms and conditions of the contract upto four years, therefore, the appellants had not adhered with the terms and conditions of the contract in true sense and failed to perform their part of duty as per the terms of the agreement to sale within prescribed time limit. Learned advocate submitted that as stated above, within five months, registered sale deed for two parcels of land has been executed in favour of the appellants on payment of sale consideration but thereafter for a long period of four years, they remained silent, therefore, equitable relief would go in favour of the respondent and in case of specific performance, burden of proof would always lie on the head of the appellants and the appellants have miserably failed to place on record those set of material.

8. Learned advocate further submitted that in earlier round of litigation, when an application, Exh.5 was entertained by the learned civil court, the respondent had challenged the said order before this Hon'ble Court by filing Appeal from Order No.127/2023 and at that relevant point of time, the original plaintiffs – the appellants herein had filed affidavit-in-reply, wherein they have fairly stated that "the defendant owner has not transacted with any third party till the date of the suit nor has created any equitable right of any party". Learned advocate has submitted that at the time of deciding the application, the Hon'ble Court has rightly applied the ratio of the principle of law enunciated by the Hon'ble Supreme Court as well as this Hon'ble Court, therefore, the impugned order is not required to be interfered with at the hands of this Hon'ble Court. Learned advocate has put reliance upon following decisions,

(1) the judgment of the Hon'ble Supreme Court in case of Skyline Education Institute (India) Private Ltd. Vs. S.L. Vaswani & Anr., reported in (2010) 2 SCC 142;

(2) the judgment of the Hon'ble Supreme Court in case of Neon Laboratories Ltd. Vs. Medical technologies Ltd. & Ors., reported in (2016) 2 SCC 672;

9. Referring to the ratio enunciated in the aforesaid decisions, it is urged that the present Appeal from Order may not be considered and it may be dismissed.

10. In rejoinder, in reply to the submission canvassed by learned advocate for the respondent with regard to non-production of the documents with regard to payment to the respondent, learned Senior Counsel submitted that at the time of

institution of suit, the appellants have already produced copies of the income tax returns. Learned Senior Counsel, however, submitted that but the facts remains that the appellants have made the payment through cheques and all the cheques were cleared and this fact is supported by the documents produced on record like copies of income tax returns and at the time of filing of plaint, those facts were placed on record and not denied by the other side, however on the contrary, it would be said that there was admission on the part.

11. Having heard the learned counsel for the respective parties and on perusal of the impugned judgment and order, the issue falls for consideration of this Court is as to whether the impugned judgment and order declining the injunction suffers from any error of law which calls for interference in the exercise of appellate jurisdiction?

12. It is well settled principles of law that in an Appeal against exercise of 'discretion' by the Court of first instance, the power of appellate Court to interfere with the exercise of discretion is restrictive. Merely because on facts, the appellate Court would have concluded differently from that of the learned Civil Court, that would not, by itself, provide justification for appellate Court to interfere. To justify interference, the appellant would have to demonstrate that the discretion has been shown to have been exercised arbitrarily or capriciously or perversely or where the Court had ignored the settled principles of law regulating grant or refusal of interlocutory injunction. An appeal against the exercise of discretion is an appeal on principle. In the case of *Wander Ltd. Vs. Antox India P. Ltd.*, reported in 1990 (Supp1) SCC 727, it has been adumbrated by the Hon'ble Supreme Court that the Appellate Court ought not to "re-assess 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 in 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. If the discretion has been exercised by the trial Court reasonably and in a judicial manner, the fact that the Appellate Court would have taken a different view, may not justify interference with the trial Court's exercise of discretion".

13. In view of the above settled principles of law, power of this Court, as an Appellate Court, to interfere with the order passed by the trial Court is very limited and only in exceptional circumstances, the Appellate Court can interfere with the discretionary order passed by the trial Court. The Appellate Court cannot re-evaluate the entire evidence and arrive at a conclusion contrary to the conclusion arrived at by the trial Court. However, in case where the order passed by the trial Court is found to be invalid, illegal, arbitrary, perverse or contrary to the settled principles of law, the Appellate Court has all powers to interfere with the same. Considering the above principles of law, this Court has only to see as to whether the trial Court has committed any error in passing the impugned

order. It has also to see whether the main basic principles of law namely, prima-facie case, balance of convenience and irreparable loss are satisfied or not in passing the order.

14. Before advertng to the contentions, let me refer the settled principles with regard to grant or refuse of temporary injunction and power and scope of the Appellate Court to interfere with the order of granting/ refusing the interim injunction. Grant of temporary injunction is discretionary and the appellate court will not interfere with the exercise of discretion of court at first instance except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. This aspect has been dealt with by Hon'ble Supreme Court in the case of Esha Ekta Appartments CHS Limited & Ors. Vs. Municipal Corporation of Mumbai & Anr., reported in (2012) 4 SCC 689. Para 19 & 20 of the said judgment are reproduced below:-

"19. We have considered the respective submissions and carefully scrutinized the record. The scope of the appellate Court's power to interfere with an interim order passed by the Court of first instance has been considered by this Court in several cases. In Wander Ltd. vs. Antox India (P) Ltd. 1990 Supp SCC 727, the Court was called upon to consider the correctness of an order of injunction passed by the Division Bench of the High Court which had reversed the order of the learned Single Judge declining the respondent's prayer for interim relief. This Court set aside the order of the Division Bench and made the following observations:

"In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the Court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will 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 in 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. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion."

20. In Skyline Education Institute (India) Pvt. Ltd. vs. S.L. Vaswani, (2010) 2 SCC 142, the 3-Judge Bench considered a somewhat similar question in the context of the refusal of the trial Court and the High Court to pass an order of temporary injunction, referred to the judgements in Wander Ltd. v. Antox India (p.) Ltd, (supra), N.R.Dongre v. Whirlpool Corpn., (1996) 5 SCC 714 and observed:

"The ratio of the abovenoted judgements is that once the court of first instance exercises its discretion to the grant or refuse to grant relief of temporary injunction and the said exercise of discretion is based upon objective consideration of the material placed before the Court and is supported by cogent reasons, the appellate Court will be loath to interfere simply because on a de novo form a different opinion on the issues of prima facie case, balance of convenience, irreparable injury and equity."

15. Coming to the facts of the case of the plaintiffs available from the facts and pleadings and furthered by submissions canvassed, it is found out that the appellants have filed Special Civil Suit No.120/2020 before the court of learned Civil Judge, Gandhinagar inter alia praying for specific performance and along with the said suit, an application for injunction, Exh.5 was also filed, which was rejected by the learned Civil Judge by impugned order and, hence, the present appeal has been preferred. In the plaint, it is the case of the plaintiffs that an agreement to sale has been executed between the parties for the land bearing Survey Nos.147/2/a, 147/2/b, 147/3, 147/4, 148/2 & 149/1 situated in the sim of Village : Bhat, Tal. & Dist.: Gandhinagar on 19.04.2016 on the terms and conditions mentioned therein and as per the terms and conditions, sale deeds for the aforesaid lands are to be executed by the respondents after obtaining Title Clearance Certificate within 27 months and at the time of execution of the agreement to sale, an amount of Rs.6,00,000/- was given through cheque, details of which are mentioned in the said agreement to sell, however thereafter, the respondent has failed to discharge his duty to execute the sale deed in favour of the appellants and demanded more money, which led to filing of the aforesaid suit. It is not in dispute that the respondent has executed registered sale deed for two parcels of land i.e. land bearing Survey Nos.148/2 & 149/1 without obtaining Title Clearance Certificate and in all, the appellants have paid Rs.81,70,000/- to the respondents by way of cheques. It is the specific case of the appellants just because the need of respondent, the appellants have entered into sale transaction by executing registered sale deed for two parcels of land without obtaining Title Clearance Certificate from the respondent and the respondent has taken benefit of that fact. It is also the case of the appellants that they were and are ready and willing to make the payment of sale consideration but because of price escalation, the respondent demanded more money that what is agreed by and between the parties in the agreement to sale. It is also found out that from time to time, the appellants have made the payment through cheques, which were honoured and the said fact is not disputed by the respondent and documents to that effect are also on record before the learned Civil Court. Thus from this fact itself, it is found out that at regular interval, the parties have met and payment has been accepted, therefore, the respondent cannot say that no efforts were being made by the appellants to discuss the issue. At this stage, it is required to be noted that while passing observation, the learned Judge has observed about the time period decided by the parties i.e. 27 months. However it is also required to be noted that in a

contract for sale of immovable property, normally it is presumed that time is not the essence of the contract unless any specific schedule is given in the contract. Further, there is no clause expressly mentioned in the contract that in case of failure of either party to fulfill the terms and conditions, the contract between the parties would automatically stand cancelled. Therefore the observation and finding given by the learned Judge on this aspect are found to be erroneous and perverse.

16. Reverting back to the facts of the present case and findings of the trial Court, it appears that the learned trial Court while rejecting the application preferred by the appellants observed that the plaintiffs have failed to produce on record the documents related to the money transaction took place between the parties, which substantiate the fact that the plaintiffs have made the payment to the defendant and the documents, which are produced on record, are self-created statements. It is also observed that within time framed schedule of 27 months, the plaintiffs have not made any attempt to execute registered sale deed from the respondents and though there was specific condition in the agreement to sale with regard to obtaining Title Clearance Certificate before sale transaction, the plaintiffs have entered into registered sale deed for two parcels of land without obtaining Title Clearance Certificate. However, on perusal of the pleadings of the party, the plaintiff has averred that as the defendant had demanded money from the plaintiffs, sale deed for two parcels of land has been executed without obtaining Title Clearance Certificate on a condition that for remaining parcels of land, sale deed will be executed on getting cleared title. Not only that, it is also averred that efforts were being made by the plaintiffs for the execution of the registered sale deed as also the fact that the defendant had demanded double amount than what was decided at the time of execution of the agreement to sale. It is also averred in the plaint that the plaintiffs are ready and willing to deposit the amount before the Hon'ble Court and pursuance to that effect was also filed before the learned civil court, copy of which is also produced on record by the appellants on the record of this Hon'ble Court by way of filing additional affidavit. Further, Income Tax Returns are also produced on record, which clearly goes on to show the transaction took place between the parties. Thus, the learned civil court has not properly appreciated the facts and law while deciding the interim injunction application, which is clearly arbitrary, perverse and capricious one. Therefore, in view of the above discussion, the impugned order needs to be interfered with by this Court and the impugned order is not sustainable in the eyes of law.

17. At this stage, it is relevant to refer to the provisions Order XXXIX Rule 1 and 2 read with Section 151 of the Civil Procedure Code, 1908, which are reproduced as under:

"Order XXXIX Rule 1 and Order XXXIX Rule 2

1. Cases in which temporary injunction may be granted.-- Where in any suit it is proved by affidavit or otherwise--

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to [defrauding] his creditors, [(c) that the defendant threatens to dispossess, the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit,] the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property 1 [or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit] as the Court thinks fit, until the disposal of the suit or until further orders.

2. Injunction to restrain repetition or continuance of breach.--

(1) In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the Court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right.

(2) The Court may by order grant such injunction, on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise, as the Court thinks fit.

SECTION 151 OF THE CIVIL PROCEDURE CODE:

151. Saving of inherent powers of Court.-- Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court."

18. While considering the application under Order XXXIX Rule 1 and 2, the Court has to consider the factors like, prima facie case, balance of convenience and irreparable loss in terms of money, if injunction is not granted. This Court has powers under Order XLIII Rule 1 of the CPC, which is discussed by the Hon'ble Apex Court in the leading judgment rendered in the case of Wander Ltd & Anr. Vs. Antox India P. Ltd., reported in 1990 (Supp) 1 SCC 727.

19. It is also relevant to refer to the judgment rendered in the case of Ramdev Food Products (P) Ltd. Vs. Arvindbhai Rambhai Patel & Ors., reported in (2006) 8 SCC 726, more particularly, paras 125 to 127, which are as under:

"125. We are not oblivious that normally the appellate court would be slow to interfere with the discretionary jurisdiction of the trial court.

126. The grant of an interlocutory injunction is in exercise of discretionary power and hence, the appellate courts will usually not interfere with it. However, appellate courts will substitute their discretion if they find that discretion has been exercised arbitrarily, capriciously, perversely, or where the court has ignored settled principles of law regulating the grant or refusal of interlocutory injunctions. This principle has been stated by this court time and time again.

127. 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 in 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.”

20. At this stage, I would like to refer to the judgment of the Hon’ble Supreme Court in case of N. Srinivasa (supra) upon which reliance has been placed by learned Senior Counsel, Mr. Joshi. In the said decision, the Hon’ble Supreme Court has observed in Paragraph Nos.27 & 28 as under,

“27. In a contract for sale of immovable property, normally it is presumed that time is not the essence of the contract. Even if there is an express stipulation to that effect, the said presumption can be rebutted. It is well settled that to find out whether time was essence of the contract, it is better to refer to the terms and conditions of the contract itself.

28. Further more, the High Court, in our view, has failed to appreciate that by the impugned order they have also limited the scope of arbitration if ultimately the allegations made by the appellant are found to be true. That is to say, if an order restraining the respondent from creating any third party interest or from transferring the property in dispute is not granted till an award is passed, the appellant shall suffer irreparable loss and injury and the entire award if passed in his favour, would become totally negated.”

21. Thus in view of the proposition of law enunciated in the aforesaid decisions of the Hon’ble Supreme Court as well as considering the facts of the case on hand, it is found out that the appellants - plaintiffs have established prima facie case as also balance of convenience in their favour on the strength of the material available on record. Over and above that the dispute pertains to land and as stated above, the agreement to sale was for six parcels of land, out of which, sale deed has been executed for two parcels, where now the dispute is with regard to four parcels of land, therefore, if the injunction as prayed is not granted then, it would cause irreparable loss to the appellants. Therefore, the present appeal deserves to be allowed.

22. At this stage, it is required to be noted that by submitting purshis, readiness and willingness is shown by the appellants to deposit the amount before the learned court just to show their bonafides and the said application is not yet decided and is pending. Therefore, it is open for the learned Judge concerned to

decide the said application and pass appropriate order in accordance with law with regard to deposit of the amount.

23. In the result, present Appeal from Order succeeds and is hereby allowed. The impugned order dated 29.06.2024 passed below application, Exh.5 by the learned 5th Additional Senior Civil Judge, Gandhinagar in Special Civil Suit No.120/2020 is hereby quashed and set aside. Both the parties are hereby directed to maintain status quo with regard to the land in question till final hearing and disposal of Special Civil Suit No.120/2020 pending before the court of the learned 5th Additional Senior Civil Judge, Gandhinagar. It is expected that the learned Civil Judge shall proceed with the plaint in accordance with law without being influenced by the observations made by this Court in the present order and decide the plaint as early as possible.

24. In view of above order passed in main Appeal From Order, connected Civil Application for stay does not survive and same stands disposed of accordingly.