$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Judgment reserved on: 16.09.2025***
Judgment pronounced on: 09.10.2025

\+ FAO(OS) 79/2022, CM APPL. 30807/2022 & CM APPL. 56839/2024

EARTHZ URBAN SPACES PVT. LTD. .....Appellant

Through: Dr. Manish Singhvi, Sr. Adv. with Ms. Himaani Prabhakar, Adv. and Mr. Saroj Rai, AR for the Appellant.

versus

RAVINDER MUNSHI & ORS. .....Respondents

Through: Mr. Rajashekhar Rao Sr. Adv., with Ms. Sanam Tripathi, Ms. Meherunisa Anand Jetley, Ms. Anjali Kaushik and Mr. Dheeresh Kumar Dwivedi, Advs. for R-1.
Mr. Ashish Dholakia, Sr. Adv. with Ms. Sanam Tripathi, Mr. Subhoday Banerjee, Ms. Anjali Kaushik and Mr. Dheeresh Kumar Dwivedi, Advs. for R-2.
Mr. Jeevesh Nagrath, Sr. Adv. with Ms. Sanam Tripathi, Ms. Nitya Maheshwari, Ms. Anjali Kaushik and Mr. Dheeresh Kumar Dwivedi, Advs. for R-3.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T

HARISH VAIDYANATHAN SHANKAR, J.

1. The present appeal, filed under Order XLIII Rule 1 and Section 151 of the **Code of Civil Procedure, 1908**[1], read with Section 10 of the Delhi High Court Act, 1966, assails the **Order dated 02.06.2022** [2] passed by the learned Single Judge in CS(OS) No. 287/2022, titled '*Earthz Urban Spaces Pvt. Ltd. vs. Ravinder Munshi & Ors.*'.

2. By the Impugned Order, while the learned Single Judge directed issuance of summons to the Defendants/Respondents herein, the Plaintiff/Appellant's application under Order XXXIX Rules 1 and 2 CPC for grant of an interim and temporary injunction was dismissed. In addition, the learned Single Judge held that the **property bearing No. B-8, Pamposh Enclave, New Delhi-110048** [3] would stand exempted from the applicability of the doctrine of *lis pendens* as embodied under Section 52 of the **Transfer of Property Act, 1882**[4].

BRIEF FACTS:

3. The Appellant's case is that negotiations for the sale and purchase of the suit property commenced with the Respondents in April 2021. These discussions primarily took place through electronic means such as WhatsApp messages and Zoom meetings, owing to restrictions imposed during the COVID-19 pandemic.

4. The Appellant contends that a binding oral agreement was concluded on 27.04.2021, wherein the essential terms were settled,

[1] CPC
[2] Impugned Order
[3] Suit Property
[4] TP Act

including a sale consideration of Rs. 26 crores and a three-month timeline for completion of the transaction.

5. Subsequently, on 02.06.2021, the parties executed a **Memorandum of Understanding**[5]. According to the Appellant, this MoU was intended only to facilitate the Respondents in securing the most favourable tax treatment and did not affect the binding nature of the oral agreement already concluded. The Respondents, however, rely upon the express clauses of the MoU to argue that it was non-binding in nature.

6. The Appellant claims to have acted in furtherance of the agreement by arranging finances through a loan and making part-payment of Rs. 12 lakhs on 11.08.2021. This payment, as alleged, comprised two cheques, Rs. 5 lakhs issued to Respondent No. 1 and Rs. 2 lakhs to Respondent No. 3, and a cash payment of Rs. 5 lakhs to Respondent No. 2. The Respondents, however, dispute both the receipt and encashment of these amounts.

7. The Appellant further alleges that by late August 2021, it came to light that the Respondents were seeking to renege from the agreement and instead negotiate with third parties for a higher price. In response, the Appellant issued a legal notice dated 27.08.2021, calling upon the Respondents to perform their obligations. The Respondents, by reply dated 30.08.2021, categorically denied the existence of any concluded agreement and also refuted receipt of the alleged advance payment.

8. Thereafter, the Appellant approached the Delhi High Court Mediation and Conciliation Centre for Pre-Litigation Mediation.

[5] MoU

However, since the Respondents refused to participate, the mediation was declared a "*Non-Starter*" *vide* Conciliation Report dated 04.10.2021.

9. Premised on these, the Appellant instituted CS(OS) No. 287/2022 before the learned Single Judge, seeking specific performance of the oral agreement to sell dated 27.04.2021 and the MoU dated 02.06.2021 in respect of the suit property, seeking the following substantive relief:

> "a) Pass a Decree of Specific Performance directing the Defendants to jointly and severally fulfill their part of obligations under the Agreement to Sell dated 27.04.2021, MoU dated 02.06.2021 as well as subsequent electronic and oral agreement(s) and execute the Sale Deed(s) in respect of the property bearing No. B-8, Pamposh Enclave, New Delhi - 110048 in favour of the Plaintiff and/or its Nominee(s), against the payment of the balance sale consideration and as per law."

10. Along with the suit, the Appellant filed I.A. No. 7928/2022 under Order XXXIX Rules 1 and 2 of the CPC, seeking interim and temporary injunctions in the following terms:

> "i. To pass an *ex-parte ad-interim* order thereby restraining the Respondents their agents, assigns, nominees, legal heirs, representatives etc. from alienating, transferring, mortgaging, parting with possession or creating any third party interest in any manner whatsoever in the property bearing No. B-8, Pamposh Enclave, New Delhi - 110048;
> ii. To pass a temporary injunction thereby restraining the Respondents, their agents, assigns, nominees, legal heirs, representatives etc. from alienating, transferring, mortgaging, parting with possession or creating any third-party interest in any manner whatsoever in the property bearing No. B-8, Pam posh Enclave, New Delhi – 110048."

11. By the Impugned Order dated 02.06.2022, at the stage of issuance of summons, the learned Single Judge dismissed the Appellant's interim application, holding that the electronic communications indicated only ongoing negotiations and not a

concluded contract, and further observing that the MoU was expressly non-binding and that the Appellant had failed to produce conclusive proof of the alleged part-payment. The learned Single Judge also noted suppression of material facts by the Appellant, particularly the omission of portions of the WhatsApp transcripts from the Plaint, and consequently held that the doctrine of *lis pendens* under Section 52 of the TP Act, would not apply, thereby permitting the Respondents to freely deal with the property notwithstanding the pendency of the suit.

12. Aggrieved by the aforesaid findings and dismissal of the interim application, the Appellant/Plaintiff has preferred the present appeal against the Respondents/Defendants.

CONTENTIONS OF THE APPELLANT:

13. Learned Senior Counsel for the Appellant would contend that the learned Single Judge exceeded his jurisdiction by granting an exemption from the rigours of Section 52 of the TP Act, even though no formal application seeking such relief had been filed by the Respondents. He would further submit that such an exemption could not have been granted during the hearing of the Appellant's application under Order XXXIX Rules 1 and 2 CPC.

14. It would further be contended by the learned Senior Counsel for the Appellant that the suit is premised upon a valid oral agreement dated 27.04.2021, which is supported by contemporaneous documentary evidence in the form of WhatsApp messages and transcripts of Zoom meetings, and that this material *prima facie* establishes the existence of a concluded agreement between the parties for the sale of the suit property.

15. Learned Senior Counsel for the Appellant would submit that the suit is based on the oral agreement concluded between the parties, and he would emphasize that the electronic communications, including WhatsApp messages and Zoom transcripts, clearly demonstrate the *consensus ad idem* necessary for a binding agreement to sale.

16. It would also be submitted by the learned Senior Counsel for the Appellant that the Impugned Order is vitiated because the learned Single Judge decided substantial questions of fact and law at the preliminary stage of issuance of summons, and in doing so, denied the Appellant an opportunity to substantiate its case through proper evidence.

17. In the alternative, the learned Senior Counsel for the Appellant would submit that even if the exemption from *lis pendens* were to be upheld, the learned Single Judge ought to have imposed appropriate conditions to protect the Appellant's interests. He would further argue that the Appellant's commercial expectation from the transaction, which involved constructing a superstructure on the suit property, represented a projected profit of at least 15% of the project cost, amounting to approximately Rs. 6-7 crores, which ought to have been secured by the learned Single Judge while passing the Impugned Order.

CONTENTIONS OF THE RESPONDENTS:

18. *Per contra*, learned Senior Counsel for the Respondents would strongly support the Impugned Order passed by the learned Single Judge, relying heavily on the MoU dated 02.06.2021, particularly Clauses 1 and 12, which provide as follows:

> "1. This Document does not create a binding agreement between the Purchaser and the Sellers and will not be enforceable.

> Absolutely no rights will be created in favour of either party by this document, including right to ask for damages or execution of a Sale Deed. The limited and only purpose of this Document is for the Purchaser to assist and facilitate the Sellers in receiving the most favorable tax indexation and associated tax treatment that may be legally available to the Sellers in the event that a Sale Deed is executed between the parties. Only the Sale Deed, duly executed by the Purchaser and the Sellers, will create legal rights and be enforceable. The terms and conditions of the Sale Deed will supersede any terms and conditions contained in this Document.
>
> ******
>
> 12. The Purchaser and the Sellers understand and acknowledge that nothing contaied in this Documents constitutes a contractual obligation between the two parties."

19. On the basis of these clauses, it would be contended by learned Senior Counsel for the Respondents that the MoU, being in supersession of any prior alleged agreement between the parties, clearly stipulated that it was non-binding and unenforceable, and therefore, any claim of a concluded agreement prior to the MoU is misplaced.

20. It would further be submitted by the learned Senior Counsel for the Respondents that Clause 1 unequivocally precludes the accrual of any rights to either party, including any right to claim damages or to seek execution of a Sale Deed, and this clearly reinforces the non-binding nature of the MoU.

21. Learned Senior Counsel for the Respondents would also rely upon Clause 12 of the MoU to contend that no contractual obligations would flow from the MoU, and would further point to paragraphs 12 and 13 of the Impugned Order to buttress the argument that the parties never intended to create enforceable rights through this document.

22. It would also be submitted by the learned Senior Counsel for the Respondents that a reading of paragraph 5(cc) of the Plaint shows

that the MoU dated 02.06.2021 governed the relationship between the parties, and that any reliance upon an alleged oral agreement is therefore entirely misplaced.

23. Paragraph 5(dd) of the Plaint would further be cited by the learned Senior Counsel for the Respondents to demonstrate that the electronic communications exchanged between the parties after the MoU only concerned due diligence and documentation requirements, and cannot be interpreted as evidence of an enforceable agreement for sale.

24. Further reliance is placed on paragraph 5(ff) of the Plaint by the learned Senior Counsel for the Respondents to submit that the MoU alone governed the parties' understanding, and that any other electronic messages, transcripts, or communications have no evidentiary value and cannot support the Appellant's claims.

25. Learned Senior Counsel for the Respondents would submit that no payment was ever received by the Respondents, and the Appellant's claim of a cash payment is unsubstantiated as no receipt was produced, while with respect to the two cheques relied upon by the Appellant, there is nothing to show that they were ever encashed, particularly since one of the cheques was drawn in a mis-spelt name.

26. In response to the Appellant's contention regarding exemption of the suit property from the rigours of Section 52 of the TP Act, it would be submitted by the learned Senior Counsel for the Respondents that no relief for damages has been sought in the present case, and in light of Section 21 of the Specific Relief Act, 1963, such a contention is wholly misplaced.

27. It would also be contended by the learned Senior Counsel for the Respondents that the Appellant, being a builder, has, on the basis of a contrived narrative, sought to embroil the suit property in litigation with the ulterior motive of rendering it a pariah in the real estate market, and that this strategy is designed to make the property commercially unviable for years to come.

***ANALYSIS*:**

28. We have heard the learned Senior Counsel appearing for the parties, and with their able assistance, have carefully perused the Impugned Order and the record of the present Appeal.

29. Before embarking upon our analysis of the issues at hand, we consider it appropriate to extract the relevant portions of the Impugned Order herein:

> **"12.** It would be apposite to extract some of the relevant clauses from the MoU dated 2nd June, 2021.
>
> *"**BACKGROUND:***
>
> *A. The Sellers are the owners of a certain property that is available for sale.*
>
> *B. The Purchaser wishes to purchase said property from the Sellers.*
>
> *This Document will establish the basic terms to be used in a future real estate contract for sale ("the Sale Deed") between the Purchaser and the Sellers.* ***The terms contained in the Document are NOT comprehensive and it is expected that additional terms may be added, and existing terms may be changed or deleted.*** *The basic terms are, as follows:*
>
> ***Non-Binding agreement with the limited purpose of attempting to provide the most favourable tax treatment to the Sellers.***
>
> 1. ***This Document does not create a binding agreement between the Purchaser and the Sellers and will not be enforceable. Absolutely no rights will be created in favour of either party by this document, including right to ask for damages or***

execution of a Sale Deed. *The limited and only purpose of this Document is for the Purchaser to assist and facilitate the Sellers in receiving the most favourable tax indexation and associated tax treatment that may be legally available to the Sellers in the event that a Sale Deed is executed between the parties. Only the Sale Deed, duly executed by the Purchaser and the Sellers, will create legal rights and be enforceable. The terms and conditions of the Sale Deed will supersede any terms and conditions contained in this Document.*

Transaction Description

2. The property (the "Property") that is the subject of this Document is located at:

B-8 Pamposh Enclave, New Delhi-110048

Purchase Price

3. The Purchase price for the Property is Indian Rupees Twenty-Six Crores, including the Compulsory Tax Deduction at Source.

4. Upon making the payment to the Sellers in full, the Purchaser will take possession of the Property on July 31, 2021, or at any time, thereafter, as mutually agreed upon.

XXX XXX XXX

12. ***The Purchaser and the Sellers understand and acknowledge that nothing contained in this Documents constitutes a contractual obligation between the two parties.*** *"*

13. A perusal of the clauses of the MoU extracted above, clearly show that by this document the parties did not intend to enter into a binding agreement. The parties have used words/expressions such as "*terms contained in the document are not comprehensive*"; "*additional terms may be added*"; "*existing terms may be changed/deleted*". Further, it has specifically been stated that the MoU will not be enforceable and will not create any rights in favour of either of the parties, including the right to ask for damages or execution of a Sale Deed. Therefore, in my view, the aforesaid MoU does not constitute an agreement that can be specifically enforced by the parties in a court of law.

14. In view of the aforesaid MoU being executed between the parties on 2nd June, 2021, all previous WhatsApp messages exchanged between the parties, in terms of which plaintiff claims the existence of an 'Oral Agreement to Sell', also stand superseded.

15. Though in the plaint, the plaintiff constantly makes a reference to 'Oral Agreement to Sell', the fact of the matter is that in the legal notice dated 27th August, 2021 sent by the plaintiff to the defendants, no reference to an 'Oral Agreement to Sell' has been made. The reference in the aforesaid legal notice is to the

agreement dated 2nd June, 2021, which as noted above is not a legally binding agreement. Clause 4 of the said legal notice is set out below:

> *"4. That, it is legally notified to you the Noticees No. 1 to 3 that, in pursuance to the aforesaid events and negotiations of terms, you the above said Noticees No. 1-3 entered in to an Agreement dated 02.06.2021 with our Client whereby, you the Noticees No. 1-3, expressly agreed to sell the above property and execute the Sale Deed of the same in favour of our Client or its nominees, for a total sale consideration of sum of Rs. 26,00,00,000/- [Rupees twenty six crores]."*

16. It is also to be noted that the plaintiff has failed to place any document on record to show that any payment has been made on behalf of the plaintiff to the defendants towards the sale consideration of Rs. 26 crores. Even though the plaintiff claims that he has paid Rs. 5 lakhs in cash, no receipt in respect thereof has been placed on record. Further, in respect of the cheques bearing no. 001081 and 001082 dated 11th August, 2021 for a sum of Rs. 5,00,000/- and Rs. 2,00,000/- respectively, no bank statement has been placed on record by the plaintiff to show that the aforesaid amounts have been encashed. In fact, one of the cheques wrongly records the name of the defendant no. 3.

17. Counsel for the plaintiff has drawn attention of the Court to WhatsApp messages exchanged between the parties even after the execution of MoU. However, a perusal of the aforesaid messages clearly show that no agreement was arrived at between the parties and the parties were continuing to negotiate the terms of a proposed agreement.

18. Senior counsels for the defendants have placed reliance on the judgment of a Coordinate Bench of this Court in ***Santokh Singh* v. *Shagun Farm Pvt. Ltd.***, 2017 SCC OnLine Del 6844. Paragraphs 25 and 26 of the said judgment read as under:

> *"**25.** The genesis of the judgment in* Vinod Seth *supra was the* ***prejudice suffered by the defendant in a suit for specific performance of an Agreement of Sale of immovable property even in the absence of any restraint order against him, due to applicability of the principle of lispendens and which virtually makes the property inalienable or unencumberable at market rates and with no measure left to compensate the defendant in the event of the plaintiff in the suit for specific performance ultimately failing. The costs of the suit even if awarded to the defendant in such a situation were not found sufficient to compensate the defendant. Supreme Court in Vinod Sethi held that a Court is justified in taking a view that on material till then on record, the likelihood of the plaintiff succeeding in the suit or securing any***

***interim relief against the defendant is remote and to exempt the suit property from the operation of Section 52 of the Transfer of Property Act so that the defendant would have the liberty to deal with the property in any manner inspite of the pendency of the suit. I have in* Rajiv Maira *v.* Apex Apartments Pvt. Ltd. *(2013) 138 DRJ 464 so exempted the property subject matter of that proceedings and SLP (C) No. 5920/2014 preferred thereagainst was dismissed on 24th March, 2014*.**

***26. I am, for the reasons here after appearing, of the view that chances of the plaintiffs succeeding in this suit for specific performance are remote and there would be no way to compensate the defendant for the prejudice caused from applicability of Section 52 of the Transfer of Property Act during the pendency of the suit which though has to be put to trial.**"*

19. Taking into account the conduct of the plaintiff in the aforesaid case, the court observed that the doctrine of *lispendens* will not apply to the property that was subject matter of the suit and the defendant therein would be free to deal with the property. Counsel for the plaintiff submits that the aforesaid judgment was passed prior to the amendment of the Specific Relief Act in 2018 and therefore, would not apply to the present case. I do not agree. The observations of the aforesaid judgment would be squarely applicable to the facts of the present case, on account of the following factors:

(i) The transcripts of the WhatsApp messages filed on behalf of the plaintiff do not establish any oral agreement between the parties.

(ii) The transcripts of the WhatsApp messages of 27th April, 2021 have been selectively extracted in the plaint and material parts thereof, have been deliberately omitted so as to mislead the court.

(iii) The case of an 'Oral Agreement to Sell' has been set up only for the first time in the plaint. In the legal notice sent on behalf of the plaintiff to the defendants, the case was completely based on the MoU dated 2nd June, 2021.

(iv) A perusal of the aforesaid MoU clearly show that it is not a binding agreement between the parties and therefore, cannot be enforced in a court of law.

(v) No proof of payment of any amount to the defendants has been produced on behalf of the plaintiff. The cheque bearing no. 001082 amounting to Rs. 2 lakhs wrongly records the name of the defendant no. 3.

20. Taking into account the aforesaid, I am of the view that the likelihood of the plaintiff succeeding in the present suit is remote and therefore, it is a fit case to exempt the suit property from the operation of Section 52 of the Transfer of Property Act during the

> pendency of the suit. Great prejudice would be caused to the defendants if upon issuance of summons in the suit, the doctrine of *lispendens* is applied in respect of the suit property.
> **21.** Counsel for the plaintiff relies upon the judgment in ***PunitBeriwala* v. *Bhai Manjit Singh Huf and Others***, 2022 SCC OnLine Del 378, to contend that a suit for specific performance of an oral agreement to sell would be maintainable. In the view that I have taken above that the plaintiff in the present case has not established the existence of an oral agreement to sell, the said judgment would have no relevance."

30. Having given our thoughtful consideration to the submissions advanced, we find no infirmity in the Impugned Order of the learned Single Judge. The suit, in our view, rests on an inherently fragile foundation, being premised upon an alleged oral agreement which, as rightly observed by the learned Single Judge, stands contradicted by the Plaintiff's own pleadings. The Plaint itself admits that the MoU dated 02.06.2021 superseded all prior communications and arrangements, thereby making it abundantly clear that any relief could only have been founded upon the MoU and not upon any purported oral understanding.

31. We are also constrained to observe that the reliance placed on various electronic communications is wholly misplaced. The WhatsApp messages and Zoom transcripts relied upon by the Appellant do not evince any concluded or binding contract; instead, they only reflect ongoing negotiations. The materials produced are not only inconclusive but appear to have been selectively extracted in order to mislead the Court.

32. The conclusion of the learned Single Judge that the oral agreement was set up for the first time in the Plaint is fully borne out from the record. The pleadings themselves do not substantiate the existence of such an agreement, and more significantly, the legal

notice dated 27.08.2021, which preceded the suit, makes no reference whatsoever to any oral agreement, but unequivocally relies only on the MoU dated 02.06.2021.

33. On perusal of the MoU dated 02.06.2021, particularly Clauses 1 and 12 thereof, it is explicit that the said MoU was never intended to create any enforceable rights between the parties. Indeed, the MoU goes further to expressly preclude either party from claiming damages or seeking execution of a Sale Deed. Thus, the very document on which the Appellant bases its relief directly militates against the grant of specific performance.

34. Equally apparent is the Appellant's failure to demonstrate payment of any consideration in furtherance of the alleged agreement. Neither receipts for the alleged cash payment nor evidence of encashment of the cheques have been produced. On the contrary, one cheque relied upon by the Appellant was issued in a mis-spelt name, casting serious doubt on the authenticity of the alleged transaction.

35. It is trite law that for a valid and enforceable contract to come into existence, there must be a lawful offer, its unqualified acceptance, and valid consideration. Section 10 of the Indian Contract Act, 1872, encapsulates this principle, requiring that every enforceable agreement be supported by free consent of competent parties, lawful consideration, and lawful object. Without these essential elements, no agreement can mature into a contract enforceable at law. It would be apposite to refer to Section 10 of the Indian Contract Act, which reads as under:

> "**10. What agreements are contracts —** All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void. Nothing herein

> contained shall affect any law in force in India and not hereby expressly repealed by which any contract is required to be made in writing or in the presence of witnesses, or any law relating to the registration of documents."

36. In the present case, even on a *prima facie* evaluation, the indispensable element of valid consideration is wholly absent. The Appellant has failed to demonstrate that any payment was in fact made, much less accepted by the Respondents. In such circumstances, the foundation of the suit appears to be tenuous.

37. At this stage, having regard to the submissions advanced on the doctrine of *lis pendens*, we deem it appropriate to reproduce certain pertinent passages from the judgment of the Hon'ble Supreme Court in ***Vinod Seth v. Devender Bajaj***[6]. That decision throws considerable light on the proper judicial approach in such matters, especially where litigants institute suits for specific performance on tenuous grounds.The relevant paragraphs of the said judgment are as follows:

> "**8.** The Division Bench dismissed the appeal by the appellant, holding that the order of the learned Single Judge did not in any way contravene the said decision, on the following reasoning:
>
> > "We see no contradiction in the aforesaid judgment and the impugned order. The learned Single Judge has not dismissed the suit. We also note the observations of the Supreme Court that even a frivolous suit can be brought before the court 'at one's peril'. All that the learned Single Judge has done at the stage of framing of issues, having prima facie found not much merit in the case of the appellant, considered it appropriate to impose certain terms and conditions.
> >
> > We may notice that the provisions of Order 39 of the said Code deal with temporary injunctions and interlocutory orders. Order 39 Rule 2(2) authorises the court to grant injunction on such terms as it deems proper including giving of security. Thus, when the prayer for interim relief has to be granted, provision has been specifically made authorising the court to make orders for keeping accounts, giving security or otherwise as the court thinks fit.

[6] (2010) 8 SCC 1

The appellant has conveniently not filed an interim application to avoid the rigour of such an order. Normally in a suit for specific performance and that too dealing with an immovable property, a party would seek interim protection. The appellant has not done so. It is an ingenious method of keeping a suit alive without claiming interlocutory relief and creating a cloud over a property in view of the provisions of Section 52 of the Transfer of Property Act.

We do think that the courts cannot look helplessly at such tactics and ignore the problem of huge docket, which arises on account of meritless claims being filed. The heavy docket does not permit early disposal of suits and thus parties may take advantage of keeping frivolous claims alive. We also cannot ignore the ground realities of the market which would persuade third parties to eschew dealing with such a property over which there is a cloud during the pendency of the suit. It is this cloud of which the appellant can take advantage of to extract some money in case the relief is frivolous.

We also find that the appellant really cannot have any grievance since a condition has not been imposed to deposit any amount which would make the appellant be out of pocket. The condition is of a much lesser level of only an undertaking to compensate the respondent in case of failure in the suit and as the learned Single Judge has rightly observed that a party coming to court should reasonably be confident of the genuineness of its case. The figure of Rs. 20 lakhs is based on the claim of the appellant as noticed by the learned Single Judge.

We may also add that Order 25 Rule 1 CPC gives power to the Court including suomotu power for the plaintiff to give security for payment of all costs incurred and likely to be incurred by the defendant. However, reasons for such an order are to be recorded. The costs include not only what is spent in the litigation but also the effect of the continuation of the suit on the plaintiff and, thus, as per the impugned order, for reasons recorded, the learned Single Judge has passed the order.

We find that the course adopted by the learned Single Judge is not without sanction of law and there is merit in this approach looking to the ground realities mentioned aforesaid."

******

11. We are broadly in agreement with the High Court that on the material presently on record, the likelihood of the appellant

succeeding in the suit or securing any interim relief against the defendants is remote. We may briefly set out the reasons therefor.

******

17. The property stands in the name of the second respondent (Defendant 2), but she did not sign the receipt. There is nothing to show that the second respondent participated in the alleged negotiations or authorised her husband, the first respondent to enter into any collaboration agreement in respect of the suit property. The receipt is not signed by the first respondent as attorney-holder or as the authorised representative of the owner of the property. From the plaint averments it is evident that the appellant did not even know who the owner was, at the time of the alleged negotiations and erroneously assumed that the first respondent was the owner. The execution of a receipt for Rs. 51,000 by the first respondent even if proved, may at best make out a tentative token payment pending negotiations and finalisation of the terms of an agreement for development of the property.

******

19. We also agree with the High Court that having regard to the doctrine of lispendens embodied in Section 52 of the Transfer of Property Act, 1882 ("the 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.

20. 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 realise 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 the plaintiff's terms, or force the defendant to agree for some kind of settlement. It is these circumstances which persuaded the High Court to find some way to do justice, leading to the impugned direction. Having broadly agreed with the High Court in regard to the factual position and the adverse consequences of the suit, the

question that remains is whether in such a situation, the High Court could have issued the impugned interim direction.

******

35. We appreciate the anxiety shown by the High Court to discourage land-grabbers, speculators, false claimants and adventurers in real estate from pressurising hapless and innocent property owners to part with their property against their will, by filing suits which are vexatious, false or frivolous. But we cannot approve the method adopted by the High Court which is wholly outside law. In a suit governed by the Code, no court can, merely because it considers it just and equitable, issue directions which are contrary to or not authorised by law. The courts will do well to keep in mind the warning given by Benjamin N. Cardozo in *The Nature of the Judicial Process* (Yale University Press, 1921 Edn., p. 114):

> "The Judge even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight errant roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodised by analogy, disciplined by system, and subordinated to 'the primordial necessity of order in social life'."

The High Court can certainly innovate, to discipline those whom it considers to be adventurers in litigation, but it has to do so within the four corners of law.

*****

41. Having found that the direction of the High Court is unsustainable, let us next examine whether we can give any relief to the defendants within the four corners of law. The reason for the High Court directing the plaintiff to furnish an undertaking to pay damages in the event of failure of the suit, is that Section 52 of the Transfer of Property Act would apply to the suit property and the pendency of the suit interfered with the defendant's right to enjoy or deal with the property. Section 52 of the TP Act provides that during the pendency in any court of any suit in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceedings so as to affect the rights of any other party thereto under any decree or order which may be made therein except under the authority of the court and on such terms as it may impose. The said section incorporates the well-known principle of lispendens which was enunciated in *Bellamy* v. *Sabine* [(1857) 1 De G&J 566 : 44 ER 842] : (ER p. 849)

> "It is, as I think, a doctrine common to the courts both of law and equity, and rests, as I apprehend, upon this foundation—that it would plainly be impossible that any action or suit could be brought to a successful termination, if alienations pendente lite were permitted to prevail. The plaintiff would be liable in every case to be defeated by the defendant's alienating before the judgment or decree, and would be driven to commence his proceedings de novo, subject again to be defeated by the same course of proceeding."
>
> **42.** It is well settled that the doctrine of lispendens does not annul the conveyance by a party to the suit, but only renders it subservient to the rights of the other parties to the litigation. Section 52 will not therefore render a transaction relating to the suit property during the pendency of the suit void but render the transfer inoperative insofar as the other parties to the suit. Transfer of any right, title or interest in the suit property or the consequential acquisition of any right, title or interest, during the pendency of the suit will be subject to the decision in the suit.
>
> **43.** 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 part 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."

38. The foregoing observations of the Hon'ble Supreme Court make it abundantly clear that while the doctrine of *lis pendens* is rooted in equity and justice, it cannot be allowed to degenerate into a weapon of harassment or a tool for speculative adventurism.

39. The law recognizes that the Courts are vested with the power, in appropriate cases, to exempt properties from the rigours of Section 52 of the TP Act. The rationale behind such an exemption is to insulate genuine property owners from being trapped in vexatious, frivolous,

or *mala fide* litigations, and to deter land-grabbers, speculators, and false claimants from misusing judicial processes to create artificial obstacles in the real estate market. In our considered opinion, the present case falls squarely within the four corners of these observations.

40. Applying these principles to the facts at hand, *ex facie*, it is manifest that the Appellant's suit is built on a foundation that is both fragile and untenable. Neither the pleadings nor the documents relied upon disclose a *prima facie* case that could justify invoking the doctrine of *lis pendens*.

41. On the contrary, the selective reliance on electronic communications, the internal contradictions within the pleadings, and the absence of credible evidence of consideration reveal that the suit has been instituted not to enforce any legitimate contractual right but to create a cloud over the title of the property and thereby impede its marketability. Such speculative litigation undermines judicial integrity and burdens the docket with frivolous claims.

CONCLUSION:

42. We are, therefore, in agreement with the learned Single Judge in exempting the suit property from the operation of Section 52 of the TP Act. To permit otherwise would be to reward a litigant who has sought to misuse the equitable jurisdiction of this Court for commercial leverage. The Appellant, having embarked upon an adventurous and fragile claim, cannot be allowed to reap any advantage from the pendency of such proceedings.

43. We are also of the view that the present Appeal itself is devoid of merit, is clearly an abuse of the process of law, and deserves to be

dismissed with exemplary costs. Accordingly, the present Appeal is dismissed with costs of Rs. 5,00,000/- payable to the Respondents.

44. It is clarified that all issues shall remain open, and the suit shall proceed uninfluenced by any observations made herein.

45. In view of the foregoing discussion, the Appeal, along with all pending applications, stands disposed in the aforesaid terms.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.

OCTOBER 09, 2025/v/sm/ds