Haryana Containers Limited Thru Chaula ... vs Ks Infraspace Llp Thru Ketan Bhailal ... on 30 August, 2019

Author: A.J.Shastri

Bench: A.J. Shastri

C/AO/72/2019 CAV ORDER

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/APPEAL FROM ORDER NO. 72 of 2019

With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2019
In R/APPEAL FROM ORDER NO. 72 of 2019
With
R/APPEAL FROM ORDER NO. 73 of 2019
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2019
In R/APPEAL FROM ORDER NO. 73 of 2019
With
R/APPEAL FROM ORDER NO. 74 of 2019
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2019
In R/APPEAL FROM ORDER NO. 74 of 2019

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HARYANA CONTAINERS LIMITED THRU CHAULA MAHENDRAPRASAD SHASTRI Versus KS INFRASPACE LLP THRU KETAN BHAILAL SHAH ========== Appearance:

R/APPEAL FROM ORDER NO. 72 of 2019 With CIVIL APPLICATION (FOR STAY) NO. 1 of 2019 In R/APPEAL FROM ORDER NO. 72 of 2019 MR MIHIR JOSHI, SENIOR ADVOCATE WITH MS MEGHA JANI FOR APPELLANT MR PERCY KAVINA SENIOR ADVOCATE WITH MR SP MAJMUDAR FOR RESPONDENT R/APPEAL FROM ORDER NO. 73 of 2019 With CIVIL APPLICATION (FOR STAY) NO. 1 of 2019 In R/APPEAL FROM ORDER NO. 73 of 2019 MR MIHIR JOSHI, SENIOR ADVOCATE WITH MS MEGHA JANI FOR APPELLANT MR DEVEN PARIKH, SENIOR ADVOCATE WITH MR SP MAJMUDAR FOR RESPONDENT NO.1 R/APPEAL FROM ORDER NO. 74 of 2019 With CIVIL APPLICATION (FOR STAY) NO. 1 of 2019 In R/APPEAL FROM ORDER NO. 74 of 2019 MR MIHIR J THAKORE, SENIOR ADVOCATE WITH GARGI R VYAS for the C/AO/72/2019 CAV

ORDER MR MEHUL S SHAH, SENIOR ADVOCATE WITH SP MAJMUDAR(3456) for MR MIHIR JOSHI, SENIOR ADVOCATE WITH MS MEGHA JANI for Respondent No. 2

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CORAM: HONOURABLE MR.JUSTICE A.J. SHASTRI Date : 30/08/2019 COMMON CAV ORDER

1. The present group of appeals under Order 43 Rule 1 read with Section 104 of the Code of Civil Procedure is arising out of the common order dated 18.2.2019 passed by the learned 5th Additional Senior Civil Judge, Vadodara in Special Civil Suit No. 322 of 2018. Since common questions of law and facts are involved in the present appeals, by treating Appeal From Order No.72 of 2019 as a lead matter, all three appeals were heard together and are being decided by the present common judgment and order.

2. The facts reflecting from Appeal From Order No.72 of 2019 are that K.S.Infraspace LLP through its partner Ketan Bhailal Shah had instituted a suit being Special Civil Suit No.322 of 2018 in the Court of learned Principal Civil Judge at Vadodara for seeking declaration and specific performance against the defendant i.e. Haryana Containers Ltd. on the premise that, the plaintiff is a limited liability partnership firm involved in the business of real estate and engaged in the property development since last number of years in the city of Vadodara. The C/AO/72/2019 CAV ORDER defendant is a limited company registered under the provisions of the Companies Act, which is a wholly owned subsidiary of Ambalal Sarabhai Enterprise Limited and is claiming to be in possession of various parcels of land as shown in the map enclosed with the draft memorandums of understanding dated 29.3.2018 and 30.3.2018 admeasuring 1260 sq.mtrs. and 5442 sq.mtrs of City Survey Nos.921 of Village Subhanpura. The defendant i.e. Haryana Containers Limited was desirous of selling the above parcels of land with right, title and interest in the name of the company (wholly owned subsidiary) as stated above, in all 6702 sq.mtrs. for their personal need as well as for funds needed for business and to meet with various financial commitments. In the year 2012, the defendant had negotiated and struck the deal with the plaintiff for selling said parcels of land as a result of this, series of meetings, telephonic conversations and exchange of emails took place between Mr. Kartikeya Sarabhai & Director of the defendant company, Chavla Shastri and Nimish Vasa, Escrow Agent, on the side, and the plaintiff's partner, Mr. Ketan Shah which ultimately resulted into the deal. The total consideration was also fixed, as stated in the plaint, which is roughly estated to Rs.31,81,73,076/□ According to the plaintiff, the contracts between the plaintiff and the defendant stood concluded, terms were finalised after series of negotiations and the final memorandum of understanding and the agreement to sell exchanged vide emails dated 29.3.2018 and 30.3.2018 and C/AO/72/2019 CAV ORDER according to the plaintiff, even after acceptance of the final draft and after conclusion of the transaction, vide email dated 30.3.2018, the contract came into existence and the payment was also made by token amount of Rs.2.16 crores for the whole suit property on 10.1.2018. It is the case of the plaintiff that throughout, the plaintiff was ready and willing to perform his part of the contract, however, despite such readiness, the defendant turned around from the said concluded contract and to the utter shock of the plaintiff, the defendant backed out from the deal by way of sending email on 31.1.2018 at about 5.24 p.m. and returned the

amount of Rs.2.16 crores through RTGS. It has come to the knowledge that after such conduct having been shown and though the plaintiff has fully managed the entire amount of consideration to be paid, it was apprehended that to defeat such concluded contract, the defendant is likely to back out and has entered into a registered agreement to sell with defendant No.2 i.e. Neptune Infraspace Pvt. Ltd of Special Civil Suit No. 323 of 2018, as a result of this, the present plaintiff had to file this suit for the purpose of seeking specific performance of memorandum of understanding/agreement to sell/contract with respect to the land in question. This suit filed by the present plaintiff numbered as Special Civil Suit No. 323 of 2018 appears to have been presented in the month of October, 2018.

3. Similar is the position with respect to Appeal C/AO/72/2019 CAV ORDER from Order No.73 of 2019 which is arising out of the very same order dated 18.2.2019 in which Special Civil Suit No. 323 of 2018 is filed against two defendants namely, Ambalal Sarabhai Enterprise Ltd. and Neptune Infraspace Pvt. Ltd. So far as this Appeal From Order is concerned, it is filed by Ambalal Sarabhai Enterprise Ltd., original defendant No.1 of Special Civil Suit No. 323 of 2018 in which the facts are almost similar, but parcel of land is different. In this suit being Special Civil Suit No. 323 of 2018, the plaintiff i.e. K.S.Infraspace LLP has entered into transaction with the defendant No.1, which is a Public Limited Company holding the ownership and possession of various pieces of land mentioned in memorandum of understanding dated 29.3.2018 and 30.3.2018 respectively. Such lands are:

> (A) admeasuring about 2078 sq.mtrs. of City Survey No.383/1 paiki of Village Wadiwadi and City Survey No.921/part of Subhanpura (B) admeasuring about 5633 sq.mtrs. of City Survey No.383/1 paiki, 385/A part, 386, 541 of Village Wadiwadi and (C) admeasuring about 4635 sq.mtrs. of City Survey No.385/A part, 386, 541 of Village Wadiwadi and City Survey No.921/part of Subhanpura.

4. It is the further case of this appellant that the defendant No.1 i.e. Ambalal Sarabhai Enterprise Ltd. wanted to sell the aforesaid lands for their personal as well as business need and to fulfill C/AO/72/2019 CAV ORDER various funding commitments. The negotiation for that took place right from 2012 which, according to the appellant, has culminated into a concluded contract through series of meetings, telephonic conversation and exchange of emails with Mr. Kartikeya Sarabhai & Director of defendant company, Chaula Shastri and Mr. Nimish Vasa, Escrow Agent on the side of defendant with plaintiff's partner Mr. Ketan Shah. This portion of land was agreed to be sold for a total consideration of Rs.58,26,86,984/☐ According to the plaintiff, the terms and conditions were finalized after series of negotiations and the defendant agreed to sell the aforesaid (A), (B) and (C) immovable properties described in the schedule and the same were reduced in writing finally which was received by the plaintiff in terms of revised draft memorandum of understanding and agreement to sell vide emails dated 29.3.2018 as well as 30.3.2018. According to the plaintiff of this suit, on 30.3.2018, the contract came into existence and token amount of Rs.2.16 crores was already paid on 10.1.2018. It is the further case of the plaintiff of that suit that throughout, the plaintiff was ready and willing to perform his part of the contract and was ready and willing to pay the balance amount for which, an arrangement was already made but later on, defendant No.1, even after finalizing the memorandum of understanding as well as agreement to sell, has backed out and entered into a transaction with defendant No.2 and has returned back the amount of Rs.2.16 crores through RTGS. Though, according to the C/AO/72/2019 CAV ORDER plaintiff, the contract came to

be concluded on 30.3.2018 or at the best on 31.3.2018, defendant No.1 disowned the concluded contract and has entered into fraudulently an agreement with defendant No.2 i.e. Neptune Infra Space Pvt. Ltd. which has given rise to filing of the aforesaid suit for specific performance and also for a declaration against the defendants.

5. Similar is the case with respect to Appeal From Order No.74 of 2019 filed by original defendant No.2 against the common order dated 18.2.2019 passed in Special Civil Suit No. 323 of 2018. The facts emanating from this Appeal From Order are identical in nature which are mentioned hereinabove in Appeal From Order No.73 of 2019 and hence, the Court need not repeat the same but this action of the defendants have given rise to aforesaid two suits which are filed for seeking declaration and specific performance in which it appears from the record that original plaintiff has filed an application for injunction below Exh.5 inter alia seeking relief against the defendants from executing any further document including the sale deed with respect to the lands which are described in the prayer clause and also prayed that defendant No.2 be prevented from creating any further charge or interest or deal with aforesaid subject matter of the suit. The injunction below Exh.5 in Special Civil Suit No. 323 of 2018 is almost similar to that of Exh.5 application of Special Civil Suit No. 322 of 2018 in which the C/AO/72/2019 CAV ORDER defendants were requested to be restrained from executing any document including sale deed in favour of any third party or creating any charge, interest or deal with the aforesaid land in any manner. Simultaneously, it appears that the defendants have also filed an application at Exh.18 under Order 7 Rule 11(d) for rejection of the plaint essentially on the ground that land in question is a commercial land exclusively utilised for commercial purpose and looking to the valuation and the nature of the land, the suit itself is hit by the provisions of Commercial Courts Act and by referring to section 2(c) as well as Section 2(c)(vii) of Commercial Courts Act, a contention is raised that suit itself is not maintainable since the dispute is arising out of an agreement related to immovable property used exclusively in trade or commerce, hence, the plaint be under Order 7 Rule 11(d) or in the alternative, the same be returned under Order 7 Rule 10 of CPC so as to present it before the concerned Commercial Court. These two applications i.e. Exh.5 and Exh.18 appear to have been clubbed at the request of learned advocates and these applications were heard together and decided by common judgment and order dated 18.2.2019 by the learned 5th Additional Senior Civil Judge, Vadodara whereby the application Exh.18 filed under Order 7 Rule 11 as well as Order 7 Rule 10 of CPC came to be rejected whereas application Exh.5 filed under Order 39 Rules 1 and 2 came to be allowed and the defendants' side was ordered to be temporarily restrained from executing any further C/AO/72/2019 CAV ORDER document including sale deed pertaining to the land till the final disposal of the main suit proceedings and it was also ordered not to create any charge, interest or deal with the land in any manner and also ordered to restrain from signing any document till the final disposal of the suit and it is this common judgment dated 18.2.2019 in so far it relates to application Exh.5, which is made the subject matter of challenge in the aforesaid proceedings.

6. At the request of the learned advocates appearing for the parties, these three Appeals From Order were taken up for hearing conjointly and are being decided by this common judgment and order.

7. Learned Senior Advocate, Mr. Mihir Joshi appearing with learned advocate, Ms.Megha Jani for the appellant Haryana Containers Ltd. has vehemently submitted that no contract has been

concluded with the original plaintiff□K.S.Infraspace LLP in any manner. It has been submitted that there is no specific prayer made in the suit as to which agreement is sought to be specifically performed. A bare reading of the cause of the suit itself makes it clear that alternative reliefs are sought in the suit which are thoroughly vague and on that count alone, no specific performance even otherwise be granted. It has been submitted that there is no specific signed agreement which can even infer the concluded contract in favour of the plaintiff. Even the emails and WhatsApp correspondences, which are reflecting on the C/AO/72/2019 CAV ORDER record, are also clearly missing the unequivocal intention of agreement and in the absence of any unconditional acceptance, the oral agreement of the contract cannot be inferred. It has been submitted that when the case is based upon oral agreement, the heavy burden is lying on the plaintiff to plead and to establish even a cogent inference of the oral contract. It is a settled position of law that no doubt oral agreement is permissible under the law but the assertion of acceptance must be unequivocal and must be in clear terms and simply because negotiations have taken place, no inference can be drawn of concluded contract. If only unequivocal acceptance is reflecting then only the binding effect can be attached which is completely missing here on the basis of which, no relief can be granted. The learned Senior Advocate by drawing attention to various averments contained in the plaint itself precisely from paragraphs 4 and 14 has contended that prayer itself is also vague since apparently the plaintiff has miserably failed in showing even a single memorandum of understanding which is confirmed by the defendants. Mere exchange of several draft agreements would not constitute remotely even an oral contract. According to learned Senior Advocate, Mr. Joshi, the learned Judge has completely overlooked the material circumstances which are apparently emerging from the record and intention of party to be bound is not reflecting at all and no written agreement has been actually signed. Even the required amount of payment has also C/AO/72/2019 CAV ORDER not been effected and there is remotely no material to allow the parties to read down the concluded contract. When that be so, on the basis of mere draft which is not signed by any of the parties, the same cannot take place of a concluded contract, as a result of this, no specific performance is possible and when that be so, the question of granting interim relief does not arise.

8. Mr. Joshi, learned Senior Advocate has further submitted that various drafts have been exchanged and the terms were not finalized and looking at the aforesaid material changes which are taking place from time to time are clearly indicating that the defendants originally have shown an inclination to meet with the income tax liability latest by 30th March, 2018 but the same has not been acted upon at all. When several memorandums of understanding underwent material alteration and changes and the contract has not resulted into finality nor even signed, it is not open for the plaintiff to treat these mere drafts as a concluded contract to come out for specific performance. Mr. Joshi has further contended that it was clearly mentioned by the defendants to the plaintiff on 30.3.2018 itself and have returned the amount and suit appears to have been filed after almost a period of seven months and this delay has not been explained. This injunction relief being essentially governed by the rule of equity, the very conduct of the plaintiff is suggesting that the said relief cannot be granted C/AO/72/2019 CAV ORDER particularly in a suit which has been filed for seeking specific performance. Various exchange of emails and mere drafts are indicating that the plaintiff's request for injunction on both the counts i.e. on the count of conduct as well as on the count of delay cannot be granted looking at the well recognized principle of equity. Even the entire correspondences which have taken place between the parties are not suggesting even remote

acceptance of the defendants. The Court without looking at it ought not to have granted relief in favour of the plaintiff which has got a far reaching consequences. Mr. Joshi has further submitted that on the contrary, conduct is suggesting a serious attempt by the plaintiff to drag the defendants to a situation where the defendants may be embarrassed. The averments contained in the plaint are, on the contrary, suggesting that the suit itself is not maintainable and maintainability of the main proceeding since is a relevant consideration, by ignoring the same, no order of injunction could have been granted. This being the position, the order in question deserves to be set aside.

9. For the purpose of substantiating these submissions, learned Senior Advocate, Mr. Joshi has heavily relied upon the averments made in the plaint precisely at paragraphs 4, 5 and 7 and by referring to several other paragraphs of the plaint, a contention is raised that such a suit is not possible to be entertained, resultantly, since the plaintiff C/AO/72/2019 CAV ORDER is not exactly in a position to show a clear cause of action and upon which he is seeking specific performance, the relief which has been granted by the court below is nothing but a clear example of non□application of mind. Learned Senior Advocate has further submitted by referring to series of WhatsApp communications, which are reflecting from pages 101 to 109 of the paper book compilation, that throughout these WhatsApp correspondences, not a single circumstance is emerging that there was a complete agreement that the plaintiff has entered into transaction and which has been concluded. On the contrary, from the beginning, the plaintiff was aware about the fact that in parallel proceedings, negotiations were going on with other party as well and as such, it is not correct to conclude that behind the back of the plaintiff, something is done by the defendants. Various WhatsApp exchanges have been brought to the notice of this Court including various MOUs as well as agreement to sell and by referring to these documents, it has been submitted that these MOUs and agreement to sell are mere drafts, not attained finality and underwent series of changes which ultimately have not been finally concluded and accepted. It has been submitted that payment of Rs.2.16 crores which has been stated to have been given in January, 2018 has no connection with these transaction and it was a mere financial assistance and as such, learned Senior Advocate has submitted that here is the case in which no final conclusive terms have been agreed upon which may C/AO/72/2019 CAV ORDER infer remotely a concluded contract. Mr. Joshi, learned Senior Advocate has further submitted that on the contrary, for the income tax purpose and its liability, the inclination was shown to sell some part of the lands, which was only for the purpose of mitigating such need which arose to be cleared by 30.3.2018, latest by April, 2018. The learned Senior Advocate has further submitted that this transaction which defendant No.1 took place with defendant No.2 is an agreement by virtue of which the payments which have been made have been directly appropriated towards the income tax liability which are clearly reflecting from page 474 onwards. By referring to page 474/11, learned Senior Advocate has submitted that defendant No.2 has entered into a transaction which is registered on 31.3.2018 and towards the same, payments have also been realized on 30.3.2018 which amount has been appropriated towards the income tax liability and this was clearly known from the beginning that this transaction is going to take place to meet with these liabilities and this negotiation with other party was also well within the knowledge of the plaintiff and so it is not that some under dealing has taken place in any manner. He has drawn the attention towards the WhatsApp correspondences precisely communication dated 18.12.2017 at 12.06 p.m. as well as at 12.14 p.m. By referring to further communications of 20.12.2017 at 9.26 a.m. and 25.12.2017 at 10.15 a.m., it has been conveyed that it was not that only with the plaintiff, the

transaction was being negotiated and C/AO/72/2019 CAV ORDER even the plaintiff was also aware about the fact that with original defendant No.2 also, the negotiations were going on. It has been submitted that these correspondences of WhatsApp went on which has not attained any finality in any form. On the contrary, the action of the plaintiff of Special Civil Suit No. 323 of 2018 in approaching the Income Tax Department directly without consent or without consulting defendant No.1 has got the effect of derailing the negotiation and ultimately a board meeting took place which was also well within the knowledge of the plaintiff. It was pointed out that since the same was within the knowledge of the plaintiff, Ascrow agent Nimish Vasa on 26.3.2018 at 10.27 p.m. has indicated that if tighter terms are required for good execution and if any penalty is to be inflicted upon, then also problem can be discussed. Now this is indicating that defendant No.1 was not inclined to conclude the contract and the transaction has never been finalized. It was submitted that on the contrary, Ascrow agent for some reason was more inclined rather than original plaintiff who was aware about the ground reality. Learned Senior Advocate has further submitted that if the communications of 29.3.2018 as well as 30.3.2018 are closely read, it would indicate that there was no unequivocal acceptance of any nature. On the contrary, it was other way round. In fact, this episode which took lace on 30.3.2018 is indicating that atleast from that day, the plaintiff knew about the fact of non□inclination to move any further in respect of C/AO/72/2019 CAV ORDER transaction and further the same was specifically conveyed by returning even the amount of Rs.2.16 crores which was by way of personal loan according to defendant No.1. The sum and substance of these correspondences which took place on WhatsApp nowhere is indicating that any final assertion of acceptance has taken place from the side of the defendants. On the contrary, it reflects that denial was very much communicated. It is not understandable as to why for a pretty long period of seven months after getting back the amount of Rs.2.16 crores, the plaintiff has remained silent. This delay which is unexplained is fatal to the case of the plaintiff and at least for not getting any interim relief, resultantly, the order at Exh.5 is not tenable.

10. Mr.Mihir Joshi, learned Senior Advocate has further submitted that the huge amount is already passed on to defendant No.1 by defendant No.2 while entering into a registered agreement to sell and to intercept these process of transaction in a situation like this would clearly has got the serious prejudice and, therefore, in the absence of any prima facie case or balance of convenience, no interim relief could have been granted. Mr.Joshi has further submitted that apart from this, here is the case in which, on one side there is a registered agreement to sell which has already taken place on 31.3.2018 and on the other side, there is a mere draft of agreement to sell and memorandum of understanding which has not even been signed and additionally, the C/AO/72/2019 CAV ORDER amount of Rs.2.16 crores was also returned back which was not even for this transaction. Hence, if the balance of equity is to be examined, the same is leaning towards the holder of registered agreement to sell than that of the plaintiff, hence, no relief could have been granted in such a situation. Learned Senior Advocate has submitted that even on the basis of these material facts, which are reflecting on record, even specific performance of agreement is not at all possible and the suit itself appears to be laconic on cause of action and hence, not tenable. In such a situation, when the main proceedings are also not possible to be considered in the light of settled position of law, the question of grant of interim relief would not arise, as a result of this, since the learned Judge has completely misconstrued the facts, such perversity emerging is required to be corrected by setting aside the impugned order. Learned Senior Advocate has submitted that in any case, there is no

prima facie case in favour of the plaintiff. The balance of convenience and irreparable aspects are also not leaning in favour of the plaintiff and even if assuming everything against the defendant, then also, the relief can be possible to be compensated in terms of money. The question of granting interim relief in a situation like this is nothing but an erroneous exercise of jurisdiction. Learned Senior Advocate has submitted that as the registered agreement to sell has already taken place and the sizable amount has already been passed on, no injunction can be granted and it is settled position C/AO/72/2019 CAV ORDER of law that in all cases, the specific performance decree cannot be passed keeping in view the parameters of section 20 of the Specific Relief Act. It is a settled position of law propounded by series of decisions that, to grant a decree for specific performance, several circumstances are to be analysed and even in case where there is a registered agreement, then also, if there is a stiff price rise, there is a change in the background of material facts and consistent readiness and willingness are the circumstances by virtue of which, specific performance may not be granted and by giving lump sum compensation also, the proceedings can be terminated. So, here is the case in which there is a reliance of a mere unsigned agreement to sell which is merely a draft and the terms have been altered from time to time which also have not attained any finality and crucial thing is that even till 30.3.2018, there is no unequivocal acceptance made by the plaintiff. Hence, in such a situation, grant of equitable relief, according to Mr. Joshi, is out of place.

11. In support of the aforesaid stand taken by original defendant No.1, Mr. Mihir Thakore, learned Senior Advocate appearing for original defendant No.2, who is the holder of registered agreement to sell and who has parted with a sizable amount, has contended that even remotely, there is no circumstance which may infer any concluded contract.

> It is submitted that from the beginning, plaintiff was aware about the fact that
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> C/AO/72/2019 CAV ORDER

regarding transaction were going on in parallel with both the persons and Mr. Nimish Vasa, the person having a link between the plaintiff and the defendant and who was an interested person. It has further been contended that the transaction was to be done for the purpose of business and meeting with liability regarding income tax assessment and the last date was 30.3.2018 since 31.3.2018 was a holiday being Saturday. The chronology of events according to Mr. Thakore, learned Senior Advocate is clearly indicating that there is neither any agreement nor any concluded contract came into existence. To substantiate this, learned Senior Advocate has drawn attention to WhatsApp correspondence of material dates along with the time and has submitted as if it is the trial of the suit and thereby contended that since there is no concluded contract, there is no question of granting any injunction. It has been submitted that WhatsApp talks/messages reflecting on page 104 of paper book compilation more particularly on 26.3.2018 at 1.29 p.m. and the messages reflecting on page

106 on 30.3.2018 would clearly indicate that there is no contract came into existence with the plaintiff. Furthermore, as per the transaction which took place by his client with the appellant, a sizable amount of Rs.34.00 crores appears to have been paid by defendant No.2 and this fact is very much reflecting on page 474/Z. By referring to pages 474/U and 474/J, a submission is made by Mr. Thakore, learned Senior Advocate that this transaction is essentially meant for clearing income tax assessment C/AO/72/2019 CAV ORDER as the deadline was 30.3.2018 and this being a commercial transaction, one who pays earlier in point of time can proceed since there was no concluded contract with the original plaintiff in any form and as such, the grant of injunction would be nothing but serious prejudice to his client. It has further been canvassed that from the beginning, the plaintiff was aware about the fact that this dealing with M/s Neptune is going on in parallel and even a public notice was also given, still, however, after unreasonable period of time, the suit came to be filed particularly after the sizable amount was paid by defendant No.2 and, therefore, this unexplained delay in approaching the Court would disentitle the plaintiff from securing any equitable relief. It has further been contended that apart from delay in approaching the court by the original plaintiff, there also appears to be no prima facie case at all and balance of convenience is also not in favour of the plaintiff. In fact, if the balance of equity is to be evaluated, the same would lien in favour of his client rather than the plaintiff. To strengthen his submission, learned Senior Advocate has relied upon the decision delivered by this Court (Coram:

> H.K.Gokhale,J.) which is reported in 1996(3) GLR page 536 and the decision of Hon'ble Apex Court which is reported in (2015)15 SCC page 1 and by referring to paragraphs 37 and 39 of this judgment, learned Senior Advocate has submitted that on account of delay and laches as well, the plaintiff is not entitled to equitable relief. Additionally, learned Senior C/AO/72/2019 CAV ORDER Advocate, Mr. Thakore has also relied upon paragraph 13 of the written statement and has reiterated his submissions on the issue of no concluded contract.

Learned Senior Advocate, Mr. Thakore has submitted that simply because there might be an intention to enter into the contract, eventually, if it does not exist, no interference can be drawn about contract being concluded. He has relied upon yet other decisions reported in (1997)3 SCC page 1 in the case of K.S.Vidyanadam and others Vs. Vairavan, (1990)3 SCC page 1 in the case of Mayawanti Vs. Kaushalya Devi and (2016) SCC Online Bombay 6784 in the case of Rohit A. Kapadia Vs. Perviz J. Modi and by referring to several paragraphs from those judgments, it has been submitted that in the absence of existence of any concluded contract, there is no question of granting any interim relief and the learned Judge has materially erred in exercising jurisdiction. By referring to rojkam, learned Senior Advocate has submitted that actually, Exh.5 application has never been heard. What has been heard is an application filed under Order 7 Rule 11(d) of CPC and, therefore also, the impugned order which has been passed is in complete disregard to the principles of natural justice and hence, the same is required to be quashed and set aside on this count alone.

12. In counter to this submission, learned Senior Advocate, Mr. Deven Parikh appearing on behalf of the plaintiff has submitted that systematic steps have been taken to reach upto to final stage of the C/AO/72/2019 CAV ORDER contract and then at the last moment, returning the amount and entering into transaction with other party would be nothing but a clear conduct on account of which

only the injunction has to be given. The ill-intention on the part the defendant was very much clear from the WhatsApp correspondences and can easily infer an intention and the learned Judge, after overall appreciation of material, was pleased to grant an interim order which is just and proper. If the steps could be perused closely, it would make it clear that the contract did take place but a mere formality of signing was left out and at this interim stage of the proceedings, no merit could be examined as it would be an adjudication of the main suit. At this stage, the Court has to evaluate as to whether there exists any prima facie case and there exists any apprehension as to whether the subject matter of the suit is to be preserved or not. This having been opined clearly by the court below, the just and proper order is passed, according to learned Senior Advocate, Mr. Deven Parikh since the entire demonstration from the WhatsApp correspondences and the assertion of the plaint prima facie suggest existence of oral contract at least and, therefore, whether on the basis of this material, suit is maintainable or not and relief as prayed for is possible to be granted or not is a matter of trial of the suit and that has to be allowed to go on without any hindrance and minute examination is to take place during the course of trial and as a normal rule, subject matter of the suit deserves to be C/AO/72/2019 CAV ORDER protected and, therefore, rightly the order of injunction was passed. Learned Senior Advocate, Mr. Parikh has further submitted that from the overall material, if we look at a just prior circumstance to the final draft of memorandum of understanding, then there appears to be a clear existence of the oral contract and this being a prima facie material which is emerging from the record, the discretion has rightly been exercised. Learned Senior Advocate has further submitted that the plaintiff was and is willing to perform its part of contract even till last day, but surreptitiously behind the back of the plaintiff, this contract in the form of agreement to sale has been entered into. Last page of WhatsApp correspondence would clearly indicate that a systematic design is executed against the plaintiff. All these triable issues are to be adjudicated upon during the course of trial. Simply because some more amount is paid by another person and agreement to sale is registered, that would not disentitle the plaintiff to seek a remedy of injunction. On the contrary, it is a settled position of law that mere agreement to sale would not confer any absolute right, as a result of this, no interference deserves to be made. Apart from this, a close reading of the material would also indicate that as on 31st March, 2018, the plaintiff was not aware about denial. On the contrary, till last moment, the plaintiff was kept under an impression that transaction is to take place with the plaintiff. So, even independently, it has been established that a denial was never C/AO/72/2019 CAV ORDER communicated or conveyed to the plaintiff. Their withdrawal either on 30th or 31st March from the contract is not supported by any valid material and this being highly disputed and triable one, the learned Judge has justifiably exercised the discretion. It is a settled position of law that whenever a surrounding circumstance is emerging, mere non-signing may not affect the legitimate right at this stage of the proceedings. Mr. Parikh, learned Senior Advocate has further pointed out the conduct of the defendant and submitted that the stand taken by the defendant is nothing but a concoction. There is a clear conflict between their stand which is reflecting from the written statement on pages 208 and 209 of paper book compilation and under the provisions of Contract Act, there is no prohibition or embargo about entering into oral contract. So, whether in the absence of any signature, transaction can be treated as a contract having come into existence or not is a matter of law and fact which will have to be examined during the course of trial. To substantiate his stand, as a part of reiteration, learned Senior Advocate has drawn the attention to various contracts of MOUs and then agreement to sale, copies whereof are given. So much so that map has also been attached which is a further step in

favour of transaction with the plaintiff and, therefore, the question of reverting back was out of place for the defendant. Not only the terms were modulated and figures were also altered, but even some further details which are material in nature have also been C/AO/72/2019 CAV ORDER furnished which is nothing but a clear step on the part of the respondent□defendant about the transaction in question. It is completely incorrect to state that the plaintiff has lost interest during any portion of time. On the contrary, the amount was also kept ready which can meet with the consideration of the contract. When these situations are prevailing, it is only then the final draft of agreement to sale came to be exchanged and now to back out from that is a conduct which is thoroughly uncalled for and that is the reason why on such part only, the matter requires not to be entertained and the appeals deserve to be dismissed.

13. Mr.Deven Parikh, learned Senior Advocate has drawn attention towards paragraphs 115 to 124 of the paper book compilation and submitted that there is a clear nexus of transaction about the land with the plaintiff of Rs.2.16 crores and this was not in any form regarded as a personal loan but it was all the way for transaction in question and that is the reason why immediately after entering into agreement to sale with the other defendant, the amount has been returned back through RTGS. Mr. Parikh, learned Senior Advocate has further submitted that this defendant is armed with a legal team which is systematically out to go on sending various drafts and by referring to page 117 of paper book compilation, it is submitted that exchange of final draft and agreement to sale through Legal Department is a final stage of entering into transaction and C/AO/72/2019 CAV ORDER sending of final draft of agreement to sale is a concluded step on the part of the defendant which would easily infer a clear intention to conclude the contract. It is submitted that as soon the plaintiff came to know about the fact regarding return of amount of Rs.2.16 crores, immediate protest was lodged and as on 3.4.2018, sufficient balance was also maintained in the account with a view to complete their part of the contract by the plaintiff. The story which has been tried to be created that amount of Rs.2.16 crores was in the form of personal loan and not about the transaction, it may be noted that this stand is nothing but a clear concoction and as such, when this be the situation on record, the learned trial Judge has rightly exercised the discretion. According to him, as WhatsApp exchanges took place with Ketan and not with the plaintiff, it cannot be inferred to have been communicated to the plaintiff and in that view of the matter, the injunction has been rightly ordered. It has further been contended that a defense has been raised that by any means they have to meet with income tax liability, but then while entering into transaction in the form of mere agreement to sale, full amount of income tax is not yet paid and, therefore, this story of income tax appears to have been got up just with a view to see that no injunction be made available to the plaintiff. According to learned Senior Advocate, Mr.Parikh, there is a specific pleading of the plaintiff with regard to an oral contract which can C/AO/72/2019 CAV ORDER be easily culled out from material on record and the plaintiff is able to analyse stagewise step which would infer existence of an oral contract. It has further been contended that here is the case in which whether there exists the oral contract or the concluded contract is a matter of trial but, all details about various drafts and final exchange of ATS and memorandum of understanding are the circumstances which require adjudication. Even a reference is made that once upon a time, stringent terms were being suggested even after dissolution of the company but till the final draft, there was a complete ad□idem between the parties. So, under these systematic steps, the signing of an agreement has remained merely as a formality and nothing beyond that. It is not required that in every injunction,

there must be a written contract. On the contrary, MMS on page 108 dated 31.3.2018 at 9.11 a.m. has indicated that confirmation was just worked out on the previous day and, therefore, the story which has been put up that on 30.3.2018, the plaintiff was informed about non-entering into or non-continuing with the transaction and, therefore also, the injunction has rightly been given. Mr.Parikh has further submitted that in fact Exh.5 application came to be decided after giving adequate opportunity and they have been heard by the learned trial Judge. On the contrary, there is a clear reference in paragraph 4 that both the learned advocates have argued and thereafter has mentioned in paragraph 7 on page 16 and, therefore, question of non-hearing of Exh.5 is C/AO/72/2019 CAV ORDER also nothing but an illusion in the mind of the defendant. Mr. Deven Parikh, learned Senior Advocate has then relied upon the judgment delivered by Hon'ble Mr. Justice A.S.Kureshi which is part of paper book compilation on page 70 and another decision which is reported in AIR 1996(8) SC 1028 in the case of Kollipara Vs T. Aswatha Narayana to suggest that case is not made out by the defendant. On the contrary, learned Senior Advocate has relied upon other decisions reported in (2017)9 SCC 622 in the case of Nadiminti Suryanarayan Murthy (dead) through Legal Representatives Vs. Kothurthi Krishna Bhaskara Rao and others, AIR 1990 SC and (2016) SCC Online Bombay 6784 in the case of Rohit A. Kapadia Vs. Perviz J. Modi. Yet another decision which has been relied upon is reported in AIR 2006 SC page 87 and by referring to the judgment of Hon'ble Mr. Justice A.S.Kureshi, a contention is raised that a case is made out by the plaintiff. Lastly, learned Senior Advocate has submitted that no case is made out by the defendant as still the plaintiff is ready and willing to deposit an amount of Rs.2.16 crores before the registry of this Court or before the Court concerned to preserve the interest in the subject matter of the suit and keeping in view the interest of the defendant as well within a reasonable time that may be fixed by this Court. With these submissions, learned Senior Advocate has requested the Court to dismiss the Appeals From order.

14. In so far as another cognate appeal being Appeal C/AO/72/2019 CAV ORDER From Order No.74 of 2019 is concerned, with respect to another party namely, M/s Haryana Containers Limited, learned Senior Advocate, Mr. Mehul S Shah has submitted that there is a clear difference between prima facie case and prima facie title. Here is the case in which by execution of registered agreement to sale, a right is created in favour of the defendant which would be thwarted by grant of injunction. On the contrary, this prima facie case and prima facie title are distinct is very much reflecting from a decision reported in AIR 1993 SC

276.

15. Mr.Mehul S. Shah, learned Senior Advocate has further contended that no doubt the oral contract is enforceable but the same is to be inferred keeping in view certain provisions of the Contract Act and for that purpose, learned Senior Advocate has relied upon sections 2(a), 2(b) and 2(e) of the Contract Act, 1872 for clarifying the situation. It has further been submitted that a stand has been taken that cancellation of transaction has taken place but then cancellation itself is suggesting pre-existence of a contract. Learned Senior Advocate has vehemently contended that what would be the effect if the agreement is not signed and for that purpose, a reference is made to a decision which is reported in (2009)2 SCC 582 and by referring to section 10 of the Specific Relief Act and the explanation contained therein, it has been submitted that normal rule is to decree a

specific performance and here is the case in C/AO/72/2019 CAV ORDER which at this stage whether to pass a decree or not is yet to be decided and, therefore, at this stage of the proceedings, when equitable relief is being sought, the balance has to be struck between both the sides. It has been submitted that an amount of Rs.2.16 crores was throughout treated as part of earnest money then why suddenly the same is to be canvassed as a personal loan. In fact, it appears that having realised a situation of embarrassment being created to somehow come out from the rigors of contract, a story is put up that amount of Rs.2.16 crores was a personal loan and nothing beyond that and additionally, the story is created that only with a view to clear the income tax dues, this transaction of an urgent nature is created. In fact, the plaintiff has maintained a sizable amount of balance in the account for the transaction itself and no prudent person would keep such a huge amount separate without any just reason. The readiness and willingness are continued throughout and there was a sufficient financial capacity to meet with the consideration. On the contrary, the last talk is clearly suggesting that there was no waiver by the plaintiff and for that purpose, a reference is made to a decision which is reported in AIR 2017 SC 3608 in the case of Dev Prakash Vs. Indra. Yet another decision which is referred to and relied upon is reported in 1983 GLH 538 in the case of Ibrahim Shah Mohmad and others Vs. Noor Ahmed Noor Mohamed and others and submitted that status quo has to be maintained during the trial of the suit which is a C/AO/72/2019 CAV ORDER normal rule throughout canvassed by series of decisions. Thereafter, by referring to a decision reported in AIR 2005 SC 104 in the case of Maharwal Khewaji Trust (Regd.), Faridkot Vs. Baldev Dass, a request is made not to disturb the order which has been passed by learned court below. Additionally, certain other decisions have also been cited to substantiate his contention to ultimate request not to entertain the appeals which are otherwise not deserve to be entertained.

16. Having heard the learned advocates appearing for the parties and having gone through the cases in detail, certain circumstances are not possible to be ignored while taking ultimate view in the present cases. First of all, it is a settled position of law propounded by the Apex Court in a decision in case of Prasar Bharti v. Board of Control for Cricket in India & Ors., reported in (2015) 6 SCC 614 that at the interim stage, minute details and examination of merit are not to be undertaken. The merits will have to be considered only to ascertain about existence of three parameters governing the grant or refusal of injunction and as such, though learned Senior Advocates have argued the matters at great length as if the Court is to undertake mini trial of suit, in view of the aforesaid proposition of law, this Court is not required to undertake such exercise as has been attempted, but would like to follow aforesaid proposition of law and as such, without much opining finally on the merit, the brief submissions and the C/AO/72/2019 CAV ORDER record are being examined by the Court.

17. A further proposition of law which has been laid down by Hon'ble Apex Court is reported in (2004) 8 SCC 488 in the case of Maharwal Khewaji Trust (Regd.), Faridkot Vs. Baldev Dass as also reported in AIR 2005 SC 104, wherein it has been held that as a normal rule, status quo during the pendency of the proceedings has to be preserved unless extra□ordinary circumstance is emerging and simply because the litigation will take some more time, same would not be treated as an exceptional circumstance to alter the status quo. Keeping the aforesaid proposition laid down by Hon'ble Apex Court, this Court is examining the submissions in co□relation with the record as to whether any deviation is possible from the aforesaid proposition and for that purpose, few

circumstances which are emerging from the record are not possible to be ignored by the Court.

18. From the paper book which was filed in Appeal From Order No.73 of 2019, both the sides have referred to relevant documents and taking note of the same, first of all the plaint which has been submitted by K.S.Infraspace LLP suggests that the averments have been made to substantially plead that the defendant has accepted the revised draft as a final draft and the revised draft MOU/ATS, which was sent with email dated 30.3.2018 was the concluded contract between them. It has also been asserted in substance that token amount of Rs.2.16 crores has C/AO/72/2019 CAV ORDER been paid on 10.1.2018 in connection with the transaction in question since the sale and purchase were orally agreed at the relevant point of time and then final drafts with certain modifications have been exchanged. It has also been asserted in the plaint that after acceptance of payment towards part sale consideration, the defendant has provided all the copies of title deeds and documents as well as title clearance report of A.C.Damani and company and then several meetings and deliberations have taken place. It was specifically averred in the plaint that the plaintiff was always ready and willing to pay the balance amount of Rs.27.84 crores as stipulated in memorandum of understanding dated 30.3.2018, but despite memorandum of understanding, the defendant has cleverly sidelined from the contract and then through RTGS, unilaterally, without communicating denial, returned the amount. It has specifically been averred in paragraph 9 that on 30.3.2018, at around 10.39.54 a.m. IST, one more email was received from Legal Department of defendant No.1 company stating that final drafts of MOU and ATS are attached and immediately within few minutes, on that very day, at 10.51.25 a.m. IST, the Legal Department also sent the land measurement summary along with the payment schedule which demonstrates conclusively that now the document is to be executed as a part of formality. It is also specifically asserted on oath in paragraph No.9.4 that all essential ingredients of a valid acceptance by defendant No.1 have clearly suggested vigil and awareness of various terms and conditions C/AO/72/2019 CAV ORDER of MOU and ATS and, therefore, a specific stand is taken to get the relief that even in the absence of signed agreement of MOU and acceptance, inference of contract can be drawn from the conduct and exchange of series of documents and correspondences. It has further been mentioned that the plaintiff sent an email on 31.3.2018 at about 11.03.44 a.m. IST stating the approval of MOUs and ATS and has shown specific readiness and willingness and then surprisingly, the defendant backed out from the deed by merely sending email at about 5.24 p.m. on 31.3.2018 and returned the amount of Rs.2.16 crores through RTGS by treating it as a short term finance, though there was a specific assertion that amount of Rs.2.16 crores was a part of consideration for the land of Ambalal Sarabhai Enterprise Ltd. and Haryana Containers Ltd. It has further been specifically averred that the defendant company has passed a resolution on 26.3.2018 but even after that, exchange of draft of MOU and ATS took place which suggests a fabricated and concoction on the part of the defendant and by alleging that the defendant has disowned the concluded contract and hence, relief prayed for deserves to be granted. There are few other circumstances narrated by way of specific assertion but in substance, this stand is taken in the plaint.

19. Now to substantiate this, series of documents have been produced on record and since the same are in bulk, only most relevant documents at this stage are to be referred to.

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20. In that context, the most material circumstance which is reflecting from WhatsApp communication is rather suggesting that till 30.3.2018, the plaintiff was kept under an impression that they are about to execute the document. A perusal of few WhatsApp exchanges would reveal the intent and conduct of parties to the proceedings and as such, the same are being reproduced hereinafter:

> "20/12/2017, 9:26 am ☐Nimish Vasa: Kartikey bhai, it would be prudent that WE meet at your earliest convenience and FINALIZE long PENDING matter of my pending dues. Also your comments about commission for D2 is not really business like and morally correct but in case you have determined to sell it to Krupesh, it really then doesn't matter. Only if you still wish to continue discussion with Ketan and explore to get best possible rate and terms, I insist that we meet and clear the issue immediately to avoid further misunderstanding in this matter. If you are still open to talk to him please let me know when to call him to Abad for meeting with you and Mohal (if you wish to directly call him and fix the meeting, please go ahead however it doesn't change the issue of commission due to me in case you finalise to sell D2 to Ketanbhai) . Waiting for your response and meeting time . Thanks. NIMISH"
>
> "25/12/2017, 10:15 am ☐Nimish Vasa: Kartikey bhai, i am now hesitant to pursue you because as Ketan informed me, if you have already made up your mind to sell D2 to Krupeshbhai and using me and Ketan to push his price as high as possible, I feel quite let down and think that there's no need for us to waste time of everyone in this futile exercise. Our commitment to give Ketanbhai Right of first C/AO/72/2019 CAV ORDER refusal for D2 also has gone for a toss. I request you to please settle my old issue as soon as possible and let's part ways on these commercial issues thereby not to affect our personal ties. I think it is high time that we should have a transparent talk on all pending issues and clear the matters. Will wait to know when you are free and would like to spare uninterrupted one hour to address all above issues. Thanks. NIMISH."
>
> "30/12/2017, 12:14 pm ☐Nimish Vasa: Dear Mohal & Kartikey bhai, After our telephonic talk yesterday, now I await your signal that you are ready and open to meet Ketanbhai to discuss and if price and terms are workable as we talked willing to conclude the deal. We can meet either late afternoon on 1st in Abad or any time there after (2nd in Baroda is also fine with me) when you are ready. Will wait to hear from you. Thanks. Have a Happy, Prosperous and Wonderful New Year. Regards, NIMISH."
>
> "06/01/2018, 2:28 pm ☐Nimish Vasa: Hello Kartikeybhai, Congratulations. You have done it !! You have been able to achieve your magic figure of 120 and infact more!! Congratulations once again and best wishes. Nimîsh."
>
> "19/01/2018, 2:35 pm ☐Nimish Vasa: Kartikey bhai, what time tomorrow are you leaving for Pune ? When will you be returning ? Please try to reach our house on

Sunday for dinner as requested. Can we meet today or tomorrow to discuss progress so far in Title draft by Damani and documents draft by Megha ben ?~ we also need to meet to finalise my old due payment as I am running huge costs on my borrowing and in absence of clarity unable to settle it. Please revert. Thanks."

"24/01/2018, 1:36 pm ☐Nimish Vasa: Kartikeybhai, as discussed we will meet on Saturday, 27th to review progress on new deal C/AO/72/2019 CAV ORDER with Ketan. However, meanwhile can we please meet and address payment due to me for earlier deal. As already informed I am running a substantial cost due to delays and hence would like to discuss and finalize the issue after which I will need to address the matter most aggressively. Please let me know when can we meet ? Thanks. Nimîsh."

"22/03/2018, 10:22 am ☐Kartikeya Sarabhai: We can meet Saturday afternoon. Am in Vadodara today. Still trying to solve issues relating to the deal.

22/03/2018, 10:36 am ☐Nimish Vasa: Thanks Kartikey bhai for your response. Today I am in Kolkata. But if there is anything that you want me to handle with Ketan please let me know. I spoke to Chaulla on Monday and she said she is sending fully corrected mou to ketan later on Monday and if there's anything she will get back to me. Since she never called I thought all OK 22/03/2018, 10:45 am ☐Kartikeya Sarabhai: MOU is accepted. But there are issues with income tax which they are meeting today 22/03/2018, 10:46 am ☐Nimish Vasa: OK let's talk tomorrow and if convenient to you then meet on Saturday.

25/03/2018, 5:26 pm ☐Nimish Vasa: Kartikey bhai, have you decided your plans for tomm ? If you agree I can go with you and will be able to push Ketan to complete payment tomm and get you to also meet commissioner of IT to aliviate your fear. If not true then i will ensure that he hands over payment to him in front of you to ensure that you don't get in any additional trouble. Will wait to hear from you. Thanks.

C/AO/72/2019 CAV ORDER 26/03/2018, 12:29 pm ☐Nimish Vasa: Kartikey bhai, Ketanbhai called me and asked me to convey to you that our understanding was to pay 30 Cr before 31st March and on that account I have already paid 2 Cr which you have accepted. Although in spite of my several requests you have not yet signed MOU , I am ready with the balance 28Cr and can complete our commitment before 31st. Please talk to kartikey bhai to sit with me today while in BARODA and complete the transaction as agreed. Thanks. I am informing you what he conveyed. Thanks. Nimish 26/03/2018, 12:31 pm ☐Nimish Vasa: with reference to our long talk. also I have given u the token amount of 2 coror.

our commitment to give 28 coror.

before 31st March. we R ready with fund. even if mou was delayed.

do needed.

26/03/2018, 12:32 pm ☐Nimish Vasa: Above Recvd from Ketanbhai.

26/03/2018, 12:36 pm ☐Kartikeya Sarabhai: Till this morning he was telling me that the IT department is willing to give installments and we have till pay only Rs. 8 cr. I have met the highest level and others and this is not the case. This and the way of negotiating with IT has shaken the confidence. The board is discussing the matter.

26/03/2018, 12:39 pm ☐Nimish Vasa: He still maintains that if you would have let him handle the IT he would have gotten you the respite but in any case his payment as long as he pays on time to us before 31st what difference does it make ? Every one has a right to try his way of extension if it doesn't harm your requirement and he gets additional time. Any way I think it C/AO/72/2019 CAV ORDER is up to you.

26/03/2018, 2:22 pm ☐Nimish Vasa: Kartikey bhai, Ketanbhai says that he has honored every commitment that he has done to you. He informs me that although actually he started working on 122 only after election and new govt formation, he has already recvd order on 122 and his documents will be registered soon. He says that all matters are clearly spelled out by you including escrow account so where is the doubt on my sincerity. He says that he cannot allow deal to be given to any one else just on assumption and suspicion especially it is a matter of his prestige, credibility and honour in market. He asked me to take responsibility for his cash flow in future in case there is any further assistance needed by you although he says everything is clearly spelled out so why such wrong suspicion. I am only conveying His talk to me."

"26/03/2018, 6:55 pm ☐Nimish Vasa: He said he will reach around 7.45☐8.00 PM
26/03/2018, 10:12 pm ☐Nimish Vasa: Kartikey bhai, I didn't want to say this in presence of Ketanbhai but I definitely don't agree with your decision and views especially to break our commitment and agreement on some imaginary perception. If you were thinking of such issue you could have told me about it and we would have informed Ketanbhai not to go in that direction. This can't be a ground to break our word or commitment and I disagree with you. I request you to please reconsider your views and let's conclude our deal with Ketanbhai to honor our words. This is also a matter of my commitment and involvement and I request you not to take such a hurried decision on pretex of mishandling of Income tax issue. I hope you will not go that route which in my opinion is not fair and also not honourable way of doing business. I sincerely request you to please do C/AO/72/2019 CAV ORDER not go the wrong way of thinking about breaking our words and commitment especially when he still has up to 31st to honor his commitment. I hope you will not put both of us (you and me) to such an awkward position to defend our honour and words."

"26/03/2018, 10:27 pm ☐Nimish Vasa: If you think you need tighter terms to ensure good execution we will do what you wish and if you want to impose some penalty for this problem we can discuss it tomm and find some fair way to get some extra."

"27/03/2018, 9:39 am ☐Nimish Vasa: Sorry, I was in Gym and then massage so could not pick up the phone. Then I have tried two three times to call you but either busy tone or no one picked up. Regards. Please call when you are free. Thanks. Nimish 27/03/2018, 11:52 am ☐Nimish Vasa: Kartikey bhai, Ketanbhai called, said he is on his way to Abad to reach your office by 12.30 (after confirmation from you) . He wants me to go with him so I am asking You if it is true ??

27/03/2018, 12:27 pm ☐Nimish Vasa: I am truly tense. I really don't want to get in to this ugly fight where clearly we are in wrong. I request you to take a fair view of the matter and complete the transaction which we have so elaborately discussed and finalised. Your graceful acceptance will automatically douse the fire but if you persist on going further with other person, it will be a serious ego clash and will create an ugly scene which I think will not be in our interest at all. I request you to say the other person that I was exploring the last minute option in case ketan can't fulfill his commitment. If he does then i have to honor my commitment to him.

C/AO/72/2019 CAV ORDER 27/03/2018, 12:29 pm ☐Nimish Vasa: If ketan fails to make payment as per the terms I will come back to you promptly. Just stop any further interaction with him till we see if ketan can make payment as he says 29/03/2018, 5:45 pm ☐Nimish Vasa: I am told that so far he has not recvd corrected draft of MOU that you had already completed, agreed and we had committed to sign???!! Kartikey bhai, whatever may be your assumed fear but this kind of oscillating behaviour is really not seen in a business deal. I request you to rush the papers. Thanks 29/03/2018, 5:54 pm ☐Kartikeya Sarabhai: MOU was sent in the morning, saying 2 or 3 changes may come. We had asked that he should read it and comment. Now both MOU.s sent.

30/03/2018, 5:31 pm ☐Nimish Vasa: I feel used, violated and cheated. This is outrageous and cannot be done. You can't be this dishonest about your comments.

30/03/2018, 5:35 pm ☐Nimish Vasa: Kartikey bhai I am taking it as a personal insult after committing to me after my assurance you can't dishour our commitment.

30/03/2018, 5:52 pm ☐Nimish Vasa: I don't want to face criminal case of misguiding and cheating some one deliberately. I am blaming this situation only on Kartikeya bhai that he knew all along and plotted for this harming everyone. Ketan is saying what ever you need to pay to IT I will pay and will adjust in your last installment so what is the excuse now 30/03/2018, 5:53 pm ☐Nimish Vasa: You have to come out of this situation which is self created and have to honour your and my word C/AO/72/2019 CAV ORDER 30/03/2018, 6:53 pm ☐Nimish Vasa: You can not pull

a fraud and cheating keeping me in between. I will not take this lying down and I will confirm with Ketan that this was a deliberate attempt to mislead Ketan and me.

30/03/2018, 6:54 pm ☐Nimish Vasa: Till this morning you are giving us a different picture and all along you had planned this. I will not be party to this cheating.

30/03/2018, 7:12 pm ☐Nimish Vasa: Ketan bhai told me that I am to remain present at 10 AM Tomm at Baroda, where ??? and either complete this transaction or face consequences !! I sincerely request you to talk among yourselves and find a way to honour our commitment and there for reputation.

30/03/2018, 7:18 pm ☐Nimish Vasa: Kartikey bhai, as late as this morning you are talking to me and making him understand that EMI will kick in. He has also agreed I am told that any extra amount that you need to pay for Income tax he will manage and pay and will adjust from your last installment. I really fail to understand where has he damaged his credibility between this morning and today evening unless all along you have been planning to do this and use me as a stupid accessory to this kind of let down. I can't believe it 30/03/2018, 7:18 pm ☐Kartikeya Sarabhai: I don't think you should be there. He was not leaving the office. I said I will see him tomorrow. However wrong the decision is in your and his mind, I told him that we are going ahead with the deal with another party.

30/03/2018, 7:19 pm – Nimish Vasa: Kartikey bhai, that is purely cheating and I can't accept it from you this

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30/03/2018, 7:37 pm ☐Nimish Vasa: Kartikey bhai, As a well wisher and also as an affected party , I warn you not to take a step which will triger a strong back lash, will geopardise the land completely and will also need to face legal challenge of cheating and fraud by deliberately misleading. I think this is infinitely more damaging to your family reputation and your company's only remaining assets. Knowing krupeshbhai you should judge that actually if some prevention order against land deal is obtained how seriously he will stand by you ??

30/03/2018, 7:49 pm ☐Nimish Vasa: And then what will happen to your cash flow requirements once land is blocked in legal issues ?

30/03/2018, 8:15 pm ☐Nimish Vasa: Please don't forget that we have taken token money of 2 Cr almost several months ago. There onwards there are at least several drafts of MOU exchanged between us, many meetings happened between us to finalize all terms and condition. As late as this morning you have sent him corrected draft asking more conditions to be agreed Which he has. Even your IT related demand he has agreed to help you out with extra payment if you need and he is graceful enough to say that he will adjust this extra payment only in your last installment there by not disturbing your cash flow. I have exchanged several emails, SMS, WhatsApp messages with him over last few months confirming all these that everything was decided and agreed upon in my presence and I am party to this commitment. Now what can I say if he puts me on stand and asked me to confirm that deal was already finalized and payment has started. I think I am already feeling worried about myself facing consequences , you may be used to such behaviour of not honouring your commitment, but I am truly not comfortable with such an idea and in my dictionary it amounts to cheating,and fraud. I plead you not to go this route or it will destroy everything that is C/AO/72/2019 CAV ORDER dear to my heart. Hope you will open your eyes to reality. Thanks. Nimish 30/03/2018, 8:15 pm ☐Nimish Vasa: Sent to kartikey bhai 30/03/2018, 9:32 pm ☐Nimish Vasa: It is just occurring to me, are you doing it for more money ?? I really don't see any reason for such a behaviour unless you have some compulsion or temptation. I am also now wondering that as per your nature such a large and complicated deal could not have been concluded in last one or two days with other party, so maybe all along keeping us in dark you were talking to him for better price and better terms and pretending with us till you conclude !!! How can you be such a back stabbing person and as late as this morning you are talking to me as if I should reconfirm to you that he is accepting all your revised terms. And when you see that he has agreed to all your terms, you are now coming up with you and board (!!??) have no confidence ??? Kindly reconsider your decision or else all of us will face unfortunate consequences. Good Night.

31/03/2018, 9:11 am ☐Kartikeya Sarabhai: I am sorry the decision finally went the way it did. You know we were working till the previous evening to try and make it possible 31/03/2018, 9:36 am ☐Nimish Vasa: I am sorry to say that this is really not an excuse to break your commitment to me especially after I have put in several months and till last moment I have got Ketan to accept every change in condition that you penciled in. I see no reason for your saying that decision deal went to other party. There's no other party once deal was made and saying that yesterday you were compelled to break your words to Ketan bhai and especially me is frankly not acceptable. If you want more money I can discuss and ask Ketan C/AO/72/2019 CAV ORDER bhai to meet your expectations. But simply saying sorry and giving an excuse that till Last night we were working to do it with you is a lie. I am really feeling used, raped and ethically violated and feel that you have used me to increase price of your

land (earlier also same thing happened) and all along you were in dialogue with this party. It is ethically wrong especially after making full commitment to break it without any reason. However you have not shown the courtsey of either taking me in confidence or honouring the commitment given keeping me in between Which is a very painful and disturbing matter. You have all along used me for your benifit as and when you wanted, increasing value of your land from 1100 to 1600 , not paying 50 Rs for this land when commitment was to pay if you get price more than 1450, Taking my personal guarantee to Sandesh when he refused to give you money just on your papers and your guarantee, Not paying me my dues for 6 years and refusing to pay interest for delay when written note was given in 2012, you conveniently kept it with you not paying, this time also you clearly had an option to go to other party but pushing with my help for Ketan to pay you your price and terms, wasting three months of every one in paper preparation while all along you negotiated higher price with other party keeping us in dark using our name to get better terms. These are all unethical behaviour and not honouring your name and family. Now exposing all of us to unnecessary legal hassle for small benifit Which any way I can match if you give me a transparent chance.

31/03/2018, 1:16 pm ☐Nimish Vasa: Kartikey bhai, I plead you to please find a way out of this mess. Please kindly get the deal restored. What ever you want we will get you the assurance of the most credible person that you will agree. I am sorry to say that once committed you can't take such step of taking money from some one else for same deal. Please C/AO/72/2019 CAV ORDER give back his money after taking from Ketan. This is the request.

31/03/2018, 1:34 pm ☐Nimish Vasa: Please don't sign anything with Krupeshbhai, which will put you in trouble as I see that Ketan and his associates will go to any extent to get deal restored, I hope we don't come under cross fire for no apparent advantage and if they manage to pressurized Krupeshbhai, or local authorities, we will be the main sufferer. Please understand the gravity of the situation and if not yet signed any thing then don't rush to sign Till this is resolved.

31/03/2018, 6:28 pm ☐Kartikeya Sarabhai:

Several talks with Ketan in the afternoon. Meeting him with Krupesh on Monday.

31/03/2018, 6:30 pm ☐Nimish Vasa: I am happy if this gets sorted out amicably. It will relieve my mind. Thanks. Please find a way to get it sorted out to avoid any back lash. Thx 31/03/2018, 6:31 pm ☐Kartikeya Sarabhai: The last conversation was good with both 31/03/2018, 6:38 pm ☐Nimish Vasa: I am happy for all of us. Let us get them to sort it out among them selves so we don't get crushed in the bargain.

31/03/2018, 6:50 pm ☐Nimish Vasa: Have you already signed MOU with Krupeshbhai ??"

21. It appears from the aforesaid exchange of communication more particularly relevant documents right from 26.3.2018 at 10.27 p.m. that some rough weather was being reflected between the plaintiff and the defendant and subsequently, MOUs/ATS have C/AO/72/2019 CAV ORDER continued to be sent even through Kartikeya Sarabhai. There appears to be a clear indication to Kartikeya Sarabhai by Nimish Vasa about the admitted act which may result into serious consequences but then there is also a clear reference in a talk dated 30.3.2018 at about 5.52 p.m. specifically conveying that Ketan i.e. the plaintiff has shown readiness to pay even the income tax dues and the defendant was not left with any excuse thereafter. The next material circumstance reflecting from WhatsApp dated 30.3.2018 at 7.12 p.m. is that it was conveyed to the plaintiff to remain present at 10 a.m. at Baroda but was asking where. Thereafter, one more material circumstance is getting reflecting from WhatsApp dated 30.3.2018 at 7.18 p.m. Though this talk is suggesting an indirect indication but then there was no other reason why the last MOU/ATS is sent. Even confirmation about the terms was also indicated which is reflecting from Entry dated 30.3.2018 at 9.32 p.m. and then there is a reference that decision finally went the way it did but this itself is clearly suggesting that till previous evening, the working out was taking place. So, these exchanges are clearly reflecting that after accepting an amount of Rs.2.16 crores and utilising the same for several months, it seems that ultimately the defendant surreptitiously backed out.

22. An attempt is made by the defendant to state that this amount of Rs.2.16 crores was an amount taken as a personal loan and not by way of C/AO/72/2019 CAV ORDER consideration in part towards the transaction. Now for that purpose, if this is to be examined prima facie with page 115, a chart which is attached, it is reflecting an overall figure including Rs.2.16 crores. This chart is indicating that overall figures tallied with the main consideration as on 30.3.2018 which is reflecting a left out amount of Rs.27.84 crores. Now if these figures are to be tallied with the figures which are mentioned in the final draft of MOU, they appear to be matching with the amount shown in the chart on page 116. If the last column on page 116 is to be compared with the last modified MOU precisely reflecting on page 125 in 2nd paragraph, it would suggest that there is a clear inference about Rs.2.16 crores, may be by way of part sale consideration towards the transaction and, therefore, the story put up of personal finance is not lending support from the material on record.

23. On the contrary, the final draft which has been submitted including agreement to sale reflecting on page 117 appears to have been sent on 30.3.2018 at 10.39.54 a.m. IST. Now if this is to be compared with a WhatsApp entry dated 30.3.2018 and the entries thereafter, it would suggest that there appears to be unilateral withdrawal without communication to the plaintiff. Therefore, keeping the plaintiff in dark till last moment clearly reflects a conduct which requires to be examined at an appropriate stage of the suit. This is more particularly in view of the fact that in a general meeting of the company, it is C/AO/72/2019 CAV ORDER being conveyed that decision is taken and some resolution is passed and even after that, exchange of documents did take place. So, from this conduct, it can be easily inferred that there was a clear deviation from the terms which till last moment were in existence.

24. In the context of aforesaid circumstances, a further email reflecting on page 162 dated 31.3.2018 at 7.24.47 p.m. is a prompt reaction on the part of the plaintiff indicating and protesting against unilateral cancellation and then return of amount of Rs.2.16 crores is indicated to have been

received as a short□term finance which is coming up for the first time. Now as against that, there was a balance certificate issued by Oriental Bank of Commerce clearing suggesting that as on 31.3.2018, a credit balance of Rs.29,66,11,326/□was maintained by the plaintiff which is a left out consideration to be payable pursuant to the transaction. This certificate is also part of the record.

25. Additionally, the agreement to sale which is said to have taken place on 31.3.2018 is also reflecting that out of 2777 sq.mtrs. of land from Survey No.383/1, land admeasuring 2500 sq.mtrs. in Wadi presently vests with Ambalal Sarabhai Enterprise Ltd. and then the document is said to have been executed. Then there is reference to a resolution and a meeting of Board of Directors, whether it is valid or not is not to be decided at this stage. But it C/AO/72/2019 CAV ORDER appears that the said board meeting is convened on 26.3.2018 in which approval was given regarding document with M/s Neptune Infraspace Pvt. Ltd. with respect to three survey numbers consisting about total land admeasuring 13,000 sq.feet but then there is no explanation coming forthwith as to why even after this resolution and the decision the MOU, the land measurement and the agreement to sale have been continued to be sent by Legal Department of the defendant. From the contents of written statement, there is a flat denial about receipt of an amount of Rs.2.16 crores by way of sale consideration and further, there is a flat denial about receiving any confirmation about proposed transaction from the plaintiff and then it was conveyed in paragraph 24 that in that situation, on 30.3.2018 in the afternoon, the plaintiff company was personally informed about cancellation of all proposed drafts. It is also reflecting that Board of Directors put their foot down after appreciating everything and decided not to travel in the direction of proposed MOU with the plaintiff. But then resolution of the Board of Directors was of previous date and subsequently, the drafts of MOU as well as ATS continued to be sent. A clear stand is taken that the plaintiff was incapable of clearing income tax liability of defendant No.1 but then this is clearly in contrast with the balance certificate which has been issued by Oriental Bank of Commerce. This stand of the defendant is to be examined from the documents which are attached in the paper book compilation C/AO/72/2019 CAV ORDER precisely page 474/U dated 3.4.2018 wherein M/s Neptune Infraspace Pvt. Ltd. has paid the amount towards the assessment of income tax on behalf of the defendant. All these payments are of 30.3.2018 totaling to around Rs.11,78,10,000/□ By that time, there was already a balance available with the plaintiff to meet with even much more amount than what has been paid by M/s Neptune Infraspace Pvt. Ltd. Therefore, prima facie stand taken by the defendant deserves to be examined at length at the time of trial. Prima facie maintaining balance is in direction of readiness and willingness which will be examined during trial. These documents and the payment schedule are indicating that all payments have been made on 30.3.2018 wherein during that period, the plaintiff was already having a balance available on hand and, therefore, prima facie inability of the plaintiff as contended by the defendant is not possible to be accepted. Further, there is a conduct on the part of the defendant on one hand to pass a resolution to proceed ahead with M/s Neptune and then there is no other corresponding explanation available on record as to for what reason thereafter the drafts of MOUs and ATS were exchanged so much so that land measurement has also been communicated. This conduct appears to be questionable at this stage which requires detailed adjudication. Further, if the figures contained in the last exchange of MOU and ATS are to be tallied and compared with the proposed payment schedule and the entries contained therein, it prima facie matches the C/AO/72/2019 CAV ORDER version and the consideration of transaction and additionally, the plaintiff was very much armed with a total consideration amount on hand and as

such, prima facie, readiness and willingness is also not in question reflecting at this stage.

26. In the context of the aforesaid circumstances, if the version of WhatsApp to be examined as compared with other documentary material attached with the paper book, it would suggest that till last moment, undisputedly, the plaintiff was kept under an impression that their terms are to be agreed and formality of execution is awaiting. A self□contradictory stand appears to have been taken on one hand that in the meeting of Board of Directors, a decision is taken to proceed ahead with plaintiff whereas undisputedly talks are emerging and reflecting that till previous evening, they continued to deliberate. Now in the aforesaid situation, which is prevailing, whether this appears to be an oral contract or a concluded contract or any remote right is emerging in favour of the plaintiff to seek an equitable relief are the questions to be examined at the stage of trial, in the considered opinion of this Court. Therefore, it is not an open and shut case where the moment the agreement to sale took place and some amount is accepted from other party, the contract which was in process of getting materialized would evaporate. At least at this stage, with no certainty, a clear conclusion is possible to be arrived at. It is further reflecting from record and C/AO/72/2019 CAV ORDER the conduct of the defendant that a projection is given that transaction is taking place with a view to mitigate the total amount of income tax but the same appears to be not the conclusion at this stage. The measurement which is reflecting in the agreement to sale which has taken place with M/s Neptune is also a matter of concern and examination and further, the amount of Rs.2.16 crores is paid by way of token payment towards transaction or not is also a matter of trial, since the said amount was undisputedly accepted in January, 2018 and then to convey later on that it was a personal finance, the plaintiff is definitely entitled to get clear answer which can be given at the time of trial. This is more so in view of the fact that the stand and the conduct of the defendant is questionable since on 31.3.2018 it was clearly indicated that it was decided to sign the document on the day previous to 31.3.2018, since in the late evening the ATS/MOU was received by the plaintiff with few modification and in that it has been mentioned clearly by the plaintiff that fund is also arranged which is substantiated by the balance certificate of the bank.

27. These are the circumstances which are not possible to be ignored by the Court at this stage of the proceedings where the subject matter of the suit is directed to be preserved by the court below. Furthermore, it is not a concluded registered sale transaction and it is merely an agreement to sale which would not finally confer a legal right. Had it C/AO/72/2019 CAV ORDER been a registered sale transaction, it might have inferred a crystallized right. But here is the case in which the defendant is dealing with both simultaneously and at convenient point of time backed out unilaterally and, therefore, it appears that amount of Rs.2.16 crores is paid by the plaintiff first in point of time than what is being collected from Neptune by subsequently executing agreement to sale. Hence, in the considered opinion of this Court, the competent court is required to be left open for taking appropriate decision finally as to whether the relief prayed for in the suit deserves to be granted or not and till that decision making process, the subject matter of the suit deserves to be protected. At this stage, in view of aforesaid circumstances, whether a relief can be granted only if there must be a signed agreement or not is not a question debatable to be tried during the course of adjudication. In view of the decisions which have been cited by the respective sides, this question is also to be tried and cannot be finally decided at this stage. In that view of the matter, whether order appealed is just and proper or not is now to be examined by this Court in the context of aforesaid

situation.

28. In the light of aforesaid situation which is prevailing, it clearly transpires that serious debatable issues have arisen and raised in the present proceedings which require a proper adjudication during the course of trial. These triable issues in view of settled position of law C/AO/72/2019 CAV ORDER cannot be adjudged at this stage and the Court is not expected to conduct a mini trial at the interim stage. The manner in which the negotiation went on even till the previous evening to the agreement to sell which came to be registered with defendant No.2, is an indication that on certain terms the parties have reached over the period of time to a particular stage where an inclination was shown to enter into a transaction. The fact that documents on record indicate that proper balance of the total consideration was available in the bank as certified by the bank officials and WhatsApp interactions suggest that the defendant was kept under a lame hope to arrive at an agreed contract. Prima facie, the learned counsel appearing for the respondent, Mr.Devan Parikh, has successfully match the amount of Rs.2.16 crores which has been paid to the appellant in January,2018, is in response to the transaction in question.

29. It has further been reflecting from the record that triable issues are very much involved which deserve proper adjudication at the time when the suit to be conducted. The readiness and willingness is also visible not only from the fact that an amount of Rs.2.16 crores has been paid way back on 10.1.2018. But even an amount of Rs.27.84 crores, a balance amount, was kept ready to be paid. The manner in which the Legal Department promptly went on reacting to the final drafts of MOU and ATS, it suggests that only a part of formality of execution of document was C/AO/72/2019 CAV ORDER to be effected. That was an impression given by the Legal Department as it seems. If we see Para.9 it would reflect that on 30.3.2018 at around 10.39.54 a.m. IST, one more email was received from the Legal Department of defendant No.1 company indicating that final drafts of MOU and ATS are attached and immediately on that very day, within few minutes on 10.51.21 a.m. IST, the Legal Department also sent the land measurement summary along with payment schedule which has demonstrated an intention to enter into transaction and then, the plaintiff sent an email on3 31.3.2018 at about 11.03.44 a.m. IST stating the approval of MOU and ATS and has shown clearly a readiness and willingness. But then surprisingly the defendant backed out by merely sending an email at 5.24 p.m. on 31.3.2018 and unilaterally returned the amount of Rs.2.16 crores through RTGS by projecting as if the said amount was a short term finance, though the same was specifically asserted as an amount of part of sale consideration. This chronology of events and the conduct of the defendant has indicated at length in earlier paragraphs of the present judgment, it requires that this conduct is also to be examined at length. It is not a simple case where the plaintiff has failed miserably in indicating prima facie case and then, wanted an injunction from the Court to intercept the further steps of defendant. The conduct on the part of defendant certainly a matter of trial. So, while considering the equitable principle in mind, the conduct of the defendant is also not possible to be C/AO/72/2019 CAV ORDER ignored. As a result of this, in such a situation when case is made out of a trial, the subject matter of the suit deserves to be protected, particularly when the manner in which the transaction is taking place and again, the registered agreement to sell has taken place and not a final concluding transaction with defendant No.2. This prima facie look of the circumstance necessitates the Court to preserve the subject matter even with a view to avoid multiplicity of proceedings and further alienation as has been apprehended by the plaintiff.

30. Additionally, the Court is of the opinion that the aforesaid discussion and the respective submissions made at length, are made as if the Court is to conduct a mini trial at this stage and as such, without much opining anything on rival contentions in detail and concluding which may influence the trial, the Court desists from commenting anything further, but is of the opinion that at least the case is made out where the property in question is required to be preserved during the course of trial.

31. It is settled position of law that normally, during the litigating process when a case is made out, the status□quo deserves to be granted and simply because the transaction is of a high value or simply because the legal proceedings taking some more time, would not be a circumstance to lift the order of status□quo, because ultimately the same would lead to a multiplicity of proceedings and would seriously C/AO/72/2019 CAV ORDER prejudice the ultimate outcome if taking place in favour of the plaintiff. As a result of this, to save this situation, the Court is of the opinion that the order in question of maintaining status□quo does not call for any interference and at the best, the suit will have to be expedited considering the peculiarity of circumstances reflecting on record.

32. In light of aforesaid situation, keeping in view the well propounded proposition of law that at an interim stage, no mini trial to be conducted as if the Court is finally examining the case. Such proposition of law is propounded in a decision of the Apex Court in case of Anand Prasad Agarwalla v. Tarkeshwar Prasad & Ors., reported in (2001) 5 SCC

568.

33. Further, the Court is also of the opinion that prima facie case and prima facie title cannot be confused because prima facie will have to be examined at length during the course of adjudication of the proceedings and here are the circumstances which are discussed above are not the circumstances which can be ignored just to vacate the order of status□quo. All these issues which have been raised are significant issues depending upon the record and as such, the trial court must be given an adequate opportunity to examine it at length.

34. Now in the light of aforesaid circumstances, the decisions which have been cited by the respective C/AO/72/2019 CAV ORDER counsel if to be looked into, what is emerging from the record is that substantially the learned counsel appearing for the respective appellants have pointed out the decisions which are majority after the full□fledged trial is over, wherein the Court had an advantage of going through and see the evidence on record. Whereas here the suit is at elementary stage; yet the adjudication is to take place and, therefore, keeping in view the proposition of law that slight change in the fact or one additional fact will make a world of difference in applying the precedent, the Court is dealing with the decisions as to whether the same to be applied as a straitjacket formula or not. This is in view of the fact that earlier discussion which has been noted down from the record is clearly giving an impression that case is made out of a trial at length to be conducted.

35. The first judgment which has been pointed out by Mr.Mihir Thakore, learned Senior Counsel appearing for one of the appellants in cognate Appeal from Order is a decision in case of Bharat

Petroleum Corporation Ltd. v. Great Eastern Shipping Co. Ltd., reported in (2008) 1 SCC 503, wherein by relying upon the observations made in Para.19, a contention is tried to be raised about the principle of sub silentio. In this particular case, the Apex Court was dealing with the proceedings wherein the High Court Judicature at Bombay has set aside the arbitral award upon proper adjudication and in the background of that fact, this principle is discussed which stage C/AO/72/2019 CAV ORDER has yet not been reached in the present proceedings, as it would always be available for the appellant to press into service this principle when the suit is to be dealt with finally by the court.

36. Yet another decision which has been pressed into service is a decision of Court of Appeal, decided on 17.4.1986, in which what can be said to be a binding contract concluded between the parties and by citing this, learned Senior Counsel has indicated that herein in the present case on hand, the parties have not yet signed the contract. Therefore, it could not have a binding effect. But to derive at that stage if we look to the order at length, it relates to a challenge to a final decision and, therefore, in the present situation when there is a stiff debate on both the sides about the continuous negotiations and till previous evening, whether it amounts to a binding contract or not is matter of examination and can be proved and dealt with by leading the evidence and, therefore, to jump to a conclusion that simply because the signature is missing, binding effect is not emerging is a conclusion can be said to be prejudged which the Court would not like to venture at this stage of the proceedings, in view of the fact that the effect of oral contract is also agitated in the present proceedings and, therefore, if we see the nature of obligation arising out of which and to see the performance as to whether the same was rightly inferred or not, is a matter of adjudication and here the plaintiff appears to have C/AO/72/2019 CAV ORDER paid an amount of Rs.2.16 crores in the month of January,2018; kept ready the balance amount as per the bank's certificate and the previous conduct of the defendant No.1 Legal Department is also a matter of examination. Therefore, it is not possible for this Court to straightway apply the principle which has been brought to the notice of the Court. Of course, the said principles are definitely vital when the suit at length to be adjudicated. Hence, since a question to be tried during the trial, the Court would like to desist from commenting anything in clear terms and would like to give an opportunity to both the sides to lead the evidence and prove accordingly.

37. Another judgment of the Apex Court in case of K.S.Vidyanadam & Ors. v. Vairavan, reported in (1997) 3 SCC 1 is essentially a judgment pressed into service for the purpose of canvassing a contention that delay is disentitling the plaintiff from equitable jurisdiction and by relying upon Para.11 onwards, it has been submitted that here is a case in which through RTGS, the amount is returned and for approximately 7 months, the plaintiff waited, but this brief period of 7 months is not such in a situation like this to oust the plaintiff from equitable relief, particularly when the reasonable time is to be determined according to this very judgment on the basis of surrounding circumstances including express terms of the contract and the nature of property.

C/AO/72/2019 CAV ORDER 37.1 From the foregoing discussion as it has been indicated that the conduct till previous day of entering into registered agreement to sell is a conduct which requires examination at length, this brief period of delay is not possible to be construed as fatal which may disentitle any relief of injunction in favour of the plaintiff and as such, the judgment which has been

pressed into service is not possible to be mechanically applied.

38. The other judgments which are pressed into service are also again on the issue whether correspondence which took place suggests that acceptance was absolute or not where two minds were ad idem or not with respect to the property to be sold. But as said earlier the Court reiterates that such issues are to be examined by allowing the parties to lead the evidence.

39. Yet another judgment which has been pressed into service is a decision of the Apex Court in case of Rohit A. Kapadia & Anr. v. Perviz J. Modi, reported in 2016 SCC Online Bom. 6784. But then if we look at the said judgment, the said judgment was dealing with the appeal against the suit which was dismissed after full-fledged trial, where the court had an advantage of looking at the effect of evidence which has been led and hence, as said earlier, this is not the case where the Court at this stage would like to clearly opine either the effect of binding nature of the C/AO/72/2019 CAV ORDER negotiation or the effect of readiness and willingness or the effect of subsequent registered agreement to sell which came to be entered into despite previous day interaction with the original plaintiffs. All these issues are left it open for trial to the court concerned. Hence, the Court would not like to prejudge these intricacies which are tried to be projected on the present case on hand.

40. Simultaneously, the judgments which have been pointed out by learned counsel appearing for the respondents, who are the original plaintiffs, if to be looked into, some of the decisions are the decisions which have been delivered at interim relief stage. Hence, the Court would like to deal with in the following manner.

41. The first judgment which has been pressed into service is a decision of the Division Bench of this Court in case of Ibrahim Shah Mohmad & Ors. v. Noor Ahmed Noor Mohamed & Ors., reported in 1983 GLH 538, wherein the Division Bench while dealing with the suit, of course at a final stage, has observed while dealing with Civil Application for interim relief. The observations contained therein have got some bearing when the issue of interim relief is being dealt with by this Court, hence, reproduced hereinafter :

> "21. Then remains Civil Application No. 3780 of 1982 for injunction against respondent C/AO/72/2019 CAV ORDER Laxmandas chanchaldas. It has been contended by Mr. P. V. Nanavati for the appellants and Mr. P. G lbesai for respondent Laxmandas. That the request of plaintiff-respondent No.1 to get injunction against him is not justified because whatever transactions have taken place earlier and those that would take place in. future would be subject to right, title and interest of plaintiff-respondent No.1 and, therefore, this Court should not grant injunction. A very serious argument about the valuable right of a party to dispose of his undivided share in the property in any way he chooses was advanced and it was stated that a right of a person to deal with his undivided share would remain uncontrolled and whatever transaction would be made by a co-owner vis-vis his undivided share would be subject to right of a person who has also a share in the property. So far as principle of law about the undivided share of co-owner is concerned, no objection can be raised about it. The court is how ever seized of the matter pertaining to the

property. Pending the litigation, the property was transferred and, therefore the respondent Laxmandas had to come on record. The matter is still to go back to the trial Court for final decree. If during that period property would change hands with any other persons would it not be necessary either for the plaintiff or somebody else to bring all parties on record, meaning thereby, delaying further proceedings for bringing them on record,' having their say, etc and thus delaying the passing of final decree? The Court should 'always lean towards seeing that there is no multiplicity of proceedings and also that the proceedings should go on as far as possible so smooth that the decision can be arrived at between the parties who are on record as early as possible. If injunction is not granted, then probably the result would be as mentioned by us above and, therefore, it is in fitness of things that Civil Application No. 37M of 1982 should be allowed and the relief prayed for therein is granted."

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42. Yet another decision which is pointed by one of the assisting counsel Mr.Mehul S. Shah is a decision of the Apex Court in case of Dev Prakash v. Indra, reported in 2017 (0) AIJEL SC 60709 and has pointed out the observations which are at the stage of considering the powers of Order 39 Rule 1 and 2 of the CPC. Same will have some assisting feature to this Court and as such, the observations contained in Para.14 are reproduced hereinafter :

"14. In the preponderant factual background, as outlined herein above, we are of the view that not only the reasons endeavoured to be cited in the impugned order in justification of the direction for public auction of the suit property lack in persuasion, those are apparently speculative and illogical, to say the least. The direction for disposal of the suit property by public auction, in the facts and circumstances of the case, clearly militates against the fundamental precept of preservation of subject matter of any dispute pending adjudication in a court of law, more particularly relatable to a civil litigation, to appropriately decide on the rights of the parties for administering the reliefs to which they would be entitled eventually on the culmination of the adjudication. As it is, the very essence of the concept of temporary injunction and receivership during the pendency of a civil litigation involving any property is to prevent its threatened wastage, damage and alienation by any party thereto, to the immeasurable prejudice to the other side or to render the situation irreversible not only to impact upon the ultimate decision but also to render the relief granted, illusory. We do not wish to burden this order by the decisions of this Court on the issue except referring to the C/AO/72/2019 CAV ORDER one in Maharwal Khewaji Trust (Regd.), Faridkot v. Baldev Dass, AIR 2005 SC 104, wherein it has been underlined that unless and until a case of irreparable loss or damage is made out by a party to the suit, the court should not permit the nature of the property to be changed, which may include alienation or transfer thereof leading to loss or damage been cause to the party who may ultimately succeed and which would as well lead to multiplicity of proceedings. Judicial discretion has to be disciplined by

jurisprudential ethics and can by no means conduct itself as an unruly horse."

43. Yet another submission of Mr.Devan Parikh, learned Senior Advocate with the support of commentary on the Law of Contract, 13th Edition by Edwin Peel, who observed upon analysis of several decisions on the issue of 'acceptance' and 'objective test' which is to be applied in the context of continuous negotiation since here it is relevant, the Court would like to refer the same, of course not binding but has an assisting measure, the learned Senior Advocate has pressed into service. Some paragraphs need to be quoted hereinafter :

> "ACCEPTANCE : An Objective test - An acceptance is a final and unqualified expression of assent to the terms of an offer. The objective test of agreement applies to an acceptance no less than to an offer. On this test, the mere acknowledgment that an offer has been received would not be an acceptance; nor would a person to whom an offer to sell goods had been made accept it merely by replying that it was his 'intention' to place an order' or by asking for an invoice. But an 'acknowledgment' may by its express terms or, in a particular context by implication, contain a statement that the C/AO/72/2019 CAV ORDER sender agreed to the terms of the offer and that he was therefore accepting it: this might, for example, be the effect of an 'acknowledgment' of a customer's order in website trading. Where the offer makes alternative proposals, the reply must make it clear to which of them the assent is directed. In one case an offer to build a freight terminal was made by a tender quoting in the alternative a fixed price and a price varying with the cost of labour and materials. The offeree purported to accept 'your tender' and it was held that there was no contract as there was no way of telling which price term had been accepted."

44. Mr.Devan Parikh, learned Senior Advocate, has bunch of decisions, but then the Court was requested to deal with only relevant decisions and as such, some relevant decisions which are pressed into service, have been considered by the Court for the purpose of arriving a final decision in the present case.

45. One of the judgments out of the bunch which is pressed into service is a decision of the Apex Court in case of Aloka Bose v. Parmatma Devi & Ors., reported in (2009) 2 SCC 582. The question arose in the said decision as to in the event of absence of signature of the purchaser, whether agreement can be said to be valid, complete or not and whether same can be enforced or not. Now, in this context some observations which are made in Para.16, 17 and 18 are the observations which are relevant to come to a conclusion that even an oral agreement to sell is also valid and here is a case where one of the C/AO/72/2019 CAV ORDER contentions was about the oral agreement to be inferred. Now for that purpose, the observations have been relied upon. But since the said issue is relatable to the trial and adjudication of the suit, the Court would refrain itself from commenting anything on that and, therefore, not quoting the observations made by the Apex Court. Of course, the said case was arising out of full fledged trial.

46. One decision which is empathetically submitted by Mr.Devan Parikh, learned Senior Counsel, is a decision of the Apex Court in case of Maharwal Khewaji Trust (Regd.) v. Baldev Dass, reported in

(2004) 8 SCC 488 which is again at an interim stage. The observations which have been made are very relevant in the factual matrix of the present case. Therefore, Para.10 is quoted hereinafter:

> "10. Be that as it may, Mr. Sachhar is right in contending that unless and untill a case of irreparable loss or damage is made out by a party to the suit, the court should not permit the nature of the property being changed which also includes alienation or transfer of the property which may lead to loss or damage being caused to the party who may ultimately succeed and may further lead to multiplicity of proceedings. In the instant case no such case of irreparable loss is made out except contending that the legal proceedings are likely to take a long time, therefore, the respondent should be permitted to put the scheduled property to better use. We do not think in the facts and circumstances of this case, the lower appellate court and the High Court were justified in permitting the respondent to change the nature of property by C/AO/72/2019 CAV ORDER putting up construction as also by permitting the alienation of the property, whatever may be the condition on which the same is done. In the event of the appellant's claim being found baseless ultimately, it is always open to the respondent to claim damages or, in an appropriate case, the court may itself award damages for the loss suffered, if any, in this regard. Since the facts of this case do not make out any extraordinary ground for permitting the respondent to put up construction and alienate the same, we think both the courts below, namely, the lower appellate court and the High Court erred in making the impugned orders. The said orders are set aside and the order of the trial court is restored."

47. Similarly, yet another decision of the Apex Court in case of Kalavakurti Venkata Subbaiah v. Bala Gurappagari Guruvi Reddy, reported in (1999) 7 SCC 114 is pressed into service, in which a comprehensive suit for specific performance of the agreement came to be filed and what has been observed by the Apex Court is that the plaintiff was alternatively entitled to base his claim for specific performance on the pleaded oral agreement to sell and inasmuch as there are further reliefs sought for, it was a comprehensive suit and, therefore, if the Court satisfies then relief of performance can be granted. So, in substance, there are so many judgments pressed into service by learned counsel for the original plaintiffs in the same manner in which the learned counsel for the appellants have projected, but the peculiar background of facts of present case would independently require to be examined by the trial C/AO/72/2019 CAV ORDER court and, therefore, without giving much emphasis on other intricacies which are projected as stated above, the Court would like to opine that here is a case in which full-fledged trial deserves. Resultantly, the order of status-quo does not call for any interference.

48. The relevant decisions which have been pointed out to this Court and emphasized leading to a conclusion that when the case is made out of a trial, the status-quo will have to be maintained which would meet the ends of justice and maintain the equitable balance between both the sides. Each case is depending upon its own merit and the factual background and as such, without much dwelling upon the minute details of decisions and opining anything in clear terms, the Court would like to now examine the scope of appellate jurisdiction.

49. Time and again, it has been observed that no doubt, the appellate court had adequate power to reverse the finding arrived at by the trial court. But then the same will have to be in a peculiar situation where the findings are apparently perverse or there may be a manifest error or patently illegality. In such kind of situation, normally the appellate court should reverse the order. But as said earlier, the background of this fact of a peculiar nature, would lead to a conclusion that during the pendency of the suit proceedings, the status□quo what has been ordered by the court below does not require C/AO/72/2019 CAV ORDER to be altered.

50. The Apex Court as well as this Court has well defined the aspect as to the scope of appeal. Few decisions on the said issue since the Court has considered, the relevant observations are reproduced hereinafter:

> (1) In the case of Wander Limited versus Antox India Private Limited reported in 1990 (Supp) SCC 727, the relevant observations contained in paragraph 9 are reproduced hereinafter:
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> "(9) Usually, the prayer for grant of an interlocutory injunction is at a stage when the existence of the legal right asserted by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. The court, at this stage, acts on certain well settled principles of administration of this form of interlocutory remedy which is both temporary and discretionary. The object of the interlocutory injunction, it is stated:
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> "□□s to protect the plaintiff against injury by violation of his rights for which he could not adequately be compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented 732 from exercising his own legal rights for which he could not be adequately compensated. The court must weigh one need against another and determine where the 'balance of convenience lies.
>
> C/AO/72/2019 CAV ORDER "the interlocutory remedy is intended to preserve in status quo, the rights of parties which may appear on a prima facie case. The court also, in restraining a defendant from exercising what he considers his legal right but what the plaintiff would like to be prevented, puts into the scales, as a relevant consideration whether the defendant has yet to commence his enterprise or whether he has already been doing so in which latter case considerations somewhat different form those that apply to a case where the defendant is yet to commence his enterprise, are attracted."

[3] In the case of Matrix Telecom Pvt. Ltd. versus Matrix Cellular Services Pvt. Ltd. reported in 2011 (3) GLR 1951, the relevant observations contained in paragraphs 6 and 6.1 are reproduced hereinafter:

"6.0 Before proceeding further it is required to be noted that the present appeal is against the rejection of interim relief and the main suit is still pending. If this court elaborately deals with the matter on merits it is likely that the same would prejudice the case of either side. Therefore, it is well settled law that this Court is not required to go into the merits of the entire matter at this stage and what is required to be seen is whether the appellant plaintiff has made out a prima facie case or not for grant of interim injunction.

6.1 It is required to be noted that it is well settled law that the Appellate Court may 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 C/AO/72/2019 CAV ORDER 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. The 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 the 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."

51. However, in a situation like this, the main suit proceedings can be dealt with expeditiously and for that purpose, liberty is kept open for the appellant to make an appropriate request to the concerned court to expedite the hearing of the suit proceedings as early as possible and as and when such approach is made by parties to the proceedings, the learned Judge is requested to deal with and expedite the suit proceedings and shall decide the same without being influenced by the observations made in the impugned order and from the present order which are tentative in nature and at an interim stage and as such, the suit may be dealt with finally on the basis of further material and the evidence which may be led by the parties to the proceedings.

52. With these observations, the present Appeal from Orders stand dismissed, with no order as to costs. Notice is discharged.

C/AO/72/2019 CAV ORDER

53. In view of the order passed in main Appeal from Orders, connected civil applications also stand disposed of accordingly.

(A.J.SHASTRI,J.) FURTHER ORDER After the order is pronounced, learned counsel appearing for the appellant has requested to suspend the present order for a reasonable period so as to enable the appellant to carry the matter further to the higher forum.

Since the request having not been strongly objected and in view of the fact that throughout the proceedings, the stay was operative, the operation of the present order shall not be effected for a

period 4 weeks from today.

(A.J.SHASTRI,J.) (vipul/radhan)