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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL ARBITRATION APPEAL (L) NO. 25270 OF 2026

IN

COMMERCIAL ARBITRATION PETITION (L) NO. 12193 OF 2026

1. Dr. Devidas R. Sheregar]
Adult, Indian Inhabitant of Mumbai,]
Partner – M/s. Sanklan Hospital,]
Having his permanent address at]
201/202, Jupiter B Wing,]
Vasant Galaxy, MG Road,]
Goregaon (W), Mumbai 400 104]

2. Dr. Alka Jain,]
Adult, Indian Inhabitant of Mumbai,]
Partner – M/s. Sanklan Hospital,]
Having her permanent address at]
1902, Angelica, Mahindra]
Eminente, S.V. Road, Goregaon (W),]
Mumbai 400 104]

3. Dr. Manoj S. Aithal,]
Adult, Indian Inhabitant of Mumbai,]
Partner – M/s. Sanklan Hospital,]
Having his permanent address at]
801 A, Mahindra Eminente,]
S.V. Road, Goregaon (W),]
Mumbai 400 104]

4. Dr. Suresh Shetty,]
Adult, Indian Inhabitant of Mumbai,]
Partner- M/s. Sanklan Hospital,]
Having his permanent address at]
1205, Silver Arch Building, Shastri]
Nagar, Lokhandwala, Andheri (W),]
Mumbai 400 053]

5. Dr. Shishir Shetty,]
Adult, Indian Inhabitant of Mumbai,]
Partners- M/s. Sanklan Hospital,]
Having his permanent address at]
1201, Progressive Highness,]

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Sector 16A , Sanpada,]
Navi Mumbai – 400 705] …. Appellants

V/s.

1. Zeenal Constructions Pvt. Ltd.,]
A Company registered under The]
Companies Act 1956, having its]
Registered address at Shop No.6,]
Saurabh Apartment, Shahaji Raje]
Marg, Vile Parle (E),]
Mumbai 400 057]

2. Prakash Barot,]
Adult, Indian Inhabitant of Mumbai]
Director of the Respondent No.1,]
Having his office at Shop No.6,]
Saurabh Apartment, Shahaji Raje]
Marg, Vile Parle (E),]
Mumbai 400 057]

3. Jayantilal Kewal Chand,]
803, Teejadeep Tower, Khima Lane,]
Jambhli Naka, Thane West,]
Mumbai 400 012]

4. Dhanesh Kantilal Tejawat,]
A/1301, Shanti Kamal,]
Dr. B.A.Road,]
Lalbaug, Mumbai 400 012]

5. Babulal Devraj Jain,]
A/1602, Royal Residency, Chiwda]
Gali, Lalbaug, Mumbai 400 012]

6. Sadashiv Pranavshankar Dave,]
Adult, Having their address at Dave]
Estate, S.V. Road, Goregaon (W),]
Mumbai 400 104.] … Respondents

Mr. Bahraiz Irani a/w. Mr. Amit Padwal, Mr. Anosh Irani and Mr. Afrin Dalal for the Appellants.

Mr. Gaurav Mehta a/w. Mr. Sahil Wagh i/b. DM Legal Associates for Respondent Nos. 1 and 2.

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Mr. Aseem Naphade a/w. Mr. Y.S.Shukla for Respondent Nos. 3 to 6.

CORAM : A. S. GADKARI AND
KAMAL KHATA, JJ.
RESERVED ON : 1st October, 2026.
PRONOUNCED ON : 21st October, 2026.

Judgment (Per : Kamal Khata, J) :-

1) The Appellants, the Original Petitioners, have filed the present Appeal, being aggrieved by and dissatisfied with the Judgment and Order dated 19th June, 2026, passed by learned Single Judge, whereby dismissing the Appellants' Petition under Section 9 of the Arbitration and Conciliation Act, 1996 (for short, the "Arbitration Act"), seeking urgent ad-interim reliefs for the appointment of the Court Receiver, High Court, Bombay, in respect of the piece and parcel of land known as Dave's Estate admeasuring approximately 1405 square yards, situated at S.V. Road, Goregaon (W), Mumbai, and for consequential reliefs, restraining the creation of third party rights, title and interest in or dealing with, the said property to the prejudice of the Appellants' contractual and arbitrary rights.

2) We have heard Mr. Bahraiz Irani, learned Advocate for the Appellants; Mr. Gaurav Mehta, learned Advocate for Respondent Nos. 1 and 2; and Mr. Aseem Naphade, learned Advocate for Respondent Nos. 3 to 6.

3) Having perused the Impugned Order, we find that it deserves to be set aside for the following reasons:

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(i) It is an undisputed fact that the Respondents had received an amount of Rs. 60 lakhs under the Memorandum of Understanding (MoU) dated 27th June, 2005. The said amounts have neither been returned nor have the Respondents delivered the commercial premises admeasuring 4360 square feet that were to be constructed in the Krishna Ambika Arcade on the subject plot. The delivery of these premises was to be made within 24 months from the receipt of an IOD or within such time as may be mutually agreed. Admittedly, the Respondents have failed to obtain the IOD for the subject project. Hence, limitation is not an issue.

(ii) It is not in dispute that the Respondents are attempting to transfer the rights in the plot in favour of some other third party. Although the Appellants would not have direct rights over the subject plot on which the proposed Krishna Ambika Arcade was to be constructed, they would certainly be entitled to the commercial premises admeasuring 4360 square feet proposed to be constructed thereon. Therefore, if the Respondents were to create third party rights in the land, claim of the Appellants for specific performance would be entirely frustrated and their only remedy would be to claim damages.

4) In our view, interim protection contemplated under Section 9 of

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the Arbitration Act is to preserve the subject matter of the dispute between the parties. In our view, if the land itself is disposed off by the Respondents, the Appellants would be remediless to the extent of their claim for specific performance.

5) Perusal of the record indicates that, the Respondents have attempted to play fraud on the Appellants. They have outrightly cheated the Appellants. In our view, the Appellants, who are a group of doctors by profession, had together invested their hard-earned money with the Respondents, who continue to use the monies of the Appellants interest free for over 21 years and now claim that the MoU stood terminated or that it came to an end long ago by the conduct of the parties.

6) *Prima facie*, it appears to be a bald and baseless contention. At this stage, the Court need not go into the evidentiary value of this contention. The Arbitrator has already been appointed and the only question raised for our consideration is whether the Appellants are entitled to an injunction preventing the Respondents from creating third party rights, title and interest in respect of the subject land.

7) Upon a question being posed to learned Advocate Mr. Naphade, appearing for Respondent Nos. 3 to 6, he explained that, his clients were negotiating with Respondent Nos. 1 and 2 for purchasing development rights in respect of the subject land/property. In that view, we also attempted to forge a settlement between the Respondents and the

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Appellants, but the same did not fructify, as the Respondents offered a paltry amount as against the monies received by them having used it interest free for over 21 years.

8) Cheating is defined under Sections 215 and 420 of the Indian Penal Code (for short, "IPC"), which reads as under:

> *" 215. Taking gift to help to recover stolen property, etc.— Whoever takes or agrees or consents to take any gratification under pretence or on account of helping any person to recover any movable property of which he shall have been deprived by any offence punishable under this Code, shall, unless he uses all means in his power to cause the offender to be apprehended and convicted of the offence, be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."*
>
> *420. Cheating and dishonestly inducing delivery of property.— Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.*

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9) Considering the aforesaid definitions and facts of the present case, we are *prima facie* of the view that the Respondents had all throughout, since inception, carried an intention to cheat the Appellants.

10) In view of the aforesaid, we allow the Appeal in terms of prayer clauses (A) to (D).

11) After hearing the matter, although instinctively we were inclined to suo motu direct the initiation of criminal proceedings against the Respondents under the powers vested in us under Article 226 of the Constitution of India to meet the ends of justice, we resisted from invoking the same.

12) We hope that even after this Judgment, all learned Advocates would attempt to prevail upon the Respondents to settle the dispute with the Appellants.

(KAMAL KHATA, J.) (A.S. GADKARI, J.)

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