IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

COMMERCIAL APPEAL FROM ORDER NO. 21 OF 2026

Akshay Sanjay Dhumal ...Appellant
Versus
Kiyaara Buildcon, a Partnership Firm,
Thr. Its Partners & Ors. ...Respondents

WITH
INTERIM APPLICATION NO. 6248 OF 2026
IN
COMMERCIAL APPEAL FROM ORDER NO. 21 OF 2026

Akshay Sanjay Dhumal ...Applicant
Versus
Kiyaara Buildcon, a Partnership Firm,
Thr. Its Partners & Ors. ...Respondents

Mr. Atul Damle, Sr. Adv. i/b Prashant More a/w Kanchan Chindarkar & Arti B. Bhoir for Appellant.
Mr Sitesh Sharma a/w Vijay Upadhyay & Nitesh Sancheti for Respondent Nos. 1 to 3.

CORAM: G. S. KULKARNI &
DR. NEELA GOKHALE, JJ.

DATE: 27th OCTOBER 2026

Judgment (Per Dr Neela Gokhale, J.):

PRASAD RAJENDRASING RAJPUT
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1. This Appeal is directed against the Judgment and Order dated 14th July 2026, passed by the learned District Judge-1, Pune, in Commercial Suit No. 34 of 2025 ('**the impugned order**') filed under Section 13(1A) of the Commercial Courts Act, 2015 read with Order XLIII Rule 1(r) and (s) of the Code of Civil Procedure, 1908 ('**CPC**'), whereby the Respondent No.2 (Orig. Defendant No.2) herein has been appointed as a Court Receiver under the provisions of Order 40

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Rule 1 of the CPC, to oversee the management and complete the development and construction activity of the redevelopment project of one Radha Anand Housing Society and to transfer the unsold units in the project on terms and conditions as stipulated in the said order.

2. The impugned common Judgment and Order was passed on four applications, namely an application (Below Exhibit-5) made by the Appellant seeking interim injunction inter alia restraining Respondents from changing the nature of the property, possession and from selling or alienating the flats. In the same application, the Appellant also sought appointment of an ad-interim receiver during the pendency of the main application. The Appellant also filed the second application at Exhibit-6, seeking appointment of an eligible third party as receiver to carry out the remaining construction. The Appellant also filed the application at Exhibit-121, seeking the ad-interim reliefs sought in the applications at Exhibits-5 and 6. Respondent Nos. 1 to 3 also filed an application at Exhibit-128, seeking appointment of Respondent No. 2 as Court Receiver on behalf of Respondent No. 1-Firm and seeking to restrain the Appellant from obstructing the construction and development activities of the redevelopment project undertaken by the partnership firm.

3. It is the Appellant's case that he was admitted as a partner of Respondent No. 1 firm on 24th September 2021. The Appellant held a 33% share in the profits and losses of the partnership firm, against 67% held by Respondent No. 2. The partnership deed stipulated that the partnership was "At Will" and that its bank accounts had to be operated jointly. The partnership firm was engaged in only one

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construction project namely the redevelopment of one Radha Anand Co-operative Housing Society at Erandwane Pune. A development agreement between the partnership firm and the society was executed along with a power of attorney executed by the Society in favour of the firm. As per the deed agreement, the Society was to construct 47 flats in total, of which 18 were for Society members, and the remaining were available for sale to the Respondent Firm. The Court is informed that as on date, 45% of the work in the A-wing and 80% in the B-wing is complete.

4. It appears that disputes and differences had arisen between the two partners, Appellant and Respondent No.2 sometime in November 2024 inter alia on an issue that Respondent No.2 had executed agreements of sale in respect of three flats (502A, 503A and 702B) in respect of which the Appellant alleged that Respondent No. 2 executed agreements at a rate which was below the market rates, which, according to the Appellant was Rs. 17,000/- per sq. ft., without receiving proportionate consideration from the flat purchasers as per the construction stage. It was alleged that Rs. 2 crores remained outstanding from the said purchasers, and only Rs. 12 lakhs were received as consideration. There were other allegations as well. The Appellant, hence issued a legal notice dated 22nd April 2024, addressed to the Respondents dissolving the firm and seeking rendition of accounts from Respondent No. 2.

5. Having issued a notice of dissolution, the Appellant instituted a suit for a declaration of dissolution, rendition of accounts and permanent injunction. Respondent Nos. 1 to 3 contested the suit and filed a counterclaim alleging breach

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of the Partnership Deed by the Appellant. Both the parties made interim applications seeking various reliefs against each other, primarily seeking appointment of a Court Receiver.

6. Considering the facts and circumstances of the case, the learned District Judge appointed Respondent No. 2 as a Court Receiver and permitted him to oversee the management and completion of the development and construction activities of the redevelopment project and also sell the unsold units on the terms stipulated in the said order. The present Appeal is directed against the said order.

7. Heard Mr Atul Damle, learned Senior Advocate, representing the Appellant and Mr Sitesh Sharma, learned Advocate, appearing for Respondent Nos.1 to 3. We have also perused the record of the proceedings with their assistance.

8. Mr Damle's grievance is limited. Although Mr Damle conceded that the order protected the Appellant's interests, he objected to appointing Respondent No.2 as Court Receiver. Mr Damle contended that if the Court permits Respondent No.2 to oversee the management of the redevelopment and construction activities and sell the unsold flats, the Appellant is likely to suffer financial hardship. The Appellant will have no control over Respondent No. 2's actions. Mr Damle further contended that the Appellant has made serious allegations of breach of fiduciary duty against Respondent No.2, and that permitting him to continue the alleged breach creates a conflict of interest. It is further submitted that the Appellant issued the notice of dissolution of partnership, which resulted in the dissolution of the partnership. Without first determining the consequences of dissolution, the Trial Court has erroneously appointed

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Respondent No.2 himself as Court Receiver. On these main grounds, amongst others, Mr Damle has assailed the impugned Judgment and Order.

9. Per contra, Mr Sharma, at the outset, submitted that the Appellant has not made out any perversity in the impugned Judgment and Order and there is no embargo on appointing the partner himself as a Receiver. He drew our attention to Section 47 of the Indian Partnership Act, 1932, which provides that partnership firms remain responsible for completing transactions that remained unfinished at the time of dissolution. He also submitted that, in pursuance of the development agreement and the contractual obligations, it is Respondent No.2 who has done all the work, including procuring the sanctioned layout and building plans from the Corporation, obtaining the commencement certificate, incurring considerable expenditure on the construction work already undertaken, including spending Rs.1,82,87,086/- from his personal account towards the project. On the other hand, the Appellant has infused only Rs.19,17,736/- as capital and has, in fact, withdrawn Rs.95,00,000/- as a loan from the Respondent-Firm. Furthermore, the Appellant had not participated in the day-to-day working of the firm, as he continued to maintain his day job in the Axis Bank. Mr Sharma further stated that the firm had appointed contractors and professionals for the project and has also borne their fees. He submitted that the Appellant owes huge amounts to the partnership firm, for which the Respondents have filed a counterclaim for Rs.7,82,69,253/-. Mr Sharma thus submitted that the Appellant was not interested in discharging his obligations towards construction of the redevelopment project and is only interested in profiteering from the venture. Respondent No.2 also bears

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the responsibility of paying rent to society members who have vacated their units to facilitate redevelopment. The Respondent is concerned about the flat purchasers and the Society members awaiting possession of their respective units, a recognition under the mandate of Section 47 of the Partnership Act. In these circumstances, Mr Sharma submitted that the impugned Judgment and Order is not illegal and that no intervention is required. He thus sought rejection of the Appeal.

10. The Appellant's grievance is that the learned Trial Court, although recorded that the allegations of undervaluation and diversion are issues which would be tested in the trial, it was appropriate that Respondent No.2 is appointed as the Receiver on considerations of commercial expediency and authorised Respondent No.2 to operate the firm's bank accounts without the Appellant's signature, utilise partnership funds, complete the project and deal with the unsold flats; has undertaken a premature merits evaluation of the rival valuation charts by treating the Ready Reckoner value as the benchmark; has overlooked that Exhibit 128 was also signed by Respondent No. 3, whose induction is itself under challenge; and has treated a deposit of Rs. 2 Crores as adequate safeguard.

11. It is well-settled that the Court would appoint a Receiver in exercise of powers under Order XL Rule 1 of the Code of Civil Procedure, 1908, to prevent the ends of justice from being defeated, whenever, having regard to the facts and circumstances of the case, it considers such appointment to be just and convenient to secure the rights and interests of the litigating parties. The object is to preserve the subject matter of the litigation pending judicial determination of the rights of

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the parties. The effect of the Court appointing a Receiver is that the property in respect of which the Receiver is appointed becomes *custodia legis* and is held for the benefit of the different parties, including the parties before the Court. The appointment of a Receiver is discretionary. Such order appointing court receiver would be made only when the Court is *prima facie* satisfied that the plaintiff has a good chance of succeeding in the suit. The major considerations would also include whether the plaintiff has established the existence of adverse and conflicting claims to the property and whether there is a situation of danger or loss necessitating immediate action. As to who can be appointed as a Receiver is also something which in the facts and circumstances of the case would be the discretion of the Court. It is also settled that, in selecting a person to be appointed as Receiver, the Court is not obliged to appoint a person of the choice of the parties. A party to the litigation can be appointed as Court Receiver in special circumstances, as the case may require as in the present case. In the facts of the present case, the learned trial Judge, in the impugned order, has considered the consequences that would ensue, if respondent no. 2/defendant no. 2 was not appointed as Receiver. It is difficult to conceive that a third party, having no knowledge of the intricacies of the business in question, could be roped in and appointed as Receiver. Appointing a third party as Receiver in these circumstances would, in fact, be detrimental to the interests of the parties. The learned Trial Judge was, therefore, certainly conscious of the consequences that would ensue, if a third party was to be appointed as the Receiver of the project. In the facts of the case, we accordingly find no infirmity in the approach adopted by the learned trial Judge in appointing defendant

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no.2/respondent no. 2 as Receiver in respect of the partnership project in question. Further, in appointing the Court Receiver, the learned trial Judge has shown due regard to the severe prejudice that would be caused to third parties, namely, the flat purchasers and the members of the Society, who are awaiting the benefits of the redevelopment being undertaken by the partnership firm. Hence, considering the nature of the dispute as raised by the appellant which has a percolation beyond the disputed issues and the accounts *inter se* between the two partners, the rights of third parties in such circumstances assume significance which cannot be overlooked by the Court, while passing orders on the partnership dispute. It is such consideration which has weighed with the learned trial Judge in appointing respondent no. 2 as Court Receiver. The discretion in appointing respondent no.2 as the Court Receiver, thus has been fairly and justly exercised by the learned trial Judge. The approach as adopted by the Learned Trial Judge in passing the impugned order cannot be faulted, either in law or in the facts of the case.

We may usefully refer to the decision in **Prem Prakash Kapoor vs. Gobind Ram Kapoor & Ors.**[1]**,** which dealt with a partnership dispute. The Jammu and Kashmir High Court, while dealing with a case of running business of the partnership firm, held that a stranger should not be appointed as Receiver to take over and run the business, unless compelling circumstances warranted such appointment. The Court made the following observations:

> "16. The question still remains: who should be appointed receiver and with what powers and functions? Here one cannot lose sight of the fact that the partnership consists of a big business dealing with the manufacture and sale of cloth and other piece goods. It has a manufacturing unit in Srinagar and associated with the

1 1975 SCC OnLine J&K 17

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> unit are quota rights. The business of the partnership is conducted in a shop in Amirakadal which is the main business centre of the City to which is also attached a godown nearby. Every business house has its own ways of dealing with the business and its suppliers and customers. The ultimate object of every business house is to make greater profits and at the same time to give maximum satisfaction to those it comes to deal with, be they its suppliers or customers. The members of each business house assiduously work to that end which a stranger, if let in, will not do. Accordingly in the case of a running business, like the present, the court will not, except under compelling circumstances, let a stranger take over the business and run it. There are not such compelling circumstances present in the instant case. In that view it will be proper if the defendants, who are admittedly having control of the business and its assets, should be appointed as joint receivers of the partnership property and the business. They will be required to maintain proper accounts of the assets of the partnership both capital and liquid including the income accruing from the business and submit quarterly returns to this court pending final conclusion of the suit. They will also be required not to draw money from the business for personal use in excess of their normal requirements. Lest the defendants should misuse the property or cook up the accounts, it will be proper if a nominee of the plaintiff is associated as a co-accountant with their accountant and the accounts of the firm are required to be maintained under the joint signature of the two accountants, the nominee of the plaintiff in addition keeping watch over the business and its assets generally. This was in fact the mode suggested by the learned counsel for the plaintiff who plainly conceded that it was not proper to introduce a stranger to take over a running business like the one in the present case. The suggestion has appealed to me and I have no hesitation in adopting the same. I make an order accordingly. The plaintiff will give the name of his nominee within a couple of days. The defendants will associate him with themselves to discharge the functions mentioned above. His salary or wages, whatever it might be, shall be borne by the plaintiff as was undertaken at the hearing by the counsel appearing on his behalf. The application for receivership shall be filed."

12. Keeping in mind these principles of law, and as applicable in the facts and circumstances of the present case, it is an admitted position that the only grievance made by the Appellant is regarding three flats alleged to have been sold by the Respondent No.2 for inadequate consideration and has not given accounts of the same. By contrast, the Appellant has not brought in any substantial capital to the firm. On the contrary, the Appellant has drawn Rs.95,00,000/- as a loan from the firm. The partnership firm is presently engaged in only one redevelopment project. It is quite clear that the ongoing business is stuck in the inter se dispute between the partners. As many as 16 society members have vacated their flats and are

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residing in rented accommodations, for which Respondent No. 2 is bearing the expenditure. Additionally, the flat purchasers who have entered into flat purchase agreements with the firm are also awaiting possession of their respective units. Only because of the Appellant's limited claim, the entire project is in jeopardy. Given the circumstances, we felt it appropriate to ask counsel whether the dispute could be resolved through mediation. We were informed that the parties had been referred to mediation thrice, but no resolution followed. Yet we gave the parties time to discuss a possible settlement. The Appellant refused to agree to a settlement while insisting on his demand for five flats from Respondent No. 2. Whereas as informed to us by learned Counsel for the Respondents, the Respondents had offered three flats. Be that as it may, there was no alternative but to proceeded to hear the parties.

13. The documents on record, including the development agreement, clearly reveal that the partnership has pending commitments, payments to vendors and suppliers, which need to be fulfilled. Moreover, we are surprised to note that, apart from the meagre amounts, the Appellant has not contributed to the firm's day-to-day operations, as he was admittedly gainfully employed at Axis Bank throughout. Thus, the suit for dissolution and accounts involves serious questions of fact, which we are not called upon to deal at this stage of the proceedings also not being the subject matter of the Appeal. Suffice it to observe that the Appeal is in a narrow compass, limited to examining the validity of the impugned interim Order. We are of the considered view that, while appointing Respondent No. 2 as Receiver, the District Judge considered the questions of prima facie case, balance of convenience,

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and irreparable injury when for sound reasons, the learned Judge in the facts and circumstances of the case and the bearing of the dispute in the partners of the Society and third party flat purchasers has considered it appropriate to appoint Respondent No.2 / Partner as the Court Receiver to complete the project. We do not find that in the facts of the case such approach is in any manner illegal or perverse.

14. The Supreme Court in **Ramakant Ambalal Choksi v. Harish Ambalal Choksi and Anr.**[2], has held that while considering an Appeal from an interlocutory order granting or declining to grant interim relief, the Appellate Court is only required to adjudicate the validity of such order applying the well-settled principles governing the scope of jurisdiction of the Appellate Court under Order 43 of the CPC.

15. The impugned Judgment and Order has also protected the interests of the Appellant as the Court has directed Respondent No.2 to deposit Rs.2 crores in the Court as a condition precedent while permitting him to sell flats in the scheme. Further, the Court directed that Respondent No. 2 shall not confirm any agreement of sale without following the procedure stipulated in the order and without the Court's prior concurrence.

16. In these circumstances, we find no infirmity or illegality in the impugned Judgment and Order. The same cannot be said to be perverse or against material available on record. The issues regarding dissolution of partnership and accounts are disputable questions pending adjudication by the Trial Court. The impugned

2 (2024) 11 SCC 351

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Judgment and Order is well reasoned, and the Trial Court has exercised its discretion judiciously.

17. In the light of the aforesaid discussion, we are of the clear opinion that the impugned Order does not require any interference.

18. The Appeal is accordingly dismissed. Cost to be cost in the cause.

19. In view of disposal of the Appeal, interim applications, if any, also stand disposed.

(DR. NEELA GOKHALE, J) **(G. S. KULKARNI, J.)**

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