



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/MISC. CIVIL APPLICATION (FOR CONTEMPT) NO. 896 of 2023

In R/SECOND APPEAL NO. 121 of 2010

With

CIVIL APPLICATION (FOR ORDERS) NO. 1 of 2024

In R/MISC. CIVIL APPLICATION NO. 896 of 2023

With

CIVIL APPLICATION (FOR ORDERS) NO. 2 of 2024

In R/MISC. CIVIL APPLICATION NO. 896 of 2023

With

CIVIL APPLICATION (FOR ORDERS) NO. 3 of 2024

In R/MISC. CIVIL APPLICATION NO. 896 of 2023

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.S. SUPEHIA Sd/-

and

HONOURABLE MS. JUSTICE NISHA M. THAKORE Sd/-

Approved for Reporting	Yes	No
	✓	

DINESHBHAI DHULABHAI PARMAR & ANR.

Versus

DAMYANTIBEN NARAYANBHAI CHAUHAN & ORS.

Appearance:

MS ARCHANA R ACHARYA(2475) for the Applicant(s) No. 1,2

MR. ANANTANAND J SINGH(10046) for the Opponent(s) No. 1,2,3,4

MS AKANKSHA U TIWARI(11499) for the Opponent(s) No. 1,2,3,4

MR AMARKANT MISHRA FOR MR PARTH Y RAVAL(9535) for the Opponent(s) No. 1,2,3,4

CORAM:HONOURABLE MR. JUSTICE A.S. SUPEHIA

and

HONOURABLE MS. JUSTICE NISHA M. THAKORE

Date : 05/03/2025

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. The present contempt application has been filed, seeking following prayers :



"A. That the Hon'ble Court be pleased to prosecute and punish the respondents/ contemnors under the provisions of Contempt of Courts Act, 1971 for committing willful disobedience of the order dated 15th December, 2010 passed by this Hon'ble Court in Civil Application (For Stay) No.6605 of 2010 in Second Appeal No.121 of 2010;

B. That the Hon'ble Court be pleased to pass suitable directions against the respondents/ contemnors for remedying and rectifying the things done in violation of order dated 15th December, 2010 and thereafter and to take restitutive measures."

BRIEF FACTS

2. By a comprehensive order dated 04.03.2024, the Coordinate Bench of this Court had framed the charges against the respondent Nos.1, 2, 3 and 4. The relevant portion of the said order reads as under:-

16. On 28.02.2024, instead of coming with the cancellation/deregistration of the deed, an excuse is offered that the cancellation could not take place, as online appointment with signatures of all the parties was not available.

17. Upon hearing the learned counsel for the respective parties and perusing the material available on record, prima facie, we are of the opinion that the contemnor has willfully and deliberately violated the direction of status quo. Initially, it was not the case of the opponents, that they were not represented by the learned advocate. It is only in the affidavit filed on 22.01.2024, a stand has been taken, perhaps, to improvise their case and to support the explanation, which in the prima facie opinion of this Court, appears to be an afterthought.

18. Accordingly, since the opponents have failed to place on record the deed of cancellations, as per the order dated 22.01.2024, we frame the following charge



on the opponents - contemnors so as to proceed further.

Charge:

"You, Ms. Damyantiben Narayanbhai Chauhan- opponent no.1, Ms. Jashodaben Narayanbhai Chauhan- opponent no.2, Ms. Nirupamaben Narayanbhai Chauhan- opponent No.3 and Ms. Kalpanaben Narayanbhai Chauhan- opponent No.4, have willfully and deliberately violated the direction issued in the order dated 15.12.2010, by executing the agreement to sell and not maintaining the status quo. From the material placed on record, it appears that you have violated the said direction issued by the Court under the provision of Section 10 read with Section 12 of the Act of 1971."

3. The aforesaid order was challenged before the Supreme Court by filing SLP (Civil) Diary No.3755 of 2024. By the order dated 06.09.2024, the SLP was dismissed, by reserving liberty in favour of the respondent Nos.1 to 4 i.e. original petitioners before the Supreme Court to file their response to the charge taking all points in defence and also to seek permission to appear through virtual mode as they all are senior citizens.

4. Thereafter the matter has been adjourned on numerous occasions. On 07.02.2025, all the four respondents – contemnors were present, two by virtual mode and the other two physically and they had submitted that they were not made aware about the *status quo* order granted by this Court



in Civil Application (for stay) No.6605 of 2010 in Second Appeal No.121 of 2010. The learned advocate appearing for them was also heard and thereafter, the matter was further adjourned. When the matter was heard on 13.02.2025, Mr.Mishra, learned advocate appearing for the respondents has submitted that the respondents have instituted a suit being Regular Civil Suit No.14 of 2024 before the learned Principal Senior Civil Judge, Gandhinagar for cancellation of agreement to sell dated 08.03.2022 and the same is pending before the Civil Court. He has also referred to the undertaking dated 21.12.2023, wherein the respondents have assured that they will not execute sale deed with the proposed buyer or to anyone till the outcome of the Second Appeal. Thereafter, the matter was heard on 03.03.2025 again at length. The fact of filing the civil suit has been recorded by the Coordinate Bench in the aforesaid order dated 04.03.2024.

SUBMISSIONS ON BEHALF OF APPLICANTS

5. Ms.Archana Acharya, learned advocate appearing for the applicant has submitted that the Coordinated Bench has already recorded the contemptuous conduct of the respondents in



violating the *status quo* order by entering into agreement to sell dated 08.03.2022 relating to the suit property in favour of one Manishkumar Ravjibhai Patel and others for a total consideration of Rs.12,00,00,000/- and the respondents have received an amount of Rs.4,15,00,000/- and thus, they have created third party right and hence, have committed willful disobedience of the order dated 15th December, 2010 passed by this Court in Civil Application (for stay) No.6605 of 2010 in Second Appeal no.121 of 2010.

6. While placing reliance on the judgment of the Supreme Court in case of Patel Rajnikant Dhulabhai and Anr. Vs. Patel Chandrakant Dhulabhai and Ors., (2008) 14 SCC 561, she has submitted that entering into an agreement to sell with respect to the disputed property for which part of the consideration is accepted, the same would mean that a third party right has been created and if there is an injunction order, it would amount to civil contempt, which the present respondents have committed.

7. Ms.Acharya, learned advocate has also referred to the recent decision of the Supreme Court in case of Balwantbhai Somabhai Bhandhari



Vs. Hiralal Somabhai Contractor, AIR 2023 SC 4390
and has also urged that the agreement to sell executed by the respondents may be quashed and *set aside*. She has also submitted that in fact, after execution of agreement to sell the purchaser has also instituted a suit for specific performance and in the suit, which is instituted by the respondents for cancellation of registered sale deed, he is not appearing and hence, it is urged that the agreement to sell may be cancelled. It is also thus, urged that the contemnors may be punished accordingly for their willful and deliberate disobedience of the order passed by this Court.

SUBMISSIONS ON BEHALF OF RESPONDENT NOS.1-4

8. Opposing the present proceedings, Mr.Mishra, learned advocate appearing for the respondent Nos.1 to 4 has reiterated his submissions which were advanced before the Coordinate Bench and recorded in the order dated 04.03.2024. Today, Mr.Mishra, learned advocate has referred to the further affidavit-in-reply filed on behalf of the respondent Nos.1 to 4, dated 13.02.2025, tendering unconditional apology. It is submitted that the respondents were never aware about the *status quo* order dated 15.12.2010.



9. It is submitted by learned advocate Mr.Mishra that, it cannot be said that the *status quo* order dated 15.12.2010 has been violated by the respondent Nos.1 to 4, since the present respondents were arraigned as party respondents in the Civil Application (for bringing heirs) No.5 of 2021, filed in Second Appeal No.121 of 2020 and after the said application was allowed, they were arraigned as party respondents, and they were in a *bona fide* belief that no stay was operating and hence, an agreement to sell with regard to the disputed property was executed on 08.03.2022. He has submitted that in fact since the nature of the property has remained unaltered or unchanged, it cannot be said that the respondents have committed contempt of Court by entering into agreement to sell. Thus, it is urged that the present contempt proceedings may be dropped.

10. Mr.Mishra, learned advocate in support of his submissions has placed reliance on the judgments of the Supreme Court in case of Ramesh Mishrimal Jain Vs. Avinash Vishwanath Patne & anr, 2025 (INSC) 213 and in case of Navratan Lal Shrama vs Radha Mohan Shrama, 2024 (INSC) 970. Reliance is also placed on the judgment of the Supreme Court



in case of Jhareshwar Prasad Paul vs Tarak Nath Ganguly, 2002(5) SCC 532. Finally, it is urged by him that the unconditional apology expressed by the respondent nos.1 to 4 may be accepted.

REJOINDER SUBMISSIONS ON BEHALF OF APPLICANTS

11. In response to the aforesaid submissions, learned advocate Ms.Acharya has submitted that the respondents cannot contend that they were not aware about the interim order passed by this Court since the said order was incorporated in the revenue entries. She has submitted that Mutation Entry Nos.5698 dated 16.12.2015 and 6699 dated 04.03.2019 were recorded by the revenue authorities in Village Form Nos.6 and 7 and entry in extract of 7/12 has also been made part of the registered agreement to sell dated 08.03.2022 executed by the contemnors. Thus, she has submitted that any party, who is desirous of selling or purchasing the property, has to always verify the revenue entries. With regard to the acceptance of the unconditional apology, she has submitted that the respondents have tendered unconditional apology only at the last moment looking to the approach of this Court and when the earlier order was passed by the Coordinate Bench, the respondent Nos.1 to 4 have not



expressed any apology and hence, it is submitted that the apology, which is tendered at the fag end, may not be accepted. In support of her submissions, she has referred to the judgement of the Supreme Court in case of L.D.Jaikwal Vs. State of U.P., (1984) 3 S.C.C. 405.

ANALYSIS AND OPINION

12. We have heard the learned advocates appearing for the respective parties at length. As recorded hereinabove, we have also heard the respondents Nos.1 to 4 on 07.02.2025 through virtual mode. The respondent No.1 - Damyantiben Narayanbhai Chauhan is aged 83 years, respondent No.2 - Jashodaben Narayanbhai Chauhan is aged about 81 years and respondent Nos.3 - Nirupama Narayanbhai Chauhan and respondent No.4 - Kalpanaben Narayanbhai Chauhan are aged about 65 and 70 years respectively. As indicated from their age, they all are the senior citizens.

13. The Coordinate Bench by a comprehensive order dated 4th March, 2024 had framed the charges under the provisions of Section 10 read with Section 12 of the Contempt of Courts Act, 1971, which was assailed by the respondent Nos.1 to 4 before the Supreme Court and the SLP has been dismissed.



14. The facts, which are established from the record are that this Court in the Civil Application (for stay) No.6605 of 2010 in Second Appeal No.121 of 2010 passed the order dated 15.12.2010 which is as under :

"Rule. Learned counsel, Mr.S.M. Shah waives service of notice of rule on behalf of the respondent.

Heard learned counsel appearing for the respective parties.

Learned counsel, Mr.Shah has stated that interim relief may not be granted and his statement may be recorded that his client, who is present in the Court, will undertake that it will not be sold or transferred without prior permission of the concerned Court.

Though the aforesaid submission is made and when the Second Appeal is pending, by any such undertaking with a rider to get permission may further complicate the issued.

Therefore, the parties are directed to maintain status quo of the land till final disposal of the Second Appeal. Accordingly, the present Civil Application stands disposed of. Rule is made absolute."

15. Despite the aforesaid order, the respondent Nos.1 to 4 entered into agreement to sell dated 08.03.2022 of the property in question in favour of one Manishkumar Ravjibhai Patel and others for a total sale consideration of Rs.12,00,00,000/-. The respondents herein have received the amount of Rs.4,15,00,000/-, which are mentioned in the agreement to sell. This fact is not specifically

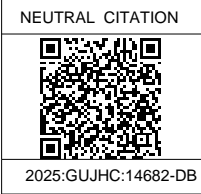


violation and disobedience of the orders of the Court and the contemnors are responsible for such act.

45. From the overall considerations of the matter in the light of series of events, we hold that the respondents-contemnors have disregarded and violated the orders passed by this Court on April 26, 2004 and January 10, 2005."

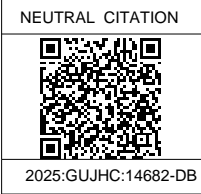
17. The Supreme Court thereafter, held the contemnors guilty under Section 12 of the Contempt of Courts Act 1971, read with Section 94(C) and Rule 2A of Order-39 the Code of Civil Procedure, 1908. Thus, the Supreme Court in an practically analogous issue has held the agreement to sell and acceptance of sale consideration despite the interim orders, as contempt of Court. In the present case, the only distinguishing feature is that the respondents have entered into the agreement to sell and have received the amount of Rs.4,15,00,000/- and thus, created third party rights in favour of one Manishkumar Ravjibhai Patel, who has also instituted a suit for specific performance before the civil Court.

18. Thus, the action of the respondent nos.1 to 4 in entering into agreement on acceptance of part consideration would hit by the interim order and it would amount to creation of interest, which is prohibited vide order dated 04.03.2024.



19. Before us when the contemnors appeared on 07.02.2025, they have asserted that they were not aware about the *status quo* order granted by this Court.

20. At this stage, we may refer that the order passed by this Court was mutated in Revenue Records being Mutation Entry No.5698 dated 16.12.2015 by the Revenue Authorities and the said entry was certified on 13.03.2016. A Mutation Entry No.6699 dated 14.03.2019 was recorded by the Revenue Authorities about the *status quo* granted by this Court and it also got certified on 18.06.2019. Thereafter, the Mutation Entry No.5698 dated 16.12.2015 and Mutation Entry No.6699 dated 14.03.2019 were given effect in the village Form No.7, which is integral part of the registered agreement to sell dated 18.03.2022 executed by the contemnors. Such entries are reflected at page No.31 of the agreement to sell. Thus, the contemnors cannot project themselves as innocent and ignorant executors of the agreement to sell. It is difficult to believe that they have blindly entered into the agreement to sell without verification of the entries which form part of the agreement. They cannot project themselves to be naive to the procedure or



process undertaken before and during the time of entering into the registered agreement to sell.

21. Thus, the contention raised by the contemnors that they were not aware about the *status quo* order is not palatable and appears to be an afterthought.

22. We may now deal with the apology tendered by the contemnors.

23. It is pertinent to note that the contemnors for the first time have tendered an unconditional apology in the affidavit dated 11th February, 2025.

24. At the time of passing the order dated 04.03.2024 by the Coordinated Bench, the contemnors have not whispered about any apology and have not expressed any remorse of executing the agreement to sell in defiance of the orders passed by this Court. On the contrary, they have vehemently contested before the Coordinated Bench and also before the Supreme Court. Thereafter, the matter was considerably adjourned on numerous occasions and the order-sheet does not reflect that they had tendered any unconditional apology. Only when this Court had taken up the matter for further hearing in view of the framing of charge,



they have filed an affidavit dated 12.02.2025. The Supreme Court in the case of **Patel Rajnikant Dhulabhai (Supra)** had also refused to accept the unconditional apology and it is recorded as under:

"61. The question then is whether the case calls for imposition of punishment on the contemners. The learned counsel for the contemners submitted that in the affidavit in reply, the respondents have stated that if this Court comes to the conclusion that they had committed contempt of Court, the Court may accept unconditional and unqualified apology and may discharge notice. The counsel submitted that the statutory provision itself enacts that no apology shall be rejected merely on the ground that it is qualified or conditional [Explanation to [Section 12\(1\)](#)]."

62. We must frankly admit our inability to agree with the learned counsel. In the light of what is stated above, we are convinced that the contemners have intentionally and deliberately violated the orders of the Court. We are also convinced that the orders were clear, unambiguous and unequivocal having one and only one meaning. Willful and deliberate disobedience of the orders passed by the apex Court of the country can never be said to be bona fide, honest or in good faith. If it is so, the action calls for serious view to ensure proper administration of justice.

63. In Hiren Bose, Re, AIR 1969 Cal 1 : 72 Cal WN 82, the High Court of Calcutta stated;

"It is also not a matter of course that a Judge can be expected to accept any apology. Apology cannot be a weapon of defence forged always to purge the guilty. It is intended to be evidence of real contrition, the manly consciousness of a wrong done, of an injury inflicted and the earnest desire to make such reparation as lies in the wrong-doer's power. Only then is it of any avail in a Court of justice But before it can have that effect, it should be tendered at the earliest possible stage, not the latest. Even if wisdom dawns only at a



later stage, the apology should be tendered unreservedly and unconditionally, before the Judge has indicated the trend of his mind. Unless that is done, not only is the tendered apology robbed of all grace but it ceases to be an apology It ceases to be the full, frank and manly confession of a wrong done, which it is intended to be".

64. It is well-settled that an apology is neither a weapon of defence to purge the guilty of their offence; nor is it intended to operate as a universal panacea, it is intended to be evidence of real contriteness [Vide M.Y. Shareaf v. Hon'ble Judges of the High Court of Nagpur; (1955) 1 SCR 757 :M.B.Sanghi v. High Court of Punjab & Haryana, (1991) 3 SCR 312].

65. In T.N. Godavarman Thirumulpad through the Amicus Curiae v. Ashok Khot & Anr., 2006 (5) SCC 1, a three Judge Bench of this Court had an occasion to consider the question in the light of an 'apology' as a weapon defence by the contemner with a prayer to drop the proceedings. The Court took note of the following observations of this Court in L.D.Jaikwal v. State of U.P., (1984) 3 SCC 405:

"We are sorry to say we cannot subscribe to the 'slap-say sorry-

and forget' school of thought in administration of contempt jurisprudence. Saying 'sorry' does not make the slipper taken the slap smart less upon the said hypocritical word being uttered. Apology shall not be paper apology and expression of sorrow should come from the heart and not from the pen. For it is one thing to 'say' sorry-it is another to 'feel' sorry".

67. Similar view was taken in other cases also by this Court.

68. We are also satisfied that the so-called apology is not an act of penitence, contrition or regret. It has been tendered as a 'tactful move' when the contemnors are in the tight corner and with a view to ward off the Court. Acceptance of such apology in the case on hand would be allowing the contemnors to go away with impunity after committing gross contempt of



Court. In our considered opinion, on the facts and in the circumstances of the case, imposition of fine in lieu of imprisonment will not meet the ends of justice."

25. We may also refer to the decision, recent decision of the Supreme Court in case of **Balwantbhai Somabhai Bhandhari (Supra)**, wherein the contempt proceedings were initiated in violation of the undertaking given by a counsel / advocate on behalf of their client to the Court, and the Supreme Court has held violation of the same as willful breach or disobedience amounting to civil contempt as defined under section 2(b) of Contempt of Courts, 1971. The matter before the Supreme Court stems out from the judgment and order passed by the Coordinate Bench of this Court being Civil Misc. Application No.121 of 2018, decided by the judgment and order dated 13.07.2022, in case of *Legal heirs of deceased Hiralal Somabhai Contractor Vs. State of Gujarat*. The Division Bench of this Court, while holding the contemnors guilty of Contempt of Courts in violating the undertaking given by the counsels/advocates, has also simultaneously set aside the sale deeds, which were executed in breach of statement made by the learned advocate on their behalf. The Division Bench had also rejected the unconditional apology. The action of



the Division Bench in cancelling the sale deed and holding the contemnors guilty for Contempt of Courts Act has been upheld by the Supreme Court in the said judgment. It is also held that the purchaser of the property is also not required to be made as party to the contempt proceedings. The Supreme Court has held that the contumacious transaction can be declared as *non est* and *void*. It is held as thus :-

"89. The High Court declared all the sale deeds executed by the contemnors in favour of the purchasers as non est. The High Court ordered that the sale deeds stand cancelled and set aside. The contemnors were directed to restore the position which was prevailing at the time of the order dated 14.10.2015 passed by the High Court. In our opinion, the High Court was fully justified in declaring the sale deeds as non est or void."

26. While dealing with the concept of apology, the Supreme Court has reiterated as under:-

"100. We now proceed to consider the question as regards the acceptance of apology. It is pertinent to note at this stage that all throughout the proceedings before the High Court, the stance of the appellants was that they committed a big mistake by executing the sale deeds despite having given a clear-cut undertaking to the court that they would not do so. By and large, from the averments in the various affidavits filed by the appellants over a period of time; referred to by the High Court in its judgment, the stance had been that the appellants should not have defied the order of the High Court and are extremely sorry in that regard. In such circumstances, the appellants pleaded before the High Court that their apology may be accepted and they may be discharged from the proceedings."



undertaking was given to the High Court and the breach or disobedience would definitely attract the provisions of the Act 1971.

(iii) Although the transfer of the suit property pendente lite may not be termed as void ab initio yet when the court is looking into such transfers in contempt proceedings the court can definitely declare such transactions to be void in order to maintain the majesty of law. Apart from punishing the contemnor, for his contumacious conduct, the majesty of law may demand that appropriate directions be issued by the court so that any advantage secured as a result of such contumacious conduct is completely nullified. This may include issue of directions either for reversal of the transactions by declaring such transactions to be void or passing appropriate directions to the concerned authorities to ensure that the contumacious conduct on the part of the contemnor does not continue to enure to the advantage of the contemnor or any one claiming under him.

(iv) The beneficiaries of any contumacious transaction have no right or locus to be heard in the contempt proceedings on the ground that they are bona fide purchasers of the property for value without notice and therefore, are necessary parties. Contempt is between the court and the contemnor and no third party can involve itself into the same.

(v) The apology tendered should not be accepted as a matter of course and the court is not bound to accept the same. The apology may be unconditional, unqualified and bona fide, still if the conduct is serious, which has caused damage to the dignity of the institution, the same should not be accepted. There ought not to be a tendency by courts, to show compassion when disobedience of an undertaking or an order is with impunity and with total consciousness."

28. Thus, In light of the aforesaid legal precedents of the Supreme Court and also in light of the order dated 04.03.2024 passed by the Coordinate Bench of framing the charge and in

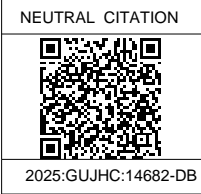


wake of the undisputed fact of (i) executing a registered agreement to sell dated 08.03.2022, (ii) receipt of the amount of Rs.4,15,00,000/- and (iii) further creating third party rights, we hold the respondent nos.1 to 4 viz. Damyantiben Narayanbhai Chauhan, Jashodaben Narayanbhai Chauhan, Nirupama Narayanbhai Chauhan and Kalpanaben Narayanbhai Chauhan guilty of civil contempt, as defined under section 2(b) of the Contempt of Courts Act read with Rule-2(a) of the order-39 of the Code of Civil Procedure, 1908. We also reject the unconditional apology tendered at the fag end of the proceedings.

29. The judgments, on which the reliance is placed by learned advocate Mr.Mishra, will not come to the rescue of the present respondents since they do not even remotely apply to the facts or the issue of the present case.

30. The punishment for Contempt of Courts Act is provided under Section 12 of the Act of 1971, which is as under :

"12. Punishment for contempt of court.-(1) Save as otherwise expressly provided in this Act or in any other law, a contempt of court may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both"



31. The punishment as provided in Section 12(1) ranges from the simple imprisonment for a term, which may extend to 6 months or with fine, which may extend to Rs.2000/- or with both.

32. At this stage, when learned advocate Mr.Mishra was called upon by us to address on the quantum of punishment, he has submitted that looking to the age of the respondent Nos.1 to 4, leniency may be shown.

33. On overall appreciation of the facts of the present case and in wake of the fact that the respondent Nos.1 to 4 are senior citizens, we do not intend to be harsh on them by sending them to a civil prison. Hence, we impose a fine of Rs.2,000/- on each of them, which shall be deposited before the Registry of this Court within a period 10 days. We also declare the agreement to sell dated 08.03.2022 as *non est* and *void ab initio* and as a sequel, the same is quashed and set aside.

34. We also direct the respondent Nos.1 to 4 to deposit costs of Rs.1,00,000/- before the Registry of this Court, as per Rule 21 of Contempt of Court(Gujarat High Court)Rules, 1984 within a period of two weeks, failing which the



Registry shall place the matter before the Bench assigned present roaster. After such amount is deposited, Rs.50,000/- shall be paid to the present applicants, after due verification, and the rest of the amount shall be deposited before the Gujarat State Legal Service Authority.

35. As a sequel, the connected civil applications being Civil Application Nos.1 of 2024 and 2 of 2024 stand disposed of.

36. So far as Civil Application No.3 of 2024 is concerned, learned advocate Mr.Mishra requests for withdrawal of the same. Hence, Civil Application No.3 of 2024 stands disposed of as withdrawn.

Sd/-
(A. S. SUPEHIA, J)

Sd/-
(NISHA M. THAKORE,J)

NVMEWADA/1