

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

APPEAL FROM ORDER NO. 4 OF 2015
WITH
CIVIL APPLICATION NO. 1141 OF 2015

Gurunath s/o. Tukaram Bhandare **....Appellant.**

Versus

Gangabai w/o. Bhagwanrao Solanke **....Respondent.**

Mr. V.D. Gunale, Advocate for appellant.

Mr. Sachin S. Deshmukh, Advocate for respondent.

CORAM : T.V. NALAWADE, J.
DATED : 3rd August, 2015.

ORDER :

1. The appeal is filed to challenge the order made by the learned Civil Judge, Senior Division, Ambajogai on Exh. 5 in Special Civil Suit No. 14/2014. Both the sides are heard.

2. The suit is filed for specific performance of agreement of sale of immovable property which is dated 2.7.2012. The transaction was to be completed by paying the remaining amount which was around 1.51 Crore by the plaintiff/appellant to defendant/respondent. Plaintiff contended that he was ready and willing to complete his part, but the defendant avoided to execute the sale deed. By making such contentions,

the plaintiff prayed for relief of temporary injunction to prevent the defendant from alienating the suit property or creating any third party interest.

3. The defendant has filed written statement. The execution of agreement is admitted. But, it is denied that the plaintiff had showed readiness and willingness to complete his part of the agreement. It is contended that when the time was fixed as before 30.12.2013, it was necessary for the plaintiff to see that the entire remaining amount was paid and the transaction is completed. It is contended that by paying meager amount of Rs. one lakh, aforesaid things were done by the plaintiff.

4. The trial Court refused the relief of injunction by observing that meager amount was paid on the date of agreement and no concrete steps taken by the plaintiff to see that the transaction of sale was completed before 30.12.2013.

5. It appears that this Court (other Hon'ble Judge) directed the appellant/plaintiff to see that the remaining amount of consideration of Rs. 1.51 Crore is deposited in the Court to show his bonafides. Today the learned counsel for plaintiff

produced receipts of amount of Rs. 1.51 Crore showing that he has deposited the amount in the trial Court.

6. The execution of agreement is admitted. The plaintiff could have used the relevant provisions of Transfer of Property Act and it was open to him to say that the transaction, if any, made during pendency of suit would not be binding on him. However, due to the aforesaid circumstances, the trial Court was required to reject the application filed for temporary injunction. Now the plaintiff has deposited the entire amount of consideration and this circumstance can be considered for grant of relief of temporary injunction to prevent the defendant from alienating the property or from creating any third party interest in the property.

7. The learned counsel for original defendant submitted that only due to the order made by this Court, the amount has been deposited by the plaintiff and this circumstance should not be taken as readiness and willingness of the plaintiff in respect of aforesaid agreement. It is true that only due to the order made by this Court, the amount has been deposited. The plaintiff will be required to prove his readiness and willingness as required under section 16 of Specific Relief Act. Further, the trial

Court will not get influenced by the orders made by this Court or by the other Hon'ble Judge dated 30.1.2015. In view of nature of dispute, this Court holds that the dispute of the present nature to grant relief of interim nature can be put to rest by giving direction to the trial Court to expeditiously dispose of the matter itself. In view of these circumstances, this Court holds that the relief can be given to the plaintiff of the nature stated above.

8. In the result, the appeal is allowed. The order made by the learned Judge of the trial Court is hereby set aside. The defendant is hereby temporarily restrained from alienating the suit property. This relief will be remain in existence till the disposal of the case. Suit is to be disposed of by the trial Court within six months from the date of receipt of this order. There will be liberty to the trial Court to make necessary orders, if the plaintiff does not cooperate for expeditious disposal of the case. All the points are kept open.

9. Civil Application is disposed of accordingly.

[T.V. NALAWADE, J.]

SSC/