IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO. 21 OF 2015

MR. FIRASAT ALI KHAN AND 2 ORS., ... Appellants
Versus
MR. JAVEED SHAFY KAZI AND ANR., ... Respondents

Shri P.P. Singh, Advocate for the Appellants.
Shri Gaurish N. Agni, Advocate for the Respondents.

Coram:- C. V. BHADANG, J.

Date:- 24th July, 2015

P.C:

Heard Shri Singh, the learned Counsel for the appellants and Shri Agni, the learned Counsel for the respondents.

2. The appellants, who are the original plaintiffs, have filed a suit for specific performance and consequential relief of injunction etc. In that suit, the appellants had filed an application seeking temporary injunction against the respondents, restraining them from creating any third party right in the suit property, pending disposal of the suit. That application has been rejected on 10.03.2015, which is the subject matter of challenge in this appeal.

3. It is submitted by Shri Singh, the learned Counsel for the appellants that out of the total consideration of Rs.53,00,000/-, an amount of Rs.8,50,000/- is already paid to the respondents. It is submitted that the M.O.U. executed between the parties would show

that the appellants were aware that the flat was mortgaged to a Bank. It is submitted that the application for temporary injunction could not have been rejected on any such ground. The learned Counsel has placed reliance on clause 9 of the M.O.U., in order to submit that the appellants are entitled to specific performance.

4. On the contrary, it is submitted by Shri Agni, the learned Counsel for the respondents that as per clause 12 of the agreement, payment was to be made within stipulated time, i.e. by 30.06.2014, failing which the M.O.U, was to stand terminated and the purchasers were only entitled to refund of advance, without any interest.

5. It appears that the trial Court has found, that at the time of execution of M.O.U., the appellants were aware that the suit house was offered as security to Bank of Maharashtra, which had the first charge on the same, while entering into the M.O.U., no written permission or consent of Bank of Maharashtra was obtained. In such circumstances, transfer by the Mortgagor, is not binding on the Bank.

6. The limited question involved in this appeal is, as to whether, the appellants are entitled to the order, restraining the respondents from creating any third party interest. It is submitted by Shri Agni, the learned Counsel, on instructions, that at present the respondents have no intention to create any third party rights/interest, in the suit

property. He submitted that if, at all occasion arises, the respondents would seek permission of the Court. If that be so, the appeal can be and is disposed of in the following terms:

(a) The statement on behalf of the respondents that at this stage, they have no intention to create any third party interest, is accepted.

(b) The respondents shall not create any third party interest in the suit property, without obtaining permission of the trial Court.

(c) All the rival contentions between the parties, on merits, are expressly kept open.

(d) The appeal is disposed of, in the aforesaid terms, with no order as to costs.

C. V. BHADANG, J.

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