IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.627 OF 2014
WITH
CIVIL APPLICATION NO.753 OF 2014

Deoki Nandan Mishra & Anr. .. Appellants

Vs.

M/s.Mantri Realty Ltd. and Anr. .. Respondents

Mr.B.N.Shukla i/b M/s.B.N.Shukla and Co. for the appellant

Mr.A.M.Kulkarni for the respondent no.1

CORAM : K.K.TATED, J.
DATED : 23/06/2015

PC:

1 Heard the learned counsel for the parties.

2 This Appeal from Order is preferred by plaintiffs challenging the order dated 3.12.2013 passed by City Civil Court for Gr. Bombay (Borivali Division), Dindoshi, Goregaon, Mumbai in Notice of Motion No.1246 of 2013 declining to grant interim relief in favour of the plaintiff.

Few facts of the matter are as under:

3 Defendant no.2 purchased the suit property i.e. Flat no.1201,

12th floor, Orchid Building, Mantri Park, CTS No.827/D, Survey No.239 (P.T.) Village-Malad (East), Film City Road, Dindoshi, Goregaon (East), Mumbai 400 065 admeasuring 70.26 square meter from defendant no.1 by registered agreement dated 9.3.2010. At that time, defendant no.2 executed undertaking dated 9.3.2010 stating that in case the liability to pay VAT Tax comes on purchaser then he will clear the said amount. Thereafter the plaintiff purchased the said plot from defendant no.2 by registered agreement dated 26.7.2011. When the plaintiff wanted to transfer his loan from Edelweiss Housing Finance Ltd. to Axis Bank Ltd., he requested defendant no.1 to give no objection. At that time, defendant no.1 demanded sum of Rs.3,05,550/- towards Maharashtra VAT. Hence, the plaintiff filed the present suit for declaration that the plaintiff is not liable to pay VAT of Rs.3,05,550/- and for other reliefs. The plaintiff preferred Notice of Motion No.1246 of 2013 with following prayers :

> "(a) That pending the hearing and final disposal of the Suit, this Honourable Court be pleased to direct Defendant No.1 to issue NOC and Charge Release Letter to the Plaintiffs for transfer of their housing loan from EDELWEISS to AXIS Bank Ltd. Or any other bank(s) or financial Institution(s);
>
> (b) That pending the hearing and final disposal of the Suit, this Honourable Court be pleased to grant an order of injunction interalia restraining the defendant no.1 from demanding any alleged MAVAT amount from plaintiffs;

(c) For interim and ad-interim reliefs in terms of prayers (a) and (b);

(d) For costs;

(e) For such further and other reliefs as the nature and circumstances of the case may require."

4 That Notice of Motion was dismissed by the Trial Court. Hence, the present Appeal from Order.

5 The learned counsel for the plaintiff submits that plaintiff is not liable to pay the said tax to defendant no.1. At the most defendant no.2 is liable to pay the same. To that effect, he relies on the clause no.6 and 11 of the Agreement for Sale dated 26.7.2011 between plaintiff and defendant no.2. On the basis of these submissions and the agreement dated 26.7.2011, advocate for the plaintiff submits that this Hon'ble Court be pleased to set aside the impugned order dated 3.12.2013 passed by the Trial Court and direct the defendant no.1 to issue no-objection certificate for transferring his loan account from one bank to another.

6 On the other hand, the learned counsel for respondent no.1 defendant no.1 vehemently opposed the present Appeal from Order. He submits that as per the undertaking dated 9.3.2010 defendant no.2 was supposed to pay VAT. He submits that as per order dated 30.10.2012 passed by this court in *Writ Petition (L) No.2440 of 2012 and Writ Petition (L) No.2502 of 2012 decided on 30.12.2012,* purchaser is liable to pay VAT. Hence, the impugned order passed by Trial Court

does not require any interference at this stage.

7 I have heard both the sides at length. It is to be noted that in the present proceeding, admittedly original defendant no.2 executed undertaking dated 9.3.2010 stating that in case the VAT is liable to pay by the purchaser then he will pay the same. With the said undertaking, plaintiff purchased said flat from defendant no.2.

8 Considering these facts, Trial Court held that unless and until plaintiff clears VAT, he is not entitled for NOC from defendant no.1. As per the undertaking, either amount be paid by defendant no.2 original purchaser to subsequent purchaser i.e. plaintiff and without that defendant no.1 cannot be directed to grant NOC.

9 Considering these facts I do not find any reason to interfere with the well reasoned order passed by Trial Court. Hence, Appeal from Order stands rejected.

10 In view thereof, nothing survives in the Civil Application. Civil Application is dismissed as infructuous.

(K.K.TATED, J.)