

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER NO. 909 OF 2015
WITH
CIVIL APPLICATION NO. 1105 OF 2015 IN A.O. NO. 909 OF 2015**

Siddhivinayak Builders & Developers
through its Proprietor & Anr. ... Appellants/Applicants
VS.
Jitendra Kapurchand Parmar & Ors. ... Respondents

Mr. Sanjay P. Shinde, Advocate for the appellants/applicants.
Mr. Shriram S. Kulkarni, Advocate for the respondents.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE : **15th September, 2015**

P.C.:

Admit. By consent, this Appeal is heard and decided finally at the stage of admission.

2. This Appeal from Order is directed against the order dated 18th October, 2014 passed by the Civil Judge Senior Division, Pune below Exhibit 5 in Special Civil Suit No. 332 of 2013. The plaintiffs/respondents have filed the suit for specific performance along with an Application for temporary injunction under Order 39 Rule 1 against the defendants/appellants that they should not create any third party interest in the suit property and not to transfer or alienate or create any encumbrance on the property in dispute during the pendency of the suit. The plaintiffs and defendants have entered into MOU dated 10th July,

2010 in respect of one property and plaintiffs/respondents have invested Rs.1,50,00,000/- for that project. It was also agreed that the said amount would be refunded along with the benefit of additional amount of Rs.75,00,000/-. However, the project frustrated and thereafter the capital amount of Rs.1,50,00,000/- and benefit of Rs.75,00,000/- could not be paid by the appellants to the respondents. Thereafter the appellants/defendants and respondents/plaintiffs entered into an Agreement of Sale dated 22nd February, 2012 in respect of suit property. The said Agreement of Sale was subsequently registered on 29th February, 2012. It was for a consideration of Rs.1,33,00,000/-. A fact of registration of Agreement of Sale dated 29th February, 2012 is disputed by the appellants, as the said agreement is forged, however, the appellants have not denied the Agreement dated 22nd February, 2012.

3. The learned counsel for the appellants submitted that no separate amount was paid pursuant to the Agreement dated 22nd February, 2012. It was an Agreement of Sale and so also the registration of said Agreement of Sale dated 29th February, 2012 is challenged, as it is forged. The terms and conditions which are appearing in the said registered Agreement of Sale dated 29th February, 2012 were never intended to be agreed and were not written in the Agreement of Sale dated 22nd February, 2012. He further submitted that the Agreement

dated 22nd February, 2012 in respect of sale of suit property was not intended to be acted upon but it was made only by way of security of the project which was frustrated and just to insure the amount paid by the plaintiffs by way of earlier agreement dated 10th July, 2010. He further submitted that earlier MOU is not cancelled and it still exists. He further submitted that the appellants have already paid Rs.17,00,000/- out of earlier payment of MOU, i.e., Rs.1,50,00,000/- and thus, as on today, the liability of the appellants is to the tune of Rs.1,33,00,000/- which is the consideration amount of second agreement dated 22nd February, 2012. He further submitted that the appellants are ready to pay the said amount of Rs.1,33,00,000/- to the respondents and the order of injunction is to be vacated. The learned counsel submitted that the property which is a subject matter of this Agreement is a residential house of the appellants. It is constructed on the leasehold land of Nigdi Pradhikaran and therefore, the appellant cannot even go and reside and also cannot do the interior decoration work.

4. The learned counsel for the respondents opposed the Appeal and submitted that if the appellant wants to decorate the said house, he can do so at his costs and subject to the outcome of the suit.

5. After perusal of the order passed by the trial Court and after

hearing the submissions except the fact of forged Agreement of Sale which was sent for registration on 29th February, 2012, all facts are admitted. Even the payments are admitted. As on today, the respondents have paid Rs.1,33,00,000/- to the appellants. Though the earlier MOU is not cancelled and there is no separate payment towards the Agreement of Sale dated 22nd February, 2012, the Agreement is not produced along with this Appeal from Order, which was necessary. Under such circumstances, it appears that the parties are always free to make adjustments of the money and they can also intend to merge the agreement in respect of payment and the project/suit property. Under such circumstances, the balance of convenience lies with the respondents though it is accepted as a security as argued by the learned counsel for the appellants, the said amount is to be secured. The view taken by the learned Judge of the trial Court is legal and cannot be faulted with. The Appeal is dismissed. The appellants can decorate the suit property at their risk and subject to the outcome of the suit.

6. In view of dismissal of Appeal, Civil Application does not survive and the same is accordingly disposed of.

(MRS.MRIDULA BHATKAR, J.)

CERTIFICATE

Certified to be true and correct copy of the original signed
Judgment/Order.