

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

***CIVIL APPLICATION NO. 1518 OF 2014
IN
FIRST APPEAL NO. 463 OF 2013***

Sandeep Ochhaval Mistry
(since deceased through legal heirs)
Trupti Sandeep Mistry & anr.

... Applicants

v/s

1. Siya Estates & Ventures & ors.

... Respondents

Mr. Harshal Sathe for the applicant.

Mrs. Chandana Salgaokar for the respondent No.1.

***CORAM: SMT. VASANTI A. NAIK &
SHRI C. V. BHADANG, JJ.***

DATED : 13TH FEBRUARY 2015

P.C.:

Heard. Perused the contents of the application. Perused the judgment of the Trial Court.

The Trial Court has accepted the case of the respondents and recorded cogent reasons for holding that the defendants had not agreed to sell the plot described in the suit, to the plaintiff and the agreements were executed between the parties only towards security for ensuring that the professional fees of the applicant are paid by the defendants. We also find that, on a consideration of the

evidence on record, the Trial Court has recorded the finding that the applicant was not ready and willing to perform his part of the contract, even assuming that the defendants had agreed to sell the suit plot to the applicant. Also, we *prima facie* find that the suit property could not have been agreed to be sold to the applicant for the paltry amount as mentioned in the plaint. It would, therefore, not be proper in the circumstances of the case to lock up the property during the pendency of the appeal.

Hence, the prayer made by the applicant for restraining the respondents/defendants from alienating the suit property or creating any third party interest therein, is rejected.

We, however, direct the respondent No.1 to furnish security for a sum of Rs.10,00,000/- to the satisfaction of the Trial Court as the applicant is not willing to accept the amount that is directed to be refunded to the applicant by the Trial Court.

The civil application is disposed of accordingly.

At the request of the learned counsel for the applicant, this order is stayed only for a period of two weeks.

(C. V. BHADANG, J.)

(VASANTI A. NAIK, J.)