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

APPEAL FROM ORDER NO.709 OF 2015
WITH
CIVIL APPLICATION NO.863 OF 2015

Nalin Pravinchandra Shah & Anr. … Appellants

V/s.

M/s. Pratima Enterprises & Ors. … Respondents

Mr. V. B. Naik, Senior Advocate with Mr. Nimay Dave with Ms. Trupti Shetty with Umang Mehta i/b. M/s. Dhruve Liladhar & Co. for the Appellants.
Mr. Shripad Murthy with Abhishek Patil for the Respondent Nos.1, 2, 8 and 9.
Mr. Kaustubh N. Marathe i/b. Amit Atul Tungare for Respondent Nos.3 to 7.

CORAM: K.K. TATED, J.
DATED : JULY 28, 2015

P.C. :

1. Heard the learned counsel for the parties. By consent of the parties, the matter is taken up for final hearing at the stage of admission itself.

2. By this appeal, the Appellant Plaintiff challenges the order dated 18/03/2015 passed by the Bombay City Civil Court, Mumbai in Notice of Motion No.199/2010 in Suit No.1937/2010 dismissing the Appellant's Notice of Motion for appointment of Court Receiver in respect of the suit property with all powers under Order XL of the Code

of Civil Procedure, 1908 and injunction restraining the Respondent Defendant from creating any third party right, title and interest in respect of the suit property in pursuance of the Power of Attorney dated 26/11/2002, in any manner whatsoever nature and for other reliefs.

3. For the sake of convenience, the parties will be referred to as per their nomenclature in the suit i.e. Appellant – as Plaintiff and Respondent – as Defendant.

4. Few facts of the matter are, as under:

As per the agreement for sale dated 26/11/2002 the Plaintiff and Defendant Nos.4 to 6 agreed to sell their share in suit property i.e. (i)Sy.no.309, H.No.5, CTS No.35, admeasuring 477.40 sq.mtr. (reserved for road) (ii) S.No.309, H.No.8, CTS No.39, admeasuring 5977.00 sq.mtr. (reserved for telephone complex) and (iii) S.No.302, H.NO.2, CTS No.7(P) admeasuring 1863.70 sq.mtr. (reserved for BEST) depot for total consideration of Rs.18,75,000/-. Following are some of the relevant clauses of agreement for sale dated 26/11/2002, i.e. clause (2), (6), (16) and (34) which read thus:

> *"2. In consideration of the purchasers shall pay to the Vendors a sum of Rs.18,75,000/- (Rs. eighteen lacks seventy five thousands only) as lump sum consideration. The said Rs.18,75,000/- (Rs. eighteen lacks seventy five thousands only) will be paid by the purchasers to the Vendors in the manner hereinafter appearing, that is to say:*
>
> > *a. Rs.8,00,000/- (Rs. Eight lac only) to be paid on or before execution of these presents (The payment and receipt whereof the Vendors do and each of them both hereby admit and acknowledge.)*

b) Rs.8,00,000/- (Rs. Eight lac only) after 90 days from execution of these present or on the Vendors shall make out clear & marketable title and produce title certificate duly signed by his solicitor to the satisfaction of Purchasers solicitors and Vendors shall demarcate the boundaries on the site.

c) Rs. 2,75,000/- (Rs. Two lac seventy five thousand only) on the vendors executing the conveyance of the said property after they shall have produced their certificate under section 230-A of the Income Tax Act, 1961."

"6. It is expressly agreed that in the event of purchasers committing default in payment of any installment of the consideration monies on its due date defaulted installment shall carry interest at the rate on 15% p.a. from the date of default till payment. In case the purchasers shall commit default in payment of consecutive installments and interest thereon for a period of 15 days from the date when the 2nd defaulted installment shall have become due the Vendors shall be entitled to call upon the purchasers to pay such defaulted installments together with interest at the rate of 15% p.a. as aforesaid by giving 15 days notice in writing to the purchasers."

"16. It is specifically agreed that the Vendors shall not be entitled to terminate this agreement for any reason."

"34. The Vendors shall at the time of the execution of such conveyance or conveyances as aforesaid produce their respective certificates under section 230-A of the Income Tax Act, 1961 for the registration of such conveyance at the cost of Vendors only."

At the same time, the Plaintiff and other Defendant Nos.2 to 4 executed Power of Attorney dated 26/11/2002 in favour of Defendant No.1 for managing the suit property. The relevant clause Nos.28, 29, 33, 43 and 44 of the said Power of Attorney read thus:

"28. To enter into any Tripartite agreement as our Attorney being the developers, with Slum Rehabilitation Authority and Project Implementing Authority for the development of the property under the Section 33(1), 3.11 or 33(10) scheme proposed by the Slum Rehabilitation Authority. For that purpose our Attorney shall be entitled to negotiate with the Slum Rehabilitation Authority, Project Implementing Authority & any other concerned Authorities and also entitled to negotiate for the purpose of handing over possession/surrendering the said land to the Slum Rehabilitation Authority/ Project Implementing Authority and/or any authority and also to execute agreement or Deed of Transfer/Conveyance for the purpose of transferring the said land in favour of the Slum Rehabilitation Authority/ Project Implementing Authority and/or such authority and also entitled to utilize T.D.R./Slum T.D.R. F.S.I. generated after the transfer & development of the property on the said property or any other property or properties and also entitled to sell the said slum T.D.R./T.D.R. F.S.I. to any persons or persons and to receive entire purchase price paid by the purchaser of the said T.D.R. F.S.I. and our Attorney is authorized to execute necessary receipts on our behalf and our attorney is authorized to appropriate the purchase price payable to such sale."

"29. To execute the Deed of Conveyance in favour of any Project Implementing Authority (P.I.A.) as approved by the Slum Rehabilitation Authority."

"33. To attend before any Registrar, Sub-Registrar of Dy. Registrar of Assurances in Mumbai and to execute and present for registration and admit execute by us of any agreement, deed, conveyance, transfer, assignment, assurances, releases, indemnify or other instrument or writing the registration of which is compulsory and generally to do all things, necessary and expedient for registering such deeds, instruments and writings or any of them as fully and effectually as we ourselves could do."

"43. To utilize, consume, exploit and take advantage of the F.S.I. in respect of the said property described in the schedule hereunder written on the said property or on any other property or properties belonging to other and to utilize, consume, and exploit the F.S.I. of any other property or properties belonging to another or others as

> *and by way of T.D.R. or what is popularly known as floating F.S.I. on the said property as may be permitted by the concerned authorities."*
>
> *"44. To appear before any judicial or other official or authority for us and represent us in all matters relating to the said property before any Income Tax Officer or officers, Inspecting/Appellate Assistant Commissioner or Tribunal or Court of Law relating to our assessments in respect of the said property and to make applications or petitions for reference and to consent to any arrangements of settlements therein and to make necessary Applications for issue of our respective certificates under section 230-A of the Income Tax Act, 1961."*

5. Pursuant to the said agreement for sale, Defendant No.1 made payments to the Plaintiff and other Defendant Nos.2 to 4 as per their letter dated 10/06/2003 and 16/01/2007. The Plaintiff denied the payment as per letter dated 16/01/2007. Whereas, other Defendant Nos.2 to 4/owners of the suit property accepted the cheques issued by Defendant No.1 and encashed the same. The Plaintiff disputed the receipt of sale proceeds in respect of their 20% share.

6. The Plaintiff, through their Advocates and Solicitors issued legal notice dated 16/06/2009 to Defendant No.1 and their partners by terminating the agreement for sale dated 26/11/2002 and Power of Attorney dated 26/1/2002 executed between the Plaintiff and Defendant No.1 and their partners in respect of the suit property. In reply to the said legal notice, Defendant No.1, through their Advocate's letter dated 24/07/2009 replied said legal notice and denied the contents thereof. Defendant No.1, in paragraph 4 of the said reply disclosed the fact that they entered into a development agreement with M/s. Shivneri Realties (Defendant No.2) and now they are in

possession of the suit property. Thereafter, the Plaintiff, through Advocate's letter dated 31/08/2009 called upon the Advocate for Defendant No.1 to provide copies of development agreement with Defendant No.2 and other documents.

7. Thereafter the Plaintiff filed Suit No.146/2010 on the Original Side of this court for declaration that the agreement for sale dated 26/11/2002 *inter alia* between the Plaintiff and Defendant No.1 was not subsisting and binding upon the Plaintiff and/or same be treated as cancelled/ terminated by the Plaintiff and for other various reliefs which are as under:

> *"(a) that this Hon'ble Court be pleased* to declare that the agreement for sale dated 26/11/2002, *inter alia, between the Plaintiffs and Defendant No.1 is not subsisting and/or binding upon the Plaintiff and/or that the same is duly cancelled/terminated by the Plaintiffs.*
>
> *(b) that this Hon'ble Court be pleased to declare that the Power of Attorney dated 26/11/2002 being Exhibit G to the plaint executed, inter alia, by the Plaintiffs in favour of the Defendant No.3 has been duly terminated and/or revoked by the Plaintiffs.*
>
> *(c) that this Hon'ble Court be pleased to declare that the Defendants or any one or more of them or any person claiming through Defendant No.1 (including Defendant No.2) are not entitled to act upon or in pursuance of the agreement for sale dated 26/11/2002 or the Power of Attorney dated 26/11/2002.*
>
> *(d) that this Hon'ble Court be pleased to declare that the Plaintiffs alone are entitled to quiet, vacant and peaceful possession of the suit property more particularly described in Exhibit – A to the plaint without any attempts being made by Defendant Nos.1 and/or 2 or either of them and/or any person claiming through or*

under them from in any manner whatsoever to enter thereupon or otherwise disturb or interfere with the quiet, vacant and peaceful use, possession enjoyment or occupation of the suit property by the Plaintiffs.

(e) that this Hon'ble Court be pleased to issue a permanent order and injunction restraining Defendant Nos.1 and 2, their respective partners, servants, agents and/or any person claiming through or under them from making any attempts to enter the suit property or disturb or interfere with Plaintiffs' possession of the suit property described in Exhibit A to the plaint.

(f) that this Hon'ble Court be pleased to issue a mandatory order and injunction ordering and directing the Defendants to deliver up the original Power of Attorney dated 26/11/2002 to the Prothonotary & Senior Master, High Court, Mumbai for cancellation.

(g) that this Hon'ble Court be pleased to issue an order and injunction restraining the Defendants, their partners, servants, agents and/or any person claiming through or under them from in any manner acting upon and/or in pursuance of the Power of Attorney dated 26/11/2002 in any manner whatsoever being Exhibit - "G" to the plaint or otherwise.

(h) to issue an order and injunction restraining the Defendants, their partners, servants, agents and/or any person/s claiming through or under them from dealing with or transferring, alienating, creating any encumbrances, of whatsoever nature in respect of the suit property or part thereof in favour of any third party in pursuance of the Power of Attorney dated 26/11/2002 being Exhibit - "G" to the plaint or otherwise.

(i) that pending the hearing and final disposal of the suit, this Hon'ble Court be pleased to appoint the Court Receiver, High Court, Bombay or some other fit and proper person as Receiver of the suit property described in Exhibit – A hereto with all the powers under order XL Rule 1 of the Code of Civil Procedure, 1908.

(j) that pending the hearing and final disposal of the suit, this

Hon'ble Court be pleased to issue an order and injunction restraining the Defendants, their respective partners, servants, agents and/or any person claiming through or under them from in any manner acting upon and/or in pursuance of the Power of Attorney dated 26/11/2002 in any manner whatsoever being Exhibit – G to the plaint or otherwise.

k. that pending the hearing and final disposal of the suit, this Hon'ble Court be pleased to issue an order and injunction restraining the Defendants by themselves, their respective partners, servants and agents or any person claiming through or under them from in any manner dealing with, disposing of, selling, transferring, alienating or encumbering the suit property or part thereof or attempting to induct any party in the suit property or creating third party rights in the suit property or any part thereof and disturbing or interfering with Plaintiffs' possession of the suit property or any part thereof in any manner whatsoever;

l. for interim and ad-interim reliefs in terms of prayers (I), (j) and (k) above.

m. ……….

n. ……….”

8. In that suit, the Plaintiff preferred Notice of Motion No.199/2010 for an order of appointment of a Court Receiver, High Court, Bombay under order XL of the Code of Civil Procedure, 1908 and for restraining the Defendants, in any manner acting upon and/or in pursuance of the Power of Attorney dated 26/11/2002. Following are the prayers in Notice of Motion.

“a. that pending the hearing and final disposal of the suit, this Hon'ble Court be pleased to appoint the Court Receiver, High Court, Bombay or some other fit and proper person as Receiver of the suit property described in Exhibit – A hereto with all the powers under order XL Rule 1 of the Code of Civil Procedure, 1908.

b. that pending the hearing and final disposal of the suit this Hon'ble Court be pleased to issue an order and injunction restraining the Defendants, their partners, servants, agents and/or any person/s claiming through or under them from in any manner acting upon and/or in pursuance of the Power of Attorney dated 26/11/2002 in any manner whatsoever being Exhibit - "G" to the plaint or otherwise.

c. that pending the hearing and final disposal of the suit, this Hon'ble Court be pleased to issue an order and injunction restraining the Defendants by themselves, their respective partners, servants and agents or any person claiming through or under them from in any manner dealing with, disposing of, selling, transferring, alienating or encumbering the suit property or part thereof or attempting to induct any party in the suit property or creating third party rights in the suit property or any part thereof and disturbing or interfering with Plaintiffs' possession of the suit property or any part thereof in any manner whatsoever;

d. for ad-interim reliefs in terms of prayers (a) to (c) above."

9. In the meanwhile, in view of change of pecuniary jurisdiction of the Bombay City Civil Court, Mumbai, the suit was transferred to that Court for hearing on its own merits.

10. In that Notice of Motion No.199/2010 this court (Coram : Anoop V. Mohta, J.) by order dated 26/01/2010 granted ad-interim relief in terms of prayer clause (c) except bracketed portion. Subsequently, the said interim protection was continued till hearing and final disposal of the Notice of Motion. Thereafter, the Trial Court, by order dated 13/03/2015 dismissed the Notice of Motion. Hence, the present Appeal from Order.

11. The learned senior counsel for the Plaintiff submits that the impugned order passed by the Trial Court dated 13/03/2015 is against justice, equity and good conscience and same is liable to be set aside. He submits that as per the agreement for sale dated 26/11/2002 the Defendant No.1 was supposed to pay sum of Rs.3,75,000/- to each Plaintiff towards their $1/5^{th}$ share in the suit property. He submits that the Defendant No.1 has paid Rs.70,000/- on 18/07/2002, Rs.1,43,000/- on 26/11/2002 and Rs.75,000/- on 07/07/2007 i.e. total Rs.2,35,000/- only instead of Rs.3,75,000/- to each Plaintiff. He submits that the Trial Court failed to consider that for more than 7-8 years Defendant No.1 failed and neglected to comply with the agreement for sale dated 26/11/2002 and hence the Plaintiff constrained to file the suit for declaration and/or cancellation of said agreement for sale as well as Power of Attorney.

12. The learned senior counsel for the Plaintiff submits that without complying with the terms and conditions for agreement for sale dated 26/11/2002, the Defendant No.1, with *mala fide* intention, entered into development agreement dated 27/11/2006 with Defendant No.2 and handed over possession. He submits that the Trial Court failed to consider the fact that unless and until the property is duly transferred in favour of Defendant No.1, they have no right, title and interest to create third party right in respect of the suit property. He submits that the Trial Court failed to consider the fact that the payment receipt dated 16/01/2007 was not signed by the Plaintiff. He submits that the said receipt was executed by the Defendant Nos.4 to 6 for the benefit of Defendant No.1 in the present proceedings. He submits that neither

the Plaintiff received any cheque as per receipt cum letter dated 16/01/2007 nor received any payment to that effect.

13. The learned senior counsel for the Plaintiff submits that the Trial Court erred in coming to the conclusion that the Plaintiff is not entitled to any relief in the said Notice of Motion on the ground that the Defendant No.1 created third party right, title and interest in respect of the suit property on the basis of development agreement dated 26/11/2006. He submits that the Trial Court failed to consider the fact that the said development agreement dated 27/11/2006 was executed by Defendant No.1 in favour of Defendant No.2 without any authority and therefore, same is not binding on the Plaintiff.

14. The learned senior counsel further submits that the Trial Court failed to appreciate that the interim protection granted by this court on 27/01/2010 was in force when the Notice of Motion was decided finally. He submits that the Trial Court ought to have continued the said ad-interim relief till hearing and final disposal of the suit. He submits that the Trial Court failed to consider the fact that if interim protection is not granted in favour of the Plaintiff and if in between Defendant Nos.1 and 2 create third party right, title and interest in respect of the suit property, nothing will survive in the present litigation.

15. On the basis of above submission, the learned senior counsel for the Plaintiff submits that this Hon'ble Court be pleased to allow the Appeal from Order by setting aside the order passed by the Trial Court

on 13/03/20015 and allow the Notice of Motion No.199/2010 with costs.

16. On the other hand, the learned counsel for the contesting Defendants i.e. Defendant Nos.1 to 3 vehemently opposed the present Appeal from Order. He submits that the Trial Court, after considering the evidence on record, rightly held that the Plaintiff failed and neglected to make out any case for interim protection.

17. The learned counsel for Defendant Nos.1 to 3 submits that the Plaintiff has only 20% share in the suit property, whereas Defendant No.4 to 6 have remaining 30% share. He submits that the Defendant Nos.4 to 6 have not challenged and/or supported the Plaintiff in the present proceedings for cancellation of agreement for sale and the Power of Attorney both dated 26/11/2002. He submits that Defendant No.4 to 6 have not made any grievance about payment of full consideration as per agreement for sale dated 26/11/2002. He submits that the Defendant No.1, along with their letter/receipt dated 16/01/2007 forwarded the cheques to the Plaintiff as well as Defendant Nos.4 to 6. Defendant Nos.4 to 6 duly accepted the same and issued receipt stating that they received remaining consideration in full and final settlement. Whereas, the Plaintiff neither signed the said receipt nor returned those cheques to Defendant No.1.

18. The learned counsel for Defendant Nos.1 to 3 submits that though Defendant No.1 disclosed the Plaintiff that he already executed development agreement dated 26/11/2006 in respect of the suit

property in favour of Defendant No.2 and handed over vacant possession, the Plaintiff failed and neglected to challenge the development agreement dated 26/11/2006 in the present proceedings. He submits that the Trial Court rightly held that Defendant No.1 handed over vacant and peaceful possession of the suit property to Defendant No.2 and he is in possession of the same on the basis of development agreement dated 27/11/2006.

19. The learned counsel for the Defendant Nos.1 to 3 submits that the Income Tax Authority recorded statement of Defendant No.7 Navneet Mohanlal Ruparelia under section 131 of the Income Tax Act in June 2009, wherein it is specifically stated that in respect of the suit property the agreement for sale was executed on 26/11/2002 and owners have received consideration to that effect. He relies on question No.6 asked by the Income Tax Officer, which reads thus:

> *"Q.6 : Please give particulars of the payments made to Nalin P. Shah & others ?*
>
> *Ans : My firm M/s. Pratima Enterprises having 3 partners namely Shri Navnit M. Ruparelia, Shri Samir P. Ruparelia & Shri Suresh K. Joshi had purchased the above land for Rs.18.75 lakhs on 26.11.2002. At the time of negotiation we have paid Rs.85,000/- as earnest money to Shri nalin P. shah & Others. Again at the time of agreement we have paid Rs.7,15,000/- to Shri Nalin P. Shah & Others and the balance of Rs.10.75 lakhs has been paid subsequently. Also we have paid interest on delayed payment on the balance amount. The details of the payment will be sent to you."*

20. The counsel for Defendant Nos.1 to 3 submits that the Plaintiff admitted before the Income Tax officer about the sale of suit property and receipt of consideration to that effect. He further submits that the

Defendant filed their income tax returns after agreement for sale dated 26/11/2002, wherein Defendant no.1 specifically disclosed the purchase of the suit property and payment made thereon.

21. The learned counsel for the Defendant Nos.1 to 3 submits that if the Plaintiff is disputing about the receipt of the balance consideration in respect of their shares, they are ready and willing to deposit the said amount in the Trial Court and/or to pay the same to show their *bona fide*, though said amount was already offered by them to the Plaintiff. The learned counsel for the Defendant Nos. 1 to 3 submits that in any case, at present, the suit is pending for hearing and final disposal on its own merits. The Trial Court, after considering the evidence on record held that the Plaintiff failed to make out any case for an order of injunction restraining Defendant Nos.1 to 3 from developing the suit property and/or for appointment of Court Receiver. He submits that at this interim stage, this court should not interfere with the well reasoned order passed by the Trial Court. He submits that the objections raised by the Plaintiff in the present Appeal from Order can be considered by the Trial Court at the time of deciding the suit finally. Hence, there is no substance in the Appeal from Order. Same be dismissed with costs.

22. Heard both sides at length. I have gone through the copy of the plaint, documents on record and orders passed by this court from time to time.

23. The main dispute between the parties in the present proceeding

is that whether the Defendant Nos.1 to 3 can proceed to develop the suit property on the basis of agreement for sale dated 26/11/2002 and development agreement dated 27/11/2006. There is no dispute that the Plaintiffs have 1/5 share each in the suit property. They have received more than 75% of the sale proceedings. As per clause 2 of the agreement for sale, the Plaintiff failed to make out clear and marketable title and the certificate duly signed by their solicitor to the satisfaction of the purchaser and also a certificate under section 230A of the Income Tax Act. In spite of that Defendant No.1 made payment to the Plaintiff as well as Defendant Nos.4 to 6. It is to be noted that Defendant No.1, along with their letter cum receipt dated 16/01/2007 forwarded cheques of Rs.21,90,750/- i.e. balance amount of consideration and the interest @ 18% p.a. for the delayed payment. That receipt was duly signed by other co-owners except Plaintiff. This itself shows that the Defendant No.1 tendered full consideration of the suit property to the Plaintiff.

24. It is to be noted that though Defendant No.1 disclosed the fact that he already executed development agreement dated 27/11/2006 with Defendant No.2 in respect of the suit property and handed over vacant and peaceful possession, the Plaintiff failed to claim any relief for cancellation of the said development agreement dated 27/11/2006. There is not a single averment in the plaint and/or any relief in respect of the development agreement dated 26/11/2006.

25. It is to be noted that the Apex Court in the matter of ***Mohd. Mehtab Khan and Ors. Vs. Khushnuma Ibrahim Khan & Ors. (2013)***

9 SCC 221 held that any order passed under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908, the appellate court usually should not interfere, unless exercise of discretion by the Trial Court is palpably incorrect or untenable. Paragraph 20 to 22 read thus:

> *"20. In a situation where the learned Trial Court on a consideration of the respective cases of the parties and the documents laid before it was of the view that the entitlement of the Plaintiffs to an order of interim mandatory injunction was in serious doubt, the Appellate Court could not have interfered with the exercise of discretion by the learned Trial Judge unless such exercise was found to be palpably incorrect or untenable. The reasons that weighed with the learned Trial Judge, as already noticed, according to us, do not indicate that the view taken is not a possible view. The Appellate Court, therefore, should not have substituted its views in the matter merely on the ground that in its opinion the facts of the case call for a different conclusion. Such an exercise is not the correct parameter for exercise of jurisdiction while hearing an appeal against a discretionary order. While we must not be understood to have said that the Appellate Court was wrong in its conclusions what is sought to be emphasized is that as long as the view of the Trial Court was a possible view the Appellate Court should not have interfered with the same following the virtually settled principles of law in this regard as laid down by this Court in Wander Ltd. Vs. Antox India (P) Ltd. 1990 (Supp) SCC 727."*

> *"21. Para 14 of the aforesaid judgment which is extracted below would amply sum up the situation:*
>
> > *14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance*

and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in Printers (Mysore) Private Ltd. v. Pothan Joseph AIR 1960 SC 1156

9. These principles are well established, but as has been observed by Viscount Simon in Charles Osenton and Co. v. Jhanaton 1942 AC 130

".......The law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case."

The appellate judgment does not seem to defer to this principle."

"22. Though the above discussions would lead us to the conclusion that the learned Appellate Bench of the High Court

> *was not correct in interfering with the order passed by the learned Trial Judge we wish to make it clear that our aforesaid conclusion is not an expression of our opinion on the merits of the controversy between the parties. Our disagreement with the view of the Division Bench is purely on the ground that the manner of exercise of the appellate power is not consistent with the law laid down by this Court in the case of Wander Ltd.(supra). Accordingly, we set aside the order dated 09.10.2012 passed by the Appellate Bench of the Bombay High Court and while restoring the order dated 13.04.2012 of the learned Trial Judge we request the learned Trial Judge, or such other court to which the case may, in the mean time, have been transferred to dispose of the main suit as expeditiously as its calendar would permit with the expectation that the same will be possible within a period of six months from the date of receipt of this order. The appeal shall stand disposed of in terms of the above."*

26. Considering the fact that the Defendant No.1 paid substantial amount as per agreement for sale dated 26/11/2002, the Plaintiff and other owners handed over possession to Defendant No.1, the Defendant No.1 executed development agreement dated 27/11/2006 in favour of Defendant No.2 with possession and Defendant Nos.2 to 4 - the owners of the suit property to the extent of 60% share have not disputed the agreement for sale dated 26/11/2002 and receipt of full consideration, as the development agreement dated 27/11/2006 was not challenged by the Plaintiff in the present proceedings and the law declared by the Apex Court in the matter of Md. Mehtab Khan (supra), I do not find any reason to interfere with the well reasoned order passed by the Trial Court dated 13/03/2015, by which the Notice of Motion No.199/2010 preferred by the Plaintiff for various relief was dismissed.

27. Hence, the Appeal from Order stands rejected.

28. Consequently, Civil Application stands dismissed as infructuous.

29. At this stage, the learned senior counsel for the Appellant submits that the interim protection granted by the Trial Court i.e. parties to maintain status quo be continued for further period of 8 weeks. Same is vehemently opposed by the counsel for the Respondent Nos.1, 2, 8 and 9.

30. Considering the facts and circumstances of the present case, request for continuation of status quo order stands rejected.

(**K.K. TATED, J.**)