

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CIVIL JURISDICTION
CIVIL APPLICATION NO.3669 OF 2015
IN
FIRST APPEAL NO. 1174 OF 2015

Ashim Ajit Sengupta & Anr. ... Appellants/Applicants
Vs.
Dilip V. Kopikar & Anr. ... Respondents

Mr.H.S.Venegavkar for the Appellants/Applicants.
Mr.V.S.Bhadkamkar for Respondent No.1.

CORAM : MRS.MRIDULA BHATKAR, J.
DATE : NOVEMBER 20, 2015.

P.C.

. This appeal is directed against the Judgment and order dated 21st April, 2015 passed by the learned Judge of the Civil Court, Dindoshi. The appellant is the original Plaintiff who has filed the S.C. Suit No.1082 of 2008 for declaration and execution of registered agreement of sale under the MOFA and also for perpetual injunction restraining the Defendants i.e. Respondents and their agents from parting with the suit property. The suit was dismissed. Hence this appeal.

2. This application is moved for stay of the said order and also for injunction that the Respondents shall not create any third party interest in the Suit property i.e. Plot No.A501, Sai Sainik Apartment, 5th Floor, Pimpripada Road of General A.K.Vaidya Marg, Mumbai-97.

3. The learned Counsel for the Appellant submitted that the agreement of sale was registered and the consideration fixed for the sale was Rs.20 Lacs out of which Rs.2 Lacs was paid towards earnest money by cheque. However, as per the said agreement he was to pay stage-wise amount, as 90% construction was completed.

4. The learned Counsel submitted that during the pendency of the Suit injunction granted at ad-interim stage continued and motion was disposed alongwith disposal of the suit, which was disposed of in April, 2015. However, thereafter there is no order of injunction. The learned Counsel submitted that today the appellant is ready to pay the entire amount of Rs.18 Lacs alongwith interest to the Respondent No.1 and he prays for prayer clause (c) in the application.

5. The learned Counsel for the Respondent No.1 is present. He submitted that the appellant has breached the terms and conditions of the agreement. The money was not paid as agreed and, therefore, after 7 months i.e. in the year 2008, the Respondent No.1 terminated the said contract.

6. It is informed by the learned Counsel for the Respondent that 4 weeks back the Respondent No.1 has let out the impugned flat on leave and licence to the third party, as already third party interest is created when there was no injunction.

7. The learned Counsel further submitted that licensee by name Pankaj Sinha is presently occupying said premises for a period of 11 months.

8. As already a third party interest is created 4 weeks back i.e. on or about first week of November, 2015, it is proper to pass the following order.

- a) Licensee/the Respondent shall not create further third party interest or part with the possession of the suit property after 11 months i.e. the period of leave and liscence agreement gets over. Said licensee shall not continue after 11 months without leave of the Court. The party will have to come before Court for further orders.
- b) Civil Application disposed of.

(MRS.MRIDULA BHATKAR, J.)