

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

WRIT PETITION NO.9620 OF 2015

M/s. Sharda Enterprises

.. Petitioner

Versus

Shri. Nandalal D. Gupta and others

.. Respondents

Mr. A. B. Tajane, for the Petitioner.

CORAM : R.M. SAVANT, J.

DATE : 12th OCTOBER, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the order dated 18.03.2015 passed by the Learned District Judge-15, Pune, by which order the Appeal in question being Misc. Civil Appeal No.85 of 2014 came to be dismissed and resultantly, the order dated 21.06.2013 passed by the Learned 6th Joint Civil Judge, Senior Division, Pune, came to be confirmed.

2. The suit in question has been filed by the Plaintiffs for declaration and perpetual injunction. The subject matter of the suit is plot bearing S/P-109 (part) in Pimpri Industrial Area of the Maharashtra Industrial Development Corporation. The said plot admeasures 1600 sq. mtrs. and has been shown in the map annexed with the plaint by

alphabetes A to H. It is the case of the Plaintiffs that they along with Defendant No.1 i.e. Respondent No.1 formed an Condominium known as “Sainath Apartment Condominium”. It is the case of the Plaintiffs that the suit plot is adjacent to the said “Sainath Apartment Condominium”. It is the further case of the Plaintiffs that they along with Defendant No.1 required more premises for expansion of their business. It is the case of the Plaintiffs that they paid an amount of Rs.1,06,000/- to the Defendant No.1 for initial expenses for the process of the application for the plot in question. It is the case of the Plaintiffs that sometime in the year 2009 they found construction being carried out in the plot in question. It is further the case of the Plaintiffs that they made inquiries with the Defendant No.1 who gave evasive replies and ultimately on making inquiries with the MIDC they found that the Defendant No.1 had already got the suit plot allotted in his name by defeating the legal rights of the Plaintiffs. It was their case that the Defendant No.1 was acting in collusion with the MIDC officials. It is further the case of the Plaintiffs that they acquired knowledge that the Defendant No.1 has executed a further Transfer Deed in favour of the Defendant No.2. It is in the said circumstances that the Plaintiffs were constrained to file the suit in question for declaration and perpetual injunction.

3. In the suit, the Plaintiffs filed an application for temporary

injunction Exh.5. The Defendant No.1 filed his reply to the application for temporary injunction and denied the case of the Plaintiffs. It was denied by the Defendant No.1 that there was any agreement between the Plaintiffs and him to purchase the plot jointly. The Defendant No.1 denied the contentions of the Plaintiffs in toto and prayed for rejection of the application for temporary injunction. The Defendant No.2 i.e. MIDC filed its reply and submitted that the suit plot was allotted in the name of Defendant No.1 for the total consideration of Rs.67,14,700/- and accordingly Defendant No.2 handed over possession. The Defendant No.2 in its reply placed on record that construction has been carried out in the suit plot with its prior permission as it is the planning authority. The Defendant No.2 further contended that the construction has been carried out and completed, in respect of which the MIDC has granted Completion Certificate. The Defendant Nos.3 and 4 filed their reply and stated that the acts done by them are in good faith and that there is no collusion between the Defendant No.1 and Defendant Nos.3 and 4 as alleged by the Plaintiffs. The Trial Court considered the said application and having regard to the fact that the Defendant No.1 has paid the entire consideration of Rs.67,14,700/- and that the agreement was entered into between MIDC and Defendant No.1 and that the plans have been approved by the MIDC and also Completion Certificate has been granted

to the Defendant No.1, rejected the application. The Trial Court whilst rejecting the application observed that though it is the case of the Applicants that they have paid an amount of Rs.1,06,000/- to the Defendant No.1 as initial expenses, the Plaintiffs have not produced any material on record in support of the said case. The Trial Court therefore held that in the absence of such documents, it would not possible to accept the theory put up by the Plaintiffs that the consent letter has been forged by the Defendant as alleged by the Plaintiffs. The Trial Court therefore held that the Plaintiffs have not made out prima-facie case for grant of the discretionary relief of injunction and accordingly rejected the application by its order dated 21.06.2013.

4. The aggrieved Plaintiffs carried the matter in Appeal by filing Misc. Civil Appeal No.85 of 2014. The Lower Appellate Court on a reappraisal of the material on record and especially having regard to the fact that the plot was allotted in the name of the Defendant No.1 as also the payment of Rs.67,14,700/- has been made by the Defendant No.1 and that the Plaintiffs have not produced any document to show that they have contributed the said sum of Rs.1,06,700/- towards the initial expenses and since the construction was already complete did not deem it appropriate to interfere with the order passed by the Trial Court. In so far as the alleged forgery is concerned, both the Courts below have held that

the said aspect can be gone into at the trial of the suit and could not be decided at the said interim stage. Hence, both the Courts below have not deemed it fit to exercise discretion in favour of the Plaintiffs. In the light of the concurrent orders passed by the Courts below, no case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

5. Needless to state that the observations made in the impugned order or the instant order are only for consideration of the application for temporary injunction. The suit would undoubtedly be tried on its own merits and in accordance with law.

[R.M. SAVANT, J]