

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

CIVIL APPLICATION NO.2320/2014
IN
FIRST APPEAL NO.1062/2014

Bharat Petroleum Corporation Ltd. ... Applicant

Vs.

Videocon Properties Ltd. ... Respondent

Mr. G. S. Godbole with Prantik Mujumdar i/b. M/s. M. P. Savla & Co.
for the Applicant.

Mr. Daniyar Madon, Senior Advocate with Ms.Neeta Rajda i/b. M/s.
DSR Associates for the Respondent.

CORAM : K. K. TATED, J.
DATE : JULY 15, 2015

P.C.:

1. Heard.
2. This Application is preferred by the Plaintiff for stay of the operation and implementation of the impugned decree dated 11/06/2013 passed by the Bombay City Civil Court, Mumbai in S.C.Suit No.5772/2005 (High Court Suit No.191/2005) dismissing the Plaintiff's suit for declaration that the writing arrived at as recorded by Minutes dated 14/03/2001 along with letter dated 19/01/2002 and letter dated 26/03/2004 for specific performance of agreement for sale and also for continuation of status quo order passed by the Trial Court.

3. The learned counsel for the Plaintiff submits that by minutes of meeting dated 14/03/2001 it was agreed between the parties that the Plaintiff will purchase the suit property admeasuring 9342 sq.ft. @ Rs. 525/- per sq.ft. and additional area admeasuring 1300 sq.ft. at the same rate. The points agreed between the parties are as under;

- a) The aforesaid leasehold plot with additional area would be sold by Videocon Properties Ltd. and purchased by Bharat petroleum Corporation Ltd. (BPCL) at a price of Rs.525/- (Rupees Five Hundred Twenty Five only) per sq.ft. The additional area admeasuring 1300 sq.ft. (approximately) will be sold to BPCL after the joint verification by both the parties and the final sale price will be depending on the actual measurement at the rate of Rs.525/- per sq.ft.
- b) The stamp duty and registration charges would be born by BPCL in addition to the aforesaid price.
- c) The aforesaid purchase is subject to clear title being made by Videocon Properties Ltd.
- d) The aforesaid purchase is also subject to approval of BPCL management.
- e) The full sale price would be paid upon execution and registration of sale deed in a form approved by BPCL.
- f) The parties will cooperate with each other in obtaining the necessary statutory clearance and expediting the registration of sale deed, preferably within four months.

4. The learned counsel for the Plaintiff submits that thereafter the Defendant wrote letter dated 19/01/2002 to the Plaintiff stating that it is not possible for them to sell an additional land of 1300 sq.ft. as desired by the Plaintiff. He submits that thereafter, the Plaintiff, by their letter dated 26/03/2004 informed the Defendant that they ready

and willing to purchase the remaining plot admeasuring 9340 sq.ft. as agreed between the parties. He submits that as the Defendant failed and neglected to act as per the minutes of meeting dated 14/03/2001 they filed S.C.Suit No.5772/2005.

5. The learned counsel for the Plaintiff submits that during pendency of the suit, there was an order of status quo passed by this court in Appeal from Order (ST) No.26747/2013 dated 19/10/2013. He further submits that thereafter the matter carried to Supreme Court wherein vide order dated 04/04/2014 in SLP, the Supreme Court directed the Trial Court to dispose off the suit as early as possible directing the parties to maintain status quo. He submits that though the Plaintiff was ready and willing to perform their part of agreement, the Trial Court erred in coming to the conclusion that the Plaintiff was not ready and willing to perform their part of contract. He further submits that even the Trial Court answered issue No.1 and 2 in negative. Those issues are as under:

1	Whether Plaintiff proves that agreement/minutes dated 14/03/2001 is valid, subsisting and binding on the Defendants?	Negative
2	Whether Plaintiff proves that they were ready and willing to perform their part of contract under the agreement ?	Negative

6. The learned counsel for the Plaintiff submits that if during pendency of the present appeal, the Respondent Defendant creates third party right, title and interest in respect of the suit property, nothing will survive in the First Appeal. He further submits that in the

interest of justice, this Hon'ble Court be pleased to stay the operation and implementation of the impugned decree dated 11/06/2014 and continuing the status quo order as granted by this court in Appeal from Order No.1910/2013.

7. On the other hand, the learned senior counsel for the Defendant vehemently opposed Civil Application. He submits that admittedly, as on today, the suit filed by the Plaintiff for specific performance of agreement is dismissed and therefore there is no question of granting any relief in favour of the Plaintiff and restraining the Defendant from creating any third party right, title and interest and /or to maintain status quo as of today. He submits that in minutes of order dated 13/03/2001, it was specifically stated that the Plaintiff had to obtain approval from BPCL Management for this transaction. He submits that the Plaintiff failed to place on record the approval given by the BPCL Management to this transaction. He further submits that the Trial Court rightly held that the Plaintiff was not willing to perform part of their obligations. He submits that the Plaintiff failed and neglected to clear their lease amount for more than 20 years. Hence, they issued letter dated 24/02/2004 calling upon the Plaintiff to handover vacant and peaceful possession of the suit premises. This itself shows that the Plaintiff was not ready and willing to perform the transaction.

8. The learned senior counsel for Defendant submits that the Defendant filed TE & R suit No.24/29 of 2005 in the Small Causes Court at Mumbai for vacant and peaceful possession of the suit premises. He submits that the Trial Court by decree dated 23/07/2008

directed the Plaintiff to handover vacant and peaceful possession of the suit property to the Defendant. That decree was challenged by the Plaintiff in this court as well as the Supreme Court. This court, as well as, the Supreme Court rejected the Plaintiff's appeal. Thereafter the Plaintiff handed over possession of the suit premises on 20/02/2013.

9. The learned senior counsel for Defendant submits that Defendant in their affidavit dated 07/05/2014 filed in Bombay City Civil Court, Mumbai in Suit No.5772/2005 categorically disclosed that the Defendant had already created third party right, title and interest in respect of the suit property on 23/07/2013 in favour of the M/s. Madhuban Motors Pvt. Ltd. and accepted sum of Rs.3 crores and put them in possession thereafter. He submits that in spite of this disclosure by them in affidavit dated 17/05/2014 till today, the Plaintiff has not made any Application for joining the subsequent purchaser in the present proceedings. He submits that when they created third party right, title and interest on 31/07/2013, on that day, there was no restraining order against them to do so. He submits that in view of the above mentioned facts and the third party right is already created in the suit premises, there is no question of allowing the Civil Application either in terms of prayer clause (a) or (b). He submits that Civil Application be dismissed with costs.

10. Heard both sides at length. In the present proceedings, the suit filed by the Plaintiff for specific performance of contract was dismissed by the Trial Court. As per the minutes of meeting date 14/03/2001, the Plaintiff has not made any averments in pleading that the

Management of the BPCL granted approval to the said deal. Apart from that the Defendant already created third party right in respect of the suit premises on 07/05/2014 and as on today, M/s. Madhuban Motors Pvt. Ltd. - subsequent purchaser is in possession of the suit premises. Hence, if any order is passed in the present Civil Application, that will affect the right, title and interest of third party who is not before this court. In any case, the said transaction is subject to outcome of the present appeal. Considering these facts, I am of the opinion that the Applicant Plaintiff has not made out any case for allowing the Civil Application. Same is rejected.

11. At this stage, the learned counsel for the Applicant Plaintiff seeks continuation of the status quo granted by this court earlier. Same is vehemently opposed by the learned senior counsel for Respondent. It is to be noted that in the present proceedings, the Defendant has already created third party right, title and interest on 23/07/2013. In spite of that the Plaintiff has not joined the subsequent purchaser as party in the present proceedings. Considering this subsequent development, I do not find any reason to continue the earlier status quo order. Hence, request is rejected.

(K.K.TATED,J.)