

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION STAMP NO.22397 OF 2015**

**M/s. Manoj Enterprises,
Through it Proprietor
Manoj Balchand Desai : Petitioner
versus
Smt. Chandrabai Ambarnath Mhatre & ors. : Respondents.**

**Mr. Vishal Kanade a/w Mr. Mavlik Vora i/by M/s. Pramodkumar & Co. for
the Petitioner.**

**CORAM : R. M. SAVANT, J.
DATE : 31st August 2015**

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 2/7/2015 passed by the learned Principal District Judge, Raigad Alibag by which the Appeal filed by the Respondent Nos. 1 to 3 i.e. the original Plaintiffs came to be partly allowed and the directions as contained in clauses 2 to 4 of the operative part of the order came to be issued. In so far as clause (2) is concerned, by the said clause the Respondent No.5 i.e. the Petitioner herein was directed to give a fresh undertaking within fifteen days in respect of flat No.704 on the 7th floor in B Wing admeasuring 985 sq.ft. to the effect of not creating third party interests in respect of the said flat pending the suit. In so far as clause (3) is concerned, by the said clause the Respondent No.5 was directed to deposit an amount of Rs.60,00,000/- in the Trial Court and, the Trial Court was directed to invest the same in a Fixed Deposit for a period of five years. The said arrangement was made pending the suit. The Petitioner is

the original Defendant No.5 who aggrieved by the direction issued vide clause (3) of the impugned order has filed the instant Petition.

2 The Respondent Nos. 1 to 3 herein are the original Plaintiffs who have filed the suit in question against the Defendant Nos.1 to 4 inter alia for cancellation of heirship certificate issued in Misc. Application No.319 of 2004, for declaration of ownership rights and for permanent injunction. The Plaintiffs are the heirs of one Godibai Ragho Mhatre and the Defendant Nos. 1 to 4 are the heirs of one Janardan Hari Thakur. It seems that the Plaintiffs and the Defendant Nos. 1 to 4 are claiming through a common ancestor on the basis of which the Plaintiffs lay a claim to the extent of 50% share in the plot of land in question. It appears that the original owner was one Hari Janu Thakur who owned lands at village Ulve, Tal. Panvel which were the subject matter of acquisition for the Navi Mumbai Project. In terms of the scheme for rehabilitation the heirs of the said Hari Janu Thakur were entitled to allotment of land under the scheme known as 12.5% scheme from the City and Industrial Development Corporation ("the CIDCO" for short). Accordingly Plot No.91 admeasuring 1050 sq.mtrs in Sector 20 Ulve Nod was allotted to the Respondent No.4 - Pralhad Janardan Thakur by the CIDCO. The bone of contention between the parties is therefore the said plot of land. It appears that the Defendant Nos. 1 to 4 entered into an agreement with the Defendant No.5 pursuant to which a Tripartite Agreement was executed between the Defendant

Nos.1 to 4, the Defendant No.5 and the CIDCO as a lessor. It is pursuant to the said Tripartite Agreement that the Defendant No.5 i.e. the Petitioner herein undertook the development of the plot and by the time the instant suit i.e. Special Civil Suit No.867 of 2012 was filed, 56 flats in the 7 storeyed building put up by the Defendant No.5 were already sold. It seems that during pendency of the suit, occupation certificate was also issued.

3 In the Trial Court i.e. the Court of the learned Civil Judge, Senior Division, Panvel an application for temporary injunction came to be filed by the Plaintiffs seeking an injunction against the Defendants from creating third party rights in respect of the plot of land in question. The said application came to be replied on behalf of the Defendants.

4 The Trial Court considered the said application and having regard to the fact that the suit came to be filed, much after the construction had progressed substantially and for which no plausible explanation was given by the Plaintiffs, did not deem it appropriate to exercise discretion in favour of the Plaintiffs and accordingly rejected the application filed by the Plaintiffs vide its order dated 4/8/2014. However, before the Trial Court a statement came to be made on behalf of the Defendant No.5 that it would give an undertaking that to protect the Plaintiffs' interest, it would not deal with one remaining flat i.e. flat No.704 admeasuring 985 sq.ft. which according to the Defendant No.5 was

of the value of Rs.42,50,000/- . The Trial Court therefore took the said aspect into consideration whilst rejecting the application for temporary injunction.

5 The Plaintiffs aggrieved by the said order dated 4/8/2014 challenged the same by way of Misc. Civil Appeal No.102 of 2014. The Lower Appellate Court as indicated above by the impugned order dated 2/7/2015 partly allowed the Appeal and has issued the directions as contained in clauses 2 to 4 of the operative part of the impugned order. The Lower Appellate Court though endorsed the view of the Trial Court in so far as refusal of injunction to the Plaintiffs is concerned, however, was of the view that the Plaintiff's' interest pending the suit would have to be protected. This was probably on the ground that if the suit is to be decreed, the Plaintiff should not be left with a paper decree. The Lower Appellate Court therefore, apart from the undertaking in respect of flat No.704, has also directed the Defendant No.5 to deposit an amount of Rs.60,00,000/- in the Panvel Court which is to be kept as security pending the suit to take care of the Plaintiffs' interest if ultimately the Plaintiffs succeed in the suit. The Lower Appellate Court relied upon the judgment of the Apex Court reported in 2008 (4) ALL MR 932 in the matter of Mandali Ranganna and ors. v/s. T Ramchandra & ors. As indicated above it is the said order dated 2/7/2015 which is taken exception to by way of the above Petition.

6 The learned counsel appearing on behalf of the Petitioner i.e. the Defendant No.5 the Developer would contend that once the Trial Court had refused to exercise discretion, the Lower Appellate Court had erred in interfering with the order passed by the Trial Court to the extent of directing the Defendant No.5 to comply with the directions in terms of the directions as contained in clause (3) of the operative part of the impugned order i.e. the direction to deposit the amount of Rs.60,00,000/- . The learned counsel would contend that the Plaintiffs' interest is adequately protected by virtue of the undertaking given on behalf of the Defendant No.5 to the extent of not dealing with the said flat No.704 pending the suit.

7 In the instant case it is required to be noted that the Trial Court has refused to exercise discretion having regard to the length of time at which the suit in question was filed by the Plaintiffs i.e. much after the construction on the plot of land had progressed substantially. The consideration for grant of injunction in such a case would obviously have to be different than the consideration for protecting the Plaintiffs right pending the suit. The Plaintiffs obviously on account of the delay would not be entitled to the exercise of discretion by way of temporary injunction being granted to stay the construction as the construction was virtually complete but that would not mean the Plaintiffs' rights are not required to be protected pending the suit. It is required to be noted that the Plaintiffs had claimed that 14 flats be

earmarked pending the suit so as to protect the Plaintiffs' rights. The Defendant No.5 has made a statement only in respect of one flat i.e. flat No.704 admeasuring 985 sq.ft which according to the Defendant No.5 is worth Rs.42,50,000/-. The learned counsel appearing for the Defendant No.5 i.e. the Petitioner herein Shri Kanade states that save and except the said flat, the other flats have been sold. It is in the said context the Lower Appellate Court has directed the Defendant No.5 to make a deposit of Rs.60,00,000/- so that same would take care of the Plaintiffs' interest pending the suit, and that in the event the Plaintiffs succeed then same would take care of the decree that would be ultimately passed in favour of the Plaintiffs. In my view, the Lower Appellate Court has rightly balanced the equities between the parties pending the suit. Though as indicated above the Defendant No.5 is aggrieved by the directions as contained in the operative part of the impugned order i.e. to deposit Rs.60,00,000/-, the Defendant No.5 is not in a position to provide security by way of other flat or flats and, it is in the said circumstances that the direction to deposit Rs.60,00,000/- cannot be taken exception to. Hence no case for interference in the writ jurisdiction of this Court is made out. The above Writ Petition is accordingly dismissed. However, at the request of the learned counsel for the Petitioner time to deposit the said amount of Rs.60,00,000/- is extended up to 10th September 2015. No further extension would be granted.

[R.M.SAVANT, J]