IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (STAMP) NO.24983 OF 2015

Cogent Enterprises Ltd. Company and others .. Petitioners
Versus
Shri. Vijay Kumar Jagdishray Chawala .. Respondent

Mr. A. S. Khandeparkar i/by Ms. Mansi S. Modi, for the Petitioners.
Mr. Saurabh Butala i/by Mr. Harshad Bhadbhade, for the Respondent.

CORAM : R.M. SAVANT, J.
DATE : 7th OCTOBER, 2015

P.C.

1. The Writ Jurisdiction of this Court under Article 227 of the Constitution of India is invoked against the order dated 26.08.2015 passed by the Learned 9th Joint Civil Judge Senior Division, Pune, by which order the Petitioners i.e. Defendant Nos.1 to 5 were granted leave to defend on the condition that they submit a bank guarantee for the sum of Rs.1,51,26,000/-.

2. The suit in question being Special Summary Suit No.25 of 2015 is filed for recovery of an amount of Rs.1,51,26,000/- against the Petitioners herein i.e. Defendant Nos.1 to 5. A Memorandum of Understanding ("MOU" for short) dated 06.07.2011 was entered into

between the Plaintiff and the Defendant No.1 which is an entity involved in the development of properties. By the said MOU, the Plaintiff had agreed to purchase two Villas in the complex known as "Mystica Twin Villas" at Lonavala. The consideration for the said two Villas was Rs.1,50,00,000/-. It is an undisputed position that the Plaintiff has paid an amount of Rs.1,00,00,000/- in terms of the payments which are reflected in paragraph No.5 of the plaint. It appears that the process of construction of the said Villas had progressed substantially. However, it seems that the construction and especially the front elevation was not to the liking of the Plaintiff. On account of which differences arose between the Plaintiff and the Defendant No.1, as a consequence of which, it is the case of the Plaintiff that the said MOU or the agreement was revoked/cancelled and the Defendants agreed to return an amount of Rs.1,65,81,000/-. The additional amount of Rs.65,81,000/- was as and by way of compensation on account of the rise in prices which took place in the interregnum. The said writing is dated 18.12.2013, in which writing the eight cheques for the said amount of Rs.1,65,81,000/- have been mentioned. The factum of agreement being revoked/cancelled can also be seen from the reply which was given by the Defendants to the notice issued on behalf of the Plaintiff after the cheques bounced. The instant suit was therefore founded on the agreement dated 18.12.2013 pursuant to which the said eight cheques mentioned therein for Rs.1,65,81,000/- are mentioned. However, in the suit as indicated above, the substantive relief sought is for recovery of an amount of Rs.1,51,26,000/-. The Plaintiff applied for Summons for Judgment in the said suit. On the said summons for judgment being served on the Defendants, the Defendants filed an application for leave to defend. The Defendants questioned the said agreement dated 18.12.2013 on the ground that the same has not been properly stamped and that the same has been executed by its director Mr. Girimon Pattupara Thankappan i.e. the second Petitioner herein and that the action has not been endorsed by the Petitioner No.1 as having been issued on its behalf. The Trial Court considered the said summons for judgment and as indicated above has by the impugned order granted conditional leave by directing the Defendant Nos.1 to 5 to furnish a bank guarantee in the sum of Rs.1,51,26,000/- which is the suit claim.

3. The Trial Court in so far as the agreement dated 18.12.2013 is concerned, observed that the nature of the said document could be decided in the suit. The Trial Court further observed that there is no doubt about the fact that an amount of Rs.1,00,00,000/- has been paid by the Plaintiff to the Defendant No.1 company pursuant to the said MOU dated 06.07.2011 which MOU has been revoked/cancelled mutually and as can be seen from the reply of Shri. Rohidas Bhoir who is the Defendants

advocate. Since the said eight cheques were issued in discharge of the liability of the Defendant No.1 towards the Plaintiff and since the said cheques have been dishonoured, the Trial Court was of the view that the Defendant Nos.1 to 5 could be granted conditional leave to defend and has accordingly by the impugned order directed the Defendants to furnish bank guarantee in the sum of Rs.1,51,26,000/-. As indicated above, it is the said order dated 26.08.2015 which is taken exception to by way of the above Petition.

4. The Learned Counsel appearing on behalf of the Petitioners/ Defendant Nos.1 to 5 Mr. A. S. Khandeparkar would contend that the agreement dated 18.12.2013, as well as the manner in which the said document was got executed from the Defendant No.2 raises triable issues in the suit and therefore the Defendants are entitled to unconditional leave to defend.

5. Per contra, the Learned Counsel Mr. Saurabh Butala appearing for the original Plaintiff/Respondent would support the impugned order. The Learned Counsel would contend that there is no dispute about the fact that the Plaintiff has paid an amount of Rs.1,00,00,000/- to the Defendant No.1 for purchase of the said two Villas pursuant to the MOU dated 06.07.2011. The Learned Counsel would

contend that in so far as the agreement dated 18.12.2013 is concerned, it is under the said agreement that the said eight cheques were issued which have not been honoured which has constrained the Plaintiff to file the suit in question. The Learned Counsel would endeavour to show that the Defendants agreed to compensate the Plaintiff the sum of Rs.65,00,000/- for the loss caused on account of the rise in prices.

6. Having heard the Learned Counsel for the parties, I have considered the rival contentions. In the instant case, there is no dispute about the fact that an amount of Rs.1,00,00,000/- (Rs. One Crore) has been paid by the Plaintiff to the Defendant No.1 as consideration for the two Villas at Lonavala. There also cannot be any dispute about the factum of the termination of the said MOU. As the said fact has been accepted on behalf of the Defendants which can be gathered from the reply of their advocate to the Plaintiff's notice. In so far as the repayment of the amount is concerned, as indicated above, a writing dated 18.12.2013 has been executed between the parties, by which the Defendant Nos.1 to 5 have forwarded eight cheques which are under the signature of the Defendant No.2 to the Plaintiff from his personal account. On the said cheques having been dishonoured that the suit came to filed under the summary procedure. The Trial Court as indicated above has observed that the nature of the document dated 18.12.2013 can be gone into at the stage of the

trial. However, since it is an undisputed position that the Plaintiff has paid an amount of Rs.1,00,00,000/- to be granted leave to defend to the Defendant Nos.1 to 5 albeit on the condition of the said Defendants being directed to furnish a bank guarantee in the sum of Rs.1,51,26,000/-. In the instant case, as indicated above, there can be no dispute about the fact that the Plaintiff has paid an amount of Rs.1,00,00,000/-. It is the case of the Plaintiff that the amount of Rs.65,81,000/- was being paid as and by way of compensation. Since the veracity of the agreement dated 18.12.2013 would undoubtedly be gone into at the trial of the suit, it would be contingent upon the same that the entitlement of the Plaintiff to compensation as allegedly agreed by the Defendant Nos.1 and 2 would depend. Since admittedly, the Plaintiff has paid an amount of Rs.1,00,00,000/- which fact is also not disputed by the Defendants at any time, in my view, it would be just and proper to modify the operative part of the impugned order to the extent of the amount in respect of which bank guarantee is required to be furnished. Hence, the amount of Rs.1,51,26,000/- appearing in the operative part of the impugned order in respect of which bank guarantee is directed to be furnished by the Defendant Nos.1 to 5, the same to be substituted by the amount of Rs.1,00,00,000/-. The operative part of the order would resultantly read thus :-

Defendant Nos.1 to 5 are allowed to defend, on condition that they be submit bank guarantee of Rs.1,00,00,000/- and also file their Written Statement within 15 days strictly.

7. However, the time granted by the Trial Court to furnish bank guarantee being already over, the Petitioners/Defendants are granted time up to 04.11.2015 to furnish the said bank guarantee. This is on the condition that the Petitioners/Defendant Nos.1 to 5 would not deal with the property in question for a period of six weeks. The Legal Adviser of the Petitioner No.1 i.e. Defendant No.1, Shri. Rohidas Bhoir is personally present in Court and states that as yet no third party rights have been created in respect of the two villas which were agreed to be sold to the Plaintiff. Statement accepted. Undertaking to the said effect to be filed by the Director of the Petitioner No.1 i.e. the Petitioner No.2 in this Court latest by 16.10.2015. If the undertaking is not filed as directed by the instant order, the benefit of the extended time would then not enure to the Petitioners. In the light of the above, the Petition to stand disposed of.

[R.M. SAVANT, J]

CERTIFICATE

Certified to be true and correct copy of the original signed Judgment/Order.