

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL (LODGING) NO.608 OF 2015

Baval Builders Private Ltd., Mulund, Mumbai		Appellant
V/s.		
Ganesh Lakhaji Chudasama		Respondent

Mr. R.D. Soni a/w. Mr. M.S. Shah, i/by
M/s. Shantilal & Co., for the Appellant.

Mr. Snehal Shah a/w. Ms. Dharmika Patel and
Mr. Manish Parekh, i/by M/s. Pumand & Co., for
the Respondent.

CORAM : V.M. KANADE &
DR. SHALINI PHANSALKAR-JOSHI, J.J.

DATE : 24TH AUGUST, 2015.

P.C. :

1. Heard Mr. Soni, learned counsel for the Appellant and Mr. Shah, learned counsel for the Respondent.

2. The Appellant is aggrieved by an order dated 23rd July, 2015, passed by the learned Single Judge of this Court, in Notice of Motion (Lodging) No.1464 of 2015 in Suit (Lodging) No.529 of 2015, whereby application made by the present Appellant for grant of ad-interim relief was refused.

3. The Plaintiff has filed Suit for specific performance of MOU dated 20th January, 2011 and for consequential reliefs thereto. In the said Suit, the Appellant/Applicant took out a Notice of Motion seeking an order of injunction restraining the Respondent from creating any third party rights in respect of the suit property. It is not disputed that the MOU has been executed by the parties on 20th January, 2011, however, Plaintiff's possession over the suit property has been disputed by the Defendant. Plaintiff's possession is stated to be in part performance of the MOU. Plaintiff has paid an amount of Rs.10,00,000/- during the time stipulated in Clause (1) of the MOU. In respect of Clause (2), it was agreed that the Defendant would execute certain documents in favour of the Plaintiff. The Respondent/Defendant not having executed the said documents, as contemplated under Clause (2) of the MOU, a notice dated 17th March, 2011 was issued. One of the conditions, which was required to be fulfilled by the Plaintiff, was that the reservation of land as 'private forest' was to be removed. It is the case of the Plaintiff that the said reservation is removed in the year 2015 and after that was done, the Defendant has tried to dispossess him and, therefore, he was constrained to file a Suit for specific performance of the MOU. It is submitted that the reasons given by the learned Single Judge for not granting ad-interim relief are incorrect. It is submitted that the learned Single Judge came to the conclusion that the

cause of action for filing the Suit has arisen after no reply was given to the notice dated 17th March, 2011. The learned Single Judge also observed that a duty was cast on the Plaintiff to get the property surveyed within three months, which condition was not complied with. It is submitted that the learned Single Judge, therefore, has erred in coming to the conclusion that the Suit not having been filed within three months from the date of the said notice, the Suit prima facie was barred by limitation and on that ground, the learned Single Judge has refused to grant ad-interim relief.

4. The learned Single Judge has also observed that the MOU is not sufficiently stamped. The learned counsel on behalf of the Appellant has pointed out, firstly, that since the said land was reserved as private forest in view of the Government circular, the MOU could not be registered, nor could registration be done in respect of the suit land, possession of which was already granted to the Plaintiff in part performance of the MOU and, therefore, registration under Section 53(A) of the Transfer of Property Act, which is required to be compulsorily registered under Section 17(1-A), could not be done.

5. It is submitted that the Plaintiff has, therefore, made out a prima facie case and shown his readiness and willingness to perform his part of the Agreement and, therefore, the Plaintiff is entitled to the ad-interim

relief. On the other hand, learned counsel appearing on behalf of the Respondent, submitted that various clauses of the MOU, mainly, Clauses 6, 9, 11, 12 and 21, were not complied with. It is submitted that the Suit was clearly barred by limitation, since the limitation period started running from the date of notice dated 17th March, 2011, as also, on account of non performance of various other clauses. It is submitted that the circular on which reliance is placed by the Plaintiff was not produced before the learned Single Judge. It is also submitted that there was no registration of agreement with regard to the right of claiming part performance under Section 17(1-A). It is submitted that, therefore, the learned Single Judge has justified in not granting ad-interim relief to the Plaintiff.

6. In our considered opinion, in the facts and circumstances of the case, the Plaintiff has clearly made out a ground for grant of ad-interim relief.

7. Normally, this Court, while exercising its appellate jurisdiction under the registration, does not interfere with the order of grant or refusal of ad-interim relief. However, in the given case, if we come to the conclusion that refusal of grant of ad-interim relief would lead to Appeal being rendered infructuous, we interfere with the order passed by the learned Single Judge. This Court is, thus, exercising its appellate jurisdiction by

interfering in the order passed by the learned Single Judge of this Court dated 23rd July, 2015, refusing to grant ad-interim relief to th Plaintiff, in view of the documents produced by the Appellant, which show that the reservation of the suit land as 'private forest' has been deleted on account of the efforts taken by the Plaintiff.

8. Hence, from the facts mentioned here-in-above, a case is made out by the Appellant for grant of ad-interim relief. We direct that the Respondent is restrained from creating any third party rights in respect of the property in question.

9. The Appeal is, accordingly, allowed. The hearing of the Notice of Motion is expedited.

10. The learned Single Judge shall decide the Notice of Motion expeditiously and shall not get influenced by the observations made by this Court while granting ad-interim relief in favour of the Plaintiff.

11. The Appeal is disposed of in the aforesaid terms.

[DR. SHALINI PHANSALKAR-JOSHI, J.]

[V.M. KANADE, J.]