

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

APPEAL AGAINST ORDER NO.71/2014

Nailesh s/o Fulchand Talati

..Versus..

Vasant s/o Vinayak Nanekar and others

AND APPEAL AGAINST ORDER NO.92/2014

Anil s/o Debulalji Agrawal

..Versus..

Nailesh s/o Fulchand Talati and others

 Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

Shri R.L. Khapre, Adv. for the appellant.

Shri G.G. Mishra, Adv. for the respondents 2 and 3.

Ms. B.P. Maldhure, A.G.P. for respondent no.5.(in A.O. No.71/2014)

Shri M. Anilkumar, Adv. for the appellant.

Shri R.L. Khapre, Adv. for the respondent no.1.

Ms. B.P. Maldhure, A.G.P. for respondent no.5.(in A.O. No.92/2014)

CORAM : Z.A. HAQ, J.

DATE : 9.2.2015

Heard Shri R.L. Khapre, the learned advocate for the appellant
 in A.O. No.71/2014, Shri M. Anilkumar, the learned advocate for the
 appellant in A.O. No.92/2014, Ms. B.P. Maldhure, the learned A.G.P.
 for respondent no.5 in both appeals and Shri G.G. Mishra, the learned

advocate for the respondents 2 and 3 in A.O. No.71/2014.

These two appeals can be decided by the common judgment as they arise out of the order passed by the trial Court partly allowing the application filed by the original plaintiff praying for temporary injunction and rejecting the prayer for mandatory injunction.

The appellant in A.O. No.71/2014 - original plaintiff has filed the civil suit praying for decree for specific performance of contract. During the pendency of the civil suit the land in respect of which the decree for specific performance was sought came to be acquired by the Maharashtra Industrial Development Corporation. According to the plaintiff the acquisition was not a compulsory acquisition but it was by agreement between the M.I.D.C. and the defendants 3 and 4. As per the contention of the defendants 3 and 4 the acquisition is as per Section 33(1)(2) of the Maharashtra Industrial Development Act. Be that as it may, in view of this subsequent development, the plaintiff

amended the plaint and prayed for decree for damages. The plaintiff filed an application praying for temporary injunction restraining the defendant no.4 from creating any third party right and interest in the suit property. The learned trial Judge by the order dated 5th October, 2009 restrained the defendant no.4 from transferring or creating third party interest in the suit property. It is the contention of the plaintiff that in spite of this order the suit property was surrendered in favour of the M.I.D.C. accepting the amount of compensation of Rs.24,75,000/-. It is the contention of the plaintiff that additional amount of Rs.28,05,010/- is to be disbursed by M.I.D.C. and, therefore, the plaintiff filed another application praying that the M.I.D.C. be restrained from disbursing the amount of Rs.28,05,010/- to the defendants 1 to 4. The plaintiff also prayed that the defendants 3 and 4 who had taken the compensation of Rs.24,75,000/- should be directed to deposit the amount in Court.

The learned trial Judge by the impugned order has restrained the M.I.D.C. from disbursing the amount of Rs.28,05,010/-. According to the plaintiff, the learned trial Judge has not considered the prayer for

grant of mandatory injunction and his prayer to that effect is impliedly rejected and therefore, he has filed A.O. No.71/2014.

The defendants 3 and 4 being aggrieved by the order passed by the learned trial Judge on 21st April, 2014 restraining the M.I.D.C. from disbursing the amount of Rs.28,05,010/- has filed A.O. No.92/2014.

The contention of the defendant no.4 is that the defendant no.4 has filed an application dated 2nd April, 2014 praying that the issue of jurisdiction raised by the defendant be tried as preliminary issue and, therefore, the learned trial Judge could not have granted temporary injunction till the decision of the civil suit. Shri M. Anilkumar, the learned advocate for the defendant has submitted that the provisions of Section 9A(2) of the Civil Procedure Code, as applicable to the State of Maharashtra, empowers the civil Court to grant mandatory injunction till the decision on the preliminary issue relating to jurisdiction of the Court and in such situation the Court cannot grant temporary injunction

till the decision of the civil suit.

After considering the submissions made by the learned advocates for the respective parties, I find that the learned trial Judge has not dealt with the prayer of the plaintiff seeking mandatory injunction directing the defendant no.4 to deposit the amount of compensation of Rs.24,75,000/- which is withdrawn by him in spite of the restraint order passed on 5th October, 2009. The learned trial Judge has recorded in paragraph no.16 of the impugned order that this is not an appropriate case which necessitates the grant of temporary mandatory injunction, however, no reasons are given in support of the conclusions. It is undisputed that the order dated 5th October, 2009 restraining the defendant no.4 from creating third party interest in the suit property operates and, therefore, the learned trial Judge is required to consider the legality and validity of the action of the M.I.D.C. in disbursing the amount of Rs.24,75,000/- and the entitlement of the defendant no.4 to withdraw the amount after

recording as to whether this amounts to creation of third party interest or not. It is established law that the conclusions should be supported by the reasons and if it is not so, the order cannot be sustained.

Similarly, I find that the learned trial Judge has granted temporary injunction restraining the defendant no.5 from disbursing the amount of Rs.28,05,010/- to the defendants 1 to 4 till the decision of the civil suit overlooking the application filed by the defendant no.4 for trying the issue of jurisdiction as preliminary issue which is pending for consideration.

In view of the above, I pass the following order :-

- (1) The order passed by the learned trial Judge on 21st April, 2014 granting temporary injunction restraining the defendant no.5 from disbursing the amount of Rs.28,05,010/- is maintained, however, it is directed that this order shall operate, if the learned trial Judge orders that the issue of jurisdiction has to be decided as preliminary issue, till

the decision on that issue. If the preliminary issue is decided by the learned trial Judge along with other issues, the temporary injunction order shall operate till the decision of the civil suit. The learned trial Judge shall pass appropriate orders in the matter after taking the decision as to whether the issue of jurisdiction has to be decided as preliminary issue.

(2) The learned trial Judge shall hear the parties and pass orders on the prayer of the plaintiff regarding the grant of mandatory injunction directing the defendant no.4 to deposit the amount of Rs.24,75,000/- which is withdrawn by him.

(3) The appeals are partly allowed in the above terms.

(4) In the circumstances, the parties to bear their own costs.

JUDGE