

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

APPEAL AGAINST ORDER NO.108 OF 2014

M/s Armaan Dream Homes Pvt. Ltd. Nagpur.

-vs-

Kadir Baig S/o Amir Baig & Anr.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri B. G. Kulkarni, Advocate for appellant.
Shri Mohammed Moin, Advocate for respondents.

CORAM : A.S.CHANDURKAR, J.
DATE : AUGUST 19, 2015

In view of notice for final disposal, the parties have been heard at length.

The appellant who is the defendant No.1 in Spl.C.S. No.1496 of 2011 is aggrieved by the interim order dated 04/09/2014 passed by the trial Court below Exhibit-38 to the extent it directs the suit property to be kept vacant till the suit is decided.

The respondent No.1 has filed suit for specific performance of agreement dated 26/06/2008 along with other ancillary prayers. In said suit, the respondent No.1 had initially moved an application at Exhibit-5 which was allowed on 08/05/2012. This order was challenged in A.O.No.67/2012 in which a pursis came to be filed by the present appellant undertaking not to create any third party interest and stating that the possession would continue with him. On the basis of said pursis, the appeal was disposed of on 04/09/2012.

Subsequently the respondent No.1 filed application

below Exhibit-38 praying that the appellant be restrained from demolishing or making any unauthorised construction in the suit property and also from creating third party rights. The trial Court by the impugned order allowed said application and restrained the appellant from demolishing the construction or changing its nature and also from delivering the possession of the same to any third party by keeping the suit property vacant.

Shri B. G. Kulkarni, learned counsel for the appellant submitted that the earlier undertaking dated 03/08/2012 was binding on the appellant and therefore the impugned order to the effect it granted temporary injunction from demolishing the construction, changing its nature and creating third party rights were acceptable to the appellant. He was only aggrieved by the direction to keep the suit property vacant during pendency of the suit. Referring to the reply dated 14/06/2014 filed before the trial Court and the statement in paragraph 4 thereof, it was submitted that the appellant was in actual possession and was occupying the same. He therefore submitted that to that limited extent the order of the trial Court deserves to be modified.

Shri M. Moin, learned counsel for the respondent No.1 supported the impugned order. It was submitted that after the earlier appeal was decided, the appellant again undertook demolition of the suit property and tried to change its nature. He was therefore constrained to move another application vide Exhibit-38. He therefore submitted that the trial Court was justified in passing the impugned order.

Perusal of the earlier pursis dated 03/08/2012 indicates that the appellant had undertaken not to create any third party interests and that the possession would remain with the

appellant. It was only because the appellant started altering the suit property that the application below Exhibit-38 came to be moved. Considering the reply filed by the appellant before the trial Court in which it is stated that the appellant was occupying the suit property and considering the interim order dated 29/09/2014 passed in the present appeal, the only direction that is required to be modified in the order passed by the trial Court is of keeping the suit property vacant. No prejudice would be caused to the respondent No.1 if the suit property is continued to be occupied by the appellant subject to final outcome of the suit.

Accordingly the following order is passed :

- (i) The order dated 04/09/2014 passed below Exhibit-38 in so far as it restrains the appellant from demolishing the construction, changing its nature and delivering possession to any third person is confirmed.
- (ii) As the appellant is occupying the suit property, the direction to keep the suit property vacant during pendency of the suit is set aside.
- (iii) The appeal is partly allowed in aforesaid terms and disposed of with no order as to costs.

JUDGE