

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

APPEAL AGAINST ORDER NO.143 OF 2014

M/s. Lalit Developers and Builders and ors

..vs..

Harshal S/o Ramakant Gaikwad and ors

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

Court's or Judge's order

Shri S.P. Kshirsagar, counsel for the appellants.

Shri R.V. Gaikwad, counsel for R-1.

Shri H.A. Tambat, counsel for R-3.

CORAM : A.P. BHANGALE, J.

DATE : JUNE 17, 2015.

Heard.

The appellants question grant of injunction against defendant Nos.1 to 5 in the pending Special Civil Suit No.645 of 2014 in the Court of learned Civil Judge Senior Division, Nagpur. It appears that the plaintiffs preferred the suit against the present appellants with a prayer to declare that agreement dated 15.10.2013 executed between plaintiffs and defendant Nos.1 to 4 is void and stands cancelled on the ground of failure of defendant Nos.1 to 5 to perform their part of the contract in the said agreement with a consequent relief that the defendants had no right and authority to carry out the construction on Plot No.1, bearing City Survey No.175, Fulsunge Layout, Bhamti; and permanent

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injunction was also sought that the third party interest should not be created by defendant Nos.1 to 5 with mandatory injunction against defendant Nos.1 to 5 to demolish the constructed structure made on the suit plot and to restore the same to its original condition.

It appears that learned trial Judge passed reasoned order below Exh.5 in the suit holding that the plaintiffs had *prima facie* case and balance of convenience is in their favour. They will suffer irreparable loss if injunction as prayed for is not granted in their favour. Thus, at interim stage having considered the facts on record learned trial Judge considering declaration sought that agreement is void and liable to be cancelled on the ground that defendant Nos.1 to 5 failed to perform their part of the contract in the agreement, it was *prima facie* observed by the trial Court that defendant Nos.1 to 5 had no right and authority to carry out the construction on the suit property without making payments of consideration to the plaintiffs as stipulated in the agreement. On this ground, considering the facts at *prima facie* stage, the trial Court was pleased to grant interim injunction.

Basically, when in a civil suit for declaration

to avoid the agreement in question, the plaintiffs have made out a *prima facie* case in respect of final prayers in the plaint, the trial Court in order to prevent further damage to the suit property can ensure by an order of injunction that no further construction activity on the suit property shall continue during the pendency of the suit when the trial Court is expected to examine merits of the real controversy in the suit. I had queried the appellant as to whether construction carried out in suit property was in accordance with sanctioned plan. It is replied that the documents are produced in the trial Court in respect of the sanctioned plan. Needless to say that if sanctioned plan is produced on the record and construction is carried out in accordance with law i.e. sanctioned plan the trial Court will certainly consider the legality of the action by developers or builders in the matter of construction of building on the suit property. However, when there is serious dispute between the parties pursuant to the alleged breach of the agreement, the trial Court would ensure that the parties are insisted upon compliance of the *prima facie* valid lawful agreement, if any, between them until final prayers are examined on merits. The decision of

the trial Court at interim stage to grant interim injunction in respect of further construction activities on the suit properties and also creation of the third party interest during the pendency of the suit is ordered which in the facts and circumstances appears just and proper.

Hence, no interference is warranted in exercise of appellate jurisdiction to disturb the order of the Court since the trial Court in face of the record can expeditiously examine the suit claim on merits by disposing of the suit as early as possible. The parties are expected to co-operate the trial Court for early disposal of the suit itself.

That being so, since the appeal is found without merits, the same is dismissed. Costs shall be costs in the cause.

JUDGE

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