

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

Appeal Against Order No. 4 of 2015

(Atul S/o Manohar Ingle Vs. Smt. Sushma W/o Bipin Tiwari)

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

Court's or Judge's Order

Shri Masood Shareef, Adv. for appellant
Shri S. K. Mishra, Adv. for respondent

CORAM: A. S. CHANDURKAR J.

DATED: 7-4-2015.

Admit.

Heard learned counsel for the
parties finally.

This appeal takes exception to the
order dated 8-11-2014 passed by the trial
court rejecting the application for grant of
temporary injunction seeking to restrain the
defendant from alienating the suit property.

The appellant is the original
plaintiff who claims that there was an oral
agreement for purchase of a open plot
admeasuring about 4000 sq.ft. on 7-9-2014.
According to the appellant, earnest amount of

Rs. 1,21,000/- was paid and balance consideration was to be paid within 30 days. Subsequently, on noticing that the defendant was disposing of the aforesaid property, a suit for specific performance for breach of said oral agreement came to be filed on 8-10-2014. In said suit, application for grant of temporary injunction seeking to restrain the defendant from alienating the suit property was filed.

The defendant filed her written statement and denied having entered into any oral agreement with the plaintiff. It was stated that on 27-9-2014, a public notice came to be issued on her behalf calling for objections in respect of an agreement for sale of aforesaid property. It was stated that the plaintiff had not responded to said notice.

The trial Court, after considering the respective cases, found that there was no evidence in the form of receipt to acknowledge payment of earnest amount. It was also

noticed that there was no response on behalf of the plaintiff to the public notice issued by the defendant. It therefore noted that in these circumstances, there was no concluded contract and hence refused to grant any temporary injunction.

Shri Shareef, learned counsel appearing for the appellant submitted that in view of the agreement between the parties, a public notice came to be issued on 8-9-2014 with the consent of the defendant. It was also submitted that earnest amount was paid to the defendant in the presence of one Shri Nagpal. However, the defendant did not issue any receipt. It was further submitted that the suit came to be filed immediately after noticing that defendant intended to alienate the suit property. He therefore submitted that with a view to protect the property from changing hands and for avoiding multiplicity of proceedings, the injunction ought to have been

granted. He further submitted that the trial Court by making various observations against the plaintiff has proceeded to adjudicate the merits of the case.

Shri Mishra, learned counsel appearing for the respondent opposed the aforesaid submissions. He stated that there was no oral agreement entered into between the parties. Even the public notice published at the behest of the plaintiff indicated that the plaintiff intended to purchase the suit property. There was no receipt for the amount of Rs. 1,21,000/- which is claimed to be the earnest amount. He also submitted that failure to raise any objection to the public notice issued by the defendant was a factor against the plaintiff.

I have considered the respective submissions and I have gone through the pleadings of the parties. The material on record indicates that though it is the case of

the plaintiff that there was an oral agreement with the defendant on 7-9-2014 and earnest amount of Rs. 1,21,000/- was paid, there is no receipt signed by the defendant available on record. Reliance is only placed on the affidavit of Shri Nagpal in that regard. Similarly, in absence of any response by the plaintiff to the public notice dated 27-9-2014 issued by the defendant, the stand taken by the plaintiff regarding existence of oral agreement dated 7-9-2014 becomes slightly doubtful. The trial Court while considering these aspects of the matter found that in absence of any material to indicate any concluded contract, there was no *prima facie* case in favour of the plaintiff. These findings recorded by the trial court cannot be said to be not based on material available on record. At this stage, there is only word against word so far as existence of oral agreement dated 7-9-2014 is concerned. Hence, it cannot be said that the trial Court

has erred in refusing to grant injunction to the plaintiff.

It must however, be noted that the trial Court imposed costs of Rs. 5,000/- on the plaintiff by holding that the suit has been filed without any basis and that the defendant has been compelled to fight the litigation. These observations could not have been made at an interlocutory stage in absence of evidence of the parties. The respective stands would have to be adjudicated after the evidence is led during the trial. Hence imposition of costs of Rs. 5,000/- at this stage was uncalled for in the facts of the present case.

Hence, the following order is passed.

ORDER

The order passed by the trial Court refusing to grant temporary injunction is maintained. However, imposition of costs of Rs. 5,000/- on the plaintiff is set aside.

It is clarified that the observations made by this Court and by the trial Court are only for considering the prayer for interim relief and the trial court should not be influenced by any observations made while deciding the civil suit on merits.

The appeal against order is disposed of in aforesaid terms with no order as to costs.

Pending civil application also stands disposed of.

JUDGE