IN THE HIGH COURT OF BOMBAY AT GOA.

APPEAL FROM ORDER NOS. 1 OF 2016 AND 9 OF 2016.

APPEAL FROM ORDER NO. 1 OF 2016.

M/s Shrison Realtors,
Sole proprietary concern,
represented by its sole Proprietor,
Mr. Manjunath Srinivas Pai Dukle,
s/o Srinivas Pai Dukle,
aged about 48 years,
married, businessman, having office at
G-4, Karishma Apartments,
near Cine Vishant, Aquem Alto,
Margao, Goa – 403 601. ....Appellant.

Versus

M/s. Costa and Company Pvt. Ltd.,
a Company incorporated under,
the Indian Companies Act, 1956,
under Corporate Identity no.45/G,
of 1965-66 with the Registrar of Companies
at Panaji, Goa, having office at
H. No.248, St. Joaquim Road,
Borda, P. O. Fatorda, Margao,
Goa – 403 602 through its Managing
Director Francisco Xavier Indra Da
Costa Azaredo, having office as above. ......Respondent.

Shri A. D. Bhobe, Advocate for the appellants.

Shri A. F. Diniz, Advocate for the respondents.

WITH

APPEAL FROM ORDER NO.9 OF 2016.

M/s. Costa and Company Pvt. Ltd.,
a Company incorporated under,
the Companies Act, 1956,
under Corporate Identity no.45/G,
of 1965-66 with the Registrar of
Companies at Panaji, Goa and
having office at H. No.248, St.
Joaquim Road, Borda, P. O.

Fatorda, Margao, Goa represented
hereinafter by its Director/Authorised
Signatory, Mr. Francisco Xavier Indra
da Costa Azaredo, major, H. N o. 248,
St. Joaquim Road, Bora, P.O.
Fatorda, Margao, Goa. .... Appellant.

Versus

M/s Shrison Realtors,
a sole proprietary concern,
through by its sole proprietor,
Manjunath Srinivas Pai Dukle,
son of Srinivas Pai Dukle,
major of age, businessman,
having its office at
G-4, Karishma Apartments,
near Cine Vishant, Aquem Alto,
Margao, Goa – 403 601. ....Respondent.

Shri A. F. Diniz, Advocate for the appellant.

Shri A. D. Bhobe, Advocate for the respondent.

Coram:- NUTAN D. SARDESSAI,J.

Reserved on:-6th May, 2016.

Pronounced on:-24th June, 2016.

JUDGMENT

Heard learned Counsel appearing for the respective parties.

2. Admit.

3. Shri A. F. Diniz, learned Advocate waives notice on

behalf of the respondents in Appeal from Order no.1/2016 and Shri A. D. Bhobe, learned Advocate waives notice on behalf of the respondent in Appeal from Order no.9/2016. These are appeals at the instance of the original plaintiffs and the defendants coming up for disposal by a common judgment. The parties would be referred to as the plaintiffs and the defendants for brevity's sake hereinafter in view of the two appeals filed by each of them assailing the same order passed by the trial Court securing the plaintiffs with the partial order of injunction while imposing certain conditions on them and the appeal of the defendants challenging the order securing the plaintiffs with the order of injunction.

4. Shri A. D. Bhobe, learned Advocate came to be heard on behalf of the plaintiffs who submitted that appeal was limited to the conditions attached to the injunction order in the plaintiffs' favour. He contended that there was no finding arrived at by the trial Court that the plaintiffs had no means and/or that its financial condition was precarious considering that they had paid a substantial amount of ₹9,00,00,000/- (Rupees nine crores only) to the defendants and that although they had taken all the steps to procure the permissions and the licences to undertake the construction under the agreement for development and sale, nonetheless no construction was possible due to the obstruction

and public outcry. He argued in the alternative that assuming for a moment that certain conditions could be attached to the grant of injunction in their favour, the trial Court could not fasten them with the liability to pay the interest and penalty and at the highest could hold them liable to pay the balance outstanding. He relied in **Sanjay Agarwal Vs. Beekalane Fabrics (P) Ltd. [2007(6) Bom.C.R. 695]**.

5. Shri A. F. Diniz distinguished the judgment in **S. Agarwal** (supra), adverted to the written arguments and contended at the outset that the plaintiffs having made an application to deposit the amount unconditionally, they were precluded from challenging the order in appeal. He adverted to the written synopsis placed on record, submitted that the document in question was inadequately stamped and was liable to be impounded in terms of Section 35 of the Stamp Act, 1899. He placed reliance in **Pemmada Prabhakar and another Vs. Youngmens Vysya Association and others [2015(5) SCC 355], Bhawana Arbind Bapat(Smt.) and another Vs Navneet Bhojraj Lakhotia and another [2016(1) Bom.C.R 512], Yasodammal and another Vs Janaki Ammal, [(1968) Madras 294], N. P. Thirugnanam Vs Dr. R. Jagan Mohan Rao [(1995) 5 SCC 115] and K. S. Vidyanadam Vs Vairavan[AIR 1997 SC 1751].**

6. Shri A. F. Diniz, learned Advocate further relied in **I.S. Sikandar(d) By Lrs Vs. Subramani and others [2013(15)SCC 27] Chand Rani(smt.) (Dead) by Lrs Vs Kamal Rani (smt) (dead) by Lrs, [(1993)1 SCC 519 and Shyamabai Shriram Sharma (since deceased) and ors Vs Ramkisan Prabhatilal Mittal [2008(suppl) Bom. C.R. 449]** in support of his case. Besides reliance was placed by him in **Swaran Salaria & Associates vs. Himalayan Heli Services Pvt. Ltd. [2015(3) Bom C.R.266]** before wrapping up his arguments that the power of attorney was not stamped in accordance with law. The Agreement of Sale could not be looked into in view of the bar under Section 35 of the Stamp Act and the remedy of injunction was barred under Section 41(e) of the Specific Relief Act, 1963.

7. Shri A. D. Bhobe, learned Advocate for the plaintiffs submitted in reply that it was not available to the defendants to raise the plea under Sections 33 and 35 of the Stamp Act, 1899 since it was not raised before the Trial Court. He distinguished the judgment in **Yasodammal** (supra) and submitted that Section 35 of the Stamp Act, 1899 would not apply. It was not the case that the plaintiffs had deliberately not carried out construction but they were prevented from circumstances

beyond their control including the obstruction by the public from carrying on the construction activities. On their part, they were always ready and willing to perform their part of the contract and they had even paid an amount approximately ₹7,00,00,000/- (Rupees seven crores only) to the defendants apart from handing over the post dated cheques in their favour. Shri A. D. Bhobe, learned Advocate for the plaintiffs further placed reliance in **M/s Advel Tools and services Vs. M/s Trufit Fasteners Pvt. Ltd. [2008(6) Allahabad 611], Biswanath Ghosh(dead) by LR's and others Vs Gobinda Ghosh and ors. [2014 ALL SCR 1665]** and written statement.

As far as the application for deposit was concerned, he submitted that it was made without prejudice and therefore their right of remedy to challenge the impugned order in appeal was not taken away and therefore their appeal had to be allowed and that of the defendants had to be dismissed. i would consider their case, the judgments relied upon (supra) and decide the appeals appropriately.

8. In **Bhawana Arbind Bapat** (supra), the learned Single Judge of the Bombay High Court at Nagpur held in a suit for specific performance of the contract and permanent injunction that if no prima facie case was established, further

aspects of the conduct of the appellants, balance of convenience etc were immaterial and need not be considered and dismissed the appeal. **N. P. Thirugnanam** (supra), held that the grant of relief of specific performance was discretionary where the plaintiff must plead and prove continuous readiness and willingness which is a condition precedent for the grant of the decree of specific performance. It is well settled that the remedy for specific performance is not an equitable remedy and it is the discretion of the Court and which discretion is required to be exercised according to the settled principles of law and not arbitrarily. The Court is not bound to grant the relief under Section 20 of the Specific Relief Act just because there was a valid agreement of sale. The plaintiff must prove that he had performed or has always been ready and willing to perform his part of the contract. This fact of readiness and willingness has to be adjudged with reference to the conduct of the parties and attending circumstances.

9. In **Pemmada Prabhakar** (supra), the property bearing door no.20/42-1-9 was his self acquired property who died intestate and was survived by his wife, three sons and three daughters i.e. the defendant nos.1 to 6. The plaintiffs who are the respondents in the appeal filed a suit for specific performance of the agreement dated 3.5.1993 against the

appellants alleging that the appellants i.e the defendant nos.1 and 2 who were managing the suit property had agreed to sell the same to the plaintiff no.1. The defendant nos.1 and 2 had received an amount of ₹5000/-(Rupees five thousand only) and ₹10,000/-(Rupees ten thousand only) under the agreement of sale dated 3.5.1993 and the plaintiff no.1 had agreed to pay ₹1,70,000/-(Rupees one lakh seventy thousand only) to the defendants after 10 days from the date of vacating the tenants from the suit property, ₹50,000/- (Rupees fifty thousand only) was to be paid on 30.11.1993 and the balance amount of ₹1,50,000/-(Rupees one lakh fifty thousand only) was to be paid by 30.3.1994.

10. In **Pemmada Prabhakar** (supra), the defendant nos.1 and 2 agreed that they would obtain the signatures of the third brother i.e the defendant no.3 by 09.5.1993 while their sisters who were long married had no interest in the suit schedule property and they would get their signatures on the agreement. The Second Additional Senior Civil Judge dismissed the suit insofar as the relief for specific performance for sale is concerned directing the defendants to refund ₹5,000/-(Rupees five thousand only) and ₹10,000/- (Rupees ten thousand only) with interest from the defined dates. The trial Court had also held that the agreement was not valid as the defendants nos.3

to 6 and their mother did not give their consent to sell the suit property to the plaintiff and accordingly, the main relief for specific performance was rejected giving rise to the Appeal before the First Appellate Court being the Third Additional District Judge, Kakinada.

11. In **Pemmada Prabhakar** (supra) the First Appellate Court partly allowed the appeal directing the defendant nos.1, 2 ,4 and 5 to execute the registered sale deed in favour of the plaintiffs' Association and modified the decree for specific performance of the agreement of sale, held that the transaction between the parties was a real sale transaction and not a mere money transaction and that the sale agreement was valid and binding and the plaintiffs were entitled to the main relief of specific performance directing the defendants no.1, 2, 4 and 5 to execute the sale deed. The defendants being aggrieved by the Judgment and decree of the First Appellate Court preferred the Second Appeal before the High Court of Judicature at Andhra Pradesh at Hyderabad which dismissed the Second Appeal giving rise to the Appeal before the Hon'ble Apex Court.

12. In **Pemmada Prabhakar** (supra), the High Court had held that the approach of the First Appellate Court in granting the relief of specific performance in favour of the

plaintiff could not be faulted with and it upheld the decision moulding the relief appropriately. Their Lordships framed points for consideration whether the plaintiffs were entitled to the decree of specific performance when the Agreement of Sale entered into between the plaintiffs and the defendants who did not have absolute title to the property and whether the plaintiffs were entitled to the discretionary relief of specific performance under Section 20(2) of the Specific Relief Act when it had not approached the Court with clean hands. Their Lordships considered Section 17 of the Specific Act, 1963 which reads that a contract to sell or let property by one who has no title is not specifically enforceable and in view of the said provisions held that the agreement of sale entered into between the plaintiffs and some of the co-owners who did not have an absolute title to the suit property was not enforceable in law. This aspect had not been properly appreciated and considered by the First Appellate Court and the Second Appellate Court and the impugned judgment was vitiated in law.

13. In **Pemmada Prabhakar** (supra), Their Lordships also found from the undisputed fact that except the payment of ₹5,000/- (Rupees five thousand only) and ₹10,000/- (Rupees ten thousand only) paid by the purchaser/plaintiff no.1 to the defendant nos.1 and 2 according to the agreement for sale, the

remaining amount which was to be paid to the vendor within 10 days from the day of vacating the tenant in the property was not paid. Even assuming that further amount could have been paid had the tenants vacated the scheduled property, then the remaining part of the sale consideration agreed to be paid as notified under the clause of the agreement for sale was undisputably not paid to the defendant nos.1 and 2 and therefore, there was a breach of contract on the part of the plaintiffs and therefore the plaintiffs were not entitled for a decree of specific performance.

14. **K. S. Vidyanadam** (supra), held that in a case of specific performance of agreement to sale where a certain time limit was prescribed by one or the other party though the time may not be the essence of contract but it must have some significance and cannot be ignored of total inaction on the part of the purchaser for 2½ years in violation of the terms of agreement resulting in delay coupled with a substantial rise in prices of properties then it would be not equitable to give relief of specific performance to the purchasers.

15. **Sanjay Agarwal** (supra), had filed a suit for specific performance on a memorandum of understanding dated 14.2.2005 entered into between him and the defendants in

which a notice of motion for the appointment of a Court receiver and injunction was moved. By the memorandum of understanding the first defendant had agreed to transfer/sell to the plaintiff the leasehold plot admeasuring 6150 sq. mts. for a total consideration of ₹87,00,000/-(Rupees eighty seven lakhs only). Pursuant to the clause 2 thereof a part payment of ₹21,75,000/-(Rupees twenty one lakhs seventy five thousand only) was made on the signing of the agreement and under clause 9 the balance amount was payable on or before the registration of the documents and possession being handed over by the defendants to the plaintiff. The execution of the agreement was admitted, the receipt of the part payment was admitted and the plaintiff by his letter dated 12.10.2005 stated that despite repeated request the defendants had failed to do all the things necessary for the implementation of the said agreement.

16. In **Sanjay Agarwal** (supra), the defendants by a letter dated 29.11.2005 alleged that they had earlier addressed a letter dated 26.10.2005 in reply to the plaintiff's letter dated 12.10.2005 which was denied by the plaintiff. The letter was admittedly sent under a postal certificate. The learned Single Judge considered the alleged letter dated 26.10.2005 in which the defendants alleged that the plaintiff wanted the advance

money back and was trying to cancel the deal whereas the defendants were always ready and willing to comply with their part of the agreement. The learned Single Judge also referred to another four letters lastly sent by the defendants under a certificate of posting but which did not at all advance the defence case and militated against the contentions raised in the earlier letter dated 26.10.2005.

17. In **Sanjay Agarwal** (supra), the learned Judge found that all these letters did not find any reference in the letter dated 29.11.2005 and observed that prima facie it was difficult to accept that the defendants had infact addressed the said letters and even assuming that the letters were sent they did not establish the defence case. The learned Single Judge found that it was not clear as to how the defendants intended performing the agreement. From the documents on record there was nothing to show any want of diligence on the plaintiff's part. Besides, the plaintiff obligation to pay the balance amount was only upon being put in possession and on registration of the agreement. The learned Single Judge went on to observe that in a suit for specific performance the plaintiff was essentially required to establish that there was a valid and subsisting contract and that the plaintiff was ready and willing to perform all the essential terms and conditions of the contract as per its

true construction. There was neither any precedent nor principle which mandates or even warrants that an interlocutory order in a specific performance suit must require the plaintiff to deposit the balance consideration. Indeed such an absolute proposition would be grossly unfair and would cause great injustice to a plaintiff in a suit for specific performance who had a good case on merits.

18. In **Biswanath Ghosh** (supra), the Apex Court held that in a suit for specific performance the plaintiff must be able to show that he is ready and willing to carry out those obligations which are infact a part of the consideration for the undertaking of the defendants. For the compliance with Section 16(c) of the Act it is not necessary for the plaintiff to aver in the same words used in the Section i.e. ready and willing to perform the contract. Absence of the specific words in the plaint would not result in a dismissal of the suit if sufficient facts and evidence are brought on record to satisfy the Court the readiness and willingness to perform his part of the contract. The Court would be slow to throw out the claim on mere technicality of the pleading.

19. In **M/s Advel Tools and Services** (supra), Their Lordships of the Bombay High Court held that the Court at the

stage of the proceedings while considering an application for interlocutory order is to form a prima facie view and while considering various aspects for the grant or decline of the injunction, the Court has to balance the equity between the parties. In a suit for specific performance, the Court is vested with wide discretionary powers in terms of Section 20 of the Specific Relief Act. This discretion has to be exercised in accordance with the settled principles governing the subject and cannot be exercised arbitrarily. This principle would also be of help to the Court while deciding an interlocutory application for the grant of injunction. No doubt readiness and willingness of the purchaser is a condition precedent to the grant of relief at the final stage or even for that matter at the interlocutory stage. Readiness and willingness must exist at all relevant times. But `readiness and willingness' is a term which has to be construed with certain clarity and has to be given a meaning relatable to the facts and circumstances of a given case. It has been repeatedly held by the Courts that readiness and willingness essentially does not mean exhibition of money by the purchaser. This attains significance and relevance for the reason that grant or refusal of injunction in a suit for specific performance would essentially depend upon prima facie satisfaction of the ingredients essential for a decree of specific performance.

20. **Yasodammal** (supra), held that even though in the pleadings the contesting parties may admit the execution of an unstamped document, no relief can be granted on the basis of an admission as it would amount to acting upon unstamped document. **Umabai** (supra), held that it was for the plaintiff to prove his readiness and willingness to pay the stipulated amount and it was not for the plaintiff to raise such a question. In **Swaran Salaria & Associates** (supra), a learned Single Judge of this Court held on the basis of the record that the plaintiff had accepted the amount returned by the defendants which did not make any offer to pay the entire consideration amount to the defendant or to deposit the same in the Court to show their readiness and willingness to perform their part of obligation. Neither any such averments were made in the plaint nor the plaintiff had shown their readiness and willing to perform their part of obligation. In a suit for specific performance of an agreement, the plaintiff had not only to plead but had to prove their continuous readiness and willingness all throughout i.e from the date of the agreement till the decree is passed by the Court which the plaintiff had failed in his prima facie view and hence dismissed the notice of motion.

21. In **Chand Rani** (supra), a Five Bench Judge of the Hon'ble Apex Court held that no presumption existed whether

time was essence of the contract in a Vendee's suit for specific performance of contract for sale of immovable property. It could be ascertained from the express provisions of the contract, the nature of the property and the surrounding circumstances. The Contract stipulated that ₹98,000/-(Rupees ninety eight thousand only) would be paid by the 2nd party to the 1st party within 10 days only despite the notice of the vendor to perform the vendee's part of the payment of the stipulated amount, vendee not willing to pay the same unless vacant delivery of possession of a part of the property was given. In view of the express term of the contract coupled with the conduct of the vendee it was held that time was the essence of the contract and the vendee was not ready and willing to perform the contract. Therefore, the High Court was justified in setting aside the decree of specific performance granted by the trial Court.

22. i would first deal with the point raised on behalf of the defendants that the plaintiffs having themselves sought for the extension of time to comply with the trial Court order, they could not be permitted to challenge the very same order in appeal. A cursory perusal of the application moved at the instance of the plaintiffs' reveals that they had incorporated their case and besides set out that the amount to be deposited being sufficiently large, hence needed additional time of two months to

deposit such amount and additional interest and penalty to be calculated thereon. The Trial Court had issued a notice on the said application to the defendants and thereby the learned Trial Court had granted extension of time and directed the plaintiffs to deposit the amount with interest and penalties by 20.1.2016 by its order 18.12.2015. Such an application by the plaintiffs cannot at all be construed as an abject surrender forfeiting their right of appeal but it was rather in compliance with the order of the trial Court and to safeguard their right of appeal by showing their bonafide to adhere to the order passed by the Trial Court partially in their favour. Besides the said application was without prejudice to their right and therefore the objection raised by the defendants to the maintainability of the appeal is found without any merit.

23. The next point canvassed on behalf of the defendants was that the plaintiffs seeking the relief of specific performance had failed to specify the subject amount in respect of which such relief was claimed and therefore it could not be granted. His arguments in the alternative was assuming that the relief pertained to the Agreement dated 2.4.2011 the said Agreement has not been stamped in accordance with law and therefore the agreement was required to be impounded under Section 33 of the Stamp Act, 1899 and could not be used in evidence and

acted upon in view of Section 35 thereof and therefore no specific performance of the agreement could be granted in their favour. It was also argued on behalf of the defendants that consequently there could not be an order of injunction by recourse to Section 41(e) of the Specific Relief Act.

24. Admittedly this point about the want of adequate stamp duty was not taken up before the trial Court and has been taken up for the first time in appeal. Therefore, it is not open to the defendants to raise such a plea which was not at large before the Trial Court. Besides Shri A. D. Bhobe, learned Advocate for the plaintiffs invited attention to the notice issued on behalf of the defendants dated 19.5.2015 where the defendants did make a reference to an unregistered agreement and had still sought compliance at the instance of the plaintiffs failing which it would be terminated without further notice. The plaintiffs had replied to the said notice in which a reference was made to the two agreements dated 19.7.2010 and 2.4.2011 and being admittedly not registered and considering the nature of the agreement, they were also not required to be compulsorily registered. In any event this issue was not raked up before the trial Court and the plaintiffs had no opportunity to meet the case and therefore such a plea would not be available to the defendants at this stage.

25. The defendants had relented that this point was not taken earlier but being a question of law based on documents on record, the Court could still act on it. However, a valuable opportunity has been lost to the plaintiffs when this issue has not been taken up before the trial Court and therefore the defendants would not be entitled to rake up the issue now in appeal. The defendants had also opposed the application for injunction on the premise that the plaintiffs had failed to show that they were ready and willing to perform their part of the agreement. Admittedly the plaintiffs had paid an amount of the consideration of ₹7,00,00,000/- (Rupees seven crores only) or thereabout to the defendants and the balance to be paid was as per the schedule in respect of which blank cheques had been issued towards the payment of the part installments and the dates on which had to be filled up based on the starting of the said construction.

26. It is not as if there was no assurance on the part of the plaintiffs of their readiness and willingness to pay the amount on or before the scheduled dates but the transaction had turned out in a manner that the plaintiffs despite obtaining the requisite approvals and permissions were still prevented from circumstances beyond their control from undertaking the construction activities. Therefore, it cannot at all be heard on

behalf of the defendants that the plaintiffs had not shown their readiness and willingness to perform their part of the contract. The judgments thus relied upon on behalf of the defendants do not at all buttress the case to show that the plaintiffs were not ready and willing to perform their part of the contract so as to disentitle them to the equitable relief of injunction.

27. Shri A. F. Diniz, learned Advocate for the defendants also adverted to Section 46 of the Contract Act, 1872 which deals with the time for performance of the promise, where no application is to be made and no time is specified requiring that engagement must be performed within a reasonable time. The explanation thereto answers their objection inasmuch as what is reasonable time is particular to each case and is question of fact. Section 55 of the Contract Act deals with the effect of failure to perform at a fixed time in the contract in which time is essential. No doubt the plaintiffs were to make the payment on or before the dates specified in the agreement however such payment were linked to the development of the property and could not be read in isolation as canvassed on behalf of the defendants.

28. Shri A. F. Diniz, learned Advocate for the defendants again canvassed a point on behalf of the defendants in the

appeal for the first time that the finding of the trial Court that the power of attorney was coupled with interest and therefore irrevocable was incorrect. It was their contention that such a power of attorney assuming that it was coupled with interest had to be stamped and for want thereof, it had to be impounded and could not be looked into and acted upon. Assuming it was so, such a point was also not canvassed before the Trial Court and the plaintiffs had no opportunity to meet the case at the appropriate time. Therefore, such a plea is not available to the defendants in the present appeal. Moreover the defendants initially has skirted the issue on the irreparable loss and injury which would be caused to them by the grant of injunction and in what manner the plaintiffs were not entitled to such relief while pressing for the grant of its appeal to vacate the order of injunction in the plaintiffs favour.

29. The learned Trial Court was seized of the fact that there was an agreement between the plaintiffs and the defendants initially on 19.7.2010 by which they had agreed to sell the said property to the plaintiffs and the subsequent novation of the agreement of development and sale dated 2.4.2011 pursuant to which the plaintiffs had developed the said property and pursuant thereto had issued blank cheques in favour of the defendants. The learned trial Court was equally

seized of the fact that the plaintiffs had obtained the necessary approvals and permissions from the statutory authorities to carry out the construction in the suit property but on account of the agitation by the general public, were they prevented from carrying out the development work resulting in a lapse of license with the passage of time and ultimately the defendants seeking the payment of the balance amount and in turn terminating the notice.

30. The learned Trial Court had on a consideration of the material recorded a finding that there was a triable issue arising for determination and there was prima facie case in the plaintiffs favour. The trial Court for that matter on an appreciation of the material had concluded on prima facie consideration that the parties never intended time to be strictly to be the essence of contract. The learned trial Court was equally seized of the fact that the plaintiffs were constrained due to the circumstances beyond their control from carrying out the construction in the suit property which in turn had created a liquidity crisis and therefore in case the defendants terminated the agreement and proceeded with the construction, it was the plaintiffs who would be put to irreparable loss and injury.

31. In those set of circumstances therefore, the trial

Court rightly secured the plaintiffs with the relief of injunction restraining the defendants from carrying out any construction in the suit property or transferring or encumbering the suit property pending the disposal of the suit. The trial Court however was justified to impose the condition on the plaintiffs to deposit the balance consideration in the court while balancing the equity and securing the interest of the defendants in the suit property. However, there was no any reason for the learned Trial Court to direct the plaintiffs to deposit the interest and penalty due to the defendants and therefore to that extent, the impugned order justifies interference partially as earlier observed but there is no justification for the defendants to press for the injunction order being vacated pursuant to their appeal in the absence of any justifiable reason.

32. In the result i pass the following:-

ORDER

i. The plaintiffs appeal is allowed whereby the order under challenge is modified to the extent that the plaintiffs shall not be saddled with requirement of payment of interest and penalty due to the defendants under the agreement dated 2.4.2011.

ii. The defendants appeal stands dismissed.

iii. The plaintiffs to comply with the order passed by this Court within a period of one week.

NUTAN D. SARDESSAI J.

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