

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

APPEAL FROM ORDER NO.130 OF 2015

Pankaj S. Parikh	..	Appellant
Vs.		
Bhavarlal Pyarchand Jain & Ors.	..	Respondents

Mr.Atul Damle, Senior Advocate i/by Mr.Anil Yadav for the appellant/
applicant.

Mr.Girish Godbole a/w Mr.Sandeep Mahadik i/by Mr.Manoj Kumar
Upadhyay for the respondent no.1.

Mr.Sandesh Patil i/by Mr.Pavan Patil for the respondent nos.2 and 3.

CORAM : R.D. DHANUKA, J.

DATE : 14th January 2016

P.C.

. By this appeal from order, the appellant has impugned the order dated 30th December 2014 passed by the learned trial Judge allowing the notice of motion filed by the respondent no.1(original plaintiff) restraining the defendants, their agents, servants, representatives and/or person from making further construction on the suit site and directing to maintain the status-quo as on the date of the order passed in the said notice of motion and for other reliefs.

2. The appellant (original defendant no.3) claims to have been executed a registered Development Agreement dated 25th January 2008 with the defendant nos.1 and 2 in respect of the suit property.

3. Mr.Damle, learned Senior counsel appearing for the appellant invited my attention to the copy of the said development

agreement dated 25th January 2008, copy of surrender letter dated 21st August 2007 executed between the original plaintiff and the defendant nos.1 and 2 and also the copy of the allotment letter dated 21st August 2007 between the said parties. He submits that the defendant nos.1 and 2 had constructed a building on plots 'A' and 'B'. Original plot is divided in three parts. He submits that in so far as the nursing home being constructed by the appellant (original defendant no.3) is concerned, it is substantially complete and is being constructed on plot 'C'. He submits that there is no residential accommodation available in the said building.

4. Learned senior counsel submits that the suit was filed in the year 2010. The appellant, however, filed Notice of Motion No.2958 of 2014 belatedly inter alia praying for stay of construction. He submits that the learned trial Judge could not have passed an order of injunction at this stage when the building is substantially completed by the appellant.

5. It is submitted by the learned senior counsel for the appellant that merely on the basis of allotment letter in favour of the appellant, the learned trial Judge could not have granted any injunction against the appellant. Learned senior counsel submits that without prejudice to the rights and contentions of the appellant, the appellant is ready and willing to deposit a sum of Rs.50 lacs as and by way of security in the trial Court which would be subject to the final order as may be passed by the learned trial Judge.

6. Mr.Patil, learned counsel for the respondent nos.2 and 3 submits that there was a gross delay on the part of the appellant in filing

the notice of motion and merely on the basis of letter of allotment, learned trial Judge could not have passed any order of injunction. Without prejudice to his rights and contentions, he submits that the appellant has agreed to procure a flat no.601 in A wing of Jaya Niwas admeasuring 220 sq.ft. carpet area and keep the same under lock and key and would not create any third party rights of any nature whatsoever in respect thereof. Mr.Damle, learned senior counsel for the appellant does not dispute this position.

7. Mr.Godbole, learned counsel for the respondent no.1 (original plaintiff) invited my attention to the letter of surrender as well as the allotment letter and would submit that though the appellant had made part payment of consideration under the letter of allotment, the defendant nos.1 and 2 did not execute any agreement of permanent alternate accommodation. The appellant thus filed a suit in the City Civil Court and applied for interim relief. He submits that the learned trial Judge had granted ad-interim injunction in respect of Flat No.401 admeasuring 670 sq.ft. in the building constructed in A wing in the chamber summons filed by the respondent no.1 which is disposed of. He submits that no sooner the appellant is informed about the alleged third party rights created in favour of the appellant herein, the respondent no.1 applied for impleadment of the appellant as a party-defendant and after such order was passed, the appellant filed a fresh Notice of Motion No.2598 of 2014 inter alia praying for an injunction.

8. This matter was adjourned from time to time to enable the parties to settle the dispute amicably.

9. The defendant nos.1 and 2 do not dispute that the original plaintiff was a tenant and had executed a letter of surrender in favour of the defendant nos.1 and 2 and his clients had also issued a letter of allotment dated 26th August 2007 thereby agreeing to allot the Flat No.401 admeasuring 670 sq.ft. in the new building to the respondent no.1. There is no dispute that inspite of such letter of allotment and the appellant having made part payment under the said letter of allotment to the defendant nos.1 and 2, the plaintiff was not given any permanent alternate accommodation in the new building. It is now the case of the defendant nos.1 and 2 that there are no flats available in the building constructed on the plots 'A' and 'B'. In view of the understanding between the appellant herein and the defendant nos.1 and 2 that without prejudice to the rights and contentions of the appellant, the appellant would procure a flat no.601 in A wing of Jaya Niwas admeasuring 220 sq.ft. carpet area. In my view, the interest of justice would be met with if the interim order passed by the learned trial Judge is substituted by the following order and it is ordered accordingly :-

- (a) The appellant (original defendant no.3) shall procure a flat no.601 or any other flat in building 'A' or building 'B' admeasuring 220 sq.ft. carpet area and shall hand over possession of the said flat to the respondent no.1 (original plaintiff) as and by way of temporary alternate accommodation within four weeks from today which shall be continued to be in possession of the plaintiff during the pendency of the suit;
- (b) After the appellant procures the aforesaid flat, the same shall be handed over to the original plaintiff for occupation simultaneously. The plaintiff shall pay all outgoings in respect of the said flat.

Occupation of the plaintiff in respect of the said flat would be subject to the final order as may be passed by the City Civil Court in S.C.Suit No.2303 of 2010. Neither the plaintiff nor the appellant herein or the other defendants would create any third party rights in respect of the said flat during the pendency of the suit;

- (c) Without prejudice to the rights and contentions of the appellant, the appellant had agreed to deposit a sum of Rs.50 lacs in the trial Court within a period of 30 days from today without fail;
- (d) If such amount is deposited by the appellant in the trial Court, the same shall be invested in a Fixed Deposit of a nationalised bank initially for a period of three years and thereafter for like period after obtaining the orders from trial Court;
- (e) The defendants are directed to file written statement within a period of six weeks and serve a copy thereof upon the plaintiff's advocate simultaneously;
- (f) It is made clear that the occupation of the building by the appellant would be subject to final outcome of the suit;
- (g) The defendant nos.1 and 2 are directed to provide security to the extent of Rs.20 lacs to the satisfaction of the Registrar of the City Civil Court within a period of four weeks from today;
- (h) In the event of the defendant nos.1 and 2 not complying with this order, the plaintiff would be at liberty to seek further interim relief against the defendant nos. 1 and 2;
- (i) Learned trial Judge shall decide the suit in accordance with law and on its own merits without being influenced by the observations made by the learned trial judge and the conclusion drawn in the impugned order;

- (j) Hearing of the suit is expedited;
- (k) Learned trial Judge shall make an endeavour to dispose of the suit within two years from the date of commencement of the oral evidence. The above order is passed without prejudice to the rights and contentions of all the parties;
- (l) Appeal from order is disposed of in aforesaid terms;
- (m) In view of disposal of the appeal, civil application does not survive and is accordingly disposed of;
- (n) There shall be no order as to costs;

R.D. DHANUKA, J.