

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10529 OF 2016

Santosh Dalichand Jain ... Petitioner
Vs.
M/s. Trinity Properties through its Partners and others ... Respondents

Mr. S. S. Patwardhan for Petitioner.
Mr. V. P. Sawant i/b. Mr. Prabhakar M. Jadhav for Respondents No.1 to 3.

CORAM : R. G. KETKAR, J.
DATE : DECEMBER 15, 2016

P.C. :

Heard Mr. Patwardhan, learned Counsel for petitioner and
Mr. Sawant, learned Counsel for respondents No.1 to 3 at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner, hereinafter referred to as 'defendant No.1', has challenged the judgment and order dated 14.09.2015 below exhibit-79 as also the judgment and order dated 29.04.2016 below exhibits-88 and 92 passed by the learned 7th Joint Civil Judge, Senior Division, Pune in Special Civil Suit No.208 of 2012. By order dated 14.09.2015 below exhibit-79, the learned trial Judge allowed the application made by the plaintiffs for recalling order dated 30.01.2015 passed below exhibit-69 and directed the defendant No.1 to pay Rs.3,47,50,000/- to the plaintiffs within 6 months. By order dated 29.04.2016 below exhibit-88, the learned trial Judge has allowed the application made by the plaintiffs for vacating the order dated 21.03.2016 passed by the learned trial Judge below exhibit-85. By order below exhibit-92, the learned trial Judge rejected the application made by the defendant No.1 for extending the time by 2½ years for paying Rs.3,47,50,000/- to the plaintiffs.

3. Plaintiffs instituted Suit on 03.02.2012 inter alia praying for specific performance of contract dated 07.04.2011. In the alternative, plaintiffs prayed for awarding damages to the tune of Rs.2,20,53,283/- and refunding amount of Rs.3,47,50,000/- along with interest @ 18 p.a. till realization among other prayers. During the pendency of the Suit, plaintiffs filed application exhibit-69 on 27.11.2013 for directing defendant No.1 to deposit amount of Rs.3,47,50,000/- along with interest @ 12% p.a. By order dated 30.01.2015, the learned trial Judge rejected the application mainly on the ground that plaintiffs did not abandon their claim for specific performance of contract. Plaintiffs thereafter filed application on 27.02.2015 at exhibit-79 for recalling the order dated 30.01.2015 passed below exhibit-69. Plaintiffs expressed their readiness and willingness to abandon their claim for specific performance and filed separate purshis at exhibit-80 along with the application to that effect. By order dated 14.09.2015, the learned trial Judge allowed the application exhibit-79 and directed defendant No.1 to pay Rs.3,47,50,000/- to the plaintiffs within 6 months. Defendant No.1 has challenged this order.

4. On 14.03.2016, defendant No.1 filed application exhibit-85 seeking sufficient time to comply the order dated 14.09.2016. By order dated 21.03.2016, the learned trial Judge extended the time limit granted below exhibit-79 by three months subject to defendant No.1 paying or depositing Rs.50,00,000/- within 30 days. Defendant No.1 was also directed to deposit or pay the entire amount within 3 months.

5. As the defendant No.1 did not comply the order below exhibit-85, plaintiffs filed application exhibit-88 on 20.04.2016 for vacating the order below exhibit-85. Defendant No.1 filed application dated 26.04.2016 at exhibit-92 for granting 2½ years time to pay amount of

Rs.3,47,50,000/- to the plaintiffs. By the impugned order, the learned trial Judge allowed the application exhibit-88 filed by the plaintiffs and rejected the application exhibit-92 filed by the defendant No.1. These orders are also impugned in the present Petition.

6. In support of this Petition, Mr. Patwardhan submitted that it is impossible for the defendant No.1 to pay amount of Rs.3,47,50,000/- in view of the current situation. He submitted that defendant No.1 is ready and willing to pay Rs.3,47,50,000/- to the plaintiffs if time upto 2½ years is granted.

7. On the other hand, Mr. Sawant supported the impugned orders. He submitted that the learned trial Judge has noted that in paragraph 15 of the application, defendant No.1, in order to show his bonafides, showed his readiness and willingness to deposit Rs.50,00,000/- in the Court on 21.03.2016. Even that amount is not deposited.

8. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. Plaintiffs have filed Suit for specific performance of contract dated 07.04.2011 and in the alternative, for damages to the tune of Rs.2,20,53,283/- and refund of amount of Rs.3,47,50,000/- along with interest @ 18% p.a. Initially, plaintiffs filed application exhibit-69 for directing defendant No.1 to deposit Rs.3,47,50,000/- together with interest @ 12% p.a. In paragraph 4 of the application, plaintiffs contended that without prejudice and without admitting the case of the defendant No.1, they requested the Court to direct defendant No.1 to deposit the amount. The learned trial Judge rejected the application on 30.01.2015 as plaintiffs did not abandon their claim for relief of specific performance.

9. Plaintiffs thereafter filed application at exhibit-79 on 27.02.2015. In paragraph 4, plaintiffs expressed their readiness and willingness to withdraw / abandon claim for specific performance. They also filed separate purshis exhibit-80 along with that application giving up their claim of specific performance. Defendant No.1 filed reply dated 09.04.2015 resisting that application. By the impugned order dated 14.09.2015, the learned trial Judge allowed that application. In paragraph 7, the learned trial Judge noted that plaintiffs filed application exhibit-79 giving up their claim for specific performance. They also filed purshis at exhibit-80 withdrawing or abandoning the claim of specific performance. In paragraph 8, the learned trial Judge noted that defendant is ready and willing to deposit the amount after selling the suit properties and at present, they cannot do so because of the status-quo order operating in respect of property bearing Survey No.3/4. In paragraph 9, the learned trial Judge noted that defendant No.1 admitted in one sense that he has taken 3,50,00,000/- from plaintiffs as hand loan. The learned trial Judge accordingly directed defendant No.1 to pay Rs.3,47,50,000/- within 6 months.

10. Mr. Patwardhan submitted that by allowing the application exhibit-79, the final relief is granted at interlocutory stage. I do not find any merit in this submission. Earlier, plaintiffs did not abandon their claim for specific performance. Subsequently, they gave up their claim for specific performance. For the reasons recorded in paragraphs 8 and 9 of the impugned order dated 14.09.2015, I do not find any merit in this submission. That apart, defendant No.1 has availed the benefit under order dated 14.09.2015. It is only after expiry of 6 months, defendant No.1 filed application exhibit-85 on 14.03.2016 once again praying for grant of sufficient time to make necessary arrangements for complying the order dated 14.09.2015. Lastly, by application exhibit-92, defendant No.1 seeks 2½ years time to deposit Rs.3,47,50,000/-. In view thereof

also, challenge to order dated 14.09.2015 must fail.

11. As far as the challenge to the order dated 29.04.2016 below exhibits-88 and 92 is concerned, equally, I do not find any merit. In so far as the application exhibit-88 is concerned, by that application, plaintiffs prayed for vacating the order passed below exhibit-85. By order dated 21.03.2016 below exhibit-85, the learned trial Judge directed defendant No.1 to pay / deposit Rs.50,00,000/- within 30 days and balance amount within 3 months. After the passage of time as of today, the prayer made by the plaintiffs at exhibit-88 has become infructuous because admittedly defendant No.1 neither deposited Rs.50,00,000/- within 30 days nor balance amount within 3 months.

12. As far as the order below exhibit-92 is concerned, by that order, the learned trial Judge rejected the application made by the defendant No.1 for grant of 2½ years time to pay amount of Rs.3,47,50,000/- to the plaintiffs. In paragraph 15, defendant No.1 contended that in order to show his bonafides, he is ready and willing to deposit Rs.5,00,000/-. However, that was also not deposited. The learned trial Judge has considered this aspect in paragraph 5 of the impugned order. Though the defendant No.1 was given sufficient time to either deposit or pay Rs.3,47,50,000/-, he has not complied those directions. The learned trial Judge observed that the conduct of the defendant No.1 dis-entitles him further extension of time.

13. For the reasons recorded in paragraph 5 of the order dated 29.04.2016, I do not find that the learned trial Judge has committed any error in passing the impugned order. Hence, Petition fails and the same is dismissed.

(R. G. KETKAR, J.)