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

WRIT PETITION NO. 6978 OF 2013

Shreehari Associates Pvt. Ltd. … Petitioner.

V/s.

M/s. Sai Kuber Builders & Developers. ... Respondent.

Mr. P.M. Arjunwadkar for the Petitioner.
Mr. Amit Borkar for the Respondent.

CORAM : N.M. Jamdar, J.

25 October, 2016.

Oral Order **:-**

By this Petition the Petitioner has challenged the order passed by the learned District Judge, Kolhapur dated 21 May 2013 allowing the Misc. Appeal filed by the Respondent and setting aside the order passed by the Civil Judge, Junior Division, Kolhapur. As a consequence the application taken out by the Petitioner below Exhibit 5 for temporary injunction to restrain the Respondent from carrying out construction and to create third party rights has been rejected.

2. The Suit bearing No.2929 of 2012 is filed for simplicitor injunction by the Petitioner. The suit property has been described in the plaint. In this suit an application for temporary injunction was taken out which was granted by the learned Civil Judge and by the impugned order it has been reversed.

3. Heard the learned Counsel for the parties.

4. In the suit the Petitioner – Plaintiff has relied upon the sale deed dated 27 December 2007 by which the Petitioner, which is the Private Limited Company, stated to have purchased the property. It is stated that a development agreement was executed between the Petitioner and the Respondent and since the Petitioner – Company was not satisfied with the work carried out by the Respondent, dispute arose between the parties. It was contended that notice was given and the development agreement was sought to be terminated so also the power of attorney. Thereafter, the confirmation deed was executed on 22 July 2011 and certain monetary transactions were agreed upon. It was the contention of the Petitioner since that the amount was not paid by the Respondent, an order of injunction was necessary.

5. The first thing has to be noted that the Petitioner is a Private Limited Company, which is a different entity in law. As far as

the amount which is due to the Petitioner – Company by the Respondent, it is not disputed at this stage that this amount has been paid. There is also an amount which is to be paid towards retirement of Mr. Sacheen Mulay which is also stated to have been paid. The dispute is regarding the remaining amount. It is the case of the Petitioner that this amount was invested though by Mr. Sacheen Mulay. It was for the Petitioner – Company and the Respondents have refused to pay the amount on the ground that this is a personal transaction of Mr. Sacheen Mulay which is not correct. It is the case of the Petitioner that a loan was taken by Mr. Sacheen Mulay and his wife and the amount was invested in the project, which amount had to be returned and since the Respondents are not honouring this commitment, an order of injunction is necessary.

6. It is also an admitted position that the construction has substantially come up as on date. Even though the suit is filed for simplicitor injunction, the genesis of the dispute is a claim of money. The learned Counsel for the Respondent is right in contending that a simplicitor suit for injunction in these fact situation, prima-faice may not be maintainable, without any substantive relief, in the present case of money claim. As far as the development agreement is concerned, if the disputed amount is kept aside then there is no breach of the terms of the development agreement as the amount due to the Petitioner – Company has been repaid.

7. The question therefore will center around whether the remaining amount was agreed to be paid to the Petitioner – Company through Mr. Sacheen Mulay or it was an independent transaction with Mr. Mulay as contended by the Respondent. This is a finding of fact. The learned District Judge, has recorded a prima facie finding that the Petitioner has not been able to show that the amount was due and payable to the Petitioner – Company. The learned Counsel for the Petitioner submitted that at this stage the Petitioner cannot demonstrate this position. But if in a suit which primarily centers around the claim for money, without making any substantive prayer, if the Petitioner wants to restrain the Respondent with an order of injunction, the Petitioner will have to demonstrate that the amount is indeed due and it is not enough that mere suspicion is created that the amount might be due, as for grant of injunction both, the balance of convenience and prima facie will have to be considered. The learned Counsel for the Respondent had made statement on the earlier occasion that even today if cogent documentary evidence is produced to show that the amount has been invested in the Respondent – Company by the Petitioner, the Respondent is ready and willing to return the amount to which the contention of the learned Counsel for the Petitioner is that this issue will require a trial.

8. In the circumstances, the view taken by the learned District Judge that in absence of any cogent evidence to show that the amount is due to the Petitioner – Company, which is a different legal entity, the transaction with Mr. Mulay will have to construed as an independent transaction, cannot be stated to be a perverse view. No interference under Article 227 of the Constitution of India, is warranted.

9. The Writ Petition cannot be entertained and is rejected. It is clarified that all observations made in this order and the orders of both the Courts are prima-facie and the suit will be tried on its own merits.

(N.M. Jamdar, J.)