

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

**APPEAL FROM ORDER NO.864 OF 2016
ALONG WITH
CIVIL APPLICATION NO.1071 OF 2016**

Keshav Sitaram Patil	..	Appellant
Vs.		
Kamdhenu Realities	..	Respondent

Mr.Sachin Punde for Appellant.

Mr.N.V. Walawalkar, Senior Advocate i/by Mr.Jeetendra Sachdev for Respondent.

CORAM : R.D. DHANUKA, J.
DATE : 17th November 2016

P.C.

. By this appeal filed by the appellant (original defendant), the appellant has impugned the order dated 12th April 2016 passed by the learned trial Judge granting injunction in a suit filed by the respondent (original plaintiff) for specific performance.

2. It is not in dispute that the defendant and the plaintiff had entered into a Development Agreement in respect of the suit property. It was the case of the plaintiff that the consideration of the said agreement was Rs.8,02,70,000/-. It was also the case of the plaintiff that in addition to the said consideration, 50% constructed portion was also the part of the consideration. The plaintiff had alleged that the plaintiff had paid a sum of Rs.40,00,000/- to the defendant pursuant to the said development agreement. It was however the case of the defendant that the plaintiff had paid an amount of Rs.39,60,000/- and not Rs.40,00,000/- as alleged by the plaintiff. It was the case of the defendant that since the plaintiff did not perform their part of the

contract, the plaintiff had issued a legal notice dated 1st June 2015 to the defendant through its advocate. Since there was no response to the said legal notice, the plaintiff filed a Special Civil Suit No.268 of 2015 inter alia praying for specific performance of the development agreement dated 23rd April 2015 and also preferred an application (Exhibit 5) for interim reliefs.

3. Learned counsel for the defendant submits that signature of the defendant was obtained on the development agreement without showing the draft copy of the development agreement. He submits that two paragraphs in the development agreement are unilaterally added by the plaintiff which are allegedly not counter-signed by the defendant.

4. Mr.Walawalkar, learned senior counsel for the plaintiff, on the other hand, disputes the statement made by the learned counsel for the defendant that two paragraphs in the development agreement were unilaterally added by the plaintiff or that the same were not counter-signed by the defendant. He submits that the learned trial Judge has considered all these relevant facts and has passed a detailed order. He submits that balance of convenience was in favour of the plaintiff and not the appellant. He submits that the impugned order does not warrant any interference.

5. A perusal of the record prima facie indicates that the signature of the defendant is not disputed. In my prima facie view, there is no substance in the submission of the learned counsel for the defendant that the two clauses in the development agreement were

unilaterally added by the plaintiff or that the same were not counter-signed by the appellant. The learned trial Judge having found that the balance of convenience was in favour of the plaintiff in view of the plaintiff having already paid substantial amount to the defendant and the plaintiff having made out a prima facie case for grant of injunction has granted such relief by passing a detailed order. In my view, there is no merit in this appeal from order and the same is accordingly dismissed. In view of dismissal of the appeal from order, civil application does not survive and is accordingly dismissed. No order as to costs.

R.D. DHANUKA, J.