

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Appeal from Order NO. 44 OF 2016
with
Civil Application No.57 OF 2016

Shahaji Mahadev Jadhav

...Appellant

Versus

M/s. Villayati Ram Mittal

...Respondent

Mr.Saurabh Oka, for the Appellant.

Mr.Chaitanya Bhandarkar, for Respondent.

CORAM: G. S. KULKARNI, J.

DATED: 26th April, 2016

PC:-

1. Heard the learned Counsel appearing for the parties. By this appeal, the Appellant challenges the order dated 8 July 2015 passed by the 3rd Joint Civil Judge, Senior Division, Thane whereby an application under 'Exhibit 5' by which the Plaintiff had sought injunctory reliefs against the Respondent-Defendant, has been rejected.

2. The case of the Appellant is that there was a development agreement entered between the Appellant and the Respondent dated 22 February 2000, in respect of development of Plot 38, 39, 43, 44 and 45 admeasuring 8200.07 sq. meters situated at Sector 30, Vashi, Navi

Mumbai, which came to be allotted to the Appellant by the City and Industrial Development Corporation (for short 'CIDCO').

3. The grievance of the Appellant in Special Civil Suit No.253 of 2012 instituted before the Court of Civil Judge, Senior Division, Thane is that the Respondent is liable to specifically perform the development agreement dated 22 February 2000 by performing and complying the following obligations:-

“(i) To pay to the CIDCO a sum of Rs.4,01,17,336/- (Rupees Four Crores One Lac Seventeen Thousand Three Hundred Thirty Six only) with interest @ 18% p.a. from the date of demand made by the CIDCO till payment and/or realization.

(ii) To hand over the possession of the area admeasuring 2000 sq.ft. carpet area in the newly constructed printing press building.

(iii) To forthwith hand over to the Plaintiff the following shops/ premises and residential flats against the area agreed to be handed over by the Defendants to the Plaintiff:-

(a) Shop No.2(Two) 650 sq.ft Approximately to Shop No.8 (Eight) 650 sq.ft. approximately;

(b) Shop no.10(Ten) 650 sq.ft approximately to Shop No.22 (Twenty two) 650 sq.ft approximately;

(c) Shop No.28 (Twenty Eight) 650 sq.ft. approximately to Shop No.40 (Forty) 650 sq.ft approximately;

(d) Shop No.47 (forty Seven) 650 sq.ft. approximately to Shop No.57 (Fifty seven) 650 sq.ft. approximately;

(e) Flat No.B-101 having area 595 sq.ft approximately to B-104 having area 595 sq.ft. approximately;

(f) C-103 and C-104 having area 595 sq.ft. approximately; D-

701 and D-702 having area 595 sq.ft. approximately, F-701 and G-702 having area 599 sq.ft. approximately.”

4. An application under Order 39 Rule (1) and (2) read with Section 151 of the Code of Civil Procedure was filed inter alia praying for injunctory reliefs restraining the Respondent from selling, transferring or disposing of or creating any third party interest in the residential flats and shops as set out in prayer clause (a) of the injunction application. The Respondent appeared before the Trial Court and opposed the injunction application as filed on behalf of the Appellant. The Respondent submitted that they had complied with their obligation under the development agreement dated 22 February 2000. The Respondent denied the contention as urged on behalf of the Appellant that there is a shortfall of area of 2000 sq.ft. on handing over the possession of the Press building. The reply filed on behalf of the Respondent is at page 56 of the paper book.

5. By the impugned order, considering the facts as appearing on the record of the suit, the Court has come to a conclusion that there is no prima facie case which is made out by the Appellant for grant of any injunctory reliefs. It is observed that the development work was completed and the principal grievance of the Appellant appears to be for recovery of money which was demanded by the CIDCO as penalty. It is

observed that such a claim is required to be considered at the trial of the suit as it would be required to be decided as to whether there was any entitlement for such recovery. On the query of the Court, the learned Counsel appearing for the Appellant fairly submits that an amount of Rs.4.01,17,336/- as demanded by the CIDCO and the subject matter of prayer clause (1)(a)(i) has already been paid by the Appellant-Plaintiff. The other prayers which remain are pertaining to handing over of certain premises under the development agreement.

6. Learned Counsel for the Appellant submits that the learned Judge is in an error in recording a finding that the suit is simplicitor for a money claim and on that ground the injunction as prayed for by the Appellant has been denied. Learned Counsel for the Appellant has drawn my attention to the prayers which are made in the plaint to submit that the prayers were in fact for specific performance of the development agreement dated 22 February 2000. It is submitted that if this be the case then the impugned order is rendered erroneous to the extent it observes in paragraph 15 that the controversy in the suit pertains to payment of money viz. penalty imposed by the CIDCO.

7. Learned Counsel for the Respondent on the other hand has submitted that no case whatsoever was made out by the Appellant much

less a prima facie case to seek discretionary relief of an injunction as prayed for in the application below Exhibit 5. It is submitted that the project was completed as far back as in the year 2003 and that the possession of the Press building and other premises was handed over to the Appellant. Learned Counsel for the Respondent has drawn my attention to the letters dated 11 November 2003 and 19 July 2004 which are appearing at page nos.29 and 30 of the Civil Application, to point out that the Appellant-Plaintiff never had any objection in respect of deficiency of area of the premises which was handed over to them. It is submitted that there is no correspondence whatsoever on the record of the Trial Court to show that the Respondent has not complied with its obligation, more particularly, the obligation on which the grievance is made in the plaint. It is, therefore, submitted that the learned Trial Judge has appropriately come to the conclusion that the injunction as prayed for by the Appellant cannot be granted.

8. Having heard the learned Counsel for the parties and having perused the relevant documents as placed on record of this Appeal from Order, as also having perused the impugned order passed by the learned Trial Judge, I am of the opinion that this Appeal from Order does not call for any interference.

9. Admittedly, the development agreement pertains to the year 2000. The correspondence indicates that after completion of the building all the premises which were required to be developed are handed over by the Respondent to the Appellant. The correspondence as placed on record as also the averments in the plaint do not inspire any confidence with regard to the grievance of the Appellant which are made in paragraph 17 of the plaint and more particularly of not handing over possession of the Press Building as agreed in clause (2) of the development agreement in question. Further it also prima facie does not appear that the Appellant-Plaintiff had made any grievance in respect of the permissions which were to be obtained from the CIDCO in respect of the residential flats and the commercial premises. It also prima facie appears that an independent cause of action has arisen as the liability was imposed by the CIDCO on the Appellant to make payment of penalty amount which, according to the Appellant, has been paid by the Appellant to the CIDCO. It may be that in respect of this monetary claim as made by the CIDCO on the Appellant, there may be an obligation on the part of the Respondent, however, that cannot be the only ground on which the Appellant could approach to seek an injunction, as this would be an issue to be decided at the trial. Moreover, it is an admitted position that the amount claimed by the CIDCO has already paid by the Plaintiff and is now sought to be recovered from the Defendants.

10. Having considered the facts and circumstances of the case, I am of the opinion that the impugned order does not call for any interference. The Appeal from Order is devoid of merits and accordingly, is rejected.

11. In view of rejection of the Appeal, the Civil Application would not survive and same is accordingly disposed of.

(G. S. KULKARNI,J.)