IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.225 OF 2015
WITH
CIVIL APPLICATION NO.284 OF 2015

Vinita Haresh Gaglani and Another ... Appellants/ Ori. Defendants
vs.
Nalin Rajni Patel ... Respondent/ Ori. Plaintiff

Mr. Akshay Patil i/b. Mr. Anil Agarwal, for the Appellants.

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **5th JANUARY, 2016**

P.C.:

. This Appeal is directed against the order dated 4th July, 2013 passed by the 5th Joint Civil Judge, Senior Division, Nashik allowing the Application (Exhibit "5") in Special Civil Suit No. 304 of 2012. The Respondent who is original Plaintiff has filed a suit for declaration and injunction against the Appellants/original Defendants.

2. It is the case of the Respondent/Plaintiff that he was acquainted with the Appellant No. 1 who is the original Defendant

No. 1. Defendant No. 2 is the daughter of Defendant No. 1. The Defendants used to borrow some amounts from the Plaintiff. The Respondent/Plaintiff is a businessman and the original Defendants/ Appellants i.e. mother and daughter assured the Plaintiff that his amounts can be invested in the real estate as they were doing the said business and it would give good returns. The Plaintiff believed in the assurances given by the Appellants. As per the case of the Plaintiff, he invested the amount of Rs. 4,55,45,000/- since 30th June, 2008 to 27th May, 2009 from time to time. The payments were made to Defendant Nos. 1 and 2 both by cheques except the payment of Rs. 20 lacs which was made in cash. As per the case of the Plaintiff, these payments were made in order to invest money in the immovable properties at Nashik as represented by the Defendants. They purchased in all four BHK flats and wanted to start a resort in Andaman-Nikobar and purchase two properties at Nashik. However, thereafter the properties i.e. plots at Nashik were purchased in the joint name of Plaintiff and Defendants. The Plaintiff believed the Defendants and it was agreed between the parties that the Defendants would give him the major share of the profit in the business. However, he was shocked when he came across in respect of a title notification of the suit plots dated 5th

April, 2012. He found that the Defendants were going to alienate the properties and therefore he filed a suit for declaration and injunction against the Defendants. The interim relief was allowed vide order on application (Exhibit 5) by the trial Court. Hence, this Appeal.

3. The learned counsel for the Appellants submit that the suit itself is not maintainable on two grounds that it is barred by limitation as there is prayer of money recovery and secondly it is also barred under Section 4 of the Benami Transaction (Prohibition) Act, 1988. He submitted that a frame of the suit discloses inconsistent stand taken by the Plaintiff. The reliefs claimed by the Plaintiff are not maintainable. On one hand the Plaintiff claims amount of Rs. 4,55,45,000/- while the payment of first cheque has taken place on 30th June, 2008 and the suit is filed on 20th June, 2012 i.e. not within three years. Hence, it is barred by limitation. He further submitted that as per the averments in the Plaint, the Plaintiff has paid the amounts to purchase the properties however, the properties especially 4 BHK flats claimed by the Plaintiff are exclusively stand in the name of the Appellants. Thus, that is barred under Section 4 of the Benami Transaction (Prohibition) Act, 1988. He submits that as per the

averments in the Plaint, the properties exclusively owned by him and therefore hit under Section 4 of the Benami Transaction (Prohibition) Act, 1988. He further submits that these points were raised by the Appellants before the trial Court. However, the trial Court without considering the preliminary issue under Section 9A of the Act, has passed the interim order.

4. Perused the order passed by the learned Judge of the trial Court. The trial Court has directed the parties i.e. Plaintiff and Defendants to maintain status-quo in respect of title of the suit properties 1A and 1B i.e. two agricultural lands situated at villages Adgaon and Wasali, Dist. Nashik as described in the suit. No order is passed in respect of the property 1C i.e. 4 BHC flats at Mumbai. The submissions of the learned counsel that the preliminary issue was raised before the trial Court but in the order the learned Judge, he has not mentioned that whether the Defendants raised the preliminary issue on the ground of maintainability under Section 4 of the Benami Transaction (Prohibition) Act, 1988 on the point of limitation. However, in the order the learned Judge, he has discussed the transaction between the parties while purchasing the properties

1A, 1B and 1C. It appears that the payment of Rs. 4,55,45,000/- paid to the Defendants *prima facie* shows that it was paid to the Defendants by the Plaintiff. Except the amount of Rs. 20 lacs, all the payments were made by cheques either to the Defendant No. 1 or 2. Moreover, the limitation is a mixed issue of fact and law. The payment was made for the purpose of investment and for purchasing the immovable properties. The payments made since June, 2008 and continued till September, 2009 and suit is filed in June, 2012. It appears at this stage that it can be considered as within limitation. Moreover, the issue that whether Section 4 of the Benami Transaction (Prohibition) Act, 1988 can be attracted or not is a matter of evidence.

5. Thus, the order passed by the trial Court is legal and does not require any interference. Hence, the Appeal from Order stands dismissed summarily.

6. In view of the above, Civil Application No. 284 of 2015 stands disposed of.

(MRS.MRIDULA BHATKAR, J.)