

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 283 OF 2017
WITH
CIVIL APPLICATION NO. 371 OF 2017**

Gulam Dastagir Parkar	...Appellant
<i>Versus</i>	
Shambaji Sopan Chavan & Ors	...Respondents

Mr Nagendra S Dube, *for the Appellant.*
Mr Pradeep Thorat, *a/w Mr Puranik, for the Respondent No. 1.*

CORAM: G.S. PATEL, J
DATED: 12th June 2017

PC:-

1. The Appeal is directed against an order dated 1st August 2016 by which the Trial Court partly allowed the Plaintiffs' Notice of Motion in their Suit for specific performance of an Agreement of Sale of an immovable property. The Appellant is the original defendant.

2. The property in question is Gala No. 102 of about 850 square feet built up area, at 1st floor, Vijay Industrial Premises Co-operative Society Limited, Goregaon (E), Mumbai 400 063. According to the Plaintiffs, they entered into an Agreement of Sale dated 22nd

January 2008. This was registered. The Plaintiffs claim to have paid an amount of Rs. 15 lakhs initially as part payment and, as set out in paragraph 7 of the Plaint, a total between 1st January 2008 and 5th February 2008 of Rs. 35 lakhs.

3. Apprehending that the Defendant would create third party rights and refuse to perform their obligations under the Agreement, the Plaintiffs brought suit and sought injunctive reliefs. The Defendant appeared on notice. He filed a Written Statement. He claimed that the Plaintiffs were in breach of the Agreement. It is an accepted fact that the Defendant has received an amount of Rs. 35 lakhs but refunded no part of it. Before me, a contention is sought to be raised that that time was of the essence of this contract for sale of immovable property.

4. Before the Trial Court, the Defendant also contended that the Plaintiffs were guilty of forgery and fabrication. He said that this could be established from the documents on record. The Trial Court held, and, in my view quite correctly, that these allegations of forgery and falsification of documents were more appropriately dealt with at the stage of trial once both parties had been given an opportunity to adduce evidence. The Trial Court said that at this *prima facie* without detailed evidence, there appeared to be no substance to the Defendant's contentions of forgery. The Trial Court also noted that there was a previous interim injunction granted by this Court (Nirgude J) on 6th February 2009 in this very suit when it was originally filed on the Original Side of this Court.

5. In this view of the matter, the Plaintiffs were granted relief in terms of prayer clause (b) of the Notice of Motion:

"Pending the hearing and final disposal of this suit, the Defendant, his agents, officers and anybody claiming through him be restrained by an order and injunction of this Hon'ble Court from creating any third party rights in the Suit property or changing the nature of the suit property in any manner".

6. It is difficult to find fault with the order or its reasoning. The Trial Court was careful to confine itself to the relief which I have set out above. Even in Appeal, it is exceedingly difficult to accept the Appellant (original Defendant's) contention that on a mere production of documents it could have been conclusively held that the Plaintiffs were guilty of forgery. Such a finding necessarily requires more material and evidence, and even today, this is not a kind of case of glaring or facially apparent forgery as would justify the dismissal of the Plaintiffs' Motion.

7. The Appeal is dismissed. There will be no order as to costs.

8. Liberty to the Defendant to apply to the Trial Court for an early hearing of the suit, which the Trial Court is not bound to grant, but will consider with regard to the pendency on its own docket and the mandated programme of giving priority to reducing the pendency of old cases.

9. The Civil Application does not survive.

10. A three volume compilation tendered by the Appellant is taken on file.

(G. S. PATEL, J.)