IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2393 OF 2017

Raptakos, Brett & Company Ltd. ... Petitioner

Vs.

Arham Anmol Projects Private Ltd. … Respondent

Mr.Uma K. Wagle for the Petitioner
Mr.M.J. Bhatt with Ms.N.S. Bodade for Resp. No.1

CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: JUNE 22, 2017

P.C. :

1. Rule. By consent, Rule made returnable forthwith and heard finally at the stage of admission.

2. This petition is directed against the judgment and order dated 23.1.2017 passed by the learned District Judge V, Thane, in Miscellaneous Appeal No.160 of 2016, thereby while allowing the appeal, he has vacated the order of interim injunction dated 18.7.2016 below exhibit 5 in RCS No.396 of 2016 passed by the V Civil Judge, Junior Division, Bhiwandi.

3. The petitioner is a public limited company manufacturing pharmaceutical products, who filed a Regular Civil Suit No.396 of

2016 for permanent and mandatory injunction and other reliefs. In the said suit, an application under Order 39 Rules 1 and 2 of the Civil Procedure Code for temporary injunction to restrain the defendant/respondent company from disturbing its possession over the suit property till the condition of approach road is fulfilled by the defendant company, as per the contract, was asked for. It is the case of the plaintiff company that the defendant company is in the business of land development and infrastructure. The plaintiff company had entered into a registered agreement of sale on 21.7.2010 with the defendant company and agreed to purchase a plot of land and warehouses which were to be constructed alongwith the approach road within 9 months from the date of execution of the agreement of sale i.e., on or before 21.4.2011. As the defendant company needed to keep its goods in the warehouses and the access road which were the subject matter of the agreement, were not ready within the stipulated time, by way of stop-gap arrangement, gala Nos.9, 10 and 11 in one building situate at Mauje Walshind, Taluka Bhiwandi, Thane, admeasuring a total 30000 sq.ft was provided. The said galas 9, 10 and 11 are the suit premises. Both the parties suffered difficulties in fulfilling the conditions of the contract, however somehow, they got the conveyance deed executed on 20.11.2015. However, after the deed of conveyance, the plaintiff company did not vacate the temporary warehouse i.e., the suit premises 9, 10 and 11 and occupy the same and as according to the respondent, the plaintiffs ought to have vacated those premises as per the terms and conditions of the deed of conveyance, they started continuously demanding that the plaintiff should vacate the suit premises. However, as per the case of the plaintiff, the company could not use and utilise the newly constructed warehouses, which is the subject matter of the deed of conveyance for want of a proper access road which can take heavy load bearing vehicles carrying the goods of the company and therefore the suit was filed wherein the trial Court granted temporary injunction in favour of the plaintiff and it was reversed by the learned District Judge. Hence, this Writ Petition.

4. The learned Counsel for the Petitioner – company has submitted that they are ready to take the possession of the new warehouses, however, it is not possible to take it in the absence of an access road. She argued that to provide access road was a major condition in the contract. She has further submitted that the

plaintiff has now kept all the goods and articles and manufactured products in the suit premises and the company cannot shift all these articles to the new warehouses for non-availability of the access road for transport. She has further submitted that earlier, there was resistance of villagers to use that road and it was the duty of the respondent to provide a non-controversial and good access road. She submitted that the learned District Judge has discussed unnecessarily all the merits of the case by taking an erroneous view that the plaintiff is not entitled to any protection.

5. While opposing the Writ Petition, the learned Counsel for the respondent has submitted that there is no illegality in the order passed by the learned District Judge. The learned District Judge has rightly discussed the terms of the agreement of sale and the deed of conveyance. The respondent has waived off Rs.46 lakhs towards the cost to compensate the inconvenience caused to the plaintiff. He agreed that when the deed of conveyance was executed, there were 3 options shown in a sketch as annexure to the deed of conveyance and then option No.1 was accepted as an approach road by the petitioner/plaintiff. He further submitted that the respondent has provided an access road on which the heavy

vehicles can run. He also produced a letter of villagers where they have no issue if the access road is used by the plaintiff company. He submitted that the said objection is also gone and it is the plaintiff company who is enjoying both the warehouses at present as the new warehouses are also taken into custody free of charge. He further submitted that the rent of the suit premises is Rs.3,60,000/- per month which is a great loss to the respondent. He submitted that the order of the trial Court is rightly set aside and the plaintiff has failed to establish a *prima facie* case and no balance of convenience lies in their favour.

6. Heard both the parties. Perused the documents. There is no dispute about the amount of consideration, the earlier agreement of sale and the conveyance and lease deed. Both the parties have produced the photographs disclosing one access road going towards new warehouses. However, the said access road is found to be kachha road and is not a motorable or tar road available or accessible in all the seasons. Much was argued on the relevant clauses of the agreement of sale and the deed of conveyance. It appears that in the agreement of sale, there is a specific clause No.9(i) wherein in is mentioned that RCC approach

road will be provided. However, in the sale deed, there is a mention of Rs.46 lakhs payable by the purchaser has been waived off by the developer towards the handing over possession of the said property as per the photographs 1 to 10. In the photograph, the warehouses alongwith the kachha road is seen. Clause Nos.12, 13 and 14 were also relied, wherein 1 to 3 options were given for approach road and the purchaser has accepted to use the village road as option No.1 and also, it is mentioned that he shall also use the options as plans marked 2 and 3 without consideration which is accessible in future. He has also agreed to vacate unit Nos.9, 10 and 11 and there is also mention that the purchasers have rejected all the previously made oral commitments and the registered agreement of sale from the deed of conveyance will be null and void.

7. A letter exchanged between the parties dated 20.11.2015 is pointed out wherein it was specifically mentioned that the arrangement can be further extended after the use of unit Nos.9, 10 and 11 will be allowed to continue for a further period of three months only from 20.11.2015 free of cost and consideration and it is also mentioned that the arrangement can be further extended

after 20.2.2016 on mutually agreed terms and conditions between the properties. When there was a deed of conveyance and if the terms agreed in the agreement of sale were all cancelled and were to be treated as null and void, there was no need to continue the suit premises in the hands of the plaintiff. Thus, the case pleaded by the plaintiff that this was all done because there was no proper access road to the warehouses, as agreed between the parties, was available and so, the petitioner was allowed to continue to use the suit premises i.e., the temporary accommodation may be true. Thus, the dispute invites interpretation of clauses of MoU, Deed of Conveyance as also the letter dated 20.11.2015, which can be done only at the time of leading evidence. The submissions of the learned Counsel for the respondent that the petitioner is using the warehouses without paying any rent and the rate is of Rs.3,60,000/- per month and thus, the respondent may file appropriate application seeking some payment or royalty towards the suit premises, if advised. However, the fact that the petitioner was put in possession lawfully and are at present occupying the premises where petitioners' articles and the manufactured products are stored. Whether they are now unlawfully occupying or not can be determined after leading evidence and under such circumstances, the petitioner has made out a *prima facie* case and the balance of convenience lies in favour of the petitioner. So the learned District Judge ought to have considered these facts when he was dealing with the Miscellaneous Appeal. Thus, the said order deserves to be set aside.

8. In the circumstances, the order of the learned District Judge dated 23.1.2017 in Miscellaneous Appeal No.160 of 2016 is set aside and the order of the trial Court dated 18.7.2016 is restored.

9. Rule made absolute accordingly.

(MRIDULA BHATKAR, J.)