

Atul

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 245 OF 2017
WITH
CIVIL APPLICATION NO. 326 OF 2017

Gulam Dastagir Parkar ...Appellant

Versus

Shrenik Hasmukh Mehta (HUF) through its ...Respondent
Shrenik Hasmumkh

Mr Nagendra S Dube, *for the Appellant.*

Mr Prayag Joshi, *with Sapna Parihar, i/b Bhavin R Bhatia, for the Respondent.*

CORAM: G.S. PATEL, J

DATED: 19th June 2017

PC:-

1. The Appeal is directed against an interim order dated 1st February 2017 by which the learned Judge quite correctly dismissed the Plaintiff's Notice of Motion. The Plaintiff has come in Appeal.

2. The Suit is incomprehensible. There is an Memorandum of Understanding ("MoU") between the Plaintiff and Defendant of 22nd May 2008 in respect of Gala No. 102, Vijay Industrial Premises Cooperative Society Ltd, IB Patel Road, Goregaon (West), Mumbai 400 063. The consideration in the MoU is Rs 63 lakhs.

According to the Plaintiff, the “MoU is barred by limitation”. I do not pretend to understand what this is suppose to mean. Prayer (a) of the plaint reads thus:

“(a) This Hon'ble Court may pass an order declaring that the Memorandum of Understanding dated 22/05/2008 is barred by the period of limitation.”

3. Obviously no such relief can every be granted. An MoU or other transactional document is not by itself time barred; a suit based on it might or might not be.

4. The learned Judge found that the Defendant had already filed Suit No. 2977 of 2014 for specific performance. In the meantime, the Plaintiff entered into yet another agreement with a third party, one Sambhaji Sopan Chavan under an agreement dated 22nd January 2008. This time the Plaintiff purported to cancel it by notice and Chavan filed his own, which is still pending. In an appeal from an order in that suit, a *status quo* order was passed. In the meantime, the Plaintiff entered purportedly into an Agreement of Leave and License with one Omsaini Engineering Private Limited. Sambhaji Chavan has filed another Suit No. 3330 of 2008 in this Court (now numbered as Suit No. 4938 of 2008 in the City Civil Court).

5. The learned Judge also found that although the MoU in question is of 22nd May 2008, the Suit was brought in 2015. It does not disclose a specific cause of action. In fact, the learned Judge correctly found that it does not seek a substantive relief for

cancellation of the MoU nor does it do so within the prescribed period. There was nothing shown to the learned Judge in regard to the Plaintiff's claim of possession.

6. Before me it is vehemently contended that the Plaintiff is in possession and that the Defendant attempted to dispossess the Plaintiff. Reliance is placed on certain photographs that are annexed to the accompanying Civil Application. It is accepted that these photographs were produced by the Defendant himself. These photographs do not show the Plaintiff in possession or in the process of being dispossessed. It is also extremely unlikely that a Defendant would ever produce before a Court photographs showing the the Defendant himself in the act of dispossessing the Plaintiff and thus solemnizing the Plaintiff's case, and furnishing him with a cause of action.

7. The second relief that the Plaintiff sought was for a restraint against the Defendant from interfering with Plaintiff's possession. But that postulates that the Plaintiff was able to establish his own possession in the first place, and, second, that the Plaintiff was able to establish an attempt at dispossession. The Plaintiff did neither. In short, there was not a single issue on which the Plaintiff could remotely be said to have made out a case.

8. There is no infirmity in the order dated 1st February 2017. The Appeal is dismissed. There will be no order as to costs.

9. The Civil Application does not survive and is disposed of as infructuous.

(G. S. PATEL, J)