IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.543 OF 2016
WITH
CIVIL APPLICATION NO.700 OF 2016

Pravin Khivraj Bhandari & Ors. ...Appellants
Versus
Marvel Landmarks Pvt.Ltd.& Ors. ...Respondents

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Mr.Pradeep Thorat i/b S.K.Jain & Associates for the Appellants
Mr.Amit Ashok Gharte for the Respondent No.1.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 21st June, 2017.

P.C.:-

1. The Appellants herein, who are the Plaintiffs in Special Suit No.604 of 2015 have challenged the order dated 05/02/2016 whereby, the learned Civil Judge Senior Division, Pune dismissed the application for injunction seeking to restrain the Respondents herein from alienating or creating third party interest in respect of the flat bearing No.1501, admeasuring 270.04 sq.mtrs., in the complex "Marvel Ganga Sangria" at Village - Mohammedwadi, Tq.Haveli, District Pune.

2. The Respondent Nos.8 to 13 are the owners of several plots of land more particularly described in para 3 of the Plaint. The

said land shall be hereinafter referred to as the "the said land". The Respondent Nos.8 to 13 had assigned development rights in respect of the said land in favour of the Respondent No.1. The Respondent No.1 floated an ownership scheme known as "Marvel Ganga Sangria" The Respondent Nos.1 to 7 as the agents of the Respondents Nos.8 to 13 published an advertisement for sale of tenements to be constructed in the ownership scheme "Marvel Ganga Sangria". In response to the said advertisement, the Appellants approached the Respondent Nos.1 to 7 and expressed their willingness to purchase one of the residential tenements in the said complex for a total consideration of Rs.2,76,14,000/-. Accordingly, the Appellants and the Respondent No.1 signed a Provisional Booking Letter dated 16th July, 2013. The Appellants paid to the Respondent No.1 a sum of Rs.1,33,57,867/- from July, 2013 to October 2013, as a part payment of the sale consideration.

3. The Appellants claimed that the Respondents avoided to execute the agreement under MOFA under one pretext or the other. Hence, by legal notice dated 23rd January, 2015 the Appellants called upon the Respondents to execute the

agreement and to put them in possession of the suit tenement. The Respondents did not comply with the said notice hence, the Appellants filed a suit for specific performance, and in the alternative sought damages to the tune of Rs.3,39,45,158/-. The Appellants also by way of permanent injunction, sought to restrain the Respondents from creating third party interest and or from alienating the suit flat in any manner. The Appellants also filed an application for temporary injunction seeking to restrain the Respondents from disposing of, alienating or creating third party interest in respect of the suit flat pending the disposal of the suit.

4. The case of the Respondent No.1 in brief is that the Appellants did not perform their part of contract and further by email dated 7th February 2014, the Appellants cancelled the agreement. The Respondent No.1 has further stated that by an agreement dated 20th January, 2015, the suit flat has been transferred to the Respondent Nos.14 and 15 and that they are in possession of the suit flat. The Respondent No.1 further claims that in terms of Clause 11 of Provisional Booking Letter, the Respondent No.1 is entitled to retain 15,00,000/- towards penal charges for

cancelling the booking of the flat. The Respondent No.1 further claims that the suit flat has been sold to Respondent Nos.14 and 15 for total price of Rs.2,33,79,000/-. The Respondent No.1 claim that he has sustained loss of Rs.42,35,000/- due to cancellation of the agreement. The Respondent No.1 therefore, claimed that he is entitled to deduct the said amount of Rs.42,35,000/- from the sale consideration paid by the Appellants.

5. The learned Trial Court after considering the material on record dismissed the application mainly on the ground that there was no concluded agreement between the parties. The learned Trial Judge, has further held that the Appellants have cancelled the booking by sending the email dated 7.2.2014. The learned Trial Judge therefore, held that the Appellants are not entitled for any equitable relief. The learned Trial Judge held that in the event of transfer pendente lite the rights of the Appellants would be protected under the Provision of Section 52 of the Transfer of Property Act. The learned Trial Judge therefore, dismissed the application for Temporary Injunction. Aggrieved by this order the Appellants have preferred this Appeal.

6. Heard Mr. Pradeep Thorat, the Learned Counsel for the Appellants. He has submitted that the material on record prima facie establishes that there was a concluded contract between the Appellants and the Respondents and in accordance with the said agreement, the Appellants had paid to the Respondents a sum of Rs.1,33,57,867/-.

7. The learned Counsel for the Appellants has further submitted that the Appellants had not sent any email as alleged by the Respondents. He has further submitted that the material on record clearly indicates that the Appellants were ready and willing to perform their part of contract and that the Respondents are not justified in executing the agreement in favour of Respondent Nos.14 and 15 during the subsistence of the said agreement.

8. The learned Counsel for the Respondents has submitted that the agreement was cancelled in view of the email sent by the Appellants. He has further submitted that since the Appellants had disputed having sent the email, the matter was referred to

the Police for investigation and that the Police has investigated the same and has ascertained that the email was sent from the email-id of the Appellants.

9. The learned Counsel for the Respondent No.1 further submitted that the Appellants had not made any payment after 19.10.2013 and had not shown any interest in performing their part of the contract. He has submitted that only after the execution of the agreement dated 20th January 2015 in favour of the Respondent Nos.14 and 15 that the Appellants issued a legal notice dated 23.1.2015. He has submitted that the Respondent Nos.14 and 15 are already in possession of the suit flat and that the Appellants are not entitled for any equitable reliefs.

10. The learned Counsel for the Respondent No.1 further submitted that in terms of Clause 11 and the booking letter the Respondent No.1 is entitled to deduct an amount of Rs.15,00,000/- from the consideration received from the Appellants. He has further submitted that the Respondent No.1 has sustained loss to the tune of Rs.42,35,000/- due to

cancellation of the agreement by the Appellants and hence the Respondents are entitled to deduct the said amount from the consideration received from the Appellants.

11. I have perused the records, the impugned order as well as the pleadings and other documents on record. I have also considered the submissions of the learned Counsels for the respective parties.

12. It is not in dispute that the Appellants had booked one residential flat in "Marvel Ganga Sangria" which was constructed by the Respondent No.1 in the Property of Respondent Nos.8 to 13. In terms of the Provisional Booking Letter which was signed by the Appellant No.3 and one of the officials of the Respondent No.1, the Appellants were required to pay to the Respondent No.1 a total consideration of Rs.2,76,14,0000/- on the scheduled dates mentioned in the said booking letter. It is not in dispute that the Appellants had paid to the Respondents a sum of Rs.1,33,57,867/-from the date of booking till 19.10.2013 but had failed to make any further payment within the prescribed time stipulated in the said booking letter. Furthermore, by email

dated 7.2.2014 the Appellants had informed the Respondent No.1 that they were not interested in going ahead with the purchase of the suit flat and had requested the Respondent No.1 to refund the amount of Rs.1,33,57,867/-. Though the Appellants have disputed the genuineness of the said email, the records prima facie reveal that the Appellants herein had not made any payment since 19.10.2013. They had neither taken any steps as required under the Provisional Booking Letter nor had they called upon the Respondents to complete the transaction. There is no prima facie material on record to substantiate the submissions of the learned counsel for the Appellant that the Appellants had applied for loan and that they were pursuing the same. All these facts prima facie indicate that the Appellants had not fulfilled their obligation under the contract. These facts indicate that the Appellants were not interested in purchasing the suit flat and further lead to a prima facie inference that the email was genuine. The learned Trial Judge was therefore, justified in holding that the Appellant has failed to prove prima facie case.

13. It has to be borne in mind that the grant of injunction is the discretionary relief and conduct of the party is also one of the factors to be considered while deciding the application for Temporary Injunction. In this context, it would be advantageous to refer to the decision of the Apex Court in ***Mandali Ranganna & Ors..Vrs..T.Ramachandra & Ors 2008(11) SCC l,*** wherein the Apex Court has held as under :-

"18. While considering an application for grant of injunction, the court will not only take into consideration the basic elements in relation thereto, viz., existence of a prima facie case, balance of convenience and irreparable injury, it must also take into consideration the conduct of the parties. Grant of injunction is an equitable relief. A person who had kept quiet for a long time and allowed another to deal with the properties exclusively, ordinarily would not be entitled to an order of injunction. The court will not interfere only because the property is a very valuable one. We are not however, oblivious of the fact that grant or refusal of injunction has serious consequence depending upon the nature thereof. The courts dealing with such matters must make all endeavours to protect the interest of the parties. For the said purpose, application of mind on the part of the courts is imperative. Contentions raised by the parties must be determined objectively".

14. In the instant case, the Appellants had not made any payment or taken any other steps since 19.10.2013 and further more had informed the Respondents that they were not interested in purchase of the suit. The Respondent No.1 had thereafter, by agreement dated 20th January, 2015, sold the suit

flat to the Respondent Nos.14 and 15 and put them in possession of the suit flat. It was only after the sale of the suit flat in favour of the Respondent Nos.14 and 15 that the Appellants issued a legal notice dated 23.1.2015 to the Respondent No.1 calling upon him to put them in possession of the suit flat. Such conduct on the part of the Appellants would not justify grant of equitable relief. The learned Trial Judge was therefore, justified in rejecting the application for Temporary Injunction. The findings of the Trial Court are neither arbitrary nor perverse or illegal. Hence there are absolutely no reasons to interfere with the discretionary powers exercised by the learned Judge.

15. Under the circumstances and in view of the discussion supra the Appeal is dismissed.

16. In view of the dismissal of the Appeal the Civil Application does not survive and hence, stands disposed of .

17. At this stage, the learned Counsel for the Respondent No.l submitted that out of the total sale consideration received from

the Appellants, the Respondent No.1 has already deposited before the Trial Court a sum of Rs.76,22,867/-. The learned Counsel for the Respondent No.1 has under instructions made a statement that the Respondent No.1 will deposit an amount of Rs.42,35,000/- before the Trial Court within a period of 4 weeks from the date of this order. The said statement is accepted. In the light of the above statement, the Respondent No.1 is directed to deposit the amount of Rs.42,35,000/- before the Trial Court within four weeks from the date of this order. The Assistant Superintendent II shall invest the said amount in a fixed deposit in any Nationalised Bank till the disposal of the suit. The said amount alongwith the interest accrued thereon shall be subject to the final decision of the suit.

(ANUJA PRABHUDESSAI, J.)