

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER NO.706 OF 2016**  
**with**  
**CAA/894/2016**

Kishore Dharamdas Doshi & anr. ... Appellants

Vs.

Lizann Ahuja & Ors. ... Respondents

Mr.R.D.S. Bhandari for the Appellants  
None for Respondent

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

DATE: **NOVEMBER 13, 2017**

**P.C.:**

1. This Appeal from Order is directed against the order dated 1.4.2016 passed by the learned Judge of the City Civil Court, Dindoshi, Borivali, Mumbai, in Notice of Motion in S.C. Suit No.2959 of 2014, thereby rejecting the interim relief. The plaintiff claims to be the purchaser of the flat of the respondents, i.e., the original defendants, for Rs.65 lakhs in the year 2014. The appellant/plaintiff paid Rs.2 lakhs on 27.9.2014 to the respondent, the owner of the suit flat. However, the respondent / the owner, thereafter took steps to dispose of the said flat though there was an agreement between the appellants and the respondent in respect of the suit flat. Therefore,

the suit was filed. The learned Judge after considering the affidavit in reply cum written statement, filed by the respondents, has rejected the interim relief. The learned Counsel has submitted that the respondents have agreed to sell the said flat for Rs.65 lakhs pursuant to which he accepted the amount of Rs.2 lakhs on 27.9.2014. Thereafter, the respondents have executed power of attorney on 13.10.2014 in favour of the other sister and in the said power of attorney, the respondent mentioned about the agreement between the plaintiff and defendants so also about the consideration amount agreed by both the parties and acceptance of Rs.2 lakhs by the respondents towards the amount of consideration. The learned Counsel has submitted that the respondents / defendants also sent a letter to the society on 15.11.2014 that the defendants intend to sell the said flat to the plaintiffs.

2. He further submitted that under such circumstances, the order passed by the trial Court is erroneous and prima facie, the plaintiffs have proved the case and so the protection as prayed in the Notice of Motion should have been granted by the learned Judge of the trial Court.

3. Perused the power of attorney. The said power of attorney was executed by the respondents in favour of their sister, where they have mentioned about their negotiations and agreed the transaction in respect of the suit flat with the appellants. Thus, it appears from the record that though it was earlier agreed orally between the parties, subsequently, the transaction fizzled out and it was frustrated and, therefore, no further steps were taken in respect of written agreement and the payment of the amount.

4. The learned Counsel for the respondents is not present when called out. However, considered the written statement filed by defendant Nos.1 and 2 in the suit. It appears from the submissions and the record before this Court that the parties in the year 2014 have entered into a talk and the agreement in respect of sale of the suit flat. The suit for specific performance is based on the oral agreement as no written agreement was entered into between the plaintiffs and the defendants. The payment of amount of Rs.2 lakhs on 27.9.2014 is not disputed by the respondent/defendant. However, the fact that at the time of filing of the suit or prior to that, the agreement of sale of the suit flat was in existence, is disputed. The respondents/defendants have agreed that when the earnest amount

of Rs.2 lakhs was accepted and when the defendants accepted at that time, it was orally agreed that within the stipulated time, the appellants shall pay the entire consideration amount. However, the said amount was never paid to the respondents and the respondents/owners of the flats, were in need of money at the relevant time and, therefore, further agreement between the plaintiffs and the defendants between the parties could not work. As the further transaction was not agreed between the parties, no written agreement was executed between the parties. It appears from the record that the owners i.e., the respondents, have written a letter to the society that they intend to sell the suit flat in favour of the appellants, however, there is no mention of the agreement. Further, no acknowledgement of the society on this letter is shown and, therefore, prima facie, it cannot be accepted that the defendants have acted upon such oral agreement. Moreover, it appears from the record that the appellants/plaintiffs by the notice dated 15.11.2014, have demanded damages to the tune of Rs.4,75,000/- as they have paid the earnest money of Rs.2 lakhs. Thus, the damages, it appears, can be quantified and under such circumstances, the view taken by the trial Court cannot be faulted with.

5. In the circumstances, the Appeal from Order is dismissed.
6. Civil Application also stands dismissed.

**(MRIDULA BHATKAR, J.)**