

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**APPEAL FROM ORDER NO.770 OF 2015
WITH
CIVIL APPLICATION NO.938 OF 2015
IN
APPEAL FROM ORDER NO.770 OF 2015**

Shri.Sunderlal Jain ..Appellant/Applicant
V/s.

Shri.Ramesh Janatraji Shah & Ors. ..Respondents

None for the Appellant/Applicant.

Mr.J.S. Kini i/by Mr.Suresh Dubey for Respondent Nos.1 and 2.

Mr.Ramesh Rammurthy for Respondent Nos.4 & 6.

CORAM : M. S. SONAK, J.

DATE : 11 JANUARY 2017.

P.C.

1. Although, the learned counsel for the appellant is not present, the learned counsel for the respondent Nos.1 and 2 has made his submissions in the matter.

2. Mr.J.S. Kini the learned counsel for the respondent Nos.1 and 2 submits that by letter of allotment dated 24 April 2010, the appellant has allotted Flat No.1304 on 13th Floor of the

Deeplaxmi Tower, building which was then yet to be constructed. The letter of allotment makes reference to the price of the apartment. Mr.Kini submits that the respondent Nos.1 and 2 have paid an amount of Rs.1 lakh by way of part consideration through proper banking channels and further consideration of Rs.29,55,000/- in cash. The impugned order has merely directed the appellant not to create any third party rights in respect of the suit flat and there is no case made out to interfere with the impugned order.

3. Mr.Rammurty the learned counsel for respondent Nos.4 and 6 who claim to be the partners of the appellants submits that the record indicates that the respondent Nos.1 and 2 only paid Rs.1 lakh whereas the impugned order records that an amount of Rs.10 lakhs has been paid by the respondent Nos.1 and 2. Mr.Rammurty points out that this is one of the main ground raised in the memo of appeal and even according to him, this constitutes an error which is apparent from record.

4. Having perused the impugned order and the material on record it is apparent that only Rs.1 lakh was paid through

proper channels. Insofar as the amount of Rs.29,55,000/- said to have been paid in cash it may be noted that, apart from the validity of such payment, at least at this stage, there no cognizance taken of any such alleged payment. The letter of allotment dated 24 April 2010 in its ultimate paragraph reads as follows :

“ We hereby inform you that we have reserved the above referred flat for you and shall sale the same to you at Rs.7,100/- per sq.ft., subject to you paying all the other amounts and charges and you entering into an Agreement of Sale in respect of the same and you complying with all the terms and conditions of the said Agreement for sale.”

5. Admittedly, no agreement of sale has been signed between the appellant and the respondent Nos.1 and 2. The impugned order also proceeds on the mistaken notion that out of the total consideration of Rs.44 lakhs the respondent Nos.1 and 2 have paid Rs.10 lakhs when infact the record indicates that only Rs.1 lakh has been paid.

6. Mr.Kini the learned counsel for the respondent nos.1 and 2 is right that *prima facie* a case is made out by the

respondent Nos.1 and 2 for at least restraining the appellant from transferring and creating any third party rights in respect of the flat which is referred to in the allotment letter dated 24 April 2010. However, at the same time, it is necessary that the respondent Nos.1 and 2 are also put to some terms. Since, the construction of the apartment is yet to be completed it will not be proper to require respondent Nos.1 and 2 to secure or make deposit of entire balance consideration of about Rs.43 lakhs or thereabouts. However, the respondent Nos.1 and 2 must deposit with the Trial Court at least a further amount of Rs.9 lakhs within a period of eight weeks from today, so that, at least an amount of Rs.10 lakhs in all, is secured. Otherwise, on the basis of the payment of mere one lakh, respondent Nos.1 and 2 will prevent the appellant from dealing with the suit flat for considerable length of time. If ultimately, the suit is not decreed this will be too harsh upon the appellant. There is no question of the appellant being permitted to withdraw such amount in case the same is deposited by the respondent Nos.1 and 2. Instead, the Trial Court is directed to invest such amount in any nationalized bank in fixed deposit. Such fixed deposit to be renewed until the final disposal of the suit.

7. The appeal is therefore partly allowed. The interim relief granted by the impugned order is hereby confirmed subject to the respondent nos. 1 and 2 depositing before the Trial Court within a period of eight weeks from today an amount of Rs.9 lakhs. In case, this deposit is not made within a period of 8 weeks from today, the interim order shall stand vacated without any further reference to the Court.

8. The appeal is partly allowed. There shall be no order as to costs.

9. All concerned to act on the basis of the authenticated copy of this order.

10. In view of the disposal of the appeal the civil application does not survive and is disposed of.

(M. S. SONAK, J.)