

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

**APPEAL FROM ORDER NO.914 OF 2016
WITH
CIVIL APPLICATION NO.1129 OF 2016
IN
APPEAL FROM ORDER NO.914 OF 2016**

Ideal Prime Realtors LLP	...Appellant
Versus	
Cummins India Ltd.	...Respondent

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Mr.Rajendra Desai a/w Mr.Amit A.Gharte for the
Appellant/Applicant
Mr.Rahul Narichania, Sr.Adv. a/w Mr.R.K. Choudhary i/b RKC
Legal for the Respondent.

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CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 27th JUNE, 2017.

P.C.:-

1. The Appellant herein who is the Plaintiff in Special Civil Suit No.492 of 2012 has challenged the order dated 12th April, 2016, whereby the learned 8th Joint Civil Judge Senior Division, Pune dismissed the application for injunction under Order XXXIX Rule 1 and 2 of the Civil Procedure Code,1908.

2. Heard Mr.Rajendra Desai, the learned Counsel for the Appellant and Mr.Rahul Narichania the learned Senior Counsel for the Respondent. I have perused the impugned order as well as the pleadings and the relevant documents. I have also considered the submissions advanced by the learned Counsels for the respective parties.

3. The Appellant herein and the Respondent had entered into an MOU dated 09.03.2012 in respect of a property admeasuring 39,305 sq.meters which is described in paragraph 1 of the plaint and delineated in the plan annexed to the MOU. The said property shall be herein after referred to as 'suit property'. The Appellant claims that on conducting inquiry it was revealed that the Respondent had no title to the suit property. It was further contended that despite payment of Rs.1 crore, the Respondent herein had not executed MOU. The Appellant claims that the Respondent has not cleared the defect in the title. It is further stated that from the date of the execution of the agreement, the Appellant had made sincere efforts to complete the transaction however the Respondent failed and neglected to address the issue of title pertaining to the suit property. It is further stated that instead of complying with the conditions of the agreements, the Respondent by notice dated 9th March 2012 terminated the said agreement. Being aggrieved by the said termination letter, the Appellant filed a suit for declaration that the said termination is illegal, null and void and further sought specific performance of agreement MOU dated 9.6.2011 with further consequential reliefs.

4. The Respondent/Defendant alleged that the Appellant herein has committed breach of terms of the agreement. It is stated that the MOU was not a concluded agreement and was not specifically enforceable. The

Respondent further claims that the Appellant had paid Rs.1 crore as a security deposit and the balance amount of total consideration of Rs.14,68,37,499/- was to be paid within 60 days from the date of the MOU. It is stated that the Appellant had not paid any part of the said balance amount. The Respondent further stated that the Appellant had not fulfilled his part of the obligation under the MOU and as such vide letter dated 9/03/2012 the Respondent had exercised its right of rescinding the agreement.

5. The learned Trial Judge, after considering the material on record, has held that as per the MOU date 9.6.2011 the suit property was to be sold for a consideration of Rs. 156,83,74,990/-. The learned Judge held that the Appellant had paid Rs.1 crore as interest free security deposit and that no amount was paid thereafter. The learned Trial Judge, accepted the contention of the Respondent that the intention of the Appellant prima face appears to be to block the property worth Rs.156 crores under the garb of payment of Rs. 1 crore. The learned Judge further held that, since the Appellant has come up with a specific case that the Respondent has no title to the suit property, the Appellant cannot seek relief of specific performance of the said MOU. The learned Judge, therefore declined to grant the relief of temporary injunction. Being aggrieved by the said order, the Plaintiff/Appellant has preferred this Appeal.

6. Mr. Rajendra Desai the learned Counsel for the Appellant has submitted that upon conducting investigation of title, the Appellant learnt that the Respondent does not have clear title to the property, and further that the property was reserved for the weaker section of the society. The Appellant therefore, addressed several letters to the Respondent, to rectify the defect. The Respondent however, chose not to reply to the said letters.

7. The learned Counsel for the Appellant further submits that the Appellant was always ready to deposit the amount in an escrow account, to which the Respondent was not agreeable. He has submitted that the Appellant was and has always been ready and willing to perform his part of the agreement to get the sale deed executed in his favour. However, the Respondent herein did not discharge its obligation under the agreement and on the contrary issued the termination letter. He has submitted that the learned Trial Judge has dismissed the application without considering the submissions advanced on behalf of the Appellants.

8. The learned Counsel for the Appellant has also submitted that the conduct of the Respondent was not fair. He has submitted that the Respondent had entered into an agreement despite knowing that it had no title to the suit property. Under such circumstances, the learned Judge ought to have granted the interim relief as to prevent the Respondent from entering into such transactions with other persons.

9. Mr. Rahul Narichania, the learned senior Counsel has submitted that the Respondent has not suppressed any material facts in respect of the property. He has submitted that the recitals in the MOU itself indicates that the property was reserved for the weaker section of the society. He has further submitted that the Appellant has neither paid the sale price nor performed his part of the agreement and as such the respondent was compelled to terminate the agreement. The learned Counsel for the Respondent further submits that the Appellant had not sought any interim relief at the time of filing of the suit and that the said relief was sought only after the Respondent had filed an application calling upon the Appellant to show his bonafides by depositing the balance amount of consideration in the trial Court. He has submitted that the Appellant has not come with clean hands and is not entitled for any equitable relief .

10. It is not in dispute that the Appellant and the Respondent had entered into an agreement/MOU in respect of the suit property admeasuring 39,305 sq.meters. The Appellant had paid to the Respondent a sum of Rs.1 crore as interest free security deposit for Expression of Interest (EOI). As per the said agreement the Respondent had agreed to sell the suit property to the Appellant for total consideration of Rs.156,83,74,990/-. Perusal of the said agreement/MOU clearly indicates that the Appellant herein was very well aware that the suit property was reserved for Economically Weaker

Section (EWS) under the development plan of Pune City, implemented on 5.1.1987. In the light of the said covenant in the agreement, the contention of the Appellant as regards suppression of material facts or misrepresenting has no merits.

11. Be that as it may, in terms of the said agreement, the purchaser i.e. the Appellant herein was to obtain all approvals and consents within 50 days from the date of execution of the memorandum of understanding (MOU), and was to make payment of balance of consideration of Rs.155,83,74,990/- to the Respondent herein. It is not disputed that the Appellant has neither obtained such consents nor paid any consideration to the Respondent. The Appellant has justified his inaction by claiming that the Respondent had no clear title to the property. As rightly held by the learned Trial Judge, if the Respondent has no title to the suit property, prima facie question of seeking specific performance of the said agreement does not arise.

12. It is also to be noted that the Appellant had filed the suit only after the Respondent terminated the agreement by a letter dated 9th March 2012. The Appellant had not sought any interim relief from the year 2012 till the year 2015. It was only after the Respondent had filed the application calling upon the Appellant to deposit the balance amount that the Appellant herein

filed the Application for injunction. As rightly held by the learned Trial Judge, the conduct of the Appellant, does not justify grant of equitable relief. The learned Judge was justified in holding that the Appellant has failed to prove his case. The order is neither arbitrary nor capricious and the findings do not warrant any interference. The Appeal has no merits and hence, dismissed.

13. In view of the disposal of the Appeal the Civil Application does not survive and hence disposed of.

(ANUJA PRABHUDESSAI, J.)