

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

**APPEAL FROM ORDER NO.968 OF 2016
WITH
CIVIL APPLICATION NO.1212 OF 2016
IN
APPEAL FROM ORDER NO.968 OF 2016**

Manoj Lachhmandas Jagwani	...Appellant
Versus	
Nanikram Laxmandas Rohra	...Respondents

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Mr.R.K.Mendadkar a/w Mr.S.K.Dhanwani for the Appellant
Mr.Aaditya Thakkar a/w Ms.Sneha V.Agrawal a/w Mr.Lalit V.Jain
for the Respondent.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 21st JUNE, 2017.

P.C.:-

1. The Appellant herein, who was the Plaintiff in Special Civil Suit No.226 of 2014, has challenged the order dated 22/04/2015 whereby the learned Civil Judge Senior Division, Kalyan dismissed the application for injunction.

2. Heard Mr.R.K. Mendadkar, the learned Counsel for the Appellant and Mr.Aaditya Thakkar, the learned Counsel for the Respondents. I have perused the impugned order as well as the pleadings. I have also considered the submission advanced by the learned Counsels for the respective parties.

3. The records reveal that the Appellant herein and the Respondent had

entered into an agreement dated 27th December 2006, whereby the Respondent had agreed to sell to the Appellant a property admeasuring 7134 sq.ft., more particularly described in the agreement, for consideration of Rs.1,27,50,000/-. It is not in dispute that the Appellant had paid a sum of Rs.25,00,000/- at the time of execution of the said agreement. By notice dated 12th December 2013, the Respondent cancelled the said agreement. Aggrieved by said action, the Appellant filed this suit for Specific Performance and for permanent injunction. During the pendency of the suit, the Appellant sought to restrain the Respondent from creating third party interest or alienating the property in any manner.

4. Records reveal that the agreement in question was executed in the year 2006. In terms of the said agreement the Appellant was required to pay to the Respondent a sum of Rs. 50,00,000/- at the time of sanction of plan by UMC and further a sum of Rs.52, 50,000/- within 60 days after sanction of the plans by UMC. It is not in dispute that the Appellant has neither paid Rs.50,00,000/- nor has he taken any steps to get the plans sanctioned by UMC. The Appellant has stated in paragraph 9 of the plaint that he was unable to initiate any action due to non cooperation of the Respondent herein. There is no material on record to indicate that the Appellant herein had issued any notice to the Respondent or had called upon the Respondent to furnish any document and to co-operate in any other manner.

5. It is also to be noted that by notice dated 12.12.2013 the Respondent herein had brought to the notice of the Appellant that the balance consideration as payable under the agreement was not paid. The Appellant was also informed that he had not obtained sanctioned building plans from UMC within 6 months as assured. The Appellant was informed that he had not performed his part of contract even after the lapse of three years. Respondent therefore, by the said notice canceled the agreement. The pleadings do not indicate that the Appellant herein had replied to the said notice and had controverted the statement made in the said notice.

6. Thus, the material on record prima facie reveals that the Appellant herein had not acted upon the said agreement and had not shown his willingness to perform his part of the agreement for over a period of 14 years. Under such circumstances, learned Trial Judge was justified in holding that the Appellant had not made out prima facie case.

7. It is also pertinent to note that prior to filing of this suit, the Appellant had filed Reg.Civil Suit No.2 of 2014 before the Civil Judge Junior Division, Ulhasnagar in respect of the same transaction and had also sought interim relief. The said application for injunction was dismissed on merits. Subsequently, the suit filed before the Civil Judge Junior Division, Ulhasnagar was withdrawn for want of jurisdiction and the Special Suit No. 226 of 2014 was filed before the Civil Judge, Senior Division, Kalyan. The learned Judge has noted that the Appellant had not disclosed the fact that

the earlier application for temporary injunction was dismissed by Civil Judge Junior Division, Kalyan. The learned Judge, was therefore, perfectly justified in holding that the Appellant had suppressed the material facts. It is to be noted that even in this Appeal , the Appellant has not placed on record the copy of the order passed by Civil Judge, Junior Division, Ulhasnagar dismissing his application for injunction. The conduct of the Appellant does not justify to grant of equitable relief.

8. Under these circumstance, in view of discussion supra, the Appeal has no merits and is hereby dismissed.

9. In view of order of the dismissal of appeal the Civil application does not survive hence, stands disposed of.

(ANUJA PRABHUDESSAI, J.)