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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**APPEAL (L) NO. 437 OF 2017
WITH
NOTICE OF MOTION (L) NO. 2461 OF 2017**

Intercon Investments & Finance Pvt. Ltd. .. Appellant
Vs.
Sagolite Industries & Ors. .. Respondents

Mr. P. K. Dhakephalkar, Sr. Counsel a/w. Mr. Gaurav Joshi, Sr. Counsel,
Mr. Hemang Raythatha, Mr. Jayesh Mestry i/b RMG Law Associates for
the Appellant.

Mr. Gautam Ankad a/w. Mr. Aditya Khanna i/b Aditya Khanna for the
Respondents.

**CORAM : SMT. VASANTI. A. NAIK AND
MR. SARANG V. KOTWAL, JJ.**

DATE : 18th DECEMBER, 2017.

P. C. :

By this intra court appeal, the appellant has appealed against the judgment of the learned Single Judge dated 30.11.2017 rejecting the prayers in the Notice of Motion filed by the appellant for the appointment of the receiver for the suit property and for an injunction restraining the respondents from creating third party rights in the suit property.

The respondents are the owners of the suit property. An agreement of development was executed between the appellant and the respondents on 26.02.2004 whereby the appellant was permitted to develop the property. A supplemental development agreement was executed and on 19.01.2005 an Intimation of Disapproval was granted. In March, 2005, the commencement certificate for the construction on the suit property was granted and the appellant was permitted to construct the building with basement, ground floor and first floor. It is the case of the appellant that the possession of the ground floor building was handed over by the appellant to the respondents on 16.10.2006. By a communication dated

14.10.2009, the development agreement was cancelled and the licence granted to the appellant to enter into the suit property was also terminated. Certain communications were exchanged between the parties for more than three years after the cancellation of the agreement and on 29.11.2012 the appellant filed the suit under Section 6 of the Specific Relief Act for possession of the suit property. In the summary proceedings, the appellant filed a Notice of Motion with a prayer for the appointment of a receiver for the property and for a direction restraining the respondents from creating third party rights in the property. An injunction order was granted against the respondents, thereby restraining them from creating third party rights in the suit property. The Notice of Motion was called for hearing on 10.11.2017 and by the order dated 30.11.2017, the learned Single Judge rejected the prayers made by the appellant in the Notice of Motion and disposed of the Notice of Motion as such. The judgment of the learned Single Judge dated 30.11.2017 is appealed against.

Shri Dhakephalkar, the learned Senior Counsel appearing for the appellant submitted by taking this Court through the various documents annexed to the memorandum of appeal, specially, the agreement for development, the supplemental development agreement and the deed of power of attorney executed by the respondents in favour of the appellant to submit that the possession of the property was handed over to the appellant by the respondents in terms of the clauses in the said documents. It is submitted that it is apparent from the communications addressed by the appellant to the respondent that the appellant was in possession of the suit property till the appellant was dispossessed on 20.11.2012. It is submitted by referring to the communication addressed by the respondents to the appellant, dated 15.08.2009 seeking permission of the appellant for deploying additional security guards that the property was possessed by the appellant on the said date. It is submitted that in

the circumstances of the case, since the appellant had filed the suit under Section 6 of the Specific Relief Act for seeking the possession of the property, it was necessary for the learned Single Judge to grant the prayers made in the Notice of Motion for protecting the interest of the appellant. It is submitted that the learned Single Judge did not consider the documents tendered by the appellant in the right perspective before holding that the respondents had prima facie proved that the appellant had abandoned the property and the suit property was not in possession of the appellant till 20.11.2012, as claimed. It is submitted that in the circumstances of the case, it was necessary for the learned Single Judge to grant the prayers made in the Notice of Motion, specially, the prayer for an order restraining the respondents from creating third party rights in the suit property.

On the other hand, it is submitted on behalf of the respondents that the learned Single Judge has rightly considered the relevant documents tendered by the respondents to show that the respondents were in possession of the property even before 20.11.2012. It is submitted that the respondents had tendered the electricity bills, the receipts of the taxes paid to the Bombay Municipal Corporation, the mosquito eradication treatment bills, water bills and several other documents to show that the respondents were in possession of the property after the development agreement was cancelled and the licence was terminated and the appellant was not in possession of the same. It is stated that though it is pleaded by the appellant in the suit under Section 6 of the Act that the development agreement and the supplemental development agreement are registered agreements, the learned Single Judge has rightly found that the agreements were not registered and the case sought to be made out by the appellant in that regard was false. It is submitted that the appellant had pleaded forcible dispossession from the suit property on 20.11.2012 but in the first information report lodged by the appellant in the police

station it is mentioned that the appellant was dispossessed on 19.11.2012. It is submitted that in the circumstances of the case, the learned Single Judge has rightly held on an appreciation of the material on record and the judgments on which the parties had relied on that the appellant was not entitled to the prayers made in the Notice of Motion.

It would be necessary to firstly bear in mind that the suit filed by the appellant is not a suit challenging the cancellation of the agreement by the communication dated 14.10.2009 or the termination of the licence to enter into the property. The suit is simplicitor for possession in summary proceedings filed by the appellant under Section 6 of the Specific Relief Act. The scope of the proceedings in a matter filed by a plaintiff under Section 6 of the Specific Relief Act would not be as wide as the proceedings in a suit filed by the plaintiff against the cancellation of the development agreement or the termination of the licence. In a suit filed under Section 6 of the Specific Relief Act the Court would be required to only consider whether the plaintiff was in possession of the property on the date on which he/she was forcibly dispossessed and whether at the end of the summary trial, the plaintiff would be entitled to the possession of the property. While considering the prayers made in the notice of motion, the rights of the parties would be required to be looked into. That is not the scope of the proceedings under Section 6 of the Specific Relief Act. We find that the prayers made in the Notice of Motion are very wide. By one of the prayers in the Notice of Motion, the appellant has sought the appointment of the receiver over the suit property. By the other prayer, the appellant has sought a direction against the respondents not to create any third party rights in the suit property. Normally the prayers like the ones made in the Notice of Motion are made in the suit where substantive relief is sought. While deciding the Notice of Motion, the correctness or otherwise of the order terminating the agreement and the licence will have to be prima facie looked into, as prayers for appointment of receiver and

injunction are made therein. In our view, these aspects may not be normally considered in a summary suit under Section 6 of the Act.

By that as it may, it would be necessary to consider whether the learned Single Judge was justified in recording a prima facie finding on the basis of the material on record that the appellant was not in possession of the property till 20.11.2012, the date on which it was allegedly dispossessed. The documents on which the appellant has relied on for proving the possession till 20.11.2012 would not be relevant for deciding the question whether the appellant was in possession of the property till 20.11.2012. The documents on which the appellant has relied on are the agreement for development, the supplemental agreement, the deed of power of attorney and the clauses and conditions mentioned therein. These documents are executed some time in 2004-05. Also, in these documents, it is clearly mentioned that the possession of the property would be with the appellant as a licensee of the property. No documents from 14.10.2009 till 20.11.2012 are produced by the appellant before this Court to show that the appellant was in possession of the property till 20.11.2012. The agreements executed between the parties are not registered. The agreements refer to the possession prior to the cancellation of the agreement and the termination of the licence in the year 2009, if at all it were to be assumed that these documents speak of possession being delivered to the appellant. After the termination of the license on 14.10.2009, there is no document which would prima facie show that the appellant continued to be in possession of the property after the cancellation of the agreement on 14.10.2009 till the appellant was allegedly dispossessed on 20.11.2012. In fact, the respondents have produced several documents in the form of receipts of the payment of taxes to the Municipal Corporation, the receipts of electricity bills and consumption charges, the appointment of security guard, receipts pertaining to the payment of water taxes and the receipts showing that

certain amount was paid to the Corporation towards mosquito eradication treatment, to prove their possession. Apart from the aforesaid documents, certain other material was also considered by the learned Single Judge while holding that the appellant had failed to prove that it remained in possession of the property till 20.11.2012, the date on which it was allegedly dispossessed. In the circumstances of the case, the learned Single Judge has rightly recorded a finding that the appellant had abandoned the suit property and that it was not in possession of the property till 20.11.2012, when it was allegedly dispossessed. The said finding is based on a proper appreciation of the material on record. In the circumstances of the case, the learned Single Judge has rightly rejected the prayer made by the appellant in the Notice of Motion.

In the result, we dismiss the appeal with no order as to costs.

In view of the disposal of the appeal, the Notice of Motion is also disposed of.

At this stage, the learned Senior Counsel for the appellant seeks the continuation of the interim relief in the Notice of Motion for six weeks.

The prayer is strongly opposed by the learned counsel for the respondents. It is stated that a similar prayer was made by the appellant before the learned Single Judge and the learned Single Judge had rejected the prayer after observing that the plaintiff had not approached the Court with clean hands and was also not able to establish that prior to the date of alleged dispossession the plaintiff was in the settled possession of the suit property.

We find that a finding is recorded by the learned Single Judge in para 48 of the judgment that the plaintiffs had sought to give an impression to this Court that the deed of declaration was registered along with the development agreement and the supplemental development agreement though they were not. The learned Single Judge has prima facie found that the present appellant had not come to the Court with clean hands. In

view of the said finding, the learned Single Judge had rejected the prayer made on behalf of the appellant for continuation of the ad interim protection. In the circumstances of the case, we reject the prayer made by the appellant for continuation of the ad interim relief. Order accordingly.

[SARANG V. KOTWAL, J.]

[SMT. VASANTI A. NAIK J.]