

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 5090 OF 2017

Dattatraya Mahadev Sutar ... Petitioner
Vs.
M/s. Gaiban Construction & Anr. ... Respondents

Mr. Dhairyasheel Sutar, Advocate for the petitioner.
Mr. Sudhir V. Sadavarte, Advocate for respondent no. 1.

CORAM: MRS.MRIDULA BHATKAR, J.
DATE: 8th August, 2018.

P.C.:

This Writ Petition is directed against the order dated 20th February, 2017 passed by the learned District Judge-1, Jaysingpur dismissing Miscellaneous Civil Appeal No. 16 of 2015 wherein the order dated 9th March, 2014 passed by the learned Civil Judge Senior Division Jaysingpur below Exhibit 5 in Special Civil Suit No. 4 of 2015 is confirmed.

2. The petitioner is the plaintiff, who has filed the suit for injunction and declaration of cancellation of Development Agreement dated 14th July, 2005. He moved an Application for injunction and also prayed that 3rd party right is not to be created in the suit building. He submitted that after executing Development Agreement, the respondent/developer was supposed to construct the entire building

within 18 months, however, the time schedule was not followed by the respondents. The building, which is constructed by him, is not as per the plan. In the building, sub-standard material is used and no occupation certificate is obtained from the Corporation. He submitted that the learned trial Judge and learned District Judge have not taken into account these facts. If at all third party interest is created by selling the commercial premises or residential premises to the other parties, then the petitioner/plaintiff will face difficulty in executing the decree, if it is decreed.

3. The learned counsel for the respondents, while opposing this Petition, has submitted that there is concurrent finding of trial Court and District Court and it is to be maintained.

4. Considered the submissions, perused the impugned order and also considered the nature of the suit filed by the petitioner/plaintiff. The trial Court has noted down that the photographs of the suit building which were produced disclosed the construction of the building was complete. It is also observed that the petitioners are in possession of some of the newly constructed premises. It is the suit for specific performance and declaration. The building is complete.

Whether it is constructed as per the approved plan and whether the Corporation has given completion certificate can be decided at the time of final hearing. Once the building is ready, then granting of injunction against the respondent, that no third party interest is to be created and put restriction on sale of flats will be unjust, as the defendants have invested large amount in the construction of the building. If at all there is any illegality in the construction as per approved plan and if there is breach of the terms of Agreement on the part of respondent/defendant, then the petitioner is entitled to damages or other relief. Under such circumstances, no fault is found in the concurrent finding given by both the Courts below. Hence, the order is maintained. Writ Petition is dismissed.

(MRIDULA BHATKAR, J.)