

vks

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

WRIT PETITION NO.1372 OF 2016

Sou. Rekha Agnihotri	...	Petitioner
V/s.		
M/s Shri Samarth Enterprise	...	Respondents

Mr. Suresh M. Kamble, for the Petitioner.
Mr. Pravin H. Padave, for the Respondent
No.2.
Mr. Drupad S. Patil, for respondent No.1.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 18th JANUARY, 2018.

P.C. :

1] By this petition filed under Article 227 of the Constitution of India, the petitioner is challenging the order dated 21.11.2015, passed by District Judge-3- Kalyan, thereby dismissing Misc. Appeal No.34 of 2015 filed by the petitioner against the order dated 23rd March 2015, passed by the 3rd Joint Civil Judge (Senior Division) Kalyan, thereby rejecting petitioner's application for interim injunction filed at Exh.5 in Special Civil Suit No.347 of 2014.

2] The petitioner has filed Special Civil Suit No.347 of 2014 for cancellation of development agreement dated 16.10.2008, coupled with the relief of injunction to restrain respondent No.1 from

carrying out any construction activity over the suit property. Respondent No.2 is the owner of the suit plot admeasuring 5700 sq.meters situated at Titwala bearing Survey No.229. The petitioner has purchased an area of 3000 sq. meters out of said plot by paying full consideration. Thus, the area admeasuring 3000 sq. meters belongs to petitioner and an area admeasuring 1700 sq. meters out of the said area belongs to respondent No.2. Petitioner and respondent No.2 entered into development agreement with respondent No.1 M/s Shri. Samarth Enterprises through its partner. It was agreed between the parties that respondent No. 1 will develop th suit plot by paying consideration in the from of built up area to the extent of 22% of entire built up area jointly to both the co-owners i.e. 11% to the plaintiff and 11% to the respondent No.2. Moreover, respondent No.1 has also paid security amount of Rs.7 lacs, out of which 4 lacs was given to respondent No.2 and Rs.3 lacs given to the petitioner which was returnable after completion of transaction. As per agreement the construction work was to be completed within 36 months.

3] The grievance of the petitioner is that respondent No.1 has failed to complete construction within the stipulated period. Hence time was extended on the request of respondent No.1 on additional consideration of 9% built up area. Even then, respondent No.1 failed to perform his part of the contract. Therefore, petitioner

issued notice to cancel development powers given to respondent No.1 and as stated above filed suit.

4] Respondent No.1 resisted the suit contending inter alia that it is the petitioner, who is guilty of non performance of her part of contract. She was supposed to seek necessary permission from Kalyan Dombivali Municipal Corporation and to construct internal roads for the said development. She failed to do so. Hence respondent No.1 has to incur additional expenditure for constructing the road and to seek necessary permissions. In view thereof, the petitioner on her volition extended time by requesting respondent No.1 to pay Rs.8 lacs in lieu of 600 sq. feet built up area towards additional consideration. Respondent No.1 accordingly paid the said amount, as a result, time is extended automatically, therefore, petitioner has no case.

5] After hearing learned counsel for both the parties, the trial Court was pleased to hold that the petitioner has failed to make out prima face case as she has accepted the valid consideration amount and Rs.8 lacs and as a result time for construction is extended. It was further held that if construction activity undertaken by respondent No.1 is stopped, he will suffer irreparable loss and hardship and accordingly on the basis of these findings, learned trial Court rejected petitioner's application for interim

injunction.

6] Against this order, petitioner approached the Appellate Court and as stated above Appellate Court confirmed the said order by dismissing her appeal.

7] Perusal of the orders passed by the Courts below, is sufficient to show that both the trial Court and Appellate Court, have after considering the entire material on record, by way of reasoned orders, rejected the petitioner's application for interim injunction. No perversity on the part of any of the Courts below, is pointed out in the approach and in the view taken by them while rejecting petitioner's application for interim relief. In view thereof within the limited scope of writ jurisdiction of this Court, no interference is warranted therein. The law in this respect is well settled as laid down by the Apex Court in case of *Wander Ltd and anr -vs- Antox India Pvt. Ltd. [1990 (suppl) SCC 727]*, that Appellate or Writ Court would normally not be justified in interfering with the exercise of discretion exercised by the Courts below, and also will not reassess the material and seek to reach a conclusion different from the one reached by the Courts below unless it is found to be perverse.

8] Moreover, the perusal of the impugned order passed by the trial Court and confirmed by the Appellate Court goes to show

that the petitioner, by her own conduct, had accepted an amount of Rs.8 lacs and has extended period of agreement and hence now she cannot raise the grievance that as construction is not completed within the stipulated period, Respondent No.1 may be restrained from carrying out construction. If such relief as claimed by the petitioner is granted, it is respondent No.1, who will suffer irreparable loss as already he has invested substantial amount in the said construction. Hence, on none of the parameters, the case of the petitioner is having merits. Therefore, there is no question of interfering in the impugned order passed by the trial Court and confirmed by the Appellate Court.

9] The writ petition, therefore, being without merits stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]