

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.50/2014
IN
FIRST APPEAL NO.17/2014
WITH
CIVIL APPLICATION NO.731/2013
IN
FIRST APPEAL NO.196/2013

Mantri Realty Ltd.
(Formerly known as
Sunil Mantri Realty Ltd.) ... Applicant

V/s.

Maharashtra State Textile
Corporation Ltd. ... Respondents

Mr. Satish Raut for the Official Liquidator.
Mr. U. M. Mahajan a/w. Salil Dabke i/b. Divekar & Co. for the
Respondents.

**CORAM: K.K. TATED &
S. K. SHINDE, JJ.**

DATED : OCTOBER 9, 2018

P.C. :

1 Heard. Both the Civil Applications can be disposed of together by a common order because the reliefs are similar. Even the judgment and decree passed by the Trial Court is identical.

2 By these Civil Applications, the Applicant Plaintiff is seeking an order of injunction restraining the Respondent-Defendant from creating any third party right, title and interest

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Basavraj G. Patil

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in respect of the suit property till hearing and final disposal of the First Appeals.

3 In the present proceedings, in First Appeal No.17/2014 the Applicant Plaintiff had filed Special Civil Suit No.220/2009 before the Civil Judge, Senior Division, Solapur for specific performance and also in the alternative, for damages. Prayer clauses (a) to (f) of the Special Civil Suit No. 220/2009 read thus:

“(a) The suit be decreed with full costs.

(b) It may be declared that the letter bearing No. Secy/GP/ Solapur/589/862 dt. 21/08/2009 of the Defendant is illegal bad in law and improper and it be quashed and set aside for the reasons mentioned in the plaint.

(c) The acceptance letter bearing No.Secy/GP/Solapur/145 dated 15.05.2009 issued by the Defendant be declared in subsistence and valid and the Defendant be directed to act on it. By way of ancillary relief it may be further declared that in view of the above the issuance of the fresh notice dated 26.08.2009 in respect of development of property at Solapur is absolutely unfair, illegal and unsustainable.

(d) That the specific performance be granted in favour of the Plaintiff and the Defendant may be directed by this Honourable Court to proceed further as per the acceptance letter dated 15.05.2009 and do all such acts as per the tender document in respect of the properties CTS No.8465, 8666, 8467, 8468, 8469 at Narsingh Girji Mill, Solapur.

(e) That the Defendant be permanently restrained from allotting the said development work of Garment Parks at CTS No.8465, 8466, 8467, 8468, 8469 admeasuring 47373.08 sq.mtr. at Solapur namely Narsing Girji Mill to any other person that the Plaintiff and the Defendant be

further directed not to act upon its fresh tender publication dated 26.08.2009 and do any other act in pursuance to the said tender notice.

“(f) In the alternative if this Hon'ble Court comes to conclusion that specific performance cannot be granted in favour of the Plaintiff then Defendant may be ordered and directed to pay the amount of Rs.10,55,35,000/- towards the damages as well as the amount paid by the Plaintiff to the Defendant by way of earnest money and further payments together with interest at the rate of 15% p.a. from the date of payment till realization of the whole amount in lump sum.”

4 In First Appeal No.196/2013 the Applicant Plaintiff filed Special Civil Suit No.339/2009 for specific performance, declaration and mandatory injunction with following reliefs:

“a. The suit may kindly decree with costs.

b. Defendant may be directed to perform suit contract specifically and execute development agreement, power of attorney and further document for development of suit property and to do all such act as per bid document, judgment and decree be drawn accordingly.

c. It may kindly declare that, impugned notice of cancellation dated 21/08/2009 and impugned notice of tender dated 26/08/2009 are illegal, unauthorized, null-void-ab-initial, arbitrary, unreasonable, ineffective, without authority, not binding over suit contract, suit project, suit property and upon Plaintiff , by passing judgment and decree.

d. It may kindly declare that suit contract is subsisting and binding upon suit project, suit property and parties to this suit, by passing judgment and decree.

e. The Defendant, their servant, officer, may kindly restrain from alienating / transferring development right, title, interest over suit property, suit project to any person or association of person (incorporated OR not) and further be restrain to not obstruct/ disturb Plaintiff , their servant,

agents from exercising development activities over and in respect of suit property/ project, judgment and decree be drawn accordingly.

f. Pending the final determination of suit ad-interim relief of injunction in terms of clause (d) above may kindly issued against Defendant .

g. In the alternative if Hon'ble Court comes to the conclusion that, Specific Performance can not be granted in favour of Plaintiff then Defendant may be directed to pay amount of Rupees Twenty Crores towards damages as well as the amount of E M D paid by the Plaintiff and interest over the same @ 15% p.a. from date of payment till realization over and above entire amount in lumpsum.

h. All other consequential and necessary reliefs may be granted in force of Plaintiff .

i. Plaintiff may kindly permitted to add, alter, amend plaint as and when found necessary.

j. Defendant may directed to pay to the Plaintiff costs of the suit."

5 In both these suits, the Applicant Plaintiff had made Application for injunction which was rejected, against which they preferred Appeal from Order before this court, which was also dismissed. Then they moved the Apex Court. The Apex Court also dismissed their SLP directing the Trial Court to decide both the suits expeditiously. The Trial Court, by impugned judgment and decree dated 21.01.2013 and 30.07.2013 partly allowing the Applicant's suit directed the Defendant to pay sum of Rs. 5 lacs with interest @ 9% p.a. and 12% p.a. in both Special Civil Suit No. 220/2009 and Special Civil Suit No. 339/2009 respectively. Hence, the Applicant Plaintiff made both these Civil Applications.

6 It is to be noted that during pendency of both the suits neither the Trial Court nor the High Court and/or the Apex Court had granted any ad-interim relief in favour of the Applicant Plaintiff . Therefore, there is no question of restraining the Defendants from creating any third party right, title and interest in respect of the suit property. In any case, that will be subject to outcome of the present proceedings. Apart from that, the Applicant has made a specific prayer in both the suits for compensation. At the most, if specific performance is not granted by this court, the Applicant may claim compensation on merits.

7 In view of these facts, we do not find any reason to allow both the Civil Applications.

8 Hence, both the Civil Applications stand rejected.

9 No order as to costs.

(S. K. SHINDE, J.)

(K. K. TATED, J.)