IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7156 OF 2017

Hardip Singh Sekhon & Anr. ... Petitioners
V/s.
Runwal Homes Pvt. Ltd. ... Respondent

- Mr.Shriram Kulkarni i/b. Mr.Sachin Chavan for the Petitioners.
- Mr.S.U. Kamdar, Senior Counsel a/w. Mr.Farhan Dubash, Ms.Apeksha Munot & Mr.Shlok Bolar i/b.Wadia Ghandy & Co. for the Respondent.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 27th MARCH, 2018.

ORDER :

1] Heard learned counsel for the Petitioners and learned counsel for the Respondent.

2] By this Writ Petition, filed under Article 227 of the Constitution of India, the Petitioners are challenging the order dated 17th June, 2017, passed by the City Civil Court, Mumbai, thereby dismissing the Notice of Motion No.1621 of 2017 in S.C. Suit No. 431 of 2016.

3] The said Notice of Motion was taken out by the present

Petitioners under Section 9-A(2) of the Code of Civil Procedure, 1908 *(for short, "C.P.C.")* for appointment of the Court Receiver for checking the completion of the construction of the suit premises and for handing over the possession of the suit premises to the Petitioners.

4] The Petitioners in the present case are the original Plaintiffs, who have filed the Suit for specific performance of the agreement of sale of the flat under the provisions of the MOFA Act and for possession of the said flat. According to the Petitioners, the Respondent has agreed to sell the suit flat to the Petitioners for consideration of Rs.1,16,15,000/-. They have also made the full and final payment as per the said Agreement-of-Sale dated 30th December 2011. However, as the Respondent demanded some additional amount of Rs.20,33,909/- towards the additional carpet area, the Petitioners were constrained to file this suit before the trial Court for possession of the suit flat in view of the notice issued by the Respondent that, if they do not pay the charges, then the said Agreement will stand terminated.

5] Along with the suit, the Petitioners had also filed the Notice of Motion No. 869 of 2016 seeking interim reliefs. The trial Court has decided the said Notice of Motion on 29th February 2016 and granted the relief of interim injunction, restraining the Respondent from creating third party interests in the suit flat and also from terminating the said Agreement-of-sale executed in favour of the Petitioners.

6] On their appearance, the Respondent has raised the issue of pecuniary jurisdiction under Section 9(a) of the C.P.C.. Hence, the trial Court has also framed the issue to that effect and the suit is pending since 29th February 2016 for leading of evidence on that issue.

7] At that stage, on 4th August 2016, the Respondent issued the letter to the Petitioners informing them that the "Occupation Certificate" of the suit flat is received from the Municipal Corporation and therefore, the Petitioners can take possession of the suit flat after completing the necessary formalities and clearing the balance outstanding amount of Rs.20,33,909/- towards additional carpet area which includes a sum of Rs.9,10,000/- towards development charges within 7 days from the receipt of the letter.

8] Being aggrieved by this demand, which according to the Petitioner is over and above the agreed amount, the Petitioners filed this Notice of Motion stating that, as the issue relating to the pecuniary jurisdiction of the Court, raised under Section 9(A) of C.P.C. is pending for determination before the Court, during *pendency* of the issue, as per the provisions of Section 9(A)(2) of C.P.C., the interim relief in the nature of putting the Petitioners in possession of the suit flat be granted by the trial Court.

9] The Respondent has resisted this Notice of Motion by submitting that there was no change in circumstances. Earlier also such relief was claimed but not granted. Secondly, it was submitted that such type of interim mandatory relief of putting the Petitioners in possession of the suit flat cannot be granted at this stage, under Section 9(A)(2) of C.P.C., it being beyond the scope of the said provision and is as good as granting main relief claimed in the suit. It was submitted that, whatever relief of imminent nature to protect the interest of the Petitioners being already granted, this application under Section 9(A)(2) of C.P.C. should not be allowed by the trial Court.

10] The trial Court has accepted the submission advanced on behalf of learned counsel for the Respondent and accordingly dismissed the Notice of Motion. This order of the trial Court is the subject matter of this Writ Petition.

11] The submission of learned counsel for the Petitioners is that, when the Petitioners have, as per the agreement, paid the entire amount of consideration, then there was no justification at all for the Respondent to claim the additional amount of Rs.20,33,909/- towards additional carpet area and further the development charges of Rs.9,10,000/-. According to him, the trial Court has already passed the order restraining the Respondent from creating third party interest in the suit flat and also restraining him from terminating the Agreement-of-sale, by holding that, whether the Petitioners are liable to pay this amount of Rs.20,33,909/- or not will be considered at the time of final hearing. Therefore, it is urged that, subject to decision on that issue, Petitioners can be put in possession of the suit flat. As regards the development charges, it is submitted that the Petitioners are not at all liable to pay the said charges. The only development charges which, they were liable to pay were Rs.26,000/-. Thus, by making claim of such exorbitant charges, the Respondent is illegally depriving the Petitioners from the possession of the suit flat. It is submitted that, the Petitioners have paid the entire agreed consideration amount, hence it would be travesty of justice if they are deprived from possession. Hence, according to him, such relief of interim nature needs to be granted under Section 9(A)(2) of C.P.C..

12] It is further submitted by learned counsel for the Petitioners that, the Respondent is deliberately and intentionally delaying the hearing on "preliminary issue" relating to, pecuniary jurisdiction of the Court and till that issue is decided, if the Petitioners are left out of the possession of the suit premises, which they have purchased by paying the entire consideration amount and that too against the unlawful demand made by the Respondent towards the additional charges for carpet area and the development charges, then the very object of Section 9(A)(2) of C.P..C. would be frustrated. By pointing out to the provisions of Section 9(A)(2) of C.P.C., learned counsel for the Petitioners has submitted that, under the said provision, no restriction is placed on the Court, as to which relief can be granted or not granted. The use of the words "interim relief" implies that whatever relief is necessary in the facts and situation of the case, the Court is empowered to grant the same.

13] To substantiate this submission, learned counsel for the Petitioners has relied upon the judgment of the Hon'ble Apex Court in the case of *Tayabbhai M. Bagasarwalla & Anr. V/s. Hind Rubber Industries Pvt. Ltd., (1997) 3 SCC 443,* wherein, in paragraph No. (16), it is observed as follows:

> *"According to this section (Section 9-A C.P.C.), if an objection is raised to the jurisdiction of the court at the hearing of an application for grant of, or for vacating, interim relief, the court should determine that issue in the*

first instance as a preliminary issue before granting or setting aside the relief already granted. An application raising objection to the jurisdiction of the court is directed to be heard with all expedition. Sub-rule (2), however, says that the command in sub-rule (1) does not preclude the court from granting such interim relief as it may consider necessary pending the decision on the question of jurisdiction. In our opinion, the provision merely states the obvious. It makes explicit what is implicit in law. Just because an objection to the jurisdiction is raised, the court does not become helpless forthwith - nor does it become incompetent to grant the interim relief. It can. At the same time, it should also decide the objection to jurisdiction at the earliest possible moment. This is the general principle and this is what Section 9-A reiterates."

14] Relying on these observations, it is urged by learned counsel for the Petitioners that, just because the objection is raised to the jurisdiction, the Court does not become helpless forthwith – nor does it become incompetent to grant the interim relief deemed fit in facts and circumstances of the suit.

15] Here, in the case, it is submitted that neither the hearing on the preliminary issue of pecuniary jurisdiction is concluded since last three years nor it is likely to be concluded within a near future. For determination of this issue, the Respondent has filed the affidavitin-evidence, he will be cross-examined and then further evidence will be taken up. As a result, since last three years, the said issue is pending for determination. In that view of the matter, it is for the Court to grant the appropriate interim relief to the Petitioners and the appropriate interim relief in the facts of the present case is to put the Petitioners in possession of the suit flat. The liability of the Petitioners to pay the amount of Rs.20,33,909/- for additional carpet area or for the amount of Rs.9,10,000/- towards the development charges will be considered at the time of final hearing the suit or even at the time of hearing of Notice of Motion, but during the said period, till the issue of pecuniary jurisdiction and the Notice of Motion is decided, the Petitioners should not be deprived from possession of the suit flat.

16] Per contra, learned counsel for the Respondent has submitted that, this relief of Petitioners being put in possession of the suit flat is not granted by the trial Court in the earlier Notice of Motion, though this relief was specifically prayed. At that time the trial Court has granted only the relief of interim injunction, restraining the Respondent from creating third party interests in the suit flat or terminating the Agreement-of-sale executed with the Petitioners. According to him, the relief, which now the Petitioners are claiming is not of the imminent nature but it is as good as granting him the final relief, that too at the stage when the preliminary issue of pecuniary jurisdiction, is also to be decided and such relief according to him, is beyond the scope of the provisions of Section 9(A)(2) of C.P.C..

17] In support of his submission, learned counsel for the Respondent has placed reliance on the judgment of this Court in the case of *Kranti Mohan Guruprasad Mehra & Anr. V/s. Fatehchand Vasuram Behal, 1981 SCC Online Bom.67,* wherein, after considering the scope of Section 9(A)(2) of C.P.C., in paragraph No.13, it was held as follows:

> *"13. When sub-cl. (2) comes into operation , it is not as if the entire field for the interim relief is re-opened , but what is contemplated by that provision is that if the exigencies of the situation impress the Court that either of the sides should be protected without wasting any time , howsoever short it may be , which may be consumed for determining the said preliminary issue, then the Court may on merits grant such an interim relief as it thinks proper. There are obviously two qualifications annexed by this provision. The first is that such an interim relief, even for such an interim period is to be given only if the court is satisfied that some protection is necessary even during the short span of time during the pendency of the application taking objection to the jurisdiction. And such concession can be bestowed in favour of the party even at the time of the*

> *motion made by the other side regarding the jurisdiction of the court, but certainly before its determination . Lastly, there is a qualification or a limitation about the tenure of such an interim relief , viz., that if such an interim relief is granted, then it shall hold good and be in force only up to the moment when the application or motion vis-a-vis the jurisdiction is heard and finally decided on merits treating the same as a preliminary issue."*

18] Here, in the case, according to learned counsel for the Respondent, already the protection of imminent nature being granted, there is no question of granting, at this stage, the final relief which the Petitioners are claiming in the suit.

19] Learned counsel for the Petitioners, however, in this respect draws attention of the Court to the further observations made in paragraph No.14 of the judgment in the case of *Kranti Mohan Guruprasad Mehra (supra),* which are as follows:

> *"14. ... If it is decided to consider only the said preliminary issue and to keep back for the time being the interim application , then the possibility of any irreparable harm being caused to either side can well be avoided as cl. (2) takes care of such a situation under which even during this interim period till the adjudication of the preliminary issue, the court is empowered to grant the interim relief purely on interim basis."*

20] Thus, according to learned counsel for the Petitioners, the interim relief should be of such a nature that it takes care of the situation, so as to avoid any irreparable loss being caused, to either side. Here, in the case, according to him, that relief will be only to put the Petitioners in possession of the suit flat.

21] In my considered opinion, if one has regard to the object of enacting the Provision of Section 9(A)(2) of C.P.C., then it is needless to state that, it does not extend to the relief, which is to be granted at the time of final hearing. In this case, what was the imminent or immediate relief for the Petitioners was to restrain the Respondent from terminating the Agreement-of-sale or from creating third party interest in the suit flat. That relief is already granted by the trial Court. Now, the substantial questions of facts are raised by both the parties in the suit and even in the course of argument before this Court, as to, whether the Petitioners are liable to pay the additional charges of Rs.20,33,909/- for additional carpet area made available in the said flat. As per the agreement, the Petitioners were liable to pay the charges on the additional carpet area. Now what will be the exact charges , as already held by the trial Court, will be decided at the time of final hearing. Even as regards the development charges of

Rs.9,10,000/-, it is again a factual issue to be considered on the basis of evidence to be adduced by both the parties. At this stage, one cannot presume this demand as totally illegal or patently unlawful and therefore, without such demand of Rs.20,33,909/- towards additional carpet area and Rs.9,10,000/- towards the development charges being met, the Petitioners be put in possession of the suit flat. It would be as good as decreeing the suit itself, as then nothing further will remain to be done in the suit except for the formal execution of the sale-deed. Hence, there is definitely the substance in the submissions of learned counsel for the Respondent and which submissions are rightly accepted by the trial Court by holding that granting such relief at the stage of deciding the application under Section 9(A)(2) of C.P.C. would be granting the decree of the suit itself. It would be beyond the object and scope of Section 9(A)(2) of C.P.C..

22] Hence, after considering the submissions advanced at bar by learned counsel for both the parties, the trial Court has rejected the said prayer of the interim relief.

23] This Court in its writ jurisdiction, does not find any illegality or impropriety in the impugned order passed by the trial Court.

24] Hence, Writ Petition being without merits, stands dismissed.

25] It is clarified that whatever observations made herein above are made only for the purpose of deciding this Writ Petition and the trial Court should not be swayed or influenced by them.

[DR.SHALINI PHANSALKAR-JOSHI, J.]