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

**APPEAL FROM ORDER NO.815 OF 2016**
**WITH**
**CIVIL APPLICATION NO.1018 OF 2016**
**IN**
**APPEAL FROM ORDER NO.815 OF 2016.**

M/s Fiza Construction Company
Through Prop. Shri.Guddusaab Ramzan
Mujawar ... Appellant

V/s.

Late Halya Pitkur Gharat (decd)
through Smt. Maya H. Gharat and ors ... Respondents

Mr. Prasad K. Dhakephalkar, Senior Counsel a/w Mr.Jagdish G. Aradwad and Mr. Arvind D. Aswani, for the Appellant.
Mr. Y.S. Jahagirdar, Senior Advocate i/by Suresh M. Sabrad, a/w Ms. Sonal B. Dabholkar, for respondent No.23A to 23C.
Mr. Narendra V. Walawalkar, Senior Advocate a/w Ms. Bhagyashri S. Vishal, for respondent Nos.27A to 27CD.
Mr. Rohit P. Sakdeo for respondent Nos.28, 29 and 30.

**CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.**

**DATE : 25th SEPTEMBER, 2018.**

**P.C. :**

1] Heard learned Senior Counsels for the appellant and respondents.

2] This appeal is directed against the order dated 22nd July,

2016 passed by the Court of Civil Judge Senior Division, Panvel, thereby rejecting the application filed at Exh.5 in Special Civil Suit No.55 of 2015.

3] The said application was filed by the present appellant, for the relief of interim injunction, restraining respondents from creating third party interest and carrying out any construction in the suit property. It is the case of appellant, by virtue of an agreement of sale dated 19.10.2006, he had agreed to purchase alternate plot, which was to be alloted by CIDCO to respondent Nos. 1 to 7 and the possession of the said plot was to be delivered by virtue of tripartite agreement. However, as subsequently in the year 2013, the appellant came to know that the said plot which was to be allotted to the appellant, was already transferred by the CIDCO, in view of tripartite agreement dated 20.3.2013 to other respondents, the appellants were constrained to file then suit for specific performance of the agreement dated 19.10.2006. Alongwith the suit, the appellants had filed this application for temporary injunction which came to be rejected by the trial Court.

4] It is fairly conceded by learned Senior Counsel for appellant that after rejection of this application, this Court has not

granted any ad-interim relief. Hence, the appellant had also approached the Hon'ble Supreme Court against the order passed by this Court on 24th April, 2017, but he was not successful.

5] Hence, the fact remains that, as on today, though the suit is of the year 2015, there is no order of interim injunction in favour of the appellant. As a result thereof, the construction undertaken by the respondents is completed and the occupation certificate is also issued. The third party interests are also created in favour of the flat purchasers. Thus, the application itself has become infructuous. Therefore, after considering the reasons given by the trial Court for rejection of the interim relief, there does not appear any substance or merit in the appeal. Admittedly as held by the trial Court, the description of the plot was not given in the agreement dated 19.10.2006. Moreover, the tripartite agreement executed between respondents is of the year 2007. In such situation, the suit filed in the year 2015, also appears to be belated.

6] In view thereof, there is no question of granting any equitable relief. If any such relief as claimed by the appellant is granted, at this stage, it would be the respondents and the prospective purchasers, who would suffer irreparable loss and

hardship. Therefore, no interference is warranted in the impugned order passed by the trial Court. The Appeal, hence being without any merit, stands dismissed.

7] In view of dismissal of Appeal itself, pending Civil Application therein becomes infructuous and the same is also disposed off accordingly.

[DR.SHALINI PHANSALKAR-JOSHI, J.]