IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 970 OF 2016
with
CIVIL APPLICATION NO. 1214 OF 2016

Mr. Devram Bhausaheb Kalate & Ors. ..Appellants

v/s.

M/s. Kalcon Infrastructure (India) Pvt. Ltd.
Through Director Rahul Kalate ..Respondents

Mr. Siddharth Wakankar for the Appellants.
Mr. Birendra Saraf with Abhinav Chandrachud a/w. Trisha Mehta and Warisha Parkar for the Respondent.

CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 05 APRIL, 2018.

ORAL JUDGMENT.

1. By consent heard finally at the stage of admission.

2. The Appellants have challenged the Order dated 25th July, 2017, whereby the learned 6th Joint Civil Judge, Senior Division, Pune, rejected an application for temporary injunction at Exhibit

5, to restrain the respondents from selling, alienating or creating third party interest and further from obstructing the possession and occupation of the appellants in respect of the suit property.

3. The appellants and the respondents shall be hereinafter referred to as the plaintiffs and defendants, as per the nomenclature in the suit.

4. The dispute in the suit relates to the property under Survey No. 165 Hissa No. 4, admeasuring 1 Hectare 14 Ares, situated at village Wakad, Taluka Mulshi, District Pune, hereinafter referred to as the suit property.

5. The plaintiffs claimed to be the owners of the suit property. By Development Agreement dated 18th May, 2006 they had granted development rights in respect of portion of the suit property to Kailash Wani. The plaintiffs allege that said Kailash Wani illegally transferred development rights to M/s. Essan

Kunika Properties. In the year 2008, the defendants showed interest in developing the suit property. They were informed about the previous agreement with Wani, despite which they agreed to enter into a Development Agreement. Terms and conditions of development were agreed upon after negotiations and discussions and the same were to be incorporated in the Development Agreement. However the defendants induced them into executing a sale deed by falsely representing that it was necessary for approval of building plans. The defendants had assured that all the terms and conditions would be incorporated in the sale agreement. The plaintiffs therefore signed the said document under the belief that the defendants would not deceive them. The plaintiffs allege that they were not allowed to read the document.

6. The plaintiffs allege that the defendants did not construct and hand over possession of the bungalow/flats within the agreed timeline. As agreed, the defendants issued cheque for

Rs.2,50,00,000/- as interest free security deposit however they did not pay the balance amount of Rs.50 lakhs. In the in the meantime Manda Kalate and some others, claiming to be the co-owners filed Special Civil Suit no. 638 of 2012 for cancellation of the sale deed. The Plaintiffs claim that they were represented in the suit by a lawyer engaged by the defendants and that they filed the written statement without reading the same. Subsequently, when they obtained copies of the proceedings as well as the sale deed, they realized that the said sale deed does not contain the terms and conditions, which were agreed upon and further contains a false recital that the defendants were put in possession of the suit property, when in fact the plaintiffs continue to be in possession of the suit property. The plaintiffs further contend that the contents of the written statement filed in Civil Suit No.638 of 2012 are wrong. The plaintiffs alleged that they have been deceived by the defendants and therefore instituted the suit before the 6th Joint Civil Judge, Senior Division Pune, being Special Civil Suit No. 686 of 2016 for cancellation of the said Sale Deed. In the alternative, they have sought compensation to the tune of Rs.61,70,00,000/- with interest @ 12 % and have also sought the relief of permanent injunction. An application for interim was filed for the reliefs as stated above, which has been dismissed by the impugned order.

7. While assailing the impugned order, Mr. Wakankar, the learned Counsel for the plaintiffs submitted that the plaintiffs and the defendants had agreed to execute a development agreement. He contends that the defendants had induced the plaintiffs in believing that the Sale Deed was required to be executed for obtaining sanction plan. He has further submitted that the plaintiffs are in possession of the suit property and the recital in the sale deed about handing over of possession of the suit property to the defendants is factually incorrect. This is evident from the fact that in the suit filed by Manda Kalate, the defendants have filed a counterclaim inter alia praying for possession of the property. He further contends that the trial

court failed to consider that the defendants have not paid any consideration and that the amount of Rs.2,50,00,000/- which was received by the plaintiffs was towards interest free security deposit. Furthermore the learned judge totally ignored that fact that the defendants have neither paid Rs. 50,00,000/ nor completed the construction as agreed upon. He asserts that the recitals and covenants in the sale deed clearly indicate that the intention of the parties was to enter into a Development agreement and not into a sale transaction. The learned counsel further urges that the learned Judge has failed to appreciate that there was no bar in granting the relief only because interim order is operating against the defendants in the suit filed by Manda Kalate and further that no harm could have been caused by granting the interim relief.

8. Mr. Saraf, the learned Counsel for the defendants submitted that the plaintiffs and the defendants had executed the sale deed dated 5th June, 2009. He has drawn my attention to the relevant

recitals in the sale deed and has submitted that a plain reading of these recitals and covenants clearly indicate that the Plaintiffs had sold the property to the defendants. Furthermore, the defendants were put in possession of the suit property, and that in lieu of monetory consideration, the defendants were required to construct and hand over to the plaintiffs a hostel, bungalow etc. He has further submitted that acting upon the sale deed; the plaintiffs and defendants entered into correspondence with several authorities, taken several steps and the defendants have also constructed a bungalow for the plaintiffs at Wakad. He contends that the defendants were unable to go ahead with the construction of other buildings in view of the status quo order passed in Suit No. 632 of 2012 filed by Manda Kalate. Refuting the allegation of inducement and misrepresentation, he submits that the parties had not agreed to enter into a development agreement, but as evident from the defence raised in the suit filed by Manda Kalate, the plaintiffs were well aware that they had entered into a sale transaction. He urges that the said sale transaction cannot be canceled on the grounds raised by the plaintiffs.

9. In the light of the above pleadings and submissions, a question that falls for consideration is whether the plaintiffs have made out a prima facie case for the grant of interim relief. It is to be noted that the execution of sale deed dated 5th June, 2009 is not in dispute. The question at the prima facie stage of the matter is whether the plaintiffs were induced to execute the said sale deed because of misrepresentation. In this regard, a perusal of recitals in the sale deed indicate that the plaintiffs had represented to the defendants that they are the owners of the suit property. The plaintiffs had apprised the defendants that they had earlier entered into a development agreement with Kailas Wani, who in turn had transferred the rights to M/s. Essen Kunika Properties Pvt. Ltd. The recitals further indicate that having purchased the suit property under 32 G of Bombay Tenancy Act, 1948, the plaintiffs had obtained permission from

the Collector for sale of the suit property. The covenant contained in Clauses 1.1 to 1.6 of the sale deed read as under :-

> *"1.1. The Seller has sold the property described in Clause (ia) above to the purchaser on permanent basis for the following consideration.*
>
> *1.2 The purchaser shall give 25,000 sq. feet constructed area in the entire property to the Seller along with proportionate parking as per the Rules.*
>
> *1.3 The Purchaser shall purchase a plot admeasuring 5,000 sq. feet in the vicinity of village Wakad, in the name of the sellers and construct 3000 sq. feet Hostel building thereon. The stamp duty and Registration Charges in respect of the same are to be borne by the Seller. The Seller shall get the Building Plan of the Hostel Building sanctioned.*
>
> *1.4 The Purchaser shall allot 25,000 sq. feet built up area of residential and non-residential Galas in the building proposed to be constructed in the property as per the specifications given in Schedule A hereto. It shall consist of 7,500 sq. feet built up area on the First Floor and balance 8750 and 8750 on any two Floors or if possible on one*

floor with consent of both. The area to be allotted to the Seller shall be clearly demarcated on the Building Plan submitted for sanction.

1.5 The Purchaser shall construct Bungalow admeasuring 2,200 sq. feet on a plot admeasuring 5000 sq. feet which will be selected by the Seller. The seller shall obtain the building permission at his cost.

1.6 The resident and non-residential galas to be given to the Seller are to be constructed as per the specifications mentioned in Schedule A hereto"

xxx

1.8 The purchaser to give Rs.3 Crores to the purchaser as Security Deposit for timely completion of construction as per the above specification.

11. A plain reading of the above covenants prima facie indicate that the plaintiffs have sold the property to the defendants. The defendants have also placed on record a copy of Order dated 6th December, 2008 passed by the SDO under Section 43 of the

Bombay Tenancy and Agricultural Lands Act. It is also pertinent to note that permission was preceded by a proclamation dated 13th January, 2008 inviting objection if any from the public at large. The fact that the plaintiffs had obtained prior permission of the Collector under 43 of the Act also prima facie suggests that the plaintiffs intended to sell the suit property. In an undated letter addressed to the Commissioner of PCMC, the plaintiffs herein had stated that they were the previous owner of the suit property and that by sale deed dated 5th June, 2009 they had conveyed the right, title and interest in the said property in favour of the defendants. Similarly, the other correspondence, which is placed on record by the defendants also prima facie, indicates that the plaintiffs were very well aware that the transaction between them and the defendants was not merely a development agreement, but was in fact a sale transaction.

12. It is also pertinent to note that the sale deed itself states that the possession of the suit property was handed over to the

defendants. The mutation entry in the 7 x 12 extract also prima facie fortifies that the plaintiffs had handed over the possession of the suit property in favour of the defendants. Furthermore, the defendants have averred that acting upon the sale deed they have already constructed a bungalow at Wakad, and there is no denial to this statement.

13. It is also to be noted that the said sale deed was executed in the year 2009, whereas in the year 2012 Manda Kalate had filed a suit against the plaintiffs, defendants and challenged the validity of the sale deed claiming to be the co-owners of the suit property. It is submitted on behalf of the plaintiffs that the fact that the defendants herein have filed a counter claim in the said suit and sought possession of land itself proves that the defendants are not in possession of the suit property.

14. A perusal of the written statement reveals that the plaintiffs had averred that Manda Kalate (plaintiffs in the said suit) had

illegally constructed a new house under the garb of repairing the old house. The plaintiffs had also alleged that Manda Kalate and others had constructed illegal shops in the suit property. The plaintiffs had specifically averred that they were the exclusive owners of the suit property and have confirmed executing a sale deed and handing over possession of the suit property to the defendants. In the light of above, the fact that the defendants have sought relief of possession as against Manda Kalate and Ors. (plaintiffs in Civil Suit No.638/2012) does not prima facie lead to an inference that the plaintiffs are in possession of the suit property.

15. In the written statement filed in Civil Suit no.638 of 2012, the plaintiffs have admitted having executed the sale deed and further having put the defendants in possession of the suit property. The plaintiffs have attempted to explain this by contending that they were represented by a lawyer engaged by the defendants and having reposed implicit trust in the

defendants, they had signed the written statement without even reading the contents thereof. As stated earlier, the terms of the sale deed prima facie prove conveyance of the suit property as well as handing over of the possession in favour of the defendants. The averments made in the written statement are in consonance with the covenant in the sale deed. The explanation, which is in variance with the recitals and covenants of the sale deed, cannot be considered at this stage . Even otherwise this is not the stage to decide whether the sale is vitiated by fraudulent misrepresentation or to hold that the document is entirely different in character from what it was purported to be. As regards the delay in construction, it is not in dispute that the defendants were unable to complete the construction because of the interim order passed in Civil Suit No.638 of 2012. Hence the delay per se is not a ground for grant of interim relief.

16. The learned Judge has declined to grant interim relief in view of status quo order passed in Civil Suit No. 638 of 2012. It

is pertinent to note that in Civil Suit No. 638 of 2012 Manda Kalate and Ors. have challenged the validity of the sale deed on the ground that the plaintiffs were not the exclusive owners of the suit property whereas in the case in hand the validity of the sale deed is questioned on the ground that the plaintiffs were induced in executing the sale deed based on fraudulent misrepresentations.

17. The issues involved in both the suits are entirely different. Consequently, the learned judge could not have declined relief of interim injunction on the ground that an order of injunction is already operating against them in the other suit. Nevertheless, this is not the only ground on which the learned judge has rejected the interim relief. While rejecting the relief the learned judge has observed that the plaintiffs have executed the sale deed dated 5.5.2009 and handed over possession of the suit property to the defendants. The trial court has further observed that both the parties have acted upon the said sale deed. The

learned judge has held that the plaintiffs have prima facie failed to prove fraud or deception. The learned judge therefore concluded that the plaintiffs have failed to prove prima facie case. These findings are neither perverse, capricious, arbitrary nor against the settled principles of law regulating grant or refusal of interlocutory injunctions. The trial court has exercised the discretion reasonably and in judicial manner. Hence keeping in mind, the principles in ***Wander Ltd. And Anr. vs Antox India P. Ltd. 1990 Supp (1) SCC 727 ,*** this court cannot interfere with discretion exercised by the trial by the trial court.

18. It may be mentioned here that interim relief cannot be granted merely because it is convenient to do so or that grant of such relief will not cause prejudice to the other party. As held in Wander Ltd. & Anr. (supra)

> "*The court, at this stage, acts on certain well settled principles of administration of this form of interlocutory remedy which is both temporary and discretionary. The object of the interlocutory*

injucntion, it is stated is to protect the plaintiff against injury by violation of his rights for which he could not adequately be compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The court must weigh one need against another and determine where the "balance of convenience lies". The interlocutory remedy is intended to preserve in status quo, the rights of parties which may appear on a prima facie."

19. In the instant case, the plaintiffs have failed to make out a prima facie case. Having failed to establish the pre-requisites, which are essential for grant of interim relief, the plaintiffs, in my considered view, are not entitled for interim relief.

19. Under the circumstances and in view of the findings

recorded above, the appeal is dismissed. In view of dismissal of the appeal, Civil Application No. 1214 of 2016 does not survive, and the same is also dismissed.

(ANUJA PRABHUDESSAI, J.)