IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (ST) NO. 25816 OF 2017
WITH
CIVIL APPLICATION (ST) NO. 27187 OF 2017

Motilal Dhanraj Sankla and another … Appellants
(Orig. Plaintiffs)

Versus

M/s. Shiva Developers and others … Respondents
(Orig. Defendants)

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Mr. A. Y. Sakhare Senior Advocate a/w. M.S. Bhandari i/b. Pranjali Bhandari for the Appellants.
Mr. Ashish Kamat a/w Avdhoot Prabhu i/b Naik and Naik & Co. for Respondent No.1.
Mr. G.S. Godbole i/b I.M. Khairdi for Respondent Nos. 2 and 3.

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CORAM : MRS. MRIDULA BHATKAR, J.

DATE : 19th JANUARY, 2018.

P.C.

1. This Appeal From Order is directed against the order dated 16th June, 2017 passed by the 10th Civil Judge Senior Division, Pune, whereby rejecting application Exhibit-5 in Special Civil Suit No. 930 of 2016 for temporary injunction praying that the original defendant No.2 shall be restrained from disposing of the suit property and from changing the nature of the suit property and

Defendant No.4 be restrained from disbursing the further loan to Defendat No.2.

2. The appellants have filed the suit for specific performance seeking declaration that the agreement of sale executed between the Defendant No.1-original owner of the land and the Defendant No.2 purchaser and the sale deed dated 5th May, 2016 executed between those two parties be declared as cancelled. The plaintiffs also prayed for specific performance in respect of the land in his favour and also prayed for injunction. The learned Judge of the Trial Court has refused to grant interim relief in favour of the appellants merely on the ground that there is no concluded contract between the plaintiff No.1 and defendant No.1 and the landlords and hence, relief was refused. Hence, this appeal.

3. Learned Senior Counsel for the appellants has submitted that the appellants-plaintiffs and the defendant No.1 have in fact entered into a contract on 28th March, 2013. He pointed out that continuous correspondence have been made between the plaintiffs and defendant No.1 thereby disclosing the negotiations and nature of the terms and conditions of the agreement. He relied on

the letter dated 16th February, 2013 sent by the plaintiffs to the respondents and defendant No.1 wherein he gave an offer of Rs. 39.51 Crores for the suit land. He pointed out that the handwritten endorsement of one of the partners of defendant No.1 stating as “deal agreed for Rs. 39.51 Crores as on 28/03/2013”.

4. Learned Senior Counsel relying on the various letters exchanged between the parties, submitted that the plaintiffs have acted upon the promise given and the offer accepted by the defendant No.1, have taken efforts to clear the title of the defendant No.1. He has submitted that the suit land was purchased by the defendant No.1 in the auction of the income tax department in the year 1993. However, the land was not having clear marketable title and therefore as agreed between the parties the plaintiffs have spent time and money in getting the title marketable of the suit land after the parties entered into an agreement dated 28th March, 2013. Learned Counsel further pointed out that a public notice was given by the plaintiffs about purchase of the said land at the instance of defendant No.1 as agreed between the parties. He further submitted that by letter

dated 21/01/2014 the defendant No.1 communicated that the contract is cancelled and the same is null and void. He submitted that in these letters, in fact the defendant No.1 has given time for exchange of the contract between the parties. Learned Senior Counsel has further submited that the defendant No.1 has cancelled the contract as the franked documents were not produced. However, as per the note of minutes dated 01/01/2014 it was necessary on the part of the defendant No.1 to hand over the sanctioned plan and thereafter the plaintiffs were to submit the franked documents. He further submitted that demand of depositing of 50% of the amount by defendant No.1 as mentioned in the e-mail dated 29/01/2014 was incorrect. As agreed earlier, the 50% amount was to be given at the time of execution of the sale-deed. Learned Senior Counsel has further pointed out that under the circumstances the notices exchanged between the parties in the year 2015 wherein the defendant No.1 has given time for termination of the contract. Learned Senior Counsel further relied on the affidavit filed by Mr. Gaurav Narendra Jain, who confirmed the negotiations and agreement took place between the parties. He also confirmed the efforts taken by the plaintiffs. Learned Senior Counsel has further submitted that in the month of March 2013, pursuant to the agreement between the parties the plaintiffs gave cheque of Rs. 1 Crore in favour of defendant No.1 and so also gave silver coins to all the defendants by way of good omens. Learned Senior Counsel further submitted that considering all these facts and so also the documents, the trial Court ought to have accepted the valid agreement between the parties where the amount of consideration was agreed as 39.51 Crores so the plaintiffs have filed a suit for specific performance. The Trial Court ought to have granted interim relief in favour of the appellants. Learned Senior Counsel further relies on Section 51 of the Contract Act, 1872 and has submitted that the parties have exchanged reciprocal terms and therefore, the plaintiffs' case is covered under Section 51 to 54 of the Contract Act, 1872.

5. Per contra, learned Counsel for the defendant No.1 submits that there is no performance on the part of the appellants pursuant to the alleged contract. Firstly, he denied existence of any contract and as per the defendant No.1 and there was no such alleged contract between the parties. He further submitted that it was necessary on the part of the appellants to give the franked

documents. He submited that as per the minutes dated 01/01/2014 and further meeting dated 21/01/2014, it was necessary on the part of the plaintiffs to give franked documents, however, it was not given. He pointed out that for the purpose of getting franked documents, the plaintiffs were required to pay Rs. 2 Crores, for which, the plaintiffs were not ready and therefore they did not gave franked documents. He submits that, the terms and conditions mentioned in page No.22 were not complied with.

6. Learned Counsel for the defendant No.2 – purchaser of the suit land submits that he entered into an agreement of sale with the defendant No.1 and has subsequently entered into a registered sale-deed dated 05/05/2016. He further submits that he has submitted the process of development and got the plan sanctioned. He has constructed upto the plinth level and has loaded further TDR and has also borrowed the loan. He submitted that as per the letter dated 21/01/2014 assuming that the contract was cancelled and the appellants did not take steps till July 2016 i.e. till the date of filing of the suit. He pointed out the contents of the public notice given by the plaintiffs wherein it was mentioned about the negotiations. After 21/01/2014 there was no

communication or contact from the plaintiffs. The respondents have handed TDR and have obtained loans for the project, hence will suffer irreparable loss if injunction is granted.

7. Heard the submissions. Perused the documents. A suit for specific performance can be filed on the basis of oral agreement. However, parties to prove existence of the agreement and not that agreement in the offing. The plaintiffs relied on the endorsement by one of the partners on the letter dated 28/03/2013. The said endorsement is made on the letter sent by the plaintiffs on 16/02/2013 of Rs.39.51 Crores. It appears that one of the partners of the defendant No.1 is agreed to accept Rs. 39.51 Crores by way of consideration for the suit land. On that basis, the plaintiffs have given the public notice and some steps were taken by the plaintiffs-appellants in respect of getting the title of the suit land marketable. However, prima-facie, it appears that these negotiations or the promises exchanged between the parties subsequently could not be materialized in the proper agreement. No amount of consideration was paid and accepted at any time. Even assuming that in the month of March 2013, the appellants issued a cheque of Rs.1 Crore by way of consideration as a part

payment of consideration amount. On the contrary, this fact goes against the plaintiffs, because defendant No.1 did not credit the cheque and the said amount was not en-cashed by him. Thus, defendant No.1 had no intention to enter into any contract with the plaintiffs. It shows that the things were in the nature of negotiations and promises and when the matter was at the stage embryo, it was aborted as the defendant No.1 has decided not to proceed further by its letter dated 21/01/2014. Thus, the finding of the trial Court that there was no concluded contract cannot be faulted with. As per the case of the defendant No.2, he has executed the registered sale-deed with the defendant No.1 and has started developing the property. Considering his case and the factor of delay, there is no prima-facie case is made out to consider the findings in favour of the appellants. The Appeal From Order is therefore dismissed.

8. In view of dismissal of Appeal From Order, the pending civil application does not survive and the same is disposed of.

(MRS. MRIDULA BHATKAR, J.)