

Sharayu Khot.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

APPEAL NO. 447 OF 2015

IN

NOTICE OF MOTION (L) NO. 419 OF 2015

IN

SUIT NO. 334 OF 2013

WITH

NOTICE OF MOTION NO. 1534 OF 2015

IN

NOTICE OF MOTION (L) NO. 904 OF 2015

IN

APPEAL NO. 447 OF 2015

WITH

NOTICE OF MOTION (L) NO. 904 OF 2015

Chandrakant Premjibhai Mirani

...Appellant

Versus

M/s. Vishal Constructions & Ors.

...Respondents

Mr. J.S. Kini, a/w Ms. Sapna Krishnappa, for the Appellant/Applicant in NMAL/904/15.

Mr. Ajit Tamhane, a/w MR. Rohan Tamhane and Ms. Priyanka Rane, i/by M/s. Tamhane & Co., for the Respondents No. 1 to 10.

Mr. Karl Tamboli, a/w MR. Sidharth Samantaray and Ms. Deeksha Jani, i/by M/s. Hariani and Co., for the Respondents No. 11 and 12/Applicant in NMA/1534/15.

**CORAM : B.R. GAVAI &
RIYAZ I. CHAGLA, JJ.**

DATE : 18 December 2018

ORDER : (Per Riyaz I. Chagla, J.)

1. This Appeal challenges the order dated 20th March 2015 passed by the learned Judge of this Court thereby dismissing the Notice of Motion taken out by the Appellant in the above suit seeking a temporary injunction against the Respondents from creating any third party rights of altering *status quo* in respect of the suit property.

2. The Appeal had come up for admission before this Court, when Respondents No. 11 and 12 had not been served and the Division Bench of this Court had admitted the Appeal and directed the parties to maintain *status quo* as on the date of

the order admitting the Appeal i.e. on 7th April 2015 in respect of the suit property. The Respondents No. 11 and 12 being aggrieved that the said order dated 7th April 2015 was passed in their absence on the statement of the learned Counsel for the Appellant that third party rights had already been created, took out a Notice of Motion (L) No. 904 of 2015 in the Appeal for recalling/setting aside/discharging the order granting *status quo* dated 7th April 2015. It is this Motion which has come up today before us. As the parties have agreed for the Appeal itself to be heard, it is not necessary for us to deal with the Notice of Motion taken out by Respondent No.11.

3. A brief background of facts is necessary. The suit property consists of land together with structure standing thereon at Malad in Mumbai. Respondent No. 1 had purchased the suit property by entered into a registered Deed of Conveyance dated 18th December 1991 with the vendors. Thereafter, the Respondents were desirous of developing the suit property and it is the case of the Appellant that he was

granted development rights in respect of the suit property by Development Agreement dated 5th July 1995 entered into with the Respondents. The Appellant claims to have acted under the said Development Agreement and claims to have constructed a building thereon comprising of ground plus three storeys, which was completed in December 1998. The Appellant claims to be in exclusive possession of the said building. It is further claimed by the Appellant that the attempts were made by the Respondents to dispossess the Appellant through antisocial elements and the Appellant was compelled to make police complaint in respect thereof. The Appellant has claimed that Respondents had succeeded in trespassing into the suit property and that the Respondent No. 1 filed a Suit being Suit No. 4923 of 1999 before this Court against the Appellant *inter alia* for a declaration that the said Development Agreement was forged by the Appellant and is not binding on the Respondent No. 1 and for a declaration that the Appellant has no right, title and interest of whatsoever nature in respect of the suit premises and that the Appellant is not entitled to induct any person in the suit

property and/or building standing thereon and/or any flats therein and/or any part thereof in any manner whatsoever. The Respondent No. 1 had taken out Notice of Motion No. 1866 of 1999 in the said Suit and moved this Court for urgent *ad-interim* relief. By an order dated 20th August 1999, this Court had recorded the statement made on behalf of the parties that they will maintain *status quo* with regard to the suit premises. The order was accordingly, passed.

4. It is the case of the Appellant that Suit No. 4923 of 1999 was continued against the Appellant, although the said Suit was dismissed against Respondent No. 2 for default by an order dated 24th January 2008. The said Suit was thereafter, transferred to the long causes and continued/subsisted and *status quo* order dated 20th August 1999 which was passed, continued to bind the Respondent No. 1 and the Appellant. It is claimed by the Appellant that despite the *status quo* order operating against Respondent No. 1, the Respondent No. 1 appears to have entered into the Deed of Conveyance dated

11th November 2011 executed between the Respondents *inter se* i.e. between Respondents No. 1 to 10 and Respondent No. 11. The above Suit has therefore, been filed in 2013 challenging the said Deed Conveyance as being illegal, bad in law and incorrect apart from seeking a declaration that the Development Agreement of 1995 is valid and subsisting between the parties.

5. The Respondents had taken out Notice of Motion for rejection of the Plaint filed in the above Suit under Order VII Rule 11 of the Code of Civil Procedure, 1908 (“**CPC**”). The Respondents claimed that the Suit was barred by the law of limitation. The learned Judge of this Court (Dalvi, J) by order dated 20th March 2014 has recorded that the Appellant had thereafter applied for deletion of prayer (b) in the Suit which sought a declaration that the said Development Agreement was valid and subsisting and accordingly, prayer (b) was allowed to be deleted and that the Suit remained for a declaration that the Deed of Conveyance dated 11th November 2011 is illegal, bad in law, incorrect in the eyes of law together with the prayer (c)

which sought consequent injunction. Accordingly, the learned Judge (Dalvi, J.) has rejected the Notice of Motion taken out by the Respondents and directed that the Suit shall proceed along with the Suit filed by the Respondents herein by tagging the two Suits. In the Notice of Motion taken out by the Appellant in the above Suit, the learned Judge by the impugned order dismissed the Notice of Motion on the ground that the Appellant had despite claiming that the *status quo* order which had been passed in the Suit filed by the Respondent No. 1 was breached by the Respondents in November 2011 by entering into Conveyance, the Appellant had waited till 2015 to apply for *ad-interim* relief in the Suit. Being aggrieved with the impugned order, the Appellant has filed the present Appeal.

6. Shri. Kini, the learned Counsel appearing for the Appellant, has submitted that the *status quo* order which had been passed by the learned Judge in Suit No. 4923 of 1999, which Suit had been filed by Respondent No. 1 against the Appellant, had continued to be in operation, when the Deed of

Conveyance was entered into between the Respondents *inter se*. He has submitted that the above Suit has been filed in this Court in respect of the same suit property as that in the Suit No. 4923 of 1999. He has submitted that there is an expressed finding that the two Suits are connected in the order dated 20th March 2014 passed by the learned Judge (Dalvi, J.) which considered the Notice of Motion taken out by the Respondents for rejection of the Plaint under Order VII Rule 11 of the CPC. The Notice of Motion had been rejected and the learned Judge continued the above Suit by tagging Suit No. 4923 of 1999 with the above Suit. He has submitted that the *status quo* order passed in the Suit No. 4923 of 1999, has never been vacated and that the Appellant had also taken out a Contempt Petition against the Respondents for violation of the *status quo* order which is pending today. He has submitted that the Appellate Court by order dated 7th April 2015 admitted the present Appeal and also directed the parties to maintain *status quo* as on date of the said order. He has submitted that the Deed of Conveyance

entered into between the Respondents *inter se* is illegally entered into and in defiance of the *status quo* order. He has submitted that the Respondent No. 11 who claims to have been conveyed the suit property under the said Deed of Conveyance, has no right, title or interest, as the said Deed of Conveyance itself is illegal and bad in law. He has submitted that the Appellant's right, title and interest in the suit property as developer pursuant to the Development Agreement entered into with the Respondents No. 1 to 10, is sought to be defeated by the illegal actions on the part of the Respondents. He has therefore, submitted that it was necessary for the learned Judge to have granted *status quo* in respect of the suit property. He has submitted that the learned Judge has incorrectly observed that the Suit filed by the Respondents and the above Suit are neither interlinked nor the disposal of the Respondents' Suit would necessarily lead to grant of relief in the Appellant's Suit. He has submitted that this finding is directly contrary to the findings of the learned Judge (Dalvi, J.) in the order dated 20th March 2014. He has submitted that the learned Judge erroneously

arrived at a finding that the Respondent had not moved any application in the present Suit for *ad-interim* relief till date. He has submitted that the *status quo* order passed in the Respondents' Suit in respect of the same suit property has never been vacated and that the Appellant had filed Contempt Petition for violation of the *status quo* order by the Respondents which is still pending. He has submitted that the *status quo* order passed in the Suit filed by the Respondents ensures for the benefit of the above Suit and hence, it was not necessary till the Respondents act of creating third party rights in respect of the suit property to move this application for *ad-interim* relief. He has therefore, submitted that the learned Judge has erroneously dismissed the Notice of Motion, thereby not maintaining the *status quo* in respect of the suit premises which had been in operation for several years and would result in the Respondents' creating further third party rights in respect of the suit premises.

7. Shri. Karl Tamboli, the learned Counsel for the Respondents No. 11 and 12 and Shri. Ajit Tamhane, the learned

Counsel for the Respondents No. 1 to 10 have supported the impugned order.

8. We have considered the submissions. The learned Judge has observed that the Appellant had knowledge of the Deed of Conveyance executed by the Respondents *inter se* on 11th November 2011, particularly, since the Appellant had on that count taken out the Contempt Petition on 20th February 2012 for violation of the *status quo* order passed by this Court on 20th August 1999, by the Respondents. It has further been observed that no attempt was made to apply for *ad-interim* relief in the above Suit despite the Appellant having filed the above Suit as far back in February 2013. The Notice of Motion has thus been belatedly taken out in the year 2015 seeking the maintenance of *status quo* in respect of the suit property. The learned Counsel for the Appellant has attempted to justify the delay in approaching this Court for *ad-interim* relief in the year 2015. He has submitted that till the date of approaching this Court, the *status quo* order passed in the Suit filed by the

Respondents was operating and it was only upon Respondent No. 1 applying to this Court for withdrawal of that Suit by an application made on 25th November 2014, that it became necessary to take out this Notice of Motion. We do not accept this submission. The case of the Appellant, both in the Contempt Petition and in the present suit proceedings has been that the status quo order dated 20th August 1999 was breached by the Respondents in November 2011. Hence, the learned Judge has correctly held that there was no reason for the Appellant to wait for all these years till 2015 to apply for ad-interim relief in the above Suit.

9. We accept the view taken by the learned Judge in the impugned order that the Suit filed by Respondent No. 1 in which the *status quo* order dated 20th August 1999 had been passed is neither interlinked with the present Suit nor the disposal of that Suit would result in granting relief in the Appellant's Suit. The learned Judge has correctly observed that the suit filed by Respondent No. 1 sought a declaration that the

oral agreement entered into between Respondent No. 1 and the Appellant appointing the Appellant as contractor to carry out the construction in the suit property had been validly terminated is in no way connected with the present Suit wherein the Appellant had sought a declaration that the Development Agreement dated 5th July 1995 under which the Appellant claimed rights is valid and subsisting. The Appellant had in fact withdrawn the prayer claiming declaration that the Development Agreement is valid and subsisting. The Suit was thus left with the only prayer that the Deed of Conveyance is illegal and bad in law and hence, the learned Judge has correctly arrived at the finding that the very basis of claiming declaration of nullity in respect of the Conveyance executed between the Respondents *inter se* in respect of the suit property, has been undermined and does not effectively survive. We are of the considered view that the Appellant without claiming its right of development of the suit property under the Development Agreement in the above Suit cannot claim status quo in respect of the suit property and the finding of the learned Judge whilst

dismissing the Notice of Motion seeking such relief cannot be faulted with. We further find no perversity in the findings on fact by the learned Judge and/or in its exercise of discretion in rejecting the relief sought under Order XXXIX Rules 1 and 2 of the CPC that merits any interference by the Appellate Court. There is thus, no infirmity in the impugned order and the Appeal being without merit is accordingly, dismissed.

10. In view of disposal of the Appeal, the Notices of Motion does not survive and the same are disposed of.

[RIYAZ I. CHAGLA J.]

[B.R. GAVAI, J.]