IN THE HIGH COURT OF JUDICATURE AT BOMBAY NAGPUR BENCH : NAGPUR.

Appeal Against Order No.20/2017
(Ganesh Vitthaldas Chandak and another .vs. M/s Ramdeobaba Padmavati Developers & Builders and othrs.)

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.

Mr. J.M. Gandhi, Advocate Appellants.
Mr. S.P. Kshirsagar, Advocate for Respondent Nos. 1 to 6.
Mr. B.C. Pal, Advocate for Respondent Nos. 7 to 9.
Mr. P.M. Pande, Advocate for Respondent No.10.

CORAM : Manish Pitale, J.
DATED : February 24, 2018.

This is an appeal filed on behalf of the appellants-plaintiffs challenging order dated 12.04.2017 passed by the 3rd Joint Civil Judge, Senior Division, Nagpur, in Special Civil Suit No. 835/2016, whereby application for grant of temporary injunction filed on behalf of the appellants-plaintiffs has been rejected.

2. The appellants herein filed a suit for declaration, possession, recovery of amount, rendition of accounts of partnership and recovery of the amount of profit, for permanent perpetual prohibitory and mandatory injunction, on 17.11.2016 against respondent no.1, being the partnership firm of which the appellants are partners along with respondent nos. 2 to 6 and against respondent no.7-

a firm of developer, respondent nos. 8 and 9 being the partners of respondent no.7- developer firm and the respondent no.10 being the Yavatmal Urban Co-operative Bank Ltd., Nagpur.

3. The facts in brief leading up to the filing of the aforesaid suit by the appellants are that the respondent no.1- partnership firm came into existence by execution of partnership deed dated 1.4.2010 wherein the appellants herein and respondent nos. 2 to 6 are partners. As per the partnership deed, the appellants have 25% share together in the said partnership firm.

4. It is the case of the appellants that the respondent no.1-partnership firm undertook a project of development by purchasing land admeasuring 2 hectares in mouza Hingna, tehsil Hingna, district Nagpur. It is further the case of the appellant that the respondent nos. 1 to 6 illegally sold the aforesaid piece of land to respondent no.7 for a meager consideration of Rs.16,80,00,000/- by sale deed dated 16.06.2016, when the market value of the said piece of land at the relevant time was at least Rs.30,00,00,000/-. It is further the case of the appellant that the manner in which the aforesaid sale deed was executed and the terms of payments acted upon, demonstrated that this was a complete fraud committed by the partners at respondent nos.

2 to 6 of the respondent no.1 firm, as the appellants were not taken into confidence at all and the aforesaid property was deliberately sold at an undervalued rate because the respondent nos. 2 to 6 partners intended to grab the entire profits that would be generated from the project of development sought to be undertaken. It is the case of the appellant that respondent no.7-partnership firm was brought into existence, only to facilitate execution of the aforesaid sale deed dated 16.6.2016 and that if the details of the accounts of the respondent partners particularly respondent no.2 and that of respondent no.7 are analysed, it would be clear that the entire transaction was fictitious and that the appellants were duped in the whole process. In the aforesaid suit filed by the appellants, the prayers read as follows:-

> "(i) Decree of Declaration that the acts of the defendants of the breach of the terms of Partnership and their conduct of committing serious illegal acts contrary to the interest of the Partnership business are prejudicial to the rights of the plaintiffs and that the defendants have no right to expel the plaintiffs out of the partnership business and that the plaintiffs have every right to continue with the partnership business;
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> (ii) Decree declaring that the sale deed executed and registered by

the defendants No. 2 to 6 in favour of the defendants No. 7 to 9 with the consent of the defendant No.10 on 16.03.2016 are absolutely illegal and not binding upon the plaintiffs being ab-initio void and are liable to be cancelled and the same be cancelled;

(iii) Decree directing the defendants to render the accounts of the Partnership business to the plaintiffs right from the inception thereof;

(iv) Decree directing the defendants to deliver the possession of the due share of the plaintiffs in the suit property by partitioning the same by metes and bounds and/or deliver due share as per its existing market value i.e. Rs.30,00,00,000/- (Rupees Thirty Crores Only) along with the interest @ Rs.24 % per annum from the date of the sale deed as it became due from the said date till its actual realization;

(v) Decree of permanent, perpetual and prohibitory injunction restraining the defendants their agents, servants, representatives and any other person acting on their behalf from anyway disposing any of the properties of the Joint Ventures/partnership or creating any third party interest therein without the written consent of the plaintiff;

(vi) cost of the suit be saddled upon the defendants;

(viii) grant any other relief deemed fit and just in the facts and

> circumstances of the case, in the interest of justice."

5. The temporary injunction application filed on behalf of the appellants seeks the following reliefs:-

> *"(i) issue temporary prohibitory injunction restraining the respondents their agents, servants, representatives and any other person acting on their behalf from anyway disposing any of the properties of partnership or creating any third party interest therein, changing the nature of the suit property and parting with its possession without the written consent of th applicants during the pendency of the suit;*
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> *(ii) cost of the suit be saddled upon the respondents;*
>
> *(iii) grant any other relief deemed fit and just in the facts and circumstances of the case in favor of the applicants, in the interest of justice."*

6. The aforesaid Court took the application for temporary injunction for consideration and by the impugned order dated 12.04.2017 rejected the same. The said Court gave a finding in the impugned order that although the appellants-plaintiffs had made out a *prima facie* case, there was no material to show that there would be irreparable loss suffered by them, if the temporary injunction as

prayed by them was not granted. In fact, the said Court at paragraph 12 gave the following finding :-

> *"12. All these submissions of plaintiffs needs the detail inquiry by conducting the trial. At the same time these all submissions and the prayer clause in the plaint ultimately seeks for settlement of accounts and the recovery of amount by the plaintiffs from defendants. Therefore, when for all the losses the compensation in money can provide the remedy, those all losses can be well repaired."*

7. Upon notice being issued in this appeal, the respondents have filed their responses and submissions. The voluminous documents on record show that there are allegations of fraud made by rival parties against each other. An attempt was made by Mr. J.M. Gandhi, learned counsel appearing on behalf of the appellants to show that the statement of accounts of the respondent firm and its partners, as also that of the respondent no.7 firm demonstrated that monies were exchanged inter se between them to show as if consideration was paid for execution of the sale deed dated 16.6.2016, but, in reality it was an entirely fictitious transaction.

8. On the other hand, Mr. S.P. Kshirsagar, learned counsel appearing on behalf of respondent

nos. 1 to 6 sought to demonstrate, on the basis of account statements on record, that the entire set of transactions were capable of being explained and that the allegations of fraud and the sale transaction being fictitious were not sustainable. It was submitted that the appellants being partners of respondent no.1 firm, never contributed any amount more than the initial amount which was contributed by all the partners.

9. Mr. B.C. Pal, learned counsel appearing on behalf of respondent no.7 –firm submitted that the stalling of work on the project site had put the respondent no.7 firm to grave inconvenience and that it was facing the heat from the customers who had entered into agreements for purchasing apartments in the said project. It was contended that the entire transaction pertaining to the land in question was as per the prevailing market rates and that the impugned order passed by the trial Court was justified.

10. Mr. P.M. Pande, learned counsel appearing on behalf of respondent no. 10- Bank has pointed out that there was a proceeding undertaken in respect of the property in question against the respondent no.1 partnership firm under the provisions of The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and

that when the respondent no.10 Bank sought to sell the property in question for realizing its dues, the appellants herein through their counsel had sent a communication stating that the property was being sold for a song and that its value was at least more than Rs.20,00,00,000/-. The respondent no.10 Bank, however, in its valuation had computed the value of the aforesaid land at Rs.14,00,00,000/-.

11. Taking into consideration the contentions raised on behalf of the rival parties and the documents on record, the principal grievance of the appellants herein is that the respondent nos. 1 to 6 committed a grave illegality by executing sale deed dated 16.6.2016, whereby the land in question was sold for a meager consideration of Rs.16,80,00,000/- to the respondent no.7 firm. According to them, it was a clear case of undervaluation and a fraud had been committed on the appellants. On this basis, prayers have made in the suit on behalf of the appellants for rendition of account of the business of the respondent no.1- partnership firm right from the inception. There is also a prayer made for partition of the suit property and the appellants being given possession of their share and significantly an alternative prayer has been made that the appellants should be given their due share as per existing market value of the land in question of Rs.30,00,00,000/- along with interest @ 24% P.A.

from the date of the sale deed.

12. As there are seriously disputed questions of fact arising in this matter, which can be resolved only by a full dress trial , it is necessary that for resolution of the disputes between the parties, the Court below is directed to expedite disposal of the suit. At the same time, looking to the tenor of the averments made in the suit and the prayers made therein, it is evident that the interest of the appellants would be taken care of by the trial court, by ultimately passing appropriate orders of compensating the appellants for the loss that they may have suffered due to alleged illegal action of the respondent nos. 1 to 9. The entire nature of the suit is one, wherein the appellants are seeking recovery of their share, firstly, by rendition of accounts of respondent no.1 partnership firm and secondly, by compensating them to the extent of their share due to the undervaluation and alleged illegal sale of the property in dispute.

13. In this context, the conclusion arrived at by the Court below in paragraph 12 (quoted above) in the impugned order appears to be correct. The Court below has found that the plaint ultimately seeks settlement of accounts and recovery of amounts by the appellants-plaintiffs from the respondents-defendants. It is also correctly

recorded that although a *prima facie* case may have been made out, as regards various allegations of wrong doing committed by the respondents-defendants, there is little material to show that irreparable loss or damage would be caused to the appellants if the prayer made in the application for temporary injunction is not granted.

14. In this context, a perusal of the prayer made in the application for temporary injunction is relevant because the appellants seek to restrain the respondents from disposing of any of the properties or by creating third party rights in the property in question. As stated above, development of the property has been already undertaken , wherein prospective purchasers have entered into agreements with the respondent no.7 and the entire project is today stalled, which has given rise to litigations initiated by the prospective purchasers against the respondent no.7. In the backdrop that ultimately the nature of relief sought by the appellants boils down to damage and compensation for loss suffered by them, it would not be in the interest of justice to keep the project in a limbo during the pendency of the suit.

15. At the same time an expeditious disposal of the suit would be in the interest of justice and it would be necessary that all persons dealing with the

property are clearly made aware that transactions in respect of the suit property undertaken from the date of the filing of the suit and which may be undertaken in the future, shall be subject to the final outcome of the pending suit.

16. In that view of the matter, this appeal is disposed of with the following directions:-

i) The trial Court is directed to dispose of the Special Civil Suit No. 835/2016, as expeditiously as possible and in any case within a period of six months from the date a copy of this order is produced before the Court.

ii) It is directed that all transactions undertaken in respect of the suit property and its development from the date of filing of suit i.e. 17.11.2016 till the final disposal of the suit, shall be subject to the final outcome of the aforesaid suit.

iii) The respondent no.7, which is presently developing the property, shall inform all prospective purchasers of units being developed in the said property who have already entered into agreement with respondent no.7 and all such parties who may in future enter into agreements with the respondent no.7, that all such transactions shall be subject to the final outcome of the aforesaid suit.

iv) The respondent no.7 firm is directed to keep an account of all transactions undertaken in respect of the suit property from the date of filing of the suit and the transactions that may be undertaken in the future till disposal of the suit and to present before the Court below from time to time.

17. The appeal is disposed of in above terms with no order as to costs.

18. Needless to say that the observations made in this order, are limited to the question of deciding the present appeal and there is no opinion expressed by this Court on the merits of the matter.

JUDGE

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