

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 23rd DAY OF APRIL 2018

THE HON'BLE MRS. JUSTICE PUSHPA SATHYANARAYANA

O.A. No.1017 of 2017

and

A. No.7559 of 2017

In the matter of the
Arbitration and Conciliation
Act, 1996

In the matter of Agreement
under the Memorandum of
Understanding cum Sale
Agreement dated 27.08.2015,
Doc.No. 4557/2015.

O.A. No.1017 of 2017:-

M/s. E5 Properties Pvt. Ltd.,
No.19, Vellaiyan Street, Kotturpuram,
Chennai 600 085.

Rep.by its Managing Director

... Applicant

-Versus-

1. Mr.PS.Rajan
S/o. Sarangapani,

2. R.Amutha
W/o. PS Rajan

3. R.Chezhian
S/o. PS Rajan
1 to 3 are at Door No.5/78, Second Cross Street,
Raja Nagar, Neelangarai, Chennai - 600 041.

4. Mr.S.Manickavasagam
S/o. Late R.Shanmuga Naicker
No.72, Solaiappan Street,
Old Washermenpet, Chennai 600 021. ... Respondents

Original Application praying that this Hon'ble Court
be pleased to grant interim injunction restraining the
respondents herein, their men, servants, agents or anyone
claiming under them from in any manner alienating,

encumbering or dealing with the property more fully described in the schedule 'D' to the application, pending disposal of the arbitration proceedings.

A. No.7559 of 2017:-

1. Mr.PS.Rajan
S/o. Sarangapani,
2. R.Amutha
W/o. PS Rajan
3. R.Chezhian
S/o. PS Rajan
1 to 3 are at Door No.5/78, Second Cross Street,
Raja Nagar, Neelangarai, Chennai - 600 041.... Applicants

-Versus-

1. M/s. E5 Properties Pvt. Ltd.,
No.19, Vellaiyan Street, Kotturpuram,
Chennai 600 085.
Rep.by its Managing Director
2. Mr.S.Manickavasagam
S/o. Late R.Shanmuga Naicker
No.72, Solaiappan Street,
Old Washermenpet, Chennai 600 021. ... Respondents

Application praying that this Hon'ble Court be pleased to vacate the exparte order of injunction granted on 13.10.2017 in O.A.No.1017 of 2017.

These Applications coming on this day before this court for hearing, the court made the following order:-

O.A.No.1017 of 2017 has been preferred by the applicant seeking interim injunction restraining the respondents from in any manner alienating, encumbering or dealing with the property morefully described in the Schedule D to the application pending disposal of the arbitration proceedings.

2. This Court, while ordering notice on 13.10.2017, granted an order of interim injunction, which has been extended periodically.

3. The respondents in O.A.No.1017 of 2017 have preferred A.No.7559 of 2017 seeking to vacate the order dated 13.10.2017 passed in O.A.No.1017 of 2017.

4. The applicant had entered into a Memorandum of Understanding-cum-Sale Agreement dated 29.01.2015 (in short, "MOU") with respect to the sale of the property described in the Schedule D to the MOU for a sale consideration of Rs.7,89,60,000/- to an extent of 22 acres and 56 cents. The respondents also had undertaken to execute a Power of Attorney in favour of the applicant. On the date of MOU, a sum of one crore was paid by the applicant to the respondents, as evidenced in the agreement. The Power of Attorney was also executed on 05.02.2015 in favour of the applicant and another sum of one crore was agreed to be paid. Later, the applicant was not ready and willing to purchase the entire extent of 22 acres and 56 cents. Hence, he did not pay further sums, as agreed and requested the respondents to reduce the extent to 16 acres and 67.5 cents out of the total extent agreed.

5. A revised MOU was also entered into between the parties on 27.08.2015. As per the revised MOU, the balance sale consideration was Rs.4,13,91,900/-, which was undertaken to be paid on or before 28.01.2016, i.e., five months from the date of the revised MOU. Even the second MOU could not be honoured by the applicant. Hence, the respondents had issued a notice reminding the applicant to pay a sum of Rs.25,00,000/-, which was agreed to be paid as an additional advance on the date of entering into the second MOU. Even the cheque issued by the applicant for a sum of Rs.15,00,000/- was dishonoured.

6. The applicant had further stated that he had spent substantial amount of money for developing the property by laying out the same and he had also sold about eight plots. It is further contended that the applicant had always been ready and willing to pay the balance of the sale consideration and mark plots and also execute the sale deeds in favour of the prospective buyers in terms of the agreement for development and sale of the property as a lay out. However, as the cheques issued by the applicants were dishonoured, the respondents had cancelled the agreement on 24.05.2016 and by conduct the applicant had also accepted the cancellation of the MOU. After the cancellation of the MOU, there was no response from the applicant for more than an year. Hence, it is pleaded by the respondents that the

MOU had become unenforceable in law and the right of the applicant to file a suit for specific performance is automatically extinguished.

7. The applicant specifically contended that after the seeing the development of the lay out and eight of the plots being sold, the respondents refused to co-operate with the applicant in selling the further plots to the buyers, whereas, the respondents offered to refund the moneys paid.

8. It is the specific case of the applicant that the respondents are bound to convey the property to the applicant or their nominees, namely prospective buyers. The applicant also issued a notice dated 19.09.2017 making it clear that it was always ready and willing to perform its part of the contract. It is also stated that as substantial work had been done by laying out the property, the respondents were duty bound to perform their part of the contract. The said notice was replied to by the respondents on 25.09.2017 contending that the MOU is barred by law, besides being cancelled. The said agreement being unregistered one, the same is unenforceable in law. After having received the notice, the applicant approached this Court by filing O.A.No.1017 of 2017 seeking interim injunction restraining the respondents from in any manner

alienating, encumbering or dealing with the property, that has been described in the Schedule D to the application. As stated earlier, this Court granted the order of interim injunction on 13.10.2017. The said order is in force till today.

9. As stated supra, the respondents sought to vacate the said order contending that the MOU having been cancelled and being unregistered one is unenforceable, as the same is barred by law.

10. It is contended by the learned counsel for the respondents/vacate stay applicants that the relief of interim injunction, being a discretionary power, cannot be granted, as the rights of the parties are not crystallized.

11. Admittedly, the second MOU dated 27.08.2015, which superseded the first MOU dated 29.01.2015, was cancelled by the respondent on 24.05.2016. The Power of Attorney dated 05.02.2015 executed by the respondents is also cancelled on the same date, i.e., 24.05.2016. The cancellation letter was received by the respondents, but a reply was sent only on 19.09.2017 after a period of more than an year. Though there is a clause for arbitration, since the agreement itself is now cancelled, the applicant is not entitled for the relief of interim injunction.

12. It is trite to say that for the grant of interim injunction, the applicant has to make out a prima facie case, the balance of convenience should be in his favour and also has to prove that it would suffer irreparable loss and injury, in the event of not granting the order of interim injunction.

13. In the instant case, the respondents are the original owners of the property having entrusted the same to the applicant for development and sale. However, the same did not fructify resulting in the cancellation of the agreement and also the Power of Attorney. Thus, while applying to exercise the discretion, the Courts should necessarily take note of various provisions governing the suit for specific performance. Merely because the Court is vested with the power, order of injunction cannot be granted. Any interim measure, that is granted, should conform to the rules of equity and discretion and should be exercised within the bounds of law.

14. In the affidavit filed in support of the application, the applicant has stated that already arbitration proceedings was initiated. However, it is pointed out today that arbitration had not yet commenced. Though an Arbitrator was named, there was no progress till today and nothing has happened. Interestingly, the applicant has obtained an order of interim injunction on 13.10.2017 and though it is more than six months since the

interim injunction was obtained, there is no sign of arbitration proceedings being initiated and pending.

15. At this juncture, it is relevant to refer to Section 9 of the Arbitration and Conciliation Act, 1996, which reads as follows :

"9. Interim measures, etc., by Court -

(2) Where, before the commencement of the arbitral proceedings, a Court passes an order for any interim measure of protection under sub-section (1), the arbitral proceedings shall be commenced within a period of ninety days from the date of such order or within such further time as the Court may determine."

16. Hence, the applicant is not entitled for the equitable relief of interim injunction, as the purpose of Section 9 is to provide only an interim measure of protection and not permanent protection. Accordingly, w interim injunction granted is O.A.No.1017 of 2017 is vacated.

17. Accordingly, A.No.7559 of 2017 is allowed by vacating the order of interim injunction. Consequently, O.A.No.1017 of 2017 is dismissed.

Sd./-P.S.N.J
23/04/2018

//Certified to be true copy//
Dated at Madras this the day of 2019.

COURT OFFICER(O.S.)

JJ 12/04/2019

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