

IN THE HIGH COURT OF BOMBAY AT GOA**CIVIL APPLICATION NO. 174 OF 2019****IN****FIRST APPEAL NO. 117 OF 2019****SHIRJI BUILDERS, THR. ITS PARTNERS****THE APP. NO. 2 AND 3 AND 2 ORS.,** ... **Applicants****Versus****HIMALAYA BUILDERS PVT. LTD.,** ... **Respondent**

Mr. A. F. Diniz, Mr. Ryan Da Piedade Menezes, Mr. Rama Rivankar and Mr. Nigel Fernandes, Advocates for the Applicants.

Advs. Agha Iftikhar with Mr. Ketan Morjekar for the Respondent.

**Coram:- C. V. BHADANG &
NUTAN D. SARDESSAI, JJ.**

Date:- 7th October, 2019.

P.C.

This is an application for stay of impugned judgment and decree dated 21.06.2019, passed by the learned Senior Civil Judge at Panaji in Special Civil Suit No. 82/2009. By the impugned judgment and decree, the learned Trial Court has decreed the suit filed by the respondents/plaintiffs in the following terms:

“The suit of the plaintiff is partly decreed with costs.

It is hereby declared that the suit agreement dated

13/11/1997 entered into by defendant no.1 on one hand and, plaintiff on the other, in respect of the suit property is valid subsisting and binding between the parties.

By order of injunction, the defendant no.1 and defendant no.2 personally are directed to specifically perform the terms and conditions of the suit agreement dated 13/11/1997 and transfer to the plaintiff right, title and interest in the suit property after obtaining necessary permission for the purpose of registration of the sale deed within a period of 30 days after the appeal period is over.

The defendant nos.1 and 2 are personally directed to hand over to the plaintiff the original title deeds of the suit property as well as, the plans and specifications duly approved by the Panaji Municipal Council (now CCP) in respect of the incomplete structure standing in the suit property and described in the plaint.

2. First Appeal No. 107/2019, which is filed by the respondents, challenging the said judgment and decree, has already been Admitted.

3. We have heard Mr. Diniz, the learned Counsel for the applicants and Mr. Agha, the learned Counsel for the respondents.

4. Mr. Diniz, the learned Counsel for the applicants states that the applicants shall not create any third party interest in the suit property, pending disposal of the Appeal. The statement so made is accepted. Even otherwise,

we find that any third party interest, created during the pendency of the Appeal, would be governed by Section 52 of the Transfer of Property Act.

5. Mr. Agha, the learned Counsel for the respondents has submitted that the applicants have received an amount of Rs.1.50 crores, way back in 1998 and has put the respondents in possession of the property, over which, the respondents have made construction, which construction is complete to the extent of 70% (ground + 3 storey structure). He, therefore, submits that if this Court is inclined to grant stay, the respondent may be permitted to complete the construction. He also submitted that the part of the impugned judgment and decree directing the applicants to deposit the title deeds may not be stayed.

7. We have considered the submissions made. The impugned judgment and decree is essentially for specific performance in which the First Appeal challenging the same is admitted. We find that the impugned judgment and decree can be stayed subject to the condition that the applicant shall not create any third party interest in the suit property during the pendency of the appeal. In so far as the permission to the respondent to complete the construction is concerned, we may note the judgment and order dated 14/10/2013 passed by this Court in Writ petition no.548/2013, which permits

the parties to make an application for fresh development permission or renewal of development permission or renewal of development permission to the authorities. Needless to mention that if any such application is made, the authorities shall consider the same on its own merits and in accordance with law. Subject to the applicants being directed not to create any third party interest in the suit property during the pendency of the appeal, the impugned judgment and decree is hereby stayed.

8. The civil application is disposed off.

NUTAN D. SARDESSAI, J.

C. V. BHADANG, J.

ap/-