IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.188 OF 2019
WITH
CIVIL APPLICATION NO.227 OF 2019

M/s Pratamesh Infrarealty Pvt. Ltd. ... Appellant
Versus
Smt. Anusayabai Maruti Jitekar
And Others ... Respondents

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Mr. P.K. Dhakephalkar, Senior Advocate i/b A.P. Mhatre for the Appellant.
Mr. Shreepad Murthy i/b Abhishek Patil for the Respondents.

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CORAM : S.C. GUPTE, J.

DATE : 04 OCTOBER 2019

P. C. :

. Heard learned Counsel for the parties.

2 This Appeal from Order challenges an interlocutory order passed by the Court of Civil Judge, Senior Division, Panvel on an interim application of the Appellant (original plaintiff). The plaintiff's suit is for specific performance of an agreement for sale purportedly executed by the defendants in their favour. The agreement is of 11 September 2013. It is submitted that even before this agreement, there was an agreement between the plaintiff and the deceased father of the

defendants for sale of the suit property at or for a consideration of Rs.4.60 crore plus 50 per cent constructed flats. The land was allotted to the deceased father of the defendants by CIDCO under its 12.5 per cent scheme. It appears that a sum of Rs.2.20 crore was paid by the plaintiff to the defendants' deceased father under this agreement. After their father passed away, the plaintiff entered into the subject agreement for sale with the defendants, who were legal heirs of the deceased. This agreement, which is of 11 September 2013, is the suit agreement; it fixes the total consideration at Rs.14.99 crore. It is the case of the plaintiff that a sum of Rs.60 lacs has been paid on the date of this agreement. Accordingly, as of the date of the agreement of 11 September 2013, a total sum of Rs.2.80 crores was purportedly paid as and by way of part consideration (Rs.2.20 crores paid to the defendants' deceased father under the earlier agreement plus Rs.60 lacs). It is the defendants' case that the agreement was terminated by them on 26 December 2013, since the balance amount was not paid within the stipulated period of two months. It is the plaintiff's case that the period for payment of balance consideration was twelve months and not two months as alleged by the defendants. It is also the plaintiff's case that a further sum of Rs.2.80 crore was paid by the plaintiff to the defendants in cash on or about 15 May 2014. The plaintiff relies on a receipt signed by the defendants in support of its case of payment of this additional sum.

3 The trial court has essentially found that the plaintiff was *prima facie* guilty of using fabricated documents and had not come to the

court with clean hands. In particular reference to the suit agreement of 11 September 2013, the trial court has found that the document contained unauthorized and unsigned alterations. The trial court has found that just before the typewritten figure of "2 months", for payment of balance consideration, handwritten figure of "1" has been added without any signatures in the margin. This appears to have been done in four particular clauses of the agreement, namely, Clauses 8, 9, 10 and 12. The trial court, after making a detailed analysis of the document produced by the plaintiff before it, has observed that this clearly appeared to be a fabrication. The defendants had produced oral testimony of two witnesses, who had signed the suit agreement as witnesses, testifying to the stipulated period of two months for balance payment. Even the certified true copy of the agreement, which was made available by Advocate D.N. Singh, who was the Notary before whom the agreement was signed, showed the period for balance payment as two months. The conclusion drawn by the trial court in this behalf appears to be clearly a probable *prima facie* view. It does not warrant any interference.

4 Besides, the trial court has also found the alleged receipt of 15 May 2014, produced by the plaintiff in support of its case that a further sum of Rs.2.80 crores was paid in cash by the plaintiff to the defendants, to be suspect. If one compares the original receipt signed in pursuance of the suit agreement for sale, i.e. receipt dated 11 September 2013, with the alleged receipt of 15 May 2014, it is quite palpable that the same document appears to have been used by

changing the date and description in the column of payment. The same signatures have been used as signatures of the defendants. The words "cash" and the date "15/05/2014" appear to have been added in hand. Based on these circumstances, the observation of the trial court that the receipt of 15/05/2014 does not *prima facie* inspire confidence, appears to be a fair, reasonable and probable comment.

5 Whenever a party approaches a court seeking to invoke its equitable jurisdiction, it is imperative that he must come to the court with clean hands. That is the very first and absolutely sacrosanct requirement. The trial court has come to a *prima facie* conclusion, and justifiably so, as I have observed, that the plaintiff in the present case has not come to the court with clean hands and does not deserve any equitable relief. I cannot pursuade myself to find any fault with this conclusion.

6 There is, accordingly, no merit in the appeal. The Appeal from Order is dismissed.

7 At the request of Mr. Dhakephalkar, learned Senior Counsel appearing for the Appellant/plaintiff, the ad-interim protection in favour of the Appellant/plaintiff, originally granted on 17 January 2019, is continued for a further period of four weeks from today.

8 In view of the disposal of the appeal, the Civil Application does not survive and is disposed of.

(S.C. GUPTE, J.)