IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.332 OF 2018
WITH
CIVIL APPLICATION NO.437 OF 2018
IN
APPEAL FROM ORDER NO.332 OF 2018

Tejas Dhiresh Shah And Anr. …Appellants
vs.
Shree Laxmi Vijay Industrial Premises
Co-Op. Society Limited And Ors. …Respondents

……

Ms. Harsha Shah, a/w. Mr. Yatin R. Shah, Mr. Shivam Bhagwati, i/b. Ms. H.Y. Shah, for the Appellants.

Mr. Pradeep J. Thorat, for Respondent No.1.

…….

CORAM : S.C. GUPTE, J.

DATED : 16 SEPTEMBER 2019

P.C. :

. Heard learned Counsel for the parties.

2. This appeal from order challenges an order passed by the City Civil Court at Dindoshi, Mumbai on a notice of motion taken out by the Appellants (original defendant nos. 3(a) and 3(b)). The present suit has been filed by Respondent No.1 herein for a declaration that the suit premises, which are described as a unit, namely, Unit No.34/134-A, First Floor of Shree Laxmi Vijay Industrial Estate, New Link Road, Andheri West, Mumbai, in fact are an electric meter room, as per sanctioned plan, not saleable as per the applicable provisions of Development

Control Regulations and for a mandatory order and injunction directing the Appellants herein (original defendants) to quit, vacate and remove themselves from the suit premises.

3. The Appellants' case is that their parents had purchased the suit premises from the developer, who was originally arraigned as defendant no.1 to the Respondent Society's suit, under a registered agreement for sale dated 19 July 1996 and that their father was put in possession of the suit premises for commercial use. It appears that the suit premises were mortgaged to Punjab and Sindh Bank (original defendant no.2). It is the case of the Appellants that Respondent No.1 society had changed the electric connection from the original distribution company, BSES, to a new distributor, Reliance, in the year 2006 and, at that stage, disconnected the water supply and electricity meter to the suit premises. It is submitted that the Appellants did not take any steps so far, since this was done behind their back, and the property was mortgaged to Punjab and Sindh Bank. It is submitted that the Appellants' earlier attempts to get the water supply and electricity restored were obstructed by the office bearers of the first Respondent Society. The Appellants claim to have, accordingly, moved the present notice of motion seeking a temporary injunction against Respondent No.1 herein (original plaintiff) from interfering with or obstructing the Appellants in getting water supply and electricity connection to the suit premises.

4. The learned Judge of the trial court, after considering the record and proceedings, came to a *prima facie* conclusion that the suit

property was a meter room of Respondent No.1 co-operative society and that the defendant developer had no right to sell the same to any third party, including the predecessor of the Appellants and that there was no existing water connection or electric connection for the suit premises.

5. The trial court's conclusion on the character of the suit premises is fair and reasonable and is supported by evidence. Quite apart from prima facie merits of the Appellants' case that the premises were saleable for commercial use, even the delay in approaching the Court is gross and unexplained. The water and electricity supply to the suit premises was disconnected as far back as in the year 2005-2006. For the first time, by the present notice of motion taken out in the year 2017, the Appellants (original defendant nos. 3 and 3(b)) are seeking a temporary injunction restraining Respondent No.1 herein (original plaintiff) from obstructing the supply of water or electricity to the suit premises. The case of the Appellants is that they were minors when the supply was disconnected and that, at the relevant time, the property was mortgaged to Punjab and Sindh Bank. It is, however, pertinent to note that the Appellants attained majority in the year 2011. (One of the Appellants attained majority in 1998, whilst the other attained majority in 2011.) So also, the charge of Punjab and Sindh Bank was vacated in July 2011. There is no explanation why the Appellants did not move the Court so far for water or electricity connection. Whilst the Appellants so stood by disconnection of electricity and water supply, the suit has now become ripe for evidence and is to be heard soon. The interests of justice will, accordingly, be satisfied if the trial court is asked to

expeditiously dispose of the suit.

6. In the premises, there is no merit in the challenge to the impugned order. The appeal from order is dismissed. The City Civil Court at its Borivali Division at Dindoshi is requested to dispose of the suit as expeditiously as possible, preferably within a period of one year from today.

7. In view of the disposal of the appeal from order, the civil application does not survive and the same is also disposed of.

(S.C. GUPTE, J.)