

THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1401/2019.
IN
FIRST APPEAL NO.418/2019

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
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Mr.S.U.Gangal for applicant.

Mr.Pankaj Sawant alongwith Mr.Akshay Patil alongwith Mr.M.S. Federal alongwith Ms. Manali Sangoi i/b Federal & CO. for Respondent nos.1 to 4.

CORAM : K.K.TATED, J.
DATED : APRIL 26, 2019

P.C.

1 Heard learned counsel for the parties.

2. By this Civil Application applicant/original defendant no.5 seeks stay of Judgment and Decree dated 22.1.2019 passed by the Civil Judge, Senior Division, Alibaug, Raigad in Special Civil Suit No.49/2011 allowing respondent/original plaintiff's suit for specific performance of contract and permanent injunction. Operative part of the impugned judgment reads thus:

- “1. Suit stands decreed with cost.
2. It is hereby declared that agreement to sell dated 4.11.2006 is binding on all defendants.
3. It is hereby declared that, sale deed dated 03.02.2011 executed by defendant Nos.1, 2, and 6 in favour of defendant no.5 is null and void and not binding on the plaintiffs.
4. Defendant Nos.1 to 5 are hereby directed to execute sale-deed of suit properties (more particularly described in para 1 of the plaint) as per the terms and conditions of the agreement in favour of plaintiffs after receiving the remaining amount of Rs.1,39,90,500/- and hand over possession of the same. The remaining consideration amount is to be paid to defendant no.5 only.
5. If defendant Nos.1 to 5 failed to execute the sale deed as directed, in that event plaintiffs are entitled to get the same executed through Court Commissioner.
6. Defendant No.5 or any body claiming through him are hereby restrained by order of permanent injunction from creating third party interest or raising construction in suit properties or doing any act which will be detrimental to the interest of plaintiffs.
7. Plaintiffs to deposit the remaining consideration amount of Rs.1,39,90,500/- in the Court within two months from the date of the judgment.
8. Decree be drawn up accordingly.”

3. Learned counsel appearing on behalf of respondent nos.1 to 4 makes a statement that they will not press for execution of Clause Nos.3, 4 and 5 of the operative part of the impugned judgment dated 25.1.2019. To that effect, he has filed an affidavit dated 25.4.2019 duly affirmed by respondent No.1 Sushila Jagdish Kapadia, Respondent no.3 Azim Faizulla Tapiya and Respondent no.4 Javed Faizullah Tapiya. He further submits that respondent no.2 Amol Jagdish Kapadiya is out of country. He submits that they undertake to file similar Affidavit of respondent no. 2 with copy to other side by the end of June i.e. 29.06.2019. Same is accepted.

4. In view of Affidavit filed by respondent nos.1, 3 and 4 nothing survives in present civil application.

5. Learned senior counsel for the respondent submits that as per impugned Judgment and Decree dated 29.01.2019 they deposited sum of Rs.1,39,90,500/- in the Court of Civil Judge, Alibaug. He submit that without prejudice to their rights and contentions, the respondents may be permitted to withdraw said

amount with Undertaking that, as and when this Court called upon them, they will bring the amount immediately.

5. Learned counsel appearing on behalf of the applicant submits that they have no objection if respondents are permitted to withdraw the amount but same should be their cost and consequence. Hence, the following order

a) Respondent/original plaintiffs are permitted to withdraw the sum of Rs.1,39,90,500/- deposited by them in the Court of Civil Judge, Senior Division, Alibaug alongwith accrued interest if any, without furnishing any security on their cost and consequences, with undertaking that a and when this Court called upon they will bring the entire amount, they will do the same immediately.

b) Undertaking given by respondents by their Affidavit dated 25.4.2019 to continue till hearing and final disposal of First Appeal.

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c) Civil application disposed of.

(K.K.TATED, J.)