

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

APPEAL FROM ORDER (St.) NO.26259 OF 2018

Supreme Indosaigon Associates and Anr. .. Appellants

V/s.

Hemantkumar M. Jain and Ors. .. Respondents

Mr.Gauam Ankhad with Mr.Rakesh Pandey with Ms.Tasmin
Mosin I/b M/s.ACJ Partners for the appellants

Mr.R.D.Soni with Mr.Chinmay Acharya for the respondent nos.1
and 2

Ms.Prerna R. Lalchandani for the respondent no.3

**CORAM: K.K. TATED, J
DATED : MARCH 22, 2019**

P.C. :

1 Heard the learned counsel for the parties.

2 For the sake of convenience, the parties will be referred to as per their nomenclature in the Suit No.1312 of 2017 i.e. Appellant as original defendant nos.1 and 3 and respondent nos.1 and 2 original plaintiff nos.1 and 2 and respondent no.3 original defendant no.2.

3 As per plaintiffs in plaint, Defendant no.1 is a partnership firm, who are builders and developers and have constructed a

building known as Pranik Chambers at Saki Vihar Road, Saki Naka, Andheri (W), Mumbai and Defendant Nos.2 and 3 are the partners of Defendant no.1.

4 By this Appeal from Order, original defendant nos.1 and 3 challenges the order dated 16.08.2018 passed by Bombay City Civil Court at Bombay in Notice of Motion No.2240 of 2017 in Suit No.1312 of 2017 restraining defendant nos.1 and 3 from disturbing plaintiff's possession in respect of the suit property i.e. shop no.8, ground floor, Pranik Chamber, Off. Andheri Kurla Road, Sakinaka, Andheri (E), Mumba during the pendency of the Suit.

5 The learned counsel for the defendant nos. 1 and 3 submit that they never entered into any agreement for sale in respect of the suit property with the plaintiff. He submits that the fraud was committed by the defendant no.2 and therefore, there is no question of granting any injunction against them from disturbing plaintiff's possession in respect of the suit premises. He further submits that as on today suit premises is in their possession. He submits that these facts were not considered by the Trial Court at the time of passing impugned order dated 16.08.2018. In support of this contention, he also relies on copy of Criminal Writ Petition No.887 of 2017 filed by the plaintiff before this court.

6 The learned counsel for the defendant nos.1 and 3 submit that though the Trial Court appointed court commissioner to find out the exact position of possession, court commissioner failed to

place the several true facts on record. Hence, they filed affidavit objecting to the said court commissioner's report. He submits that at the time of passing impugned order, Trial Court failed and neglected to consider their objection to the court commissioner's report.

7 The learned counsel for the defendant nos.1 and 3 submit that amongst these on several other grounds as stated in the Appeal Memo they are challenging the order passed by Trial Court. He submits that there is no question of granting any injunction against the true owner of the property. He submits that in the present proceedings, admittedly defendant nos.1 and 3 are the true owners of the suit property. These facts were not considered by the Trial Court at the time of passing impugned order. Hence, they preferred the present Appeal from Order.

8 On the other hand, the learned counsel for the plaintiff and defendant no.2 vehemently opposed the present Appeal from Order. The learned counsel for the plaintiff submits that, plaintiff purchased the suit property by agreement dated 29.03.2013 for sum of Rs.1,25,00,000/-. He submits that out of the said amount they already paid Rs.75,00,000/-. He submits that defendant no.2 executed the agreement for sale. Because of some unavoidable circumstances that agreement was not registered at that time. On 17.07.2014 defendant no.2 executed confirmation deed and same was duly registered on payment of stamp duty.

9 The learned counsel for the plaintiff further submits that

admittedly defendant no.2 handed over possession of the suit premises to them in the year 2014 itself. In support of this contention advocate for the plaintiff relies on letter dated 29.07.2014. He further submitted that even court commissioner's report supports the plaintiff's contention that plaintiff is in possession of the suit premises. Therefore, there is no question of interfering with the well reasoned order passed by Trial Court dated 16.08.2018.

10 The learned counsel for the plaintiff further submits that subsequently defendant nos.1 filed Short Cause Suit No. 126 of 2019 in Bombay City Civil Court at Bombay for following reliefs

“(a) The Hon'ble Court be pleased to declare that Defendant No.2 exceeded the authority conferred upon him without the consent of the Plaintiff while amending the Plan of the building “Pranik Chambers” in respect of the suit premises thus the said plan is not binding upon the Plaintiff.

(b) The Hon'ble Court be pleased to declare that Defendant No.1 and 2's acts of amending the plan in respect of the ground floor premises of Pranik Chamber for creating the suit premises and entering into third party rights in respect of the suit premises violates the terms and conditions of the Joint Venture Agreement and the Agreement dated 29th March 2013 executed by Defendant No.2 on behalf of the Plaintiff in favour of Defendant No.3 and 4 is not binding upon the Plaintiff.

(c) The Hon'ble Court be pleased to restrain the Defendants or any person/s claiming through them by an order of injunction of this Hon'ble Court from obstructing or disturbing the Plaintiff possession in respect of Shop No.8 in the Pranik Chamber.

(d) Pending the hearing and final disposal of the suit, Defendant No.3 and 4 be restrained by an order and injunction of this Hon'ble Court from creating any third party rights on the basis of the Agreement dated 29th March, 2013 in respect of the suit property without the consent of the Plaintiff.

(e) Pending the hearing and final disposal of the suit, interim and ad-interim order in terms of prayer clause (c) and (d) of the suit be granted.

(f) for costs of this suit.

(g) For such further and other reliefs as the nature and circumstances of the case may require”.

11 The learned counsel for the plaintiff submits that bare reading of the copy of plaint and the prayers in S.C. Suit No. 126 of 2019 shows that, there is some dispute between defendant nos.1 and 3 on one hand and defendant no.2 on other hand.

12 The learned counsel for the plaintiff submits that bare reading of Joint Venture dated 15.05.2005 clearly shows that defendant no.2 have right to dispose of the property. In support of this contention, he relies on clause no.2 of the Joint Venture which reads thus.:

“2. The party of the First Part hereby gives full, complete and exclusive right to the Party of the Second Part for development of the said property at the costs and expenses of the Party of the Second Part. It is agreed that Party of the First Part shall be entitled to keep the constructed premises together with 62 car parking space as listed in Annexure D-1 hereto and more particularly shown on the Architect's duly certified proposed plan marked Annexure - E- Collectively hereto highlighted in blue colour. The Party of the Second part shall be entitled to keep the constructed premises together with 61 car parking space as listed in Annexure D-2 hereto and more particularly shown on the Architect's duly certified proposed plan marked Annexure - E- Collectively hereto highlighted in yellow colour. The above division of constructed area is on the basis of prevalent Development Control Rules and Regulations. The Party of the Second Part shall purchase the permissible TDR on the said property within 15 days of the date hereof on a forward purchase TDR basis time being the essence. The loading of the above TDR shall be done of by the Party of the Second Part within 60 days from the date of such forward purchase.”

13 The learned counsel for the plaintiff also relies on statement given on page 197 to 200 of Appeal from Order. On the basis of these submissions, the learned counsel for the plaintiff submits that there is no substance in the present Appeal from Order and same is required to be dismissed with costs.

14 Heard.

15 It is to be noted that bare reading of copy of plaint in present proceedings and copy of plaint in S.C. Suit No. 126 of

2019 shows that, there is some dispute between defendant nos.1 and 3 on one hand and defendant no.2. Because of that dispute , defendant nos.1 and 3 is disputing the execution of the agreement and handing over possession of the suit premises to the plaintiff.

16 Bare reading of the agreement dated 29.3.2013 and confirmation deed cum declaration dated 17.7.2014 shows that plaintiff already paid more than 60% amount of the total consideration in respect of the suit premises. Apart from that letter dated 29.07.2014 also shows that plaintiff are in possession of the suit premises.

17 Considering all these facts and the impugned order dated 16.8.2018, I do not find any reason to entertain the present Appeal from Order. Hence, following order is passed:

- a. Appeal from Order stands dismissed.
- b. In view thereof, nothing survives in the Civil Application. Same stands dismissed as infructuous.
- c. No order as to costs.
- d. At this stage, the learned counsel for the defendant nos.1 and 3 submits that status quo order passed earlier in the present proceedings, be continued for further four weeks.

e. On the other hand, the learned counsel for the plaintiff vehemently opposed the same.

f Considering the fact that status quo order is running since long, same be continued till 30.04.2019.

(K.K. TATED, J.)