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

**APPEAL FROM ORDER NO. 743 OF 2017**

Renaissance Indus Infra Private
Limited and Anr. ….Appellants
V/s.
Aarya Industrial Products (P) Limited
….Respondent

Mr. R.D. Suryawanshi for the appellant.
None for the respondent.

**CORAM: SMT. ANUJA PRABHUDESSAI, J.**
**DATED : 06th MARCH, 2019.**

**P.C. :-**

. The appellant herein has challenged the order dated 21/07/2017 whereby the learned Civil Judge, Senior Division, Link Road, Bhiwandi has partly allowed the application at Exhibit-5 filed by the respondent no.1 and restrained the appellants from creating third party interest in any manner in the suit property till the disposal of the suit.

2. The respondent no.1 was the plaintiff and the appellants were the defendants nos.1 to 3 and respondent nos.2 to 4 were the defendant nos.4 to 6 in Special Civil Suit No.238/2016 and shall be hereinafter referred to as 'the plaintiff', 'defendant nos.1 to 3' and 'defendant nos.4 to 6' respectively.

3. The dispute in the suit is in respect of a Warehousing Unit No.7, 8, 9 and 10 of Warehousing Building B-VII, admeasuring about 52,496 sq. ft area, in Renaissance Industrial and Warehousing Complex situated on Survey / Hissa Nos.48/8/1/1, 48/8/1/2, 48/8/2, 48/8/3, 48/8/4 at Village Vashere, Padgha Post, Taluka Bhiwandi, Dist. Thane. The said warehousing unit shall be hereinafter referred to as the suit property.

4. It is the case of the plaintiff that it had purchased the suit property from the defendant nos.1 to 3 by sale deed dated 02/05/2014 for total consideration of Rs.8,02,81,393/-, inclusive of VAT and service tax. The plaintiff claims that it had paid the entire consideration to the defendant nos.1 to 3. The defendants nos.4 to 6 are the licensees of the suit property. As agreed between the plaintiff and the defendant nos.1 to 3, the license agreement was to be transferred in favour of the plaintiff and the defendant nos.4 to 6 were to pay license fee of Rs.8,66,184/- per month.

5. The grievance of the plaintiff is that the defendant nos.1 to 3 failed to transfer the license in its favour. The defendant nos.1 to 3 also failed to pay the license fee of Rs.51,97,104/- collected from the

defendant nos.4 to 6. The plaintiff, therefore, issued a legal notice to the defendant nos.1 to 3 to transfer leave and license agreement in its name and further to pay the license fee collected from the defendant nos.4 to 6. The plaintiff claims that on 30/06/2015, the defendant no.2 issued a cheque for Rs.51,97,104/- towards the license fee of six months. The said cheque was dishonoured with an endorsement that the payment was stopped. The plaintiff therefore filed a suit for a declaration that they are the lawful owners of the suit property and that by virtue of the said sale deed and possession letter, they are the licensors of the suit property of which the defendant nos.4 to 6 are licensees. The plaintiffs also sought to direct the defendant no.4 to pay monthly license fee of Rs.8,66,184/-.

6. The plaintiffs also filed an application at Exhibit -5 seeking to restrain the defendant nos.1 to 3 from selling, disposing, transferring and/or creating charge, encumbrances or any third party rights, interest in respect of the suit property. The plaintiffs also sought to restrain the defendant nos.1 to 3 from terminating the leave and license agreement with the defendant no.4 and further sought to direct the defendant nos.4 to 6 to pay monthly license fees to the plaintifss.

7. The defendants nos.1 to 3 denied having sold the suit property and or having received total consideration of Rs.8,02,81,393/- from the plaintiff. The defendants claims that the receipt / possession letter was given in good faith. It is the case of these defendants that the plaintiff had paid only an amount of Rs.3 crores and issued post dated cheques in respect of the balance amount. The said cheques have been dishonoured and a complaint under Section 138 of the Negotiable Instruments Act has been filed against the plaintiff. The defendants claim that the plaintiff had executed an undertaking cum indemnity bond dated 07/11/2019 admitting that it has not paid the entire consideration and agreed to pay the balance consideration. The defendant nos.1 to 3 further claim that since the plaintiff had not paid the entire consideration, they cancelled the agreement by notice dated 02/05/2014.

8. The defendant nos.4 to 6 have stated that the leave and license agreement has already been terminated with effect from 30/06/2015 and that they have handed over possession of the suit property to the defendant no.1.

9. The learned Judge, upon considering the material on record held

that prima facie the defendant nos.1 to 3 had executed the sale deed in favour of the plaintiff. Defendants had also issued a letter stating that they had received the entire consideration. The learned Judge has also observed that the explanation offered by the defendants that the letter was issued in good faith is prima facie not acceptable. The trial Court however held that the issue raised by the plaintiffs as well as by the defendant nos.1 to 3 as regards payment of consideration of Rs.5 crores needs to be considered on merits. Hence, the learned trial Judge restrained the defendant nos.1 to 3 from creating third party interest in any manner in respect of the suit property till the final hearing of the suit. Being aggrieved by this order, the defendant nos.1 to 3 have filed this appeal.

10. Mr. Suryawanshi, the learned counsel for the defendant nos.1 to 3 contends that the indemnity bond dated 07/11/2014 clearly indicates that the plaintiff had not paid the entire consideration. The transaction dated 02/05/2014 has not culminated into a sale and the same continued to be an agreement of sale. The said agreement having been terminated, the plaintiff has not right over the suit property. He submits that the defendant nos.1 to 3 who are the owners of the suit property will suffer undue hardship if they are restrained from

creating third party rights in respect of the suit property.

11. I have perused the records and considered the submissions advanced by the learned counsels by the respective parties.

12. It is not in dispute that the defendant nos.1 to 3 were the owners of the suit property and that the suit property was in possession of the defendant nos.4 to 6 as licensees thereof. By sale deed dated 02/05/2014 which has been duly registered, the defendant nos.1 to 3 had sold the suit property to the plaintiff for total consideration of Rs.8,02,81,393/-, inclusive of VAT and service tax. The defendant nos.1 to 3 had issued a letter dated 07/11/2014 wherein they have clearly admitted having received the total consideration in respect of the suit property.

13. The contention of the defendant nos.1 to 3 that the said letter was issued in good faith and that they had not received any consideration is prima facie devoid of merits for the following reasons. The records prima facie indicate that the plaintiff and the defendant nos.1 to 3 had agreed that in view of the execution of the sale deed dated 02/05/2014, the leave and license agreement executed in favour

of the defendant nos.4 to 6 would stand transferred in the name of the plaintiff and that the licensors would pay the license fee to the plaintiff. The records indicate that after the execution of the said sale deed, the defendant no.2 had addressed a letter dated 07/11/2014 to the defendant no.4 wherein it was categorically stated that defendant nos.1 to 3 had sold the suit property to the plaintiff and that the plaintiffs are now the registered owners of the suit property. By the said letter, the defendant nos.4 to 6 were called upon to transfer the leave and license agreement in favour of the plaintiffs.

14. The plaintiff had claimed that the defendant nos.1 to 3 had collected Rs.51,97,104/- from the defendant nos.4 to 6 being license fee of six months. As per the agreement, the said amount was to be paid to the plaintiffs. The records indicate that the defendant nos.1 to 3 had paid the said amount to the plaintiff by cheque dated 01/07/2015. The said cheque was dishonoured and proceedings under Section 138 of Negotiable Instruments Act have been initiated. Letter dated 07/11/2014 viz.a.viz. payment of Rs.51,97,104/- to the plaintiff towards the license fee prima facie negates the case of the defendant nos.1 to 3 that there was no sale transaction in respect of the subject warehouse.

15. The defendants have relied upon the indemnity bond dated 07/11/2014 wherein the plaintiffs had allegedly stated that they had not received the total consideration. The plaintiffs have denied having executed any such indemnity bond. In this context, it is relevant to note that the defendant nos.1 to 3 had not referred to this indemnity bond in their written statement. There is no reference to this indemnity bond in any of the communications or correspondence between the plaintiff and the defendant nos.1 to 3. In the light of the above, prima facie the said document does not appear to be genuine and hence cannot be relied upon.

16. The sale deed dated 04/05/2016 reveals that the defendant nos.1 to 3 have sold the suit property to the plaintiffs for total consideration of Rs.8,02,81,393/-. The letter of possession which is admittedly executed by the defendant nos.1 to 3 prima facie reveals that the defendants have received total consideration. The plaintiff has therefore proved the prima facie case. The records indicate that the defendant nos.4 to 6 have surrendered possession of the suit property in favour of the defendant nos.1 to 3. Transfer or alienation of the suit property will adversely affect the rights of the plaintiff. The plaintiff having established the essential pre-requisites of grant of interim relief,

the learned Trial Judge was perfectly justified in restraining the defendant nos.1 to 3 from creating third party rights in respect of the suit warehouse. The order is neither illegal nor perverse and does not warrant interference.

17. Hence, the appeal has no merits and is accordingly dismissed with no orders as to costs. Suffice it to say that this order should not be construed as an expression on merits of the matter. The trial court to decide the suit on the basis of the evidence that would be led by the respective parties.

**(SMT. ANUJA PRABHUDESSAI, J.)**