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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.693 OF 2016

M/s.Creative Coaching Classes ...Appellant
vs.
M/s.Zenith Farms Pvt.Ltd. And
Uttara Farm, Parandwadi & Ors. ...Respondents

Mr.U.P.Warunjikar for the Appellant
Mr.Hitesh P. Vyas for the respondent Nos.1 to 3.

CORAM : M.S.KARNIK, J.
DATE : JULY 15, 2019

P.C.:

1 The appellant is the original plaintiff who had filed a suit for specific performance on the basis of oral agreement. In the plaint it is averred that on the basis of negotiations held on 28.10.2010, the plaintiff agreed to pay an amount of Rs.16,19,00,000/- to the defendant for the purchase of suit properties. It is the case of the plaintiff that amount of Rs.2,50,00,000/- was paid in cash as part payment and by RTGS. Defendants denied having received the said amount. The amount of Rs.48,00,000/- was paid to the defendants by the plaintiffs from time to time. This amount of Rs.48,00,000/- has later been returned by the defendants to the plaintiffs. The appellant's case of specific performance was based on oral agreement. So far as the balance amount is concerned, it is the contention of the appellant

that though they had issued cheques in favour of the defendants, the same were not encashed by the defendants for the reason best known to them. The Trial Court has observed that the amount of Rs.48,00,000/- which was received by the defendants has been refunded back.

2 Whether the oral agreement as alleged is entered into and what payment was made by plaintiff to defendant are the matters which the Trial Court will have to decide after recording evidence. The Trial Court has elaborately recorded reasons for rejecting the Application at Exhibit-5 restraining the respondents from creating third party rights in respect of the suit property.

3 Considering the factual matrix and the order passed by the Trial Court, I see no reason to interfere with the order passed by the Trial Court. Appeal is therefore dismissed. Civil Application does not survive and the same is disposed of.

4 However, considering the fact that the suit is of 2014, request made by the learned counsel for the appellant to expedite the hearing of the suit is reasonable. Trial Court is requested to expedite the suit.

(M.S.KARNIK,J.)