IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CONTEMPT PETITION NO.64 OF 2018
IN
ARBITRATION PETITION NO.350 OF 2015

Harshvardhan Kunj Lakhani And 3 Others ....Petitioners
vs
Kieon Developers Pvt. Ltd. And 4 Ors. ...Respondents

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Mr. Atul Daga, a/w. Mr. Suraj Iyer, and Ms. Debashree Mandpe, i/b. Ganesh & Co., for the Petitioners.

Mr. P.M. Shah, a/w. Mr. Dishang Shah, for Respondent Nos. 1 to 3.

Mr. Bhavin R. Bhatia, for Respondent Nos. 4 and 5.

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CORAM : S.C. GUPTE, J.

DATED: 13 MARCH 2019

P.C.:

. Heard learned Counsel for the parties. This contempt petition alleges breach or disobedience of a consent order passed in an arbitration petition. By an order dated 20 February 2015, passed by consent, the first Respondent was directed to deposit an amount of Rs.61,81,534/- with the Prothonotary and Senior Master "upon sale of his 40% share in the property" being the subject matter of the arbitration petition. The order also required that in the event of sale of the property not going through, the Respondent "shall not alienate, encumber, part with possession or create third party rights" in respect of his 40% share in the property "without depositing the agreed amount with the Prothonotary and Senior Master". The complaint of the Petitioners is that in the face of this consent order, by a memorandum of understanding dated 2 September 2016, executed between the first Respondent herein and its director, who is Respondent No.2 in the contempt petition, and one N.M. Investments (described in the memorandum of understanding as 'assignee'), the Respondents have alienated the property or created third party rights in respect of their 40% share in the property.

2. Considering the obligations of the Respondents, firstly, to deposit the amount stated in the order "upon sale of his 40% share in the property" and secondly, not to "alienate, encumber, part with possession or create third party rights in respect of its 40%" share in the property in the event of the sale not going through, suggest that the embargo on the Respondents under the order of 20 February 2015 was in respect of alienation, encumbrance, parting with possession or creating third party rights in respect of immovable property, namely, 40% share of the Respondents in the subject property. It does not imply that the Respondents were prevented from entering into an agreement for sale or, in other words, creating a right to seek specific performance in a prospective purchaser. The memorandum of understanding dated 2 September 2016 complained of in the present petition does not create either of these rights, creation of which was prevented by the order of 20 February 2015.

3. Learned Counsel for the Petitioners submits that not only have the Respondents executed the memorandum of understanding, but they have even received monies thereunder. That is clearly immaterial.

If the agreement does not create any of the rights, creation of which was prevented by the order of this Court, acceptance of monies under that agreement by the Respondents is neither here nor there. In any case, it is stated on behalf of the Respondents that the Respondents have not gone ahead with the performance of the memorandum of understanding. The statement is noted and accepted.

4. In the premises, there is no case for proceeding against the Respondents under the contempt jurisdiction of this Court. There is no contumacious breach or defiance of the order passed by this Court by the Respondents. The contempt petition is dismissed.

(S.C. GUPTE, J.)