

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

Amk

APPEAL NO. 431 OF 2019
IN
NOTICE OF MOTION (L) NO. 1151 OF 2019
IN
COMMERCIAL SUIT NO. 1280 OF 2018

Vimla Kewal Kapoor

.. Appellant

Vs.

M/s. Ekta Supreme Corporation & Ors.

.. Respondents

Mr. Sharan Jagtiani a/w. Ms. Ankita Singhania i/b Akash Menon for the Appellant.

Mr. Amrut Joshi a/w. Ms. Hiral Vora, Nivit Srivastava i/b Maniar Srivastava & Associates for Respondent Nos.1 & 2.

Mr. Rahul Narichania, Senior Advocate a/w. Ms. Anjali Trivedi i/b V. Thakers for Respondent Nos.4 to 6.

CORAM : PRADEEP NANDRAJOG, C.J. &
SMT. BHARATI DANGRE, J.

DATE : 13th SEPTEMBER, 2019.

P. C. :

1. Heard learned Counsel for the parties.
2. Grievance is to an ad-interim order dated 30.04.2019 not granting an ad-interim relief.
3. To appreciate the grievance of the Appellant, suffice it would be to record that in a suit seeking multifarious reliefs, principal relief being for specific performance of the agreement dated 30.09.2009 executed between the Appellant and the Developer, the case of the Appellant was

that she had acquired title to Flat No.12 on the ground floor of Building No. A, 15th Road, Bandra (West), Mumbai and as per the Municipal Bye-laws the building was in Zone R-2 having residence with shop line. That the Appellant had obtained the necessary permissions from the Corporation to carry on commercial activity from the flat and as owner of the flat vide Agreement dated 30.09.2009 distinct rights in her favour existed for the redevelopment of the entire building notwithstanding a separate agreement entered into between the co-operative society and the builder. The grievance was to the builders/developers offering a flat on the 3rd floor of reconstructed building to the Appellant. As per the Appellant, her rights under the Agreement with the developer dated 30.09.2009 was to get a flat on the ground floor.

4. After the suit was filed the developer/builder was served. It was informed that the space in the building in respect whereof the suit was filed was sold to three persons who were thereafter impleaded by the Appellant as Defendant Nos.4, 5 & 6. In the proceeding, defendant No.6 informed that in turn he had sold space given shop No.13 to three entities, namely, Teresa Choumin, Choumin Yupin Chen and Shao Lin Choumin Chen. The Appellant, as the Plaintiff prayed as claimed in the Appeal that no further transfers be made.

5. The impugned order dated 30.04.2019 simply records that after the hearing the parties the prayer for ad-interim relief is rejected.

6. With respect to the order dated 30.04.2019, the learned Senior Counsel for Respondent Nos.4 to 6 states that ad-interim relief prayed for was to restrain the said Respondents from carrying on business.

7. Whilst it may be true that keeping in view the dispute such ad-interim order would ordinarily not be granted without pleadings being completed, but the necessity to implead Teresa Choumin, Choumin Yupin Chen and Shao Lin Choumin Chen as Defendants certainly arose when Defendant No.6 informed to the learned Single Judge as aforementioned. Further, an ad-interim order was required to be passed restraining said three persons from creating any third party interest in Shop No.13.

8. Thus, we dispose of the Appeal impleading Teresa Choumin, Choumin Yupin Chen and Shao Lin Choumin Chen as Defendant Nos.7, 8 and 9 in the suit. We also restrain said Defendants from creating any third party interest in Shop No.13. Existing Defendant Nos.4 and 5 shall not create third party interest in the portion in their possession. The suit would be formally amended and service would be effected upon newly impleaded Defendants.

9. Needless to state the present order is an ad-interim order and after pleadings are completed, the learned Single Judge would decide the Notice of Motion where prayer made is to restrain further creation of third party interest in the suit property.

[SMT. BHARATI DANGRE, J.]

[CHIEF JUSTICE]