

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO.26 OF 2019

1. Mahesh Kumar Daga,
s/o. Kanhaiya Daga, age 54 years, service,

2. Dipta Bhog,
w/o Mahesh Kumar Daga,
age 54 years, consultant; both residing at
D-331, Defence Colony, New Delhi
Pin 110024.

Versus

1. Maximo Santos Fernandes
s/o late Joseph C. Fernandes, age 83
years, retired, person of Indian Origin and
non resident Indian,

2. Elfina Fernandes,
d/o late Crizomio D'Silva, age 72 years,
and non-resident Indian,
Both residing at: 144, Starthyre Avenue,
Norbury, London SW1647Q,
United Kingdom.

3. Edna Fernandes, d
d/o Maximo Santos Fernandes,
age 48 years, married, Journalist,
person of Indian Origin and non-resident
Indian, residing at: 28 Hermitage Road,
Kenley, Survey, Greater London, United
Kingdom.

4. Maria Fernandes, d/o Maximo
Fernandes, age 43 years, single, teacher,

person of Indian Origin and non-resident Indian, residing at: 1, Eskdale Gardens, Purely, Surrey, Greater London, CR81ET, United Kingdom.

5. Tania Fernandes,
d/o Maximo Santos Fernandes,
Age 48 years, single, designer,
Person of Indian Origin and
non-resident Indian, Resident at:
47A, Birhirst Rise, South Croyden,
Greater London, CR2, United Kingdom. Respondents.

Mr. Shivraj Gaonkar, Advocate for the Appellants.

Mr. Somnath Karpe, with Mr. A. Sawant, Advocate for the Respondents.

Coram : M.S. Sonak, J.

Dated : 16th October, 2020

JUDGMENT:-

Heard Mr. Gaonkar for the Appellants and Mr. Karpe for the Respondents.

2. This Appeal is directed against the order dated 15/02/2019 by which the learned Trial Judge has declined relief of temporary injunction to the Appellants-Plaintiffs.

3. The Appellants have instituted Special Civil Suit

No.46/2018/A, seeking specific performance. Pending that suit, an application was taken out for temporary injunction to restrain the Respondents from selling, transferring, alienating or otherwise creating any third party rights in the suit property.

4. Mr. Gaonkar submits that in this case, the Appellants have throughout expressed their readiness and willingness to perform their part of the contract. He points out that even bank documents were produced to indicate that arrangements were made to pay the entire agreed amounts to the Respondents. He points out that even the Respondents in paragraph 11 of their reply to the application for temporary injunction had stated that they have no intention to sell the suit property. Despite this, the learned Trial Judge's declining injunction by the impugned order, is entirely erroneous and warrants interference.

5. Mr. Karpe, the learned Counsel for Respondents No.1 to 5 points out that the statement in paragraph 11 of the reply to the application for temporary injunction was only to point out the apprehension expressed by the Appellants that the Respondents are about to sell the suit property, which was not at all justified. He points out that in this case, the Appellants failed to complete the transaction within the prescribed period. Besides, the Appellants not only accepted the termination of the agreement, but further in pursuance thereof, have accepted refund of Rs.31.00 lakhs. Mr. Karpe

submits that in these circumstances, there is absolutely no illegality in so far as the impugned order is concerned.

6. Rival contentions now fall for determination.

7. The Respondents, in their reply to the application for temporary injunction, have stated that they have no intention to sell the suit property. Even, otherwise, any transfers pending the suit, would be affected by the doctrine of *lis pendens*. This, according to me, affords sufficient protection to the Appellants in the facts and circumstances of the present case.

8. As of today, the Appellants have already received an amount of Rs.31.00 lakhs, which have been paid by the Respondents. The issue as to whether such acceptance was acknowledged or not or for that matter the issue as to whether the termination of the agreement was proper or not, are really the issues which the learned Trial Judge has to go into at the time of disposal of the suit. On the basis of such issues, it is really not necessary to interfere with the impugned order or to grant the Appellants herein, any additional relief, except to reiterate that any transfers by the Respondents will be hit by the doctrine of *lis pendens*. Therefore, if at all the Respondents make any transfers, they shall not be entitled to claim any equities. Further, it would be in the interest of the third parties that the Respondents make it clear to such third parties that the transfer, if

any, is subject to further orders in the suit and the doctrine of *lis pendens*.

9. Mr. Gaonkar expresses apprehension that certain observations in the impugned order might prejudice the final outcome in the suit. There is really no basis for such apprehensions. The observations in the impugned order ought not to influence the learned Trial Judge at the stage of grant of final reliefs in the suit. The suit will have to be disposed of on the basis of the evidence which the parties lead and on its own merits and in accordance with law.

10. In this Appeal, it is necessary to note that there was no interim relief operating in favour of the Appellants. Therefore, it is not necessary to interfere with the impugned order. The clarification as aforesaid, particularly on the aspect of *lis pendens*, affords more than sufficient protection to the Appellants. It is further made clear that none of the observations in the impugned order shall influence the learned Trial Judge in passing final orders in the suit.

11. Further, at the request of Mr. Karpe, the learned Counsel for the Respondents, hearing of the suit is expedited. It is pointed out that some of the Respondents are senior citizens *i.e.* 75 and 85 years. The learned Trial Judge is directed to dispose of the suit maximum within a period of one year from today. Both the parties

to co-operate with the learned Trial Judge and in case any parties seek unnecessary adjournments, the Trial Court should desist from granting such adjournments and even consider imposition of substantial costs. This order is made because both the parties request for expeditious disposal of the suit.

The Appeal is, accordingly, disposed of in the aforesaid terms. There shall be no order as to costs.

M.S. Sonak, J.