

Tandle

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 242 OF 2017
WITH
CIVIL APPLICATION NO. 322 OF 2017

Mrs. Kamudini Chandrakant Pethkar
and Anr.

... **Appellants/
Applicants.**

Versus

Shri Pandurang Shantaram Chikane and Ors.

... **Respondents.**

.....

Mr. S. S. Patwardhan, Advocate for the Appellants.

Mr. S. Deshmukh for the Respondents.

.....

CORAM : A. S. GADKARI, J.

DATE : 15th JANUARY, 2020

P. C. :

1. The present appeal under Order 43 of the Code of Civil Procedure, the appellants have impugned Order dated 3rd December 2016 passed below Exhibit 5 in Special Civil Suit No. 486 of 2015 by the learned 14th Joint Civil Judge, Senior Division, Pune, rejecting the application preferred by the appellants.

2. Heard Mr. Patwardhan, learned Counsel for the appellants and Mr. Deshmukh, learned counsel for the respondents. Perused the entire record annexed to the appeal.

3. The record indicates that, the appellants have filed the aforesaid Special Civil Suit No. 486 of 2015 for Specific Performance of

Agreement to sell dated 11th August 2014 and in the alternative for compensation of Rs.9,31,55,040/- from the respondents along with damages thereto and for other consequential reliefs. The appellants had filed an application below Exhibit-5 in the said suit for interim relief inter alia for temporary injunction against the respondents. The Trial Court by its Order dated 3rd December 2016 has rejected the said application.

4. Mr. Patwardhan, learned counsel for the appellants submitted that, the respondents were supposed to perform their initial part of the obligation and then in that event only the appellants were supposed to pay further amounts for getting non agricultural permission from the Competent Authority and for making payment towards the development charges. He further submitted that, as the respondents did not execute registered sale deed within the stipulated period, the appellants did not pay any further amount. He submitted that, the finding recorded by the Trial Court in that behalf is erroneous and therefore, the impugned Order may be set aside by allowing the present Appeal.

Per contra, learned counsel for the respondents vehemently opposed the Appeal and submitted that, the appellants did not perform their part of obligation within the stipulated period and it is precise reason for not completing the transaction mentioned in the said Agreement to Sell dated 11th August 2014 by the respondents. He further submitted that there is no merit in the appeal and the same may be dismissed summarily.

5. At the outset, it is to be noted here that, the Agreement to Sell dated 11th August 2014 is un-registered document. Apart from the said fact, the record further indicates that, as per terms and conditions of the said agreement, the appellants did not make payment to the respondents for getting non agricultural permission from the Competent Authority pertaining to the suit property. That, the appellants also did not pay the agreed amount to the respondents for its development.

Apart from the aforesaid fact, it is to be noted here that, in prayer clause (b) of the plaint, the appellants have by way of alternative prayer claimed for compensation to the tune of Rs.9,31,55,040 + Rs. 10,00,000/- towards damages. Thus, the appellants are well aware of the fact that, no irreparable harm or prejudice would be caused to them, if injunction is not granted. The alleged harm or loss can be compensated in terms of money, as per their own prayer in the plaint.

6. After perusing the entire record, this Court is of the considered view that, there is no prima facie case in favour of the appellants. The balance of convenience does not lie in favour of the appellants. No harm or irreparable loss would be caused to the appellants, if an injunction is not granted in their favour.

7. In view thereof, I find no merits in the Appeal and is accordingly dismissed.

8. In view of the dismissal of the appeal, Civil Application No.322 of 2017 does not survive and is also disposed off.

9. Learned counsel for the appellants submitted that, the suit is at the stage of framing of issues. In view thereof, Civil Judge, Senior Division, Pune seized of Special Civil Suit No. 486 of 2015, is hereby requested to expedite the hearing of the said suit.

(A. S. GADKARI, J.)