THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Civil Miscellaneous Appeal Nos.924 and 925 of 2019

COMMON JUDGMENT:

Since the facts of the case, parties to the litigation are same and as both these appeals arise out of the same order passed by the Court below, they are disposed of by this common judgment.

2) C.M.A.No.924 of 2019 is filed by the appellant/defendant No.3, under Order XLIII Rule 1 of Code of Civil Procedure, 1908, challenging the order, dated 13.08.2019, passed in I.A.No.1089 of 2019 in O.S.No.120 of 2019, by the Principal District Judge, Mahabubnagar, whereby, the petition filed by the respondent No.1 herein/plaintiff, under Order XXXIX Rule 1(a) read with Section 151 of CPC seeking to grant *ad interim* injunction restraining the respondent No.2 herein/defendant No.1 and appellant herein/defendant No.3 from alienating the house site plots or any extent of the land out of the lands (Golden Gate venture) to the persons other than the nominees or the persons secured, sourced and identified by the respondent No.1 herein/plaintiff, was allowed.

3) Whereas, C.M.A.No.925 of 2019 is filed by the appellant/ defendant No.1 aggrieved by the same order dated 13.08.2019 passed in I.A.No.1089 of 2019 in O.S.No.120 of 2019, by the Principal District Judge, Mahabubnagar.

4) Heard Sri S.Niranjan Reddy, learned Senior Counsel appearing for Sri Avinash Desai, learned counsel for the

appellant (defendant No.3) in CMA No.924 of 2019, Sri D. Prakash Reddy, learned Senior Counsel appearing for Sri Avinash Desai, learned counsel for the appellant (defendant No.1) in CMA No.925 of 2019 and Sri S.R.Mahajir, learned Senior Counsel appearing for Sri G.M.Mohiuddin, learned counsel for the respondent No.1 (plaintiff) in both the appeals and perused the record.

5) The plaintiff is the respondent No.1 in CMA Nos.924 and 925 of 2019; defendant No.1 is the appellant in CMA No.925 of 2019/respondent No.2 in CMA No.924 of 2019; defendant No.2 is the respondent No.3 in CMA No.924 of 2019/respondent No.2 in CMA No.925 of 2019; and defendant No.3 is the appellant in CMA No.924 of 2019/respondent No.3 in CMA No.925 of 2019. For the sake of convenience, parties are referred to as they were arrayed in the suit before the Court below.

6) The facts of the case in brief are as follows:

The plaintiff is a registered partnership firm under the name and style *'M/s.Suvarnabhoomi Developers and Constructions'* located in Visakhapatnam, Andhra Pradesh, represented by its partner and authorised signatory namely Smt.Meka Menaka and is engaged in the business of real estate, marketing of plots in the layouts developed by itself and third parties, development/construction of residential townships and commercial and residential complexes etc. The defendant No.1 came into contact with the plaintiff and stated that its company i.e, "*M/s. Legacy Avenues Private Limited,* represented by its

Managing Director Sri Bikkumala Nageshwara Rao, is developing about 55-00 Acres of land out of Sy.Nos. 321 to 327, 335, 336, 340 and 359 situated at Chatanpally village, Farooqnagar Mandal, Ranga Reddy District and offered to give marketing rights to the plaintiff for sale of house site plots in the said venture. The defendant No.1 also stated that they were having all the requisite agreements which were entered into with the land owners, permissions and layouts obtained pertaining to the said lands. Their company was also having legal and valid right and title over the entire venture. Their company already started developing the property and due to difficulty to focus on marketing and sale of the plots, the defendant No.1 offered to give said rights to the plaintiff. On that, the plaintiff entered into marketing agreement/Memorandum of Understanding (MOU) with the defendant No.1 on 16.07.2018 to market the plots in the layout being developed by the defendant No.1 in the suit land. The terms of the said MOU are that the period of agreement will be 12 months with a buffer period of three months and thereafter extendable by six months at the discretion of the defendant No.1. The plaintiff has to complete the task of marketing the plots in the layout within the above period. The plaintiff should secure prospective purchasers for a minimum price of Rs.7,000/- per sq.yard payable to the defendant No.1 towards costs of the plot and the defendant No.1 would receive consideration and execute agreements in favour of the prospective purchasers, who are secured and identified by the plaintiff and issue receipts through its representative/

accountant. It was also agreed that the plaintiff is also entitled to receive the consideration and the amount over and above Rs.7,000/- per sq.yard for its service and the defendant No.1 has no right on the price over and above Rs.7,000/- per sq.yard. In case, the plaintiff fails to market the plots within the period of 12 months and buffer period of three months, the defendant No.1 should permit the plaintiff to market the remaining plots on the same condition but the defendant No.1 and the plaintiff have to share the consideration over and above Rs.7,000/- per sq.yard equally. The plaintiff has to ensure that all the agreements with the prospective purchasers in respect of the plots purchased by them through the plaintiff are concluded by execution of sale deeds within the period of the agreement.

7) It is further averred in the plaint that the defendant No.1 had informed the plaintiff that it has purchased the share of land owners of above said lands out of the developed area and the plaintiff shall do marketing of the said plots also and get them sold and arrange payment to the landowners as per the Schedule. However, the defendant No.1 would fix selling price of those plots and agreed to pay a lump sum amount of Rs.3,60,00,000/- to plaintiff. Later the defendant No.1 stated to the plaintiff that the venture is named as 'Golden Gate' venture. Defendant No.1 also agreed to furnish all the required documents and copies of agreements entered with the land owners to the plaintiff. The defendant No.1 further informed to the plaintiff that in the month of September, 2018, their company entered into written development agreements with the

land owners in July and August, 2018 and furnished the certified copies of said documents. During the month of February, 2019, defendant No.1 stated to the plaintiff that he entered into supplementary agreement with the land owners in respect of said venture on 13.02.2019 vide registered document No.4308/2019 in continuation of earlier development agreements-cum-GPAs and furnished the copies of said development agreements-cum-GPAs and supplementary agreement stating the particulars of plots allotted to the share of the defendant No.1 in detail are furnished. It is further averred by the plaintiff that the aforesaid details are not correct. The plaintiff invested substantial time, effort and money to promote, advertise and market the plots of the Golden Gate venture and incurred expenditure of more than Rs.3 Crores under various heads between the period from August, 2018 and April, 2019. The defendant No.1 compelled the plaintiff to do business rapidly. The defendant No.1 is unfair with the plaintiff and gave incorrect information from the inception and entered into suit agreement/MOU without even having written development agreements with the land owners as on the date of suit agreement/MOU but obtained subsequently. The layout of the venture was also obtained by the defendant No.1 in respect of Phase-I plots during the end of November, 2018 vide layout permit No.000248/LO/Plg/HMDA/2018, dated 26.11.2018 and the layout pertaining Phase-II Plots was obtained in April or May, 2019. The supplementary agreement under which the entitlement of share of plots of the defendant No.1 out of the venture crystallized was executed between the land owners and the defendant No.1 only on 13.02.2019. But the defendant No.1 made the plaintiff believe that same are available and saying so entered into suit agreement/MOU with the plaintiff. In spite of said lapses, the plaintiff carried on its business and incurred huge expenditure. The plaintiff also permitted the defendant No.1 to put its Accountant/Cashier in the office premises of the plaintiff at Hyderabad. The plaintiff used to bring secured prospective purchasers and identify them and the purchasers used to pay amounts to the defendant No.1 by way of Account Payee Cheques, drawn in favour of the defendant No.1 or by way of transfer through bank accounts, for which, the Accountant/ Cashier used to issue receipts but the defendant No.1 failed to enter into agreements of sale with the purchasers except collecting the consideration and thus violated the terms of the marketing agreement/MOU. The defendant No.1 also made the plaintiff to believe that sale deeds would be registered in favour of those purchasers very soon and hence there was no need to enter into separate agreements of sale. The plaintiff believed the defendant No.1 and not insisted for execution of said agreements. The plaintiff also paid an amount of Rs.32,74,333/- to the defendant No.1 by way transfer through its Bank account with Axis Bank and through another partnership firm M/s.Suvarnabhoomi Marketing and Services, advanced a further sum of Rs.1,00,00,000/- to the defendant No.1 to meet its financial requirements. Due to the substantial escalation in the value of the plots with the efforts of the plaintiff, the land owners and the defendant No.1 got benefited. The land owners also received huge amounts from the plaintiff with certain understandings and later caused loss to the plaintiff by avoiding their commitments. Defendant No.1 failed to execute sale deeds in favour of the purchasers, secured and identified by the plaintiff, under one or the other pretext and with *mala fide* intention tried to commit breach of the terms of the suit agreement/MOU and further started to negotiate directly with the purchasers without intervention of the plaintiff to avoid payment of sale consideration to the plaintiff, which is over and above Rs.7000/- per sq.yard as agreed and started luring the said purchasers to give some benefit at the cost of the plaintiff. The plaintiff recently got to know that the defendant No.1 entered into another marketing agreement with the defendant No.2 in respect of the same plots in the same venture and further alienated some house site plots to the defendant No.3 without knowledge and consent of the plaintiff. The defendant No.1 alienated some of the plots to defendant No.3 which were supposed to be sold to the purchasers secured, identified and sourced by the plaintiff for which the defendant No.1 already received consideration. The defendant No.1 received consideration pertaining to the said plots from the other purchasers and issued receipts to them through its Accountant/ Cashier, which is illegal and against the terms of the suit agreement/MOU. The defendant No.1, in collusion with the defendant No.3, resorted to have wrongful gain violating the terms of the suit agreement/MOU. The illegal acts of the defendant No.1 have caused huge financial loss to the plaintiff. The defendant No.1, though fully aware of the suit agreement/ MOU entered with the plaintiff, intentionally entered into fresh agreement with defendant No.2 to cause loss to the plaintiff. The defendant No.2 started giving wide publicity in respect of the same venture and trying to promote the said venture without any right. Unless and until the suit agreement/MOU is legally cancelled/terminated, the defendant No.1 has no right to enter into fresh agreement. In fact, the suit agreement/MOU cannot be cancelled by the defendant No.1 as the plaintiff acted upon the same and made substantial investment of time, effort and money and the period of the said agreement is also still in force and the plaintiff is also entitled to seek extension of time as the defendant No.1 acquired rights in the suit lands only by February, 2019 when supplementary agreement was entered by him with the land owners. In spite of the demand made by the plaintiff to the defendant No.1 to honour the suit agreement, the defendant No.1 got issued legal notice dated 09.06.2019 to the plaintiff stating suit agreement/MOU is terminated and further made a false claim with *mala fide* intention that the plaintiff collected about Rs.2.5 to 03 Crores from prospective purchasers and failed to remit the same to defendant No.1 but the plaintiff never committed any breach of terms of agreement and not collected the amounts as alleged by the defendant No.1 and in fact all the amounts paid by the prospective purchasers were directly paid to the defendant No.1. The plaintiff issued reply notice dated 20.06.2019 to the defendant No.1. The purported cancellation of the suit agreement/MOU by the defendant No.1 is illegal and invalid and not binding on the plaintiff and is liable to be declared as illegal. The defendant No.2, being aware of the marketing rights of the plaintiff over the suit lands by virtue of suit agreement/MOU, has no rights to carryout any marketing activity in respect of the suit lands unless it is terminated legally. The defendant No.3 is also claiming rights in respect of some of the plots out of the suit land through defendant No.1. Hence, the plaintiff filed the suit against the defendants 1 to 3 seeking the following reliefs:

i) to declare that the cancellation of marketing agreement/ MOU dated 16.07.2018, entered between the plaintiff and defendant No.1 as illegal, inoperative, invalid and not binding on the plaintiff and for consequential relief of mandatory injunction directing the defendant No.1 to abide by the terms of said marketing agreement/MOU,

ii) to restrain the defendant No.2 and his men, by way of injunction from carrying out any marketing activity in respect of the plots out of the suit lands which are covered by the marketing agreement/MOU, dated 16.07.2018 till the same is legally terminated or cancelled by the Court, and

iii) restrain the defendant Nos.1 and 3 by way of injunction from alienating the house site plots or any extent of the land out of the suit lands to others i.e. other than the nominees or the persons secured, sourced, identified by the plaintiff, without intervention of the plaintiff, till the suit agreement/MOU dated 16.07.2018 is legally terminated or cancelled by the Court.

8) Along with the suit, the plaintiff filed subject I.A.No.1089 of 2019 seeking to grant *ad interim* injunction restraining the defendant Nos.1 and 3 from alienating the house site plots or any extent of the land out of the suit lands (Golden Gate Venture) to others i.e., other than the nominees or the persons secured, sourced, identified by the plaintiff, without intervention of the plaintiff, pending disposal of the suit. The Court below allowed the subject I.A vide impugned order dated 13.08.2019 and granted *ad interim* injunction as prayed for. Aggrieved by the same, the appellant/defendant No.3 filed CMA No.924 of 2019, the appellant/defendant No.1 filed CMA No.925 of 2019.

9) Sri S.Niranjan Reddy, learned Senior Counsel appearing for the appellant (defendant No.3) in CMA No.924 of 2019 would contend that the impugned order passed by the Court below is contrary to law, weight of evidence and all probabilities of the case. *Dehors* the settled principles of law, the impugned order was passed in a hasty manner. The defendant No.3 has lawfully acquired its share of plots in the suit schedule property from the defendant No.1 under registered sale deeds. The plaintiff has no locus standi to file the suit for declaration against the defendant No.3, who is not a party to the MOU dated 16.07.2018. The defendant No.3 is the *bona fide* purchaser of part of the suit schedule property from the defendant No.1. Therefore, the Court below ought not have granted interim injunction in favour of the

plaintiff restraining the defendant No.3 from alienating the plots purchased by it from the defendant No.1. There is no *prima facie* case against the defendant No.3. It is also contended that the life of the MOU dated 16.07.2018 has come to an end due to efflux of time. Therefore, the restraint order would not have been granted beyond the period prescribed in the MOU. The plaintiff has not invested any amount for purchase of the suit plots. There is no balance of convenience in favour of the plaintiff to seek the interim injunction and ultimately prayed to set aside the impugned order by allowing the appeal. In support of his contentions, learned Senior Counsel relied upon the following decisions:

i) *Bharat Petroleum Corporation Limited vs. Chembur Service Station*[1]

ii) *M. John Kotaiah vs. A. Divakar and others*[2]

10) Sri D.Prakash Reddy, learned Senior Counsel appearing for the appellant (defendant No.1) in CMA No.925 of 2019 would contend that the plaintiff is not the true owner and he has no substantial interest in the subject matter of the suit. There are patent violations with regard to the enforcement of MOU dated 16.07.2018. Huge amounts collected by the plaintiff under the guise of MOU dated 16.07.2018 were not accounted. As per the terms of the MOU, the plaintiff is only an agent of the defendant No.1. Defendant No.1 has lawfully acquired the suit schedule property and it is the original owner. Plaintiff had indulged in

[1] (2011) 3 SCC 710
[2] 1984 SCC Online AP 75 = AIR 1985 AP 30

malpractices as indicated above and that led to the cancellation of the MOU dated 16.07.2018. If at all the plaintiff is aggrieved by the cancellation of the MOU, the remedy available to the plaintiff is to claim damages. It is also contended that in terms of Section 41(h) of the Specific Relief Act, 1963 (for short "the Act") an injunction cannot be granted when equally efficacious remedy is available. Further, the suit for declaration seeking cancellation of MOU dated 16.07.2018, is illegal and the interim relief seeking to restrain the defendants 1 and 3 from alienating the suit schedule property, is unsustainable. If at all the plaintiff suffered any loss as contended, he is entitled to seek damages in accordance with law. Section 14(1)(c) of the Act, states that contract which is in its nature determinable cannot be specifically enforced. There is Clause 12 in the MOU, which enables the defendant No.1 to terminate the MOU on certain grounds. Since certain grounds exist, the defendant No.1 is justified in cancelling the MOU and ultimately prayed to set aside the impugned order by allowing the appeal.

11) On the other hand, Sri S.R.Mahajir, learned Senior Counsel appearing for the respondent No.1 (plaintiff) in both the appeals, would contend that so-called cancellation of the MOU dated 16.07.2018 is illegal and not binding on the plaintiff. The plaintiff is engaged in the business of real estate, marketing of plots in the layouts developed by the plaintiff itself or third parties. The plaintiff had undertaken to sell the plots of defendant No.1 as per the MOU dated 16.07.2018 and the period to market those plots is 12 months with a buffer period of three

months and thereafter, extendable by six months. The plaintiff has to complete the task of marketing the plots within the said period. The plots sold by the plaintiff are required to be registered by the defendant No.1 in favour of the purchasers. The consideration received over and above Rs.7,000/- per sq.yard is required to be retained by the plaintiff as per the MOU towards service and marketing charges. Arbitrarily without there being any *mala fides* or violation of the terms of the MOU, the defendant No.1 had cancelled the MOU. The defendant No.1 had informed the plaintiff that it has purchased the share of land owners in the developed area and asked the plaintiff to market the plots and the payment is required to be made to the land owners as per Schedule. It is agreed in between the parties that the defendant No.1 would fix the selling price of those plots which were purchased by it from the land owners and the plaintiff should not quote the price. The defendant No.1 agreed to pay a lump sum of Rs.3,60,00,000/- to the plaintiff on sale of share of plots of the land owners. Having believed the defendant No.1, the plaintiff started marketing those plots. The plaintiff incurred an expenditure of more than Rs.3 Crores towards advertisement to market the plots in the subject venture. The sale consideration of the plots sold by the plaintiff was received by the cashier of the defendant No.1, through bank account transfer, cheques etc., and the said cashier operated from the premises of the plaintiff at Hyderabad. The defendant No.1 did not register the plots in favour of the purchasers secured by the plaintiff. The plaintiff had paid huge amounts to the defendant

No.1 through its bank account. The defendant No.1 malafidely in order to defeat the MOU, entered into agreement with defendant No.2 in respect of same plots. The defendant No.2 is not entitled to alienate the plots covered under subject MOU. Further, the defendant No.1 had alienated part of the suit schedule property to defendant No.3 without the knowledge and consent of the plaintiff. The defendant No.3 is aware of the subject MOU in between the plaintiff and defendant No.1. With the malafide intention, the MOU was cancelled. Since the defendants were indulged in malpractices inspite of clear MOU dated 16.07.2018, before the expiry of the period mentioned therein including the buffer period, cancellation of the MOU is illegal and arbitrary. In view of the circumstances of the case, the plaintiff has a *prima facie* case and balance of convenience in his favour. The Court below had elaborately dealt with the contentions raised and it is justified in granting the relief as sought for. The suit schedule property is required to be protected till the determination of proceedings in the subject suit and ultimately prayed to sustain the impugned order and dismiss both the appeals. In support of his contentions, learned Senior Counsel relied upon the following decisions:

i) *Indian Oil Corporation Ltd. vs. Amritsar Gas Service and others*[3]

ii) *Ashok Kumar Srivatsav vs. National Insurance Co. Ltd and others*[4]

iii) *Dhannalal vs. Kalawatibai*[5]

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[3] (1991) 1 SCC 533
[4] AIR 1998 SC 2046
[5] 2002 Law Suit (SC) 614

iv) *M/s. Tashi Delek Gaming Solutions Ltd. and another vs. State of Karnataka and others*[6]

12) In view of the above submissions made by both sides, the following points have come up for determination:

i) *Whether the Court below is justified in granting ad-interim injunction and restraining the defendant Nos.1 and 3 from alienating the house site plots or any extent of land out of the suit lands (Golden Gate Venture) to other than the nominees or the persons secured, sourced, identified by the plaintiff, pending disposal of the suit?*

ii) *Whether the Court below is justified in granting interim order as indicated above beyond the period mentioned in the MOU dated 16.07.2018?*

iii) *Whether the impugned order dated 13.08.2019, passed in I.A.No.1089 of 2019 in O.S.No.120 of 2019, by the Principal District Judge, Mahabubnagar, is liable to be set aside?*

13) <u>POINTS</u>: There is no dispute with regard to the plaintiff and the defendant No.1 entering into Memorandum of Understanding dated 16.07.2018 to alienate the plots belonging to the defendant No.1. The land bearing Sy.Nos.321, 322, 323, 324, 325, 326, 327, 335, 336, 340, 359 (including by-numbers) totally admeasuring 55-00 Acres, situated at Chatanpally village, Farooq Nagar Mandal, Ranga Reddy District, was developed by the defendant No.1 and entrusted to the plaintiff for sale/ marketing. The time granted to market the plots is mentioned as 12 months in the MOU dated 16.07.2018 and a buffer period of three months is also given to the plaintiff. The date of expiry of

[6] AIR 2006 SC 661

the MOU is 16.07.2019. If the buffer period is included, the life of the MOU would come to an end by 16.10.2019. There is no dispute with regard to the terms of the MOU. Vide legal notice dated 09.06.2019, the said MOU was terminated w.e.f. 09.06.2019 i.e, four months before the time provided to sale/ market the suit plots. The termination was made alleging that the plaintiff as an agent has indulged in malpractices, particularly with regard to the receipt of sale consideration from the purchasers and not accounting the same to the defendant No.1. What are the amounts collected, the details of number of plots sold by the plaintiff and what is the actual consideration paid to the defendant No.1, is in dispute between the plaintiff and the defendant No.1. Both parties are giving different versions and seriously contradicting each other. A serious question also emerges in between the parties to the litigation, whether there is a valid termination of MOU dated 16.07.2018 by the defendant No.1. The receipt of actual sale consideration as well as payments made by the parties concerned can only be answered after due trial of the suit.

14) In *Bharat Petroleum Corporation Limited*'s case (1 supra), relied upon by the learned Senior Counsel for the appellants/ defendant Nos.1 and 3, the Hon'ble Apex Court observed as follows:

> *"Therefore when such a notice is issued as a precursor to termination, the respondent licensee ceases to have the right to sell the goods in the outlet premises and does not get the cause of action either to seek continuance of the supply of the products or remain in and use the premises. The show cause notice was followed by a termination of the licence of dealership on 19.3.2009. Even if the*

termination or non-supply amounts to breach of contract, the remedy of the agent-licensee at best is to seek damages, if it is established that the dealership was wrongly determined or supply was wrongly stopped. Consequently, the licensee does not have any right to use the premises nor any right to enter upon the premises after the termination of the agency."

15) In *M. John Kotaiah*'s case (2 supra), relied upon by the learned Senior Counsel for the appellants/defendant Nos.1 and 3, the erstwhile High Court of Andhra Pradesh, observed that the Indian Contract Act provides that in cases where the period of agency is prescribed and the agency is not, in law irrevocable, then the agent may have a cause of action against the principal for other remedies in case the agency is revoked within the period. But that does not mean that an agency described as being irrevocable is to be treated as an irrevocable if, in law, it does not satisfy the requirements of an irrevocable power of attorney.

16) In *Indian Oil Corporation Ltd.*'s case (3 supra), relied upon by the learned Senior Counsel for the respondent No.1/plaintiff, the Hon'ble Apex Court observed as follows:

"Para 12: The arbitrator recorded finding on Issue No.1 that termination of distributorship by the appellant-Corporation was not validly made under clause 27. Thereafter, he proceeded to record the finding on Issue No.2 relating to grant of relief and held that the plaintiff-respondent 1 was entitled to compensation flowing from the breach of contract till the breach was remedied by restoration of distributorship. Restoration of distributorship was granted in view of the peculiar facts of the case on the basis of which it was treated to be an exceptional case for the reasons given. The reasons given state that the Distributorship Agreement was for an indefinite period till terminated in accordance with the terms of the agreement and, therefore, the plaintiff-respondent 1 was entitled to continuance of the distributorship till it was terminated in accordance with the agreed terms. The award further says as under:

"This award will, however, not fetter the right of the defendant Corporation to terminate the distributorship

of the plaintiff in accordance with the terms of the agreement dated April 1, 1976, if and when an occasion arises."

This finding read along with the reasons given in the award clearly accepts that the distributorship could be terminated in accordance with the terms of the agreement dated April 1, 1976, which contains the aforesaid clauses 27 and 28. Having said so in the award itself, it is obvious that the arbitrator held the distributorship to be revokable in accordance with clauses 27 and 28 of the agreement. It is in this sense that the award describes the Distributorship Agreement as one for an indefinite period, that is, till terminated in accordance with clauses 27 and 28. The finding in the award being that the Distributorship Agreement was revokable and the same being admittedly for rendering personal service, the relevant provisions of the Specific Relief Act were automatically attracted. Sub-section (1) of Section 14 of the Specific Relief Act specifies the contracts which cannot be specifically enforced, one of which is 'a contract which is in its nature determinable'. In the present case, it is not necessary to refer to the other clauses of sub-section (1) of Section 14, which also may be attracted in the present case since clause (c) clearly applies on the finding read with reasons given in the award itself that the contract by its nature is determinable. This being so granting the relief of restoration of the distributorship even on the finding that the breach was committed by the appellant-Corporation is contrary to the mandate in Section 14(1) of the Specific Relief Act and there is an error of law apparent on the face of the award which is stated to be made according to 'the law governing such cases'. The grant of this relief in the award cannot, therefore, be sustained."

17) In *Ashok Kumar Srivatsav*'s case (4 supra), relied upon by the learned Senior Counsel for the respondent/plaintiff, the Hon'ble Apex Court held as follows:

"<u>Para 15</u>: Thus, the legal position is clear and the respondent cannot now re-agitate the question regarding maintainability of the suit under Section 34 of the Act. However, learned counsel adopted an alternative contention before us that the suit is in effect one for specific enforcement of a contract and such a suit is not conceived under Section 14 of the Act and hence it is not maintainable. According to the learned counsel, the reliefs claimed in the suit, if granted, would result in specific enforcement of a contract of employment. Section 14(1)(a) of the Act makes it clear that a contract of employment is not specifically enforceable since non-performance of it can be compensated by money, contended the counsel."

18) In *Dhannalal*'s case (5 supra), the Hon'ble Apex Court held as follows:

> *"Para 21: Reference to, or deriving aid from, certain legal maxims will be useful. Ubi jus ibi remedium — there is no wrong without a remedy. Where there is a right there is a forum for its enforcement. According to Broom's Legal Maxims (10th Edn., pp. 118-19), the maxim has been considered so valuable that it led to the invention of the form of action called an action on the case. Where no precedent of a writ can be produced, the Clerks in Chancery shall agree in forming a new one. The principle adopted by courts of law accordingly is, that the novelty of the particular complaint alleged in an action on the case is no objection, provided that an injury cognizable by law be shown to have been inflicted on the plaintiff, in which case, although there be no precedent, the common law will judge according to the law of nature and the public good. If a man has a right, he must, "have a means to vindicate and maintain it, and a remedy if he is injured in the exercise and enjoyment of it, and, indeed, it is vain thing to imagine a right without a remedy, for want of right and want of remedy are reciprocal".*

19) In *M/s. Tashi Delek Gaming Solutions Ltd. and another*'s case (6 supra), the Hon'ble Apex Court observed that an agent coupled with interest has a right to sue. He may in certain situations be sued as regard his own liabilities independent of his principal. If by a statutory provision the right of an agent to carry on his business is affected, he may, in his own right maintain an action.

20) In the instant case, it is the contention of the appellant/ defendant No.1 that Section 14(1)(c) of the Act, states that contract which is in its nature determinable, cannot be specifically enforced and in view of Clause 12 in the MOU dated 16.07.2018, the defendant No.1 can terminate the MOU under certain circumstances. It may be noted that the finding with regard to the valid termination of MOU dated 16.07.2018, can

only be answered after full-fledged trial of the suit. Admittedly, the plaintiff is an agent to the defendant No.1 to market the plots developed by the defendant No.1. There is a serious dispute with regard to the alienations made and also the consideration received by the defendant No.1 in respect of plots sold/marketed by the plaintiff. There are specific and grave allegations against the plaintiff that the plaintiff and his agents have collected huge money from the purchasers, issued receipts and the said amount was not paid to the defendant No.1. As per the terms of the MOU, the plaintiff has to pay Rs.7,000/- per sq.yard to the defendant No.1. The amount over and above Rs.7,000/- per sq.yard is required to be retained by the plaintiff. The question as to what is the exact amount received by the plaintiff and paid to the defendant No.1, is in serious dispute. Both the parties are alleging against each other with regard to the malpractices and receipt of sale considerations in respect of plots covered by the subject venture. The factual matrix with regard to the date of alienations, exact amount received in terms of the MOU dated 16.07.2018 are required to be determined after completion of the trial in the subject suit. At this juncture, those questions cannot be gone into and an opinion cannot be formed while determining the subject Interlocutory Application.

21) Furthermore, it is also relevant to state that in terms of Section 41(h) of the Act, an injunction cannot be granted when equally efficacious relief is available to the aggrieved persons. It is the case of the plaintiff that having received the entire sale consideration in respect of some plots, the defendant No.1 is not

coming forward to execute and register sale deeds in favour of the purchasers. There is a serious dispute in between the parties to the litigation with regard to the actual plots sold in terms of the MOU dated 16.07.2018. There are allegations that the plaintiff had violated the terms of the subject MOU, received huge money from the purchasers and the entire amount received by the plaintiff is not accounted to. As far as the plaintiff is concerned, he pleaded that he acted in terms of the subject MOU. The purchasers, who paid the sale consideration to the defendant No.1 through plaintiff are certainly entitled to seek registration of sale deeds, in respect of plots purchased by them in accordance with the procedure established under law, in the event of any dispute raised by the defendant No.1. However, in the subject suit which is filed mainly to set aside the cancellation of MOU dated 16.07.2018, no relief can be granted to the plaintiff in respect of alienations made in terms of subject MOU. As per the subject MOU, the defendant No.1 or his agent has to issue a receipt to the purchaser on receipt of part/full sale consideration. The plaintiff being an agent, it is his duty to procure purchasers in respect of the subject property. The plaintiff cannot seek any redressal in the subject suit for the plots alienated through it.

22) The relief granted in the impugned order dated 13.08.2019, reads as follows:

> *"The ex parte ad-interim injunction granted on 26.06.2019 is hereby made absolute. The respondents 1 and 3 are restrained from alienating the house site plots*

> *or any extent of land out of the suit land (Golden Gate Venture) to other than the nominees or the persons secured, sourced, identified by the petitioner, pending disposal of the suit".*

23) The aforementioned order operates beyond the buffer period (16.10.2019) prescribed in the subject MOU dated 16.07.2018. The subject original suit is still pending for trial. The contention put-forth on behalf of the defendant Nos.1 and 3 is that in the given circumstances, the remedy available to the plaintiff is to seek for damages. Such contention cannot be ignored. When there is a serious dispute in between the parties to the litigation with regard to marketing of the plots, receipt of sale consideration, commission of fraud, *mala fides*, which require determination after full-fledged trial, the Court below ought not have granted the interim relief sought for beyond the buffer period i.e, 16.10.2019 prescribed in the MOU dated 16.07.2018. The Court below ought to have limited the relief sought only up to the period mentioned i.e, 16.10.2019. The defendant No.1 as well as the defendant No.3 cannot be deprived of alienating the suit schedule property excluding the plots alienated in terms of the MOU dated 16.07.2018 after the expiry of the buffer period provided in the said MOU.

24) It is contended on behalf of the plaintiff that there was delay in obtaining the layouts with regard to the subject plots and that layout for Phase-II was obtained in April or May, 2019 and on this score, the plaintiff is entitled to alienate the subject plots beyond the buffer period. Admittedly, there is no written

document to substantiate those contentions. The MOU dated 16.07.2018 is only a document in between the plaintiff and the defendant No.1, which empowers the plaintiff to alienate the subject plots for a limited period. Hence, no relief to alienate the plots beyond the buffer period can be granted to the plaintiff.

25) In view of the circumstances of the case as well as the documents marked on behalf of both the sides as Exs.A.1 to A.66 and Exs.B.1 to B.20, it can be safely concluded that there is no *prima facie* case and balance of convenience in favour of the plaintiff to seek the relief beyond the prescribed buffer period i.e, 16.10.2019. However, as the plaintiff has invested huge amounts for marketing the plots and filed number of documents, there is justification to hold that there is a *prima facie* case and balance of convenience in favour of the plaintiff to restrain the defendant Nos.1 and 3 from alienating the suit plots till the buffer period mentioned in the MOU dated 16.07.2018.

26) Accordingly, the impugned order dated 13.08.2019 passed by the Court below is modified and it is held that *ad-interim* injunction granted by the Court below do not operate beyond the prescribed buffer period i.e, 16.10.2019.

27) With the above modification, both the Civil Miscellaneous Appeals are accordingly, disposed of. No costs.

Miscellaneous petitions, if any, pending in these appeals stands closed.

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Dr. SHAMEEM AKTHER, J

Date: 16th March, 2020.
vvr/scs