

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

APPEAL AGAINST ORDER NO. 10 OF 2021

APPELLANT : Spandan Business Private Limited, a company registered under the Companies Act, 1956, having its registered office at :-159, Ravindra Sarani, Canara Bank Building, 5th Floor, Room No.5B, Kolkata-700007, Nagpur Office at:- “Saisneh”, Plot No.D-22, Sai Nagar, Old Pardi Naka, Near MHADA Colony, Nagpur-440008, Maharashtra, through its Authorized Signatory Shri Deepak Singh.

Original Plaintiff.

...V E R S U S...

RESPONDENTS :1. Shri Vilas s/o Uttamrao Patne, Aged about 43 years, Occu: Agriculturist and Business.

2. Mrs. Archana w/o Vilas Patne, Aged about 41 years, Occu: Agriculturist and Business.

Both 1 & 2 R/o:- Plot No.35C,

Bhausahab Surve Nagar,
Nagpur-440022.

Original Defendants.

Shri H.R. Gadhia, counsel h/f Shri R.I. Thanvi, counsel for the
Appellant.
Shri Deoul Pathak, counsel for the Respondents.

CORAM : ANIL S. KILOR, J.
DATE : 21st DECEMBER, 2021

ORAL JUDGMENT :

1. The challenge raised in this appeal is to the order dated 03.04.2021, passed order below Exhibit No. 5 in Special Civil Suit No. 457/2019, by the learned 14th Joint Civil Judge, Senior Division, Nagpur rejecting the application for grant of temporary injunction filed by the plaintiff in a suit for specific performance.

2. Brief facts of the present case are as follows: (The parties are referred to as per their status before the trial Court)

3. The Appellant/Plaintiff filed a suit for specific performance claiming that he entered into an agreement with

the defendants in respect of suit property, which is an agricultural property on 18/06/2015. The total consideration was fixed for Rs. 2,77,66,000/- (Rs. Two Crore Seventy Seven Lacs Sixty Thousand only), out of which, before the agreement, the payment of Rs. 2,50,00,000/- (Rs. Two Crore Fifty Lakhs only) was made, and it was agreed that the remaining 27,00,000/- (Rs. Twenty Seven Lakhs only) would be paid at the time of execution of sale-deed.

4. It is further the case of the plaintiff that on 29.4.2019, the defendants issued a notice, *inter-alia* stating that, since the amount of Rs. 2,00,00,000/- (Rs. Two Crore only) was paid back to the plaintiff in the month of July 2016 the agreement to sale stands cancelled.

5. Hence, the suit for specific performance was filed by the plaintiff, along with application Exhibit-5 for grant of temporary injunction under Order XXXIX Rules 1 and 2 and thereby praying to restrain the defendants not to create third party interest in the suit property.

6. The defendants filed their reply to the application and opposed the same on the ground that, the amount of Rs. 2,00,00,000/- (Rs. Two Crore only) was already paid back to the plaintiff and it has been received by him without any objection. It is further stated that the balance amount of Rs. 50,00,000/- (Rs. Fifty Lakhs Only) will be paid back to the plaintiff on cancellation of irrevocable power of attorney executed at the relevant time by the defendants in favour of the plaintiff. It is submitted that, for the said purpose, a suit is already filed by the defendants and the same is pending.

7. The learned trial Court heard both the parties and passed the impugned order dated 03.04.2021, rejecting the application - Exhibit No.5.

8. I have heard the learned counsel for the respective parties.

9. Shri H.R. Gadhia, learned counsel for the appellant submits that, there is no dispute that the defendants have paid Rs. 2,00,00,000/- (Rs. Two Crore only) to the plaintiff,

however, the said amount was not towards refund of amount paid by the plaintiff towards part consideration of sale of suit property. But it was paid by the defendants with a request to the plaintiff, to invest the said amount in certain schemes. It is submitted that there was no occasion for the plaintiff to receive back the amount from the plaintiff in absence of any such request made by the plaintiff.

10. He submits that to show bonafide in the appeal he has made a statement that he is ready to deposit total considering amount i.e. Rs. 2,27,00,000/- (Two Crore Twenty Seven Lakhs only) in this Court.

11. Lastly, he submits that till passing of impugned order, status-quo was in operation. It is submitted that it will be in the interest of both the parties to continue the same, for the reason that a similar request was also made by the defendants in their suit and the said request was rejected.

12. Per contra, Shri Deul Pathak, learned counsel for the defendants submits that, the balance-sheet of the plaintiff,

which was produced by the defendants shows that the amount of Rs. 2,00,00,000/- (Rs. Two Crore only) was not received by the plaintiff for investment but it was received towards cancellation of the agreement.

13. It is submitted that, in the plaint, there is no pleading to the effect that the plaintiff has received the amount of Rs. 2,00,00,000/- (Rs. Two Crore Only) from the defendants with a request from the defendants to invest the same in certain schemes and that was deposited accordingly in certain schemes.

14. It is further pointed that, even if oral submission of the plaintiff is considered, no details have been given regarding under which scheme the said amount has been deposited by the plaintiff.

15. He further submits that, even from the memorandum of association, it can be seen that the plaintiff is involved in a business of construction, and therefore, his case that the defendants have paid him the amount for

investment, cannot be accepted.

16. To consider the rival contentions of the parties, I have gone through the record and also perused the impugned order dated 03.04.2021.

17. In the case of ***Purshottam Vishandas Raheja vs Shrichand Vishandas Raheja***¹, the Hon'ble Supreme Court of India has held that :-

“14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be

1 (2011) 6 SCC 73

an appeal on principle. The appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion.”

18. In the teeth of the above referred well settled principle of law, I revert back to the facts of the present case. Admittedly, the defendants have paid the amount of Rs. 2,00,00,000/- (Rs. Two Crore only) and that was received by the plaintiff.

19. In absence of any pleadings in the plaint that the said amount was received by the plaintiff with a request of the defendants to invest the said amount in certain schemes, the case of the plaintiff that the said amount was paid by the defendant, to invest the same in certain schemes cannot be accepted at this stage. Moreover, unless it is pleaded and proved by the plaintiff, it is not safe to accept the said case of the plaintiff, in the facts and circumstances of this case.

20. Furthermore, nothing has been pointed out, wherefrom it can be gathered that the defendants are creating third party interest. In absence of any such material available on record and failure on the part of the plaintiff to show any perversity in the impugned order dated 03.04.2021, I am of the opinion that, no error has been committed by the learned trial Court in rejecting the application Exhibit No.5.

21. Accordingly, I pass the following order :-

ORDER

- a] The appeal is dismissed.
- b] Pending application (s), if any, stand(s) disposed of. No order as to costs.

22. At this stage, Shri H.R. Gadhia, learned counsel for the appellant makes a request that the suit may be expedited. He points out that the suit is at the stage of recording of evidence, and it can be disposed of within the next six months. Shri Deoul Pathak, learned counsel for the respondents is not disputing the said fact and he also makes the same request to expedite the suit.

23. In that view of the matter, the learned trial Court is requested to decide the Special Civil Suit 457/2019 pending on the file of learned 14th Joint Civil Judge, Senior Division, Nagpur expeditiously and in any case before 31/07/2022.

[ANIL S. KILOR, J.]

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Signed By: RAJESH K
NANDURKAR

Signing Date: 18.01.2022 15:07