Item 23. 19-05-2022

sg Ct. 8

FMA 1223 of 2021
CAN 1 of 2021

Cliff Trexim Private Limited
Versus
Fort Projects Private Limited & Ors.

Mr. Siddhartha Banerjee, Adv.
Mr. S.N. Ghosh, Adv.
…for the appellant

Mr. Siddhartha Banerjee, Adv.
Ms. Soni Ojha, Adv.
Ms. Sambrita B. Chatterjee, Adv.
…for the petitioner

Ms. Manju Agarwal, Adv.
Mr. Bajrang Mahot, Adv.
…for the respondent nos. 1,6&25

Mr. Jishnu Chowdhury, Adv.
Ms. Nandini Khaitan, Adv.
Ms. Debdatta Ray Choudhury, Adv.
Mr. Vishal Sinha, Adv.
…for the respondent nos. 2-5

Mr. Satadeep Bhattacharya, Adv.
Mr. Hiranyak Gangopadhyay, Adv.
…for the respondent no.23

By consent of the parties, the appeal and the application are taken up together and disposed of by this common order.

The appeal is arising out of an order dated 13th August, 2021 in connection with an application filed by the plaintiffs for injunction. The injunction application was filed in connection with a suit for specific performance. The prayer for ad interim order of injunction is refused. This said order is under challenge before us.

The plaintiffs filed a suit for specific performance of contract, declaration, cancellation and delivery of deeds, eviction and possession of immovable property, perpetual injunction and other reliefs. The plaintiff no.1is a company and the plaintiff no.2

is one of the directors of the said company. The defendant nos. 1, 4 and 7 to 24 are companies and are part of Fort Group. All of them are engaged in developing properties. The defendant no.2 is a partnership firm and the defendant nos. 1, 3 to 5 are partners of the defendant no.2. The defendant no.6 is one of the directors of the defendant no.1 and the defendant no.25 is one of the directors of the defendant nos. 7 to 24. The defendant nos. 26 to 29 are the purchasers of the respective residential flats/units, which were agreed to be sold to the plaintiff no.1.

The plaintiffs before the learned Trial Court contended that the defendant promoters have surreptitiously sold the respective flats/units to the defendant nos. 26 to 29 behind the back of the plaintiffs and without their knowledge and consent. The plaintiffs adverted that the residential flats which were agreed to be sold to the plaintiff no.1 in order to secure and ensure repayment of a substantial amount of money lent and advanced by the plaintiff no.1 to the defendant no.1 for the benefit of the defendant nos. 1 to 25 are now being unauthorizedly dealt with to the detriment of the plaintiff. The learned Trial Court rejected the ad interim order of injunction on the ground of lack of urgency and existence of certain ambiguities that are required to be cleared by the defendants concerning the sale of flats in favour of the plaintiffs. The matter was made returnable on 25th November, 2021. The appellant has filed an appeal against the said order of refusal.

Mr. Siddhartha Banerjee, learned Counsel appearing on behalf of the appellant has relied upon two receipts dated 7th October, 2021 and 28th November, 2021 aggregating to a sum of Rs.5.50 crores and an agreement for sale dated 26th July, 2019 to substantiate his argument that Fort Builders have agreed to secure a portion of the loan by agreeing to sell the Flat No. 2 at the 12th Floor, Tower-3, Fort Oasis 37, Panditiya Road, Kolkata-700 029 at a consideration of Rs.4,62,12,450/- dated 26th July, 2019. There are five other agreements concerning sale of different flats in favour of the plaintiffs.

Mr. Jishnu Chowdhury, learned Counsel representing the Fort Builders have submitted that Mr. Vivek Kumar Kathotia had no authority to sign the agreement on behalf of the Fort Builders and to convey the flat mentioned in the agreement of sale dated 26th July, 2019 relying upon a reconstituted deed of partnership dated 28th June, 2018.

Our attention is drawn to the clauses of the partnership deed which debars a partner from giving any consent or entering into any agreement or to execute any deed for the purpose of giving any security or guarantor for the payment of money on account of the firm unless in the usual course of carrying on business.

Mr. Chowdhury, submits that in absence of Mr. Kathotia establishing that the partners of the said partnership firm which, inter alia, include Mr. Sanjay Gupta, Shyam Sundar Nangalia, Spandan Projects Private Limited and Lakshmedra Kumar Agarwal agreeing to such sale the said deed is unenforceable.

Mrs. Manju Agarwal, learned Counsel representing the respondent nos. 1, 6 to 25, however, admitted receipt of the aforesaid sum towards loan and also admitted the fact that the said amount formed the corpus out of which the towers were constructed.

The learned Counsel disputed the contention of Mr.

Chowdhury that Vivek Kumar Kathotia had no authority to sign the said agreement on behalf of the partnership firm.

Various agreements relied upon by the parties would show that the respondent no.1 had received a sum of Rs.5.50 crores approximately between 28th September, 2011 and 7th October, 2011. The partnership, admittedly, was formed subsequent to the receipt of the said amount by the Fort Project Limited. Admittedly, one of the partnerships of Fort Project Private Limited is Fort Builders Private Limited. Fort Project Private Limited is having 40% share in Fort Builders. The only dispute before us is with regard to whether the agreement for sale executed on 26th July, 2019 would bind Fort Builders. Insofar as the other agreements are concerned, none of the parties has raised any dispute with regard to veracity, authenticity or enforceability of the said agreement at this stage. However, they have not filed their written statement in the suit. Prima facie, the said agreements were all executed by the parties as mentioned in the said deed. The plaintiffs alleged that due to failure on the part of the respondents, principally the Fort Project Limited, to repay the loan, six separate agreements were entered into by Fort Project Private Limited and its Group in order to secure the claim of the plaintiffs and the said agreements are enforceable. Insofar as the agreements for sale excepting 26th July, 2019 by reason of non-rebuttal of such claim of Fort Project Private Limited or the signatories to the said agreements, we are of the view that the order of injunction insofar as the flats mentioned in the said agreements are concerned, shall continue. Insofar as the agreement for sale dated 28th September, 2011 in relation to flat no. 60203 is concerned, there is a registered deed of conveyance in favour of the respondent no.28 and prima facie it appears that the said respondent is a bona fide purchaser for value without notice and, accordingly, there cannot be any order of injunction in respect of the said flat. The suit was instituted much later.

However, having regard to the nature of objection raised by Mr. Jishnu Choudhury and that the partnership deed stipulates Mr. Vivek Kumar Kathotia not to entering into any agreement for sale of the kind, we do not feel it appropriate at this stage to restrain Fort Builders from dealing with the property covered by the agreement for sale dated 26th July, 2019. In the event, the said property is sold to any third party, the allottee should be informed in writing that the said property is subject matter of the suit and the recital of the deed shall also specifically mention about the pendency of this proceeding.

All other agreements excepting the agreement dated 26th July, 2019 were executed in the year 2011 and clearly refer to the loan taken by the Fort Group for the purpose of construction of the towers.

In view of the aforesaid order nothing remains to be decided by the Trial Court on the merits of the injunction application, we direct the respondents/defendants to file written statements within four weeks from date. We request the learned Trial Judge to pass peremptory directions with regard to the procedural matters in order to make the suit ready for hearing and proceed with the trial of the suit and conclude the hearing as expeditiously as possible.

We direct the learned Trial Court to immediately impound the agreement for sale excepting the agreement dated 26th July, 2019 and to send it for assessment for the stamp duty and unless adequate stamp is paid within four weeks from the date of assessment subject to the right of appeal or revision, this interim order shall immediately stand vacated.

The entire process of impounding and payment of stamp duties with the right to prefer any appeal or revision against the order shall be completed within a period of three months from date of communication of this order to the learned Trial Court by the plaintiffs. The plaintiffs shall immediately communicate this order to the learned Trial Judge in order to enable the learned Trial Judge to carry out our direction.

The Trial Court shall act on the basis of the server copy of this order.

The appeal and the application are accordingly disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.) **(Soumen Sen, J.)**