

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9195 OF 2022

HANUMANT RAMBHAU AUTADE AND ANOTHER
VERSUS
PRATIBHA SANTOSH MORE AND ORS

...
Advocate for Petitioners : Mr Amit S. Savale
Advocate for Respondent No. 1 : Mr A.D. Sonar

CORAM : SANDEEP V. MARNE, J.
DATE : 20th DECEMBER, 2022

PER COURT :

1. By this petition, petitioners challenge Judgment and order dated 14th July, 2022 passed by the District Judge, Dhule allowing Misc. Civil Appeal No. 29/2022 and confirming the order passed by the trial court dated 06.05.2022 clamping injunction against the defendants from alienating the suit property and from carrying out any construction over the suit property or from changing nature of the suit property.

2. The suit is for specific performance of the agreement to sale dated 21.12.2017. Out of the agreed amount of consideration of Rs.4,21,000/-, an amount of Rs.50,000/- was paid as earnest money and the balance consideration was to be paid within two months after which sale deed was to be executed by defendant No.1 in favour of the plaintiff. However, it appears that the plaintiff did not pay the balance amount of consideration for considerable period time. The plaintiff sent notice to defendant No.1 straightaway on 5th September, 2020 calling upon defendant No. 1 to execute the sale deed. It is claimed that the notice was received by defendant No. 1 on 12.09.2020. Before receipt of the notice,

the defendant No.1 sold and transferred the suit property in favour of defendant No. 2 on 07.09.2020. The defendant No.2 has in turn sold and transferred the suit property in favour of defendant Nos.3 and 4 on 20.03.2021. The defendant Nos. 3 and 4 are desirous of constructing the house on the suit property. The construction was commenced and was at the plinth level, when the trial court passed order dated 06.05.2022 restraining the defendant Nos. 3 and 4 from carrying out any construction over the suit property and for changing its nature. Defendant Nos. 3 and 4 are further enjoined from alienating or creating any third party right in the suit property. The Misc. Civil Appeal No. 29/2022 filed by petitioners has been dismissed on 14.07.2022.

3. In the present case, there is long gap between the date of execution of agreement to sale dated 27.12.2017 and expression of readiness and willingness on the part of the plaintiff to enter into the sale deed by way of notice dated 05.09.2020. Thus, petitioners showed readiness and willingness to perform their part of contract after lapse of period of almost three long years.

4. I have perused the averments of the plaintiffs in their plaint and find that no justifiable reason is given for not completing the transaction within reasonable time. It is not that substantial amount was paid by the plaintiff to defendant No.1 towards execution of agreement to sale.

5. In the light of the above background, issue arises as to whether the plaintiff can restrain the subsequent purchaser from enjoying the property. In the plaint, there is no alternate prayer for refund of the earnest deposit along with compensation. In these circumstances, it cannot be

stated that the plaintiff can restrain the purchaser from the suit property from enjoying it by constructing house thereon during pendency of the suit. The injunction restraining the defendant Nos. 3 and 4 from alienating or creating third party right in the suit property, however is required to be maintained.

6. Therefore, I am of the view that the trial court and lower appellate court have committed an error in stopping construction of the petitioners over the suit property when it has already commenced upto plinth level.

7. Accordingly, the orders passed by the District Court on 14.07.2022 in M.C.A. No. 29/2022 as well as the order dated 06.05.2022 passed by the trial court on application at Exh. 5 are partially set aside. Direction No. 2 of the trial court in order dated 06.05.2022 shall continue till conclusion of trial. However, direction No. 3 in the trial court order dated 06.05.2022 is set aside.

8. It appears that the suit has also progressed and the evidence in the plaintiff is already recorded. The defendant shall co-operate with the trial court for early disposal of the suit without seeking any unnecessary adjournments. The trial court shall make an endeavour to decide the suit as expeditiously as possible and preferably within a period of one year from today.

9. The writ petition is partly allowed. No order as to costs.

[SANDEEP V. MARNE, J.]

mta