

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

COMMERCIAL APPEAL FROM ORDER NO.8 OF 2022

Chandan Sumaya

...Applicant

Versus

Louisa Fernandez and Anr.

...Respondents

...

Mr. Subhash Jha with Mr. Raghavendra Mehrotra and Ms Pooja
Deshmukh i/b. Lawkhart Legal for the Appellant.

Mr. Sean Wassodew for the Respondents.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 18th JULY, 2022.

P. C. :-

1. With consent, heard finally at the stage of admission.
2. This appeal is directed against order dated 16/06/2022 whereby learned Judge, City Civil Court, Borivali Division, Dindoshi, Goregaon, Mumbai dismissed the Notice of Motion No.1641 of 2022 in Commercial Suit No.762 of 2021.
3. The Plaintiff has filed a suit for recovery of an amount of Rs.44,82,938/- which according to the Plaintiff is the amount due from the Defendants towards various expenses incurred and services rendered by him in respect of the suit property. The Plaintiff has also

sought declaration that termination of PoA 20/08/2019, and the MoU dated 04/3/2020 and 05/03/2020 is illegal and invalid. The Plaintiff has filed Notice of Motion to restrain the Respondent -Defendant from alienating or creating third party rights in respect of the property at Nachinola known as EMANACEMBATTA FONDU SINAICHEMBATTA TUBACHEMBATTA and SUDIRVADDU. Aggrieved by the dismissal of the interim relief, the Appellant-Plaintiff has filed this appeal from order.

4. Heard Mr. Jha, learned counsel for the Appellant and Mr. Wassoodew, learned counsel for the Respondents. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

5. The Respondents -Defendants own several properties at Goa. They were unable to look after the properties and resolve issues arising therefrom. The Appellant agreed to assist the Defendants in resolving the issues, on payment of necessary charges towards services rendered by him. Accordingly, Memorandum of Understanding dated 15/02/2020 was executed. A perusal of the Memorandum of Understanding dated 15/02/2020 reveals that the Appellant-Plaintiff

had agreed to provide following services to Respondents-Defendants:-

a) to help to recover bad debts; (b) negotiate with the vendors; (c) file FIR, appoint lawyers for documentation and sale deed, visit at sites, etc. Fees of the said services were decided as 25% of the total amount recovered/saved by the Plaintiff.

6. The Plaintiff and the Defendants entered into another MoU dated 05/03/2020 whereunder the Plaintiff agreed to render his expertise into assisting the Defendants to enter into composite sale transaction in respect of three properties mentioned in the said MoU. The MoU further indicates that the Plaintiff had entered into negotiations with one of the purchasers, who had agreed to purchase the property for Rs.7,25,00,000/-. It was agreed between the parties that the proposed purchaser would deposit an amount of Rs.50,00,000/- with the Plaintiff and upon receipt of Rs.25,00,000/- from the Plaintiff, the Defendants would execute the MoU with the Plaintiff assigning exclusive right to him to negotiate with the proposed purchaser. By the said MoU the Defendants had conferred rights on the Plaintiff to transact with the proposed/intended purchaser. Said MoU records that the Defendants had agreed to sell the property to the intending purchaser and had assigned right to the Plaintiff to negotiate

with the said purchaser. The records further indicate that sometime in the year 2019, the Defendants had appointed Plaintiff as a Power of Attorney to look after the immovable properties and business affairs since she and her family members were unable to attend due to health issues.

7. A perusal of the aforesaid documents prima facie indicate that the Defendants had only authorised the Plaintiff to act on their behalf in respect of the subject properties and had authorised him to negotiate with the proposed purchasers in respect of the sale of the suit properties. The Defendants had not created any right in respect of the suit properties in favour of the Plaintiff. Under the agreement, the Plaintiff was only entitled for fees of 12% of the sale consideration towards the services rendered by him.

8. Primarily the Suit is only for recovery of money due towards services allegedly rendered. The Plaintiff, prima facie, does not have any right or title in respect of the suit properties. Under these circumstances, the Defendants, who are the owners of the suit properties, cannot be restrained from alienating the properties. Mr. Jha, learned counsel for the Plaintiff submits that in the event the Plaintiff succeeds in the suit, it will only be a paper decree and that the

Plaintiff will not be able to recover the dues from the Defendants. The question whether the Plaintiff would be entitled for decree of specific performance needs to be adjudicated on merits. Unless and until the rights of the parties are finally adjudicated, there is no existing obligation on the part of the Defendants to pay any amount to the Plaintiff. Hence, no case is made out for interim relief. Furthermore, grant of relief of such nature will practically have the same effect as an order of attachment before judgment. The facts in the present case do not warrant such drastic order. Hence, the impugned order does not warrant interference. The appeal is dismissed.

9. Application (s), if any, stand (s) disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)