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

**APPEAL FROM ORDER NO. 875 OF 2022
WITH
INTERIM APPLICATION NO. 17998 OF 2022**

NITESH M. BHANSALI & ANR. ..APPELLANTS
VS.
ROLAN P. MIRANDA ..RESPONDENT

Mr. G. S. Hegde i/b. Ms. Rajlaxmi Punjabi for the appellants.
Mr. D. S. Sakhalkar i/b. Ms. Nutan S. Moily for respondent.

CORAM : M. S. KARNIK, J.

DATE : SEPTEMBER 26, 2022.

P.C. :

- 1.** Heard learned counsel for the appellants and learned counsel for the respondent.
- 2.** The dispute in the suit which has been filed by the appellants (original plaintiffs) is in respect of what is termed as 'writing' dated May 20, 2022. This writing in the submission of Mr. G. S. Hegde, learned counsel appearing for the appellants, amounts to a concluded contract. The writing was in respect of the suit flat situated at Aram Nagar-1, Versova. On the date of the writing, as agreed, a sum of Rs.50,000/- was deposited online by the plaintiffs in the account of the respondent. The plaintiffs also handed over a cheque of Rs.50,000/- being earnest money deposited by him in terms of the writing. Within a period of

one week that is on May 27, 2022, the respondent (original defendant) returned the sum of Rs.50,000/- and by a whatsapp message informed the appellants that the deal should be treated as cancelled as his family is not agreeable for it.

3. The suit was filed by the appellants for declaration that the respondent-defendant has no right and/or entitlement to deal with and dispose of and/or creating third party rights and/or part with the suit premises. The suit was essentially for a permanent injunction. The appellants also prayed for leave to file the present suit reserving the right to file further suit and/or adopt further such proceedings as may be required to be adopted for the purpose of seeking specific performance and enforcement of the rights of the appellants under the agreement in the form of writing.

4. The trial Court was of the opinion that (a) there is no concluded contract; (b) the earnest amount has been returned back by the defendant within a week from the date of the writing; (c) the suit is not filed for specific performance of the contract; (d) the description of the suit property is vague.

5. Mr. Hegde vehemently submitted that the order passed by the trial Court suffers from a complete non application of mind. In his submission, the defendant is not disputing that the writing was signed by the respondent. In fact the amount of Rs.50,000/- which was received as an

earnest money deposited was also returned. In his submission, this will go to show that there is a concluded contract and for unwarranted reasons the respondent wants to resile from the contract. Mr. Hegde further submitted that the finding of the trial Court that there is no concluded contract is contrary to the document on record which clearly establishes a concluded contract. Mr. Hegde further submitted that the defence that the respondent does not understand the English is only taken for resiling from the contract as the whatsapp message itself would go to show that the respondent is well conversant with the English language. Mr. Hegde also urged that a suit for injunction is maintainable and there was no need for the plaintiff to file a suit for specific performance and in any case, leave is sought in the suit, if need be, to file appropriate proceeding for specific performance. According to him, these are not matters which should come in the way of the appellants getting the relief of temporary injunction as prayed for in the facts of the present case.

6. Learned counsel for the respondent argued in support of the impugned order.

7. On reading of a impugned order, I find some substance in the contention of Mr. Hegde, learned counsel for the appellants. The writing in question *prima facie* indicates that there was a transaction between the appellants and the respondent for sale of the flat. I also do find substance in his contention that the suit flat in question

is sufficiently described. However, the observations of the trial Court that in respect of the property which is sold for Rs.3.50 crores, the appellants had made an earnest money deposit of Rs.50,000/-, which was repaid back to the appellants by the respondent within a period of one week, when is a ground for refusing temporary injunction cannot be said to be so unreasonable so as to warrant interference in the discretion exercised. Even the cheque of Rs.50,000/- was cancelled by the respondent. Factually, the suit as filed by the appellants was for injunction and leave has been sought for filing a suit for specific performance and for the enforcement of the rights of the appellants at a later stage if necessary.

8. In view of the order that I propose to pass, I do not find it necessary to interfere with the trial Court's order at this stage.

9. In the event, appropriate steps are taken for filing the suit for specific performance, it would be open for the appellants to file an appropriate Notice of Motion for interim injunction/reliefs which shall be considered on its own merits without being influenced by the observations made in the impugned order.

10. It is the apprehension of learned counsel for the appellants that there is a possibility that the writing is cancelled only because the respondent wants to now sell

the suit flat for a higher consideration. In fact Mr. Hegde is willing to negotiate with the plaintiffs to this end too. For the present, learned counsel for the respondent submits that the respondent does not have an intention to sell the suit flat. In this view of the matter and in the peculiar facts of this case, in my opinion, as the suit is pending, the respondent can be directed to give a four weeks notice to the appellants in case he intends to create third party interest or sell of the suit property or deal with the suit property in any manner. It would then be open for the appellants to make an appropriate application before the trial Court for appropriate interim reliefs which shall be considered on its own merits.

11. The appeal is disposed of without interfering with the trial Court's order.

12. The interim application is also disposed of.

(M.S.KARNIK, J.)