

Diksha Rane

Digitally
signed by
DIKSHA
DINESH
RANE
Date:
2022.10.11
17:55:57
+0530

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

**APPEAL FROM ORDER NO. 941 OF 2022
WITH
INTERIM APPLICATION NO. 18640 OF 2022**

OPAL BUILDERS PVT. LTD.

..APPELLANT

VS.

MRS. GULSHAN SAIFUDDIN MERCHANT
AND OTHERS

..RESPONDENTS

Mr. Pradip J. Thorat i/b. Ms. Aditi S. Naikare for the
appellant.

Mr. M. P. Vashi, Senior Advocate for respondent nos. 1 to 3.

Mr. R. B. Paranjape, Senior Advocate i/b. Mr. Vishvanath T.
for respondent no.4

**WITH
APPEAL FROM ORDER NO. 955 OF 2022
WITH
INTERIM APPLICATION NO. 18975 OF 2022**

MRS. GULSHAN SAIFUDDIN MERCHANT
& ORS.

..APPELLANTS

VS.

OPAL BUILDERS PVT. LTD. & OTHER

..RESPONDENTS

Mr. M. P. Vashi, Senior Advocate i/b. M. P. Vashi &
Associates for appellants.

Mr. Pradip J. Thorat for respondent no.1.

Mr. R. B. Paranjape, Senior Advocate for respondent no.2.

CORAM : M. S. KARNIK, J.

DATE : OCTOBER 10, 2022.

P.C. :

1. Heard learned counsel Mr. P. J. Thorat appearing on behalf of the appellant-alleged purchaser, Mr. M. P. Vashi, learned senior advocate appearing on behalf of the original owners-defendant nos. 1 to 3 and Mr. R. B. Paranjape, learned advocate for the respondent no.4.
2. The respondent no.1 is the mother of the respondent nos. 2, 3 and 4, who are her daughters.
3. The suit was filed by the plaintiff-alleged purchaser for specific performance and an application (Exhibit 5) was made by the plaintiff-alleged purchaser for temporary injunction. Pending the disposal of the suit, the plaintiff-alleged purchaser prayed for restraint orders in terms of prayer clauses (b), (c) and (d).
4. By an order dated 5/8/2022, the trial Court passed an order that the suit to proceed ex-parte against all the defendants. The defendant nos. 1 to 3 have filed a separate Appeal from Order No. 955 of 2022 challenging the ex-parte order which is tagged along with the present appeal.
5. So far as Appeal from Order No. 941 of 2022 is concerned, Mr. Thorat assailed the order passed by the trial Court contending that though the trial Court while deciding the application (Exhibit 5) was justified in granting interim reliefs in terms of prayer clause (b), however, there is reason why relief in terms of prayer clause (c) has been refused. Mr. Thorat submitted that based on the materials

on record and the pleadings, the trial Court ought to have granted interim reliefs in terms of prayer clause (b) as well.

6. In challenge to the ex-parte order, Mr. Vashi, learned senior advocate submitted that there was some communication gap between the lawyer representing the defendants and the defendants which resulted in the trial Court passing the order of proceeding with the suit ex-parte. Mr. Vashi prayed that in the interest of justice, liberty be given to the defendants to oppose the temporary injunction application and to contest the suit as well. Mr. Vashi pointed out that Appeal from Order No.955 of 2022 filed by the defendant nos. 1 to 3 challenges the ex-parte order and also challenges the grant of temporary injunction in favour of the plaintiff-alleged purchaser in terms of the prayer clause (b).

7. I have gone through the impugned order. Due to some communication gap as stated by learned senior advocate representing the defendant nos. 1 to 3 and 4, the defendants could not be represented therefore the order was made for the suit to proceed ex-parte. In any case, the appeal has been filed by the plaintiff-alleged purchaser challenging the order of the trial Court to the extent that it has refused to consider the grant of temporary injunction in terms of prayer clause (c) of the application.

8. I find that the order passed by the trial Court is a cryptic order. In the facts of the present case and in view of

the oral submissions made, liberty needs to be given to the defendants to contest the suit as well as to oppose the application for temporary injunction.

9. In my opinion, the order directing the suit to proceed ex-parte needs to be set aside as this is not a case where any prejudice would be caused to the plaintiff-alleged purchaser if such an order is passed as even the defendants need to be given fair opportunity to contest the suit. The default is not such that adequate cost would not cover it. Appeal from Order No. 955 of 2022 is allowed subject to cost of Rs.20,000/- to be paid by the defendants to "Tata Memorial Hospital & Cancer Research Institute" which learned advocate for the appellant graciously agreed.

10. The order passed by the trial Court is set aside.

11. Appeal from Order No.941 of 2022 is partly allowed.

12. It is informed that the next date before the trial Court is 15/10/2022. The defendants undertake to file written statement within a period of four (4) weeks from 15/10/2022.

13. Copy of this order to be placed before the trial Court.

14. Mr. Vashi, learned senior advocate on behalf of the defendant nos. 1 to 3 and Mr. Paranjape, learned senior advocate on behalf of the respondent no.4, on instructions, make a statement that till such time the application (Exhibit 5) is decided, they will not deal with or create any third party interest or otherwise dispose of the suit property.

15. The trial Court is requested to hear the application (Exhibit 5) expeditiously and preferably within a period of twelve (12) weeks from 15/10/2022.

16. The appeals are disposed of.

17. The interim applications are also disposed of.

(M.S.KARNIK, J.)