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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

INTERIM APPLICATION NO.1949 OF 2019

IN

COM SUIT NO.1076 OF 2019

WITH

INTERIM APPLICATION NO.2014 OF 2020

WITH

INTERIM APPLICATION NO.1725 OF 2022

WITH

IPA (L) NO.12485 OF 2022

WITH

INTERIM APPLICATION NO.106 OF 2022

WITH

INTERIM APPLICATION NO.98 OF 2022

WITH

NOTICE OF MOTION NO.2393 OF 2019

IN

COM SUIT NO.1076 OF 2019

Siroya FM Construction Pvt. Ltd.

...Applicants/
Ori. Defendant
No.1.

Sunil Krishnan Anand & Anr.

...Plaintiffs

Versus

Siroya FM Construction Pvt. Ltd. & 2 Ors.

...Defendants

Mr. Anil G. Shah, C.A. in person.

Mr. Mukesh Vashi, Senior Advocate with Prachi Khandge i/b. MP Vashi and Associates for Defendant Nos.1 and 3.

Dr. V.V. Tulzapurkar, Senior Counsel i/b. Manjiri Parasnis for Respondent Nos.4 to 6.

Rohaam Cama with Pooja Jhaveri i/b. Katariya & Associates for Respondent No.7.

CORAM : R.I. CHAGLA J.
DATE : 29TH AUGUST, 2022.

ORDER :

1. Heard learned Counsel appearing for the Applicant / Original Defendant No.1 and Mr. Anil G. Shah, Plaintiff No.2 who is also the Constituted Attorney for Plaintiff No.1.

2. By this Interim Application, the Applicant is seeking modification of the order dated 8th July, 2019 to the extent of vacating ad-interim relief in terms of paragraph 14(c), (d) and (e). The Applicant has stated that the Plaintiffs had filed the Suit for damages, compensation and refund of money with interest for a sum of Rs.22,66,86,579/- against the Defendants with interest @ 18% p.a. on Rs.16,37,24,008/- which includes the total principal amount of Rs.4,37,24,008/- i.e. the amount purportedly paid to the Defendants by Plaintiff No.1, Rs.5 Crores for causing mental trauma to Plaintiff No.1 and Rs.7 Crores for hardship and compensation.

3. The Applicant has stated that after filing of the captioned Suit, the Plaintiffs took out Notice of Motion (L) No.1031 of 2019 to direct the Defendants, pending the hearing and disposal of the Suit,

to deposit sum of Rs.22,66,87,579.52 with the Prothonotary and Senior Master of this Court to secure the interest / claim of the Plaintiff No.1 and for direction to the Defendants to disclose all their assets and for appointment of Receiver for the properties owned by Defendant Nos.2 and 3.

4. By the said order dated 8th July, 2019, this Court (Coram :- K.R. Shriram, J.) had noted that it was the Plaintiffs case that Plaintiff No.1 has paid a sum of Rs.4,25,00,000/- to Defendant No.1 towards the sale price of Flat No.501 in building known as Orchid, situated in Vile Parle (West), Juhu, Mumbai 400 049. A copy of the Receipt confirming this amount issued by Defendant No.1 is at Exhibit A to the Plaint. It is the Plaintiffs case that the Defendants had not given possession of the Flat No. 501 despite receiving entire consideration of Rs.4,25,00,000/- and thereafter the Plaintiff has sought return of the amount together with interest as well as claiming damages to the tune of Rs.12 Crores. This Court by the said order had recorded that Mr. Shah had in fairness submitted that he is restricting his security claim in the Notice of Motion at Rs.4,25,00,000/- which is admittedly the amount paid to the Defendants. This Court had considered that a criminal complaint had

been filed by the Plaintiff No.1 against Defendant Nos.2 and 3 and an Application for Anticipatory Bail was made before the City Sessions Court. The City Sessions Court, Mumbai had passed an order on 21st November, 2016 wherein the Advocate for the Applicant / Accused being Defendant herein had stated that he is ready to pay the entire amount to the Plaintiff but in view of the market situation he is unable to pay the entire amount in one stroke. Reliance has been placed on the said order by Mr. Shah to submit that the Defendant No.3 had given undertaking that he is ready and willing to pay the entire amount to the Plaintiff No.1. Thereafter, this Court in the order dated 30th April, 2019 passed in the Criminal Anticipatory Bail proceedings noted that Defendant Nos.2 and 3 were ready to settle the matter and give possession of subject flat No.501 to the Plaintiff No.1. This Court had thereafter in the said order dated 8th July, 2019 noted that despite such undertakings given, no money had been returned and no possession of the flat had been given.

5. Defendant Nos.2 and 3 were behind bars as their Anticipatory Bail Applications were rejected by this Court. A Special Leave Petition was preferred which was dismissed by order dated 18th October, 2019 of the Supreme Court. In the said order the

Supreme Court after dismissing the Special Leave Petition recorded that the observations in the impugned order were confined to the disposal of the application for anticipatory bail and shall not affect the rights and contentions of the parties in any other proceedings.

6. Thereafter, this Court had in the said order dated 8th July, 2019 considered the submission of the learned Counsel for Defendant No.1 that one unencumbered property can be given as security for the Plaintiffs claim. However, the Court considered that though this property will have to be attached pending the Defendants jointly or severally depositing the sum of Rs.4,25,00,000/- which is insisted upon because of the conduct of Defendant Nos.2 and 3 and in view of which it is difficult for the Court to even believe that the secured property will really be unencumbered. Accordingly, this Court had granted ad-interim relief in terms of Paragraph 14 (a) to (e) which includes deposit of amount of Rs.4,25,00,000/- within four weeks from the date of this said Order with the Prothonotary and Senior Master in order to secure the interest / claim of the Plaintiff as well as making of disclosures by the Defendants of their assets, including movable, immovable, tangible and intangible shares, debentures, fixed deposit, bank account details, receivables, number

of ongoing projects and unsold flats and receivables therein etc. on affidavit to be filed within three weeks. Paragraph 14 (c) of which the Applicant is currently aggrieved pertains to grant of ad-interim injunction restraining the Defendants from creating any third party rights in respect of any of their properties to be disclosed and even if not disclosed. This would also include their interest in other projects or companies either as share holding or otherwise. The Notice of Motion (L) No.1031 of 2019 was disposed of in terms of the said order with liberty to take out fresh Notice of Motion as and when advised.

7. The Defendants carried the matter in Appeal. The Appellate Bench by order dated 5th September, 2019 observed that since the impugned order dated 8th July, 2019 is a pro tem ad-interim order and direction, paragraph 14(c) being contingent upon the disclosure which would be made as per the direction in paragraph 14(b), counsel seeks leave to withdraw the Appeal after making the necessary disclosure in terms of the direction in paragraph 14(b). The Appellants therein would have a right to seek a variation of the injunction granted vide direction in paragraph 14(c). The Appeal was accordingly disposed of as not pressed. Accordingly,

the present Interim Application has been filed.

8. Mr. Vashi, learned Senior Counsel for the Applicant / Original Defendant No.1 has submitted that the order dated 8th July, 2019 is required to be modified considering that the Applicant has deposited the sum of Rs.4,25,00,000/- with the Prothonotary and Senior Master of this Court in compliance with the order dated 8th July, 2019. He has submitted that the learned Single Judge by the said order had noted that Mr. Shah / Plaintiff No.2 had restricted his security claim in the Notice of Motion to a sum of Rs.4,25,00,000/- which admittedly was the amount which the Plaintiff No.1 had paid to the Defendants. He has submitted that by the order of the Supreme Court dated 18th October, 2019 passed in the Special Leave Petition from the Anticipatory Bail Application it was recorded that the observations in the impugned order of this Court dated 30th April, 2019 would be confined to the disposal of the Application for Anticipatory bail and shall not affect the rights and contentions of the parties in any other proceedings. The learned Single Judge in the order dated 8th July, 2019 had relied upon observations made by this Court in the order dated 30th April, 2019 to hold that despite undertakings given to this Court, no money had been returned and

no flat was given possession of. Mr. Vashi has submitted that given the fact that the sum of Rs.4,25,00,000/- has been deposited by the Defendants and that disclosures have been made as per the directions in paragraph 14(b) of the said order, the ad-interim relief in terms of paragraph 14(c) requires to be vacated as the Appellate Bench had also considered that paragraph 14(c) is contingent upon disclosures made as per the direction in paragraph 14(b) of the said order.

9. Mr. Shah has relied upon his Affidavit in Reply dated 4th January, 2020 filed in the present Interim Application to state that there is no proper disclosure of the alleged unencumbered properties belonging to the Defendants and that these properties have been heavily encroached upon as well as there being no development potential of the plot at Goregaon. Hence ad-interim relief in terms of paragraph 14(c), (d) and (e) in the said order dated 8th July, 2019 requires no modification / vacation. Further the bank accounts of which disclosures have been made are not operational and that though the amount of Rs.4,25,00,000/- has been deposited, this does not mean that paragraph 14(c), (d) and (e) of the said order dated 8th July, 2019 is to be vacated.

10. Grievance is also made that the Defendants have not disclosed on oath their directorship in various companies as well as whether they are shareholders therein. Further that the Defendants have enclosed provisional Returns and none of the Returns are certified by the Chartered Accountant. He has submitted that accordingly, the directions in paragraph 14(b), (d) and (e) have not been complied with.

11. Mr. Shah has relied upon upon the decision of the Division Bench of this Court in *Krishna Dushyant Rana Vs. Cipla Ltd.*¹ to contend that the disclosure has to be made as laid down by the Division Bench of this Court and in the form mentioned in paragraph 31 of the said Order as well as paragraph 32, where the judgment debtor has to file Affidavit of Disclosure disclosing all movable and immovable properties in one Affidavit and not more than one Affidavit. The fact that the Defendant was required to file Affidavit after Affidavit clearly indicates that the Defendant did not disclose all his movable and immovable assets in the first instance. Mr. Shah has submitted that in the present case, the Defendants have filed more than one Affidavit. Hence, it would indicate that the Defendants have

¹ 2017 SCC Online Bom 10132.

not disclosed all their movable or immovable assets in the first instance.

12. Having considered the submissions, I have perused the order dated 8th July, 2019. From the said order it is clear that the Plaintiff No.1 represented by the Constituted Attorney Mr.Shah who is also the Plaintiff No.2 had restricted their security claim in Notice of Motion for sum of Rs.4,25,00,000/- which is the admitted sum paid by the Plaintiff No.1 to the Defendants towards the sale price of Flat No.501 in building known as Orchid situated in Vile Parle (West), Juhu, Mumbai 400 049. It appears from the said order dated 8th July, 2019 that the Anticipatory Bail proceedings had been relied upon including the order dated 30th April, 2019 passed by this Court in those proceedings to observe that Defendant Nos.2 and 3 have given an undertaking to this Court to pay the sum of Rs.4,25,00,000/- and inspite of the undertaking no money had been received and no flat had been given possession of. It is noted that the Supreme Court in the order dated 18th October, 2019 had expressly recorded that observations contained in the impugned order dated 30th April, 2019 passed by this Court in the Anticipatory Bail Application will be confined to the disposal of the application for

anticipatory bail and shall not affect the rights and contentions of the parties in any other proceedings. Further, it is required to note that the Defendants have in compliance with the order dated 8th July, 2019, by which ad-interim relief had been granted in terms of prayer clauses 14(a), deposited the sum of Rs.4,25,00,000/- with the Prothonotary and Senior Master of this Court and has thus complied with the said order in making such deposit. Further in compliance of 14(b) of the said order, the Defendants have filed three Affidavits of Disclosures, one Affidavit dated 16th October, 2019 and two Affidavits dated 6th November, 2019 giving disclosure of the particulars mentioned in the said paragraph.

13. I have noted that the Appellate Court order dated 5th September, 2019, expressly considered the said order dated 8th July, 2019 and held that the direction in Paragraph 14(c) was contingent upon disclosure which would be made as per directions in 14(b). Accordingly, the Defendants were granted opportunity to make an application seeking variation of the injunction granted in terms of paragraph 14(c) after making such disclosure. Paragraph 14(c) reads thus:-

“14(c) pending the hearing and final disposal of the present suit, defendants, their servants, agents, administrators and assigns are restrained by an order of injunction from creating any third party rights in respect of any of their properties to be disclosed and even if not disclosed. This would also include their interest in other projects or companies either as share holding or otherwise.”

14. It can be seen from paragraph 14(c) of the said Order that the injunction was with regard to restraining the Defendants from creating any third party rights in respect of any of their properties to be disclosed and even if not disclosed. This would also include their interest in other projects or companies either as share holding or otherwise. Considering that the injunction was contingent upon the disclosures being made by the Defendants, there have been disclosures in the said Affidavits. Further, the sum of Rs.4,25,00,000/- which had been paid by the Plaintiffs to the Defendants has been deposited with this Court. Considering that the Plaintiffs had restricted their security claim in the Notice of Motion to the said amount of Rs.4.25 Crores which has been deposited in this Court pursuant to the order dated 8th July, 2019, in my view, it would not be necessary to further continue the ad-interim relief in terms of 14(c) of the said order as this results in grave prejudice to the Defendants whose business has been adversely affected.

Accordingly, the order dated 8th July, 2019 passed by this Court is modified restricting the relief granted in terms of Paragraph 14 (a), (b), (d) and (e) of the said order, which shall continue.

15. The contention of the Plaintiffs that there has been inadequate disclosure by the Defendants is kept open. Suffice it to say that, the modification of the said order is in view of the observation that the sum of Rs.4,25,00,000/- which is stated to have been paid by Plaintiff No.1 to the Defendants has been brought into this Court as security.

16. Accordingly, the Interim Application (L) No.1949 of 2019 is disposed of in the above terms.

17. The parties shall complete pleadings in the companion matters prior to 20th September, 2022.

18. The matters shall be placed on the supplementary board on 20th September, 2022.

[R.I. CHAGLA J.]