

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 964 OF 2022
WITH
INTERIM APPLICATION NO. 19045 OF 2022

M/s. Mahir Builders and Developers, through ... Appellants/
partner Mahir Najir Fakir & Ors. Applicants

Versus

Sultan Sirajuddin Mohammad Yasin, Prop. M/s. ... Respondents
Dolphin Enterprises & Ors.

Mr. Drupad Patil a/w. Mr. Rushikesh Kale for the appellants/applicants.
Mr. Rohit Joshi for respondent nos. 3 to 6.

CORAM: G. S. KULKARNI, J.
DATED: 18 January 2023

P.C.

1. This Appeal from Order is preferred by the original defendant no. 3 in proceedings of Special Civil Suit No. 145 of 2021 filed by respondent nos. 3 to 6 (the original plaintiffs). The impugned order is an ad-interim order passed on Exhibit-5 Application filed by plaintiffs, by which defendant nos. 5 to 8, who are all officers of CIDCO, have been restrained from issuing any certificates in respect of the suit building till the decision of Exhibit 5 Application. The impugned order is required to be noted, which reads thus:

“O R D E R

COMMON ORDER BELOW EXH. 153 & 212

Heard both sides, plaintiff through Advocate Urankar andn Thakkar for defendant no. 1 present, whereas none present for defendant no. 5 to 8.

Perused Applications it's seems that, Defendant no. 1 being builder sold most of the flats and shops. Whereas defendant nos. 5 to 8 are CIDCO officials.

Plaintiff fears that if the defendant no. 1 sales the remaining flats and shops, then it will impossible to get any flats and shops from defendant no. 1 on the basis of Agreement. The said agreement is challenged by defendant no. 1.

Under the circumstances, it would be proper to restrain the defendant no. 1 from selling any further flats or shops and similarly defendant nos. 5 to 8 from issuing any certificate in respect of the building till decision of Exh. 5.”

2. Mr. Patil, learned counsel for the appellants submits that the appellants have developed the project in question, which is a RERA project in which the appellants have already sold the residential flats and commercial units to various purchasers, under registered agreements. He has placed on record the photographs of the building to contend that the building is almost complete. He thus submits that the ad-interim relief granted by the impugned order which restrained the CIDCO from issuing completion certification is causing serious prejudice to not only the appellants but also to the flat purchasers who are knocking the doors of the appellants everyday.

3. It appears that the plaintiffs are asserting rights under a Development Agreement dated 1 October, 2014 executed between the plaintiff and

defendant no.1 and for other reliefs which according to the plaintiffs would not permit the appellant to undertake development of part of the suit land.

4. Having perused the impugned order and the record, as also considering the rival contentions of the parties, in my opinion, as the impugned order is on ad-interim order, it is appropriate that the Exhibit 5 application itself is decided and more particularly in the circumstances that the project is almost on the verge of completion, and that, there are third party purchasers of units residential and commercial. The observations as made in the impugned order, as seen are prima facie, being at the ad-interim stage. Mr. Patil would urge that the dispute in regard to the interim reliefs in the suit would primarily be between the plaintiff and appellant/defendant no. 3, insofar as the reliefs in regard to the certificate to be issued by CIDCO is concerned.

5. Be that as it may, in the aforesaid circumstances, the learned trial Judge is directed to dispose of Exhibit 5 Application as expeditiously as possible and in any event on or before 28 February, 2023. All contentions of the parties on merits of the disputes in the pending proceedings before the trial Court are expressly kept open.

6. Mr. Patil has stated that all the defendants are already served with the suit summons, hence the Exhibit 5 application can be taken up for early

adjudication. In that event, the parties are directed to appear before the learned trial Judge on 25 January, 2023 at 11.00 a.m. along with the copy of this order. Learned trial Judge shall thereafter fix a convenient date when the parties can be heard on the Exhibit 5 application so that final orders on such application can be passed. Till Exhibit 5 application is decided, the impugned ad-interim order as passed by the learned trial Judge shall continue to operate.

7. It is clarified that the continuation of the interim protection is in no manner, any reflection of the rival contentions. Learned trial Judge shall decide the said application on its own merits and without being influenced by continuation of the same by the present order. All contentions are expressly kept open. The parties are directed to cooperate in the early disposal of Exhibit 5 application.

8. Disposed of in the above terms. No costs.

9. In view of disposal of Appeal from Order, Interim Application does not survive and the same is accordingly disposed of.

(G. S. KULKARNI, J)