

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CIVIL JURISDICTION

**APPEAL FROM ORDER NO.49 OF 2021
WITH
INTERIM APPLICATION NO.408 OF 2021**

Deepak Kumar Chandrabhan Menghani ...Appellant
vs.
M/s. Firdous Enterprises and Others ...Respondents

Mr. Ranjeet Thorat, Senior Advocate i/b. Mr. Rohan Barge, for the Appellant.
Mr. Shailesh Pai i/b. Mr. Vimlesh Singh, for Respondent Nos. 1, 2 & 6
Mr. Mateen Shaikh, for Respondent No. 5.
Mr. Afroz Siddiqui, for Respondent Nos. 7 and 9.
Mr. Farzana Sawant, for Respondent No. 8.
Mr. S.B. Shetye i/b. Mr. M.R. Bohra, for Respondent No. 10.

CORAM : N. J. JAMADAR, J.
DATE : MARCH 08, 2023

P.C.:

1. The challenge in this appeal is to an order passed by the learned Civil Judge, Senior Division, Panvel dated 15th December, 2020 on an application for temporary injunction (Exhibit 5) in Special Civil Suit No. 136 of 2020 whereby the prayer for temporary injunction came to be rejected.

2. The background facts necessary for determination of this appeal can be summarized as under:-

The plaintiff is engaged in the business of development and

construction under the name and style of Surya Builders and Developers. The respondent Nos. 1 to 9 /defendants represented to the plaintiff that they were having land in the vicinity of Panvel Taluka and showed their willingness to sale 16.94 Acres land situated at village Rohinjan, Tal. Panvel, Dist. Raigad (the suit property). A Memorandum of Understanding (MOU) dated 23rd February, 2012 came to be executed between the partners of M/s. Firdous Enterprises (defendant No. 1), a partnership firm through its partners (defendant Nos. 2 to 8) and the plaintiff. Under the terms thereof, the defendants agreed to convey the suit property for a consideration of Rs. 6,80,00,000/-. The plaintiff parted with a consideration of Rs. 1,55,00,000/-. The defendant, however, failed to execute the conveyance. Thus, the defendant Nos. 1 to 9 offered to return the amount under the MOU dated 23rd February, 2012 along with interest. A No Objection Deed dated 1st March, 2019 was executed wherein the defendant Nos. 1 to 9 agreed to return an amount of Rs. 2,48,40,000/- to the plaintiff. Eleven cheques were drawn for discharge of the said liability. Out of them only two cheques drawn for an amount of Rs. 25 lakhs each were encashed on presentment. Five of the rest of the cheques were dishonored.

3. The plaintiff claimed that he is and has always been ready and

willing to perform his part of contract. The defendant Nos. 1 to 9 refused and neglected to perform the contract. Instead, according to the plaintiff, defendant Nos. 1 to 9 surreptitiously sold a part of the suit property to defendant No. 10.

4. The plaintiff was constrained to institute the suit for specific performance of the contract and consequential reliefs. In the said suit, the plaintiff filed an application for temporary injunction to restrain the defendants and their agents and assigns etc. from creating any third party rights and interest in the suit property till the disposal of the suit.

5. The defendant Nos. 1, 2 and 6 resisted the application by filing an affidavit in reply. It was, inter alia, contended that there was no concluded contract between the parties. The plaintiff was also in breach of the terms of the MOU. The contract contained in the MOU stood terminated on account of the default on the part of the plaintiff.

6. The defendant Nos. 7 and 9 also resisted the application by filing affidavit in reply. They admitted the execution of the MOU dated 23rd February, 2012. However, according to defendant Nos. 7

and 9 the MOU was restricted to their respective share in the suit property. They claimed to have retired from, defendant No. 1 firm w.e.f. 11th June, 2014. According to them, only defendant Nos. 2 and 6, the continuing partners of the firm, were liable to discharge the liabilities of the firm, if any.

7. The defendant No. 10 resisted the application by contending that having executed the No Objection Deed dated 1st March, 2019, the plaintiff had waived whatsoever rights the plaintiff had under the MOU dated 23rd February, 2012. The plaintiff thus can not seek the specific performance of the contract contained in the said MOU. In any event, defendant No. 10 claimed to be a bonafide purchaser for value without notice.

8. After appraisal of the rival contentions and the documents submitted on behalf of the contesting parties, the learned Civil Judge was persuaded not to exercise the discretion to grant interim injunction. The trial Court held, inter alia, that whether there was a concluded contract between the parties, was itself a matter for trial. Secondly, the defendant Nos. 1 to 9 were admittedly not the owner of the entire suit property. Learned Judge further observed that the terms of MOU as regards the actual property to be sold thereunder

and the identity of the persons who were the owners thereof were uncertain. Thirdly, under the settlement evidenced by No Objection Deed, the plaintiff allegedly accepted a sum of Rs. 15 lakhs in cash and few cheques towards refund of the amount. Resultantly, the plaintiff failed to make out a prima facie case. Having further found, in view of the time lag of about 8 years, since the execution of the MOU, third party rights were created in the suit property, the balance of convenience tilted in favour of the defendants and that irreparable injury would not be caused to the plaintiff in the event of refusal of injunction, the learned Judge rejected the application.

9. Mr. Thorat, learned senior counsel for the appellant submitted that the learned Civil Judge committed a manifest error in declining to exercise the discretion in favour of the plaintiff. An endeavour was made to draw home the point that the MOU constituted a concluded contract. According to Mr. Thorat, the trial Court misdirected itself in giving undue importance to the alleged delay of 8 years when the conduct of the defendants in executing No Objection Deed, manifests a clear intent to extend the time to perform the obligations under the MOU. Laying emphasis on the fact that, except two, rest of the cheques could not be encashed on presentment, Mr. Thorat would urge that the plaintiff who had

parted with huge consideration of Rs. 1,50,00,000/- could not have been left in the lurch.

10. I have carefully perused the material on record and considered the submissions canvassed on behalf of the appellants. First and foremost, the circumstance in which the MOU came to be executed deserve to be noted. From the perusal of clause 'B' of the MOU it becomes abundantly clear that when the said MOU was executed the defendant Nos. 1 to 9 represented that they were in advanced stage of acquiring about 16.94 Acres of contiguous land described in the Schedule of property appended to the said MOU (the suit property). A bare perusal of the said Schedule of property makes it explicitly clear that a number of persons, who were not parties to the said MOU, and/or the partners of the defendant No. 1 firm, were shown as the holders of the distinct survey numbers either individually or collectively.

11. Mr. Thorat attempted to salvage the position by inviting the attention of the Court to a pursis filed before the trial Court on 18th December, 2020 wherein the description of the share of defendant Nos. 1 to 10 in the portion of the suit property was sought to be furnished. I am afraid the said exercise is of any assistance to the

plaintiff, especially at this stage. The fact remains that defendant Nos. 1 to 9 were not the absolute owners of the entire suit property on the date of the execution of the MOU. Yet, despite being fully cognizant of the said fact, the plaintiff sought an interim relief seeking to restrain the defendant Nos. 1 to 10 from alienating the entire suit property.

12. Secondly, No Objection Deed dated 6th March, 2019, inter alia, records that the contract contained in MOU could not be performed on account of difficulty in performance of the respective obligations by the plaintiff and defendant Nos. 1 to 9. The plaintiff thus agreed to relinquish the right and interest emanating from the said MOU in lieu of payment of a sum of Rs. 2,48,42,000/-.

13. Mr. Thorat again attempted to wriggle out of the situation by inviting attention of the Court to the stipulation in the said No Objection Deed that in the event the cheques were dishonored for any reason whatsoever, the No Objection Deed shall be deemed to have been cancelled. Undoubtedly, the plaintiff may have his remedy for failure of the consideration for the No Objection Deed. The plaintiff may also be entitled to seek damages for non performance of the contract contained in the MOU. However, having

regard to the nature of the contract, the learned Civil Judge was justified in recording a prima facie view that the existence and enforceability of the contract were matters for adjudication.

14. In the totality of the circumstances, the finding that a prima facie case for grant of injunction was not made out does not seem to be capable of correction in exercise of appellate jurisdiction. It is trite the scope for interference in an order granting or refusing to grant interim injunction is limited. It does not appear that the learned Civil Judge did not either keep in view the principles which govern the grant of injunction or exercise the discretion in an unjustifiable manner. I am, therefore, impelled to hold that no interference is warranted in the impugned order.

Hence, the following order.

ORDER

- 1] The appeal stands dismissed.
- 2] No costs.
- 3] In view of the dismissal of the appeal, interim application also stands dismissed.

(N. J. JAMADAR, J.)