IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 243 OF 2021
WITH
INTERIM APPLICATION NO.3463 OF 2020
WITH
INTERIM APPLICATION NO.17331 OF 2022

1. Shri. Prashant Rambhau Pathare
   Age 36 Years, Occu : Agriculturist,
2. Mr. Dilip Rambhau Pathare
   Age 34 Years, Occu : Agriculturist,
3. Mr. Sandip Rambhau Pathare
   Age 39 Years, Occu : Agriculturist,
   All R/at : S.No.43, Pathare Mala, Kharadi
   Tal.Haveli, Dist. Pune. 411 014. ...Appellants/Applicants

Versus

1. Smt. Aparna Ashok Joshi
   Age 64 Years, Occu : Business,
2. Shri. Amit Ashok Joshi
   Age 42 Years, Occu : Business,
   1 & 2 R/at 265, Nvi Peth, S.K. Chambers,
   Pune 411 030.
3. Sou. Anushri Kaustubh Joshi,
   Before marriage Sou. Anushri Ashok Joshi
   Age 32 Years, Occu : Housewife,
   R/at: Kothari Blok, Bibvewadi, Pune - 37.

4. Shri. Vasantraj Champalal Talsera
   Age 63 Years, Occu : Business,
5. Shri. Goutam Champalal Talsera
   Age 60 Years, Occu : Business,
   4 & 5 R/at : Maharashtra Society, Parvati,
   Pune 411 009.
6. Shri. Vimalraj Champalal Talsera
   Age 36 Years, Occu : Business,
   R/at Road No.23, Aharm Gangadham
   Society, Pune 411 037. ...Respondents

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Mr. Drupad S. Patil a/w Mr. B.G. Ligade, for Appellants/Applicants.
Mr. S.S. Panchpor a/w Mr. S.S. Natu, Mr. G.D. Tamboli i/by Mr. Ankit Dhindale for Respondent Nos.1 to 3.
Mr. Bhushan Walimbe, for Respondent Nos. 4 to 6.

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CORAM : SANDEEP V. MARNE, J.
RESERVED ON : OCTOBER 10, 2023.
PRONOUNCED ON : OCTOBER 16, 2023.

JUDGMENT :

1. This Appeal is filed challenging Order dated 16 January 2020 passed by the Civil Judge Senior Division, Pune rejecting application filed by Appellants/Plaintiffs for grant of temporary injunction. Appellants/Plaintiffs have instituted Special Civil Suit No. 875 of 2018 seeking specific

performance of Agreement for Sale, possession of suit property as well as challenging Deed of Assignment dated 16 May 2018 executed by Defendant Nos. 1 to 3 in favour of Defendant No.4 to 6. Plaintiffs have also prayed for alternate relief of refund of consideration of amount of Rs.1,73,00,000/- along with interest and compensation. It is Plaintiffs' case that late Ashok Vasudeo Joshi, Defendant No.1-Aparna Ashok Joshi and Defendant No.2-Amit Ashok Joshi executed an Agreement for Sale dated 7 July 2017 in their favour by which they agreed to sale Flat Nos. 2, 4, 6 and Shop No.7 for consideration of Rs.1,73,00,000/-. That the entire amount of consideration of Rs.1,73,00,000/- was already paid to them in the year 2013 itself. Instead of executing a Sale Deed in pursuance of that agreement, Defendant Nos.1 to 3 sold Flat No. 6 and Shop No. 7 in favour of Defendant Nos. 4 to 6. In the Suit, Plaintiffs filed application for temporary injunction to restrain Defendant Nos.1 to 3 from creating third party rights in respect of Flat Nos. 2 & 4 as well as to restrain Defendant Nos.4 to 6 from creating third party rights in respect of Flat No.6 and Shop No.7. The Trial Court has proceeded to reject the application by impugned order dated 16 January 2020.

2. I have heard Mr. Patil, the learned counsel appearing for Appellants. He would submit that the Trial Court has erroneously arrived at a

conclusion that Plaintiffs did not place on record any documentary evidence in respect of payment of amount of Rs.1,73,00,000/-. He would invite my attention to the agreement, which refers to cheque numbers in respect of various amounts totaling Rs.1,73,00,000/-. He would also invite my attention to the bank statement to show that the said cheques have been encashed and the amounts are transferred in the accounts of the Defendant Nos.1 to 3. He would submit that since the entire amount of consideration is already paid to Defendant Nos.1 to 3, the minimum relief that Plaintiffs could expect from the Trial Court was an order of temporary injunction to restrain both the sets of Defendants from creating third party rights in respect of their respective flats. He would submit that though the injunction was refused on 16 January 2020, this Court has granted ad-interim relief in terms of prayer clause (b) in Interim Application No. 3463 of 2020, by virtue of which the Defendants are restrained from creating any third-party rights and/or parting with possession of the suit property. He would submit that since the interim order is operational since 26 April 2022, the same is required to be continued till final disposal of the suit.

3. The Appeal is opposed by Mr. Panchpor, the learned counsel appearing for Respondent Nos. 1 to 3. He would produce copy of application

filed by the Plaintiffs before the Trial Court for amendment of the plaint. He would submit that after rejection of application for temporary injunction by recording a finding that Plaintiffs could not prove evidence of actual payment of consideration, Plaintiffs now wants to introduce a new case by way of amendment that the amount of Rs.1,73,00,000/- was paid in respect of some other transaction, which could not fructify and that therefore the said amount was later shown as a consideration for the Agreement for Sale dated 7 July 2017. He would submit that the Plaintiffs are thus not sure about the exact nature of transaction and are frequently changing their stands. For the first time by introducing amendment, Plaintiffs want to demonstrate that there was some other transaction in respect of which Plaintiffs had allegedly paid Rs.1,73,00,000/-. That filing of such application at such a belated stage is an admission of the fact that the Plaintiffs could not prove payment of the said amount of consideration before the Trial Court at the time of passing of the impugned order rejecting temporary injunction. He would rely upon Judgment of the Apex Court in ***Ambalal Sarabhai Enterprise Limited Vs. KS Intraspace LLP Limited and Another***[1] in support of his contention that injunction being a discretionary relief, the Courts need to exercise sound

1 (2020) 5 SCC 410

discretion in deciding whether injunction is to be granted or refused. That in the present case, the Court has exercised discretion against Plaintiffs and that there is no error in the approach of the Trial Court.

4. Mr. Walimbe, the learned coundel would appear on behalf of Defendant Nos.4 to 6, who are subsequent purchasers of Flat No.6 and Shop No.7. He would submit that Defendant Nos.4 to 6 are *bonafide* purchasers for consideration and no injunctive relief can be passed against them. He would submit that the Agreement for Sale records alleged payment of consideration in the year 2013, whereas agreement is shown to have been executed on 7 July 2017 thereby creating strong suspicion of genuineness of the transaction. That on account of delay on the part of Plaintiffs to institute the suit, temporary injunction could not have been granted in their favour.

5. I have considered the submissions. Plaintiffs' suit is for specific performance of the Agreement for Sale dated 7 July 2017. Perusal of the agreement would show that the consideration for purchase of three flats and one shop is shown as Rs.1,73,00,000/- and the said amount shown to have been paid by the Plaintiffs to the vendors on 09 April 2013, 16 April 2013 & 10 May 2013 in different tranches. Thus, the payment is shown to have been made four years before execution of the Agreement for Sale. It is on this count

that the Trial Court has arrived at a *prima facie* conclusion that no proof was produced to demonstrate that the payments indicated in the agreement were indeed made. Though copies of bank statements are now placed on record in the present appeal, admittedly the same were not produced before the Trial Court. Even if the entries in the bank statements are to be accepted, the same would at the highest prove that amount of Rs. 1,73,00,000/- was paid. However Plaintiffs still have an uphill task of linking that payment to the agreement for sale.

6. Plaintiffs possibly realized that they need to establish a link between the payments so made in the year 2013 with the Agreement for Sale executed on 07 July 2017. The realization however came late on 24 August 2021, well after the application for temporary injunction was rejected on 16 January 2020. On 24 August 2021, Plaintiffs were advised to file application for amendment of the Plaint. In the Suit originally filed, Plaintiffs averred that the vendors had domestic financial difficulties and offered to sale the suit properties, that both the parties agreed for consideration of Rs. 1,73,00,000/- and this is how the Agreement for Sale was executed. There was no whisper about any transactions preceding execution of the Agreement for Sale dated 7 July 2017. However, in the application for amendment, Plaintiffs have averred

that Late Ashok Vasudeo Joshi owned land at Village Lohgaon along with his brother and sister, who sold the same to Sinhgad Technical Education Institute on 1 August 2009. That the land came in Air Force Restriction Zone, on account of which the same was incapable of being developed. That the vendors of the said Sale Deed were yet to receive full consideration for the Sale Deed. That the vendors requested Sinhgad Technical Education Institute to cancel the transaction and showed willingness to refund the amount received by them. That accordingly, the Institute demanded amount of Rs.2 Crores from the vendors in March 2013. Since the vendors did not have money, they requested Plaintiffs to purchase the said land at Lohgaon. Therefore, Plaintiffs sold one of their lands on 15 April 2014 and out of the consideration received from that transaction, they decided to purchase the land of Joshi family at Lohgaon. That Plaintiffs paid amount of Rs.2 Crores to Shri. Ashok Vasudeo Joshi, which amount was paid by him to Sinhgad Institute. However, Sinhgad Institute failed to executed Sale Deed in favour of Ashok Joshi and therefore the transaction between Shri. Joshi and Plaintiffs could not fructify and was cancelled. That when Plaintiffs demanded refund of amount of Rs.2 Crores, Shri. Joshi refunded amount of Rs. 27 Lakhs and in respect of the remaining amount of Rs.1,73,00,000/-, he offered suit Flats and Shop to Plaintiffs. That this is how the Agreement for Sale dated 7 July 2017 was executed.

7. Plaintiffs are now attempting to establish a link between payments made in the year 2013 with the Agreement for Sale executed on 7 July 2017. The application for amendment is still pending and is yet to be decided. However, this Court at this juncture is concerned with limited issue as to whether Plaintiffs made out any case before the Trial Court on 16 January 2020 for grant of temporary injunction. In my view, Plaintiffs did not establish any link between the payments allegedly made in the year 2013 with the execution of Agreement for Sale dated 7 July 2017 in unamended suit. The Trial Court therefore cannot be faulted for disbelieving Plaintiffs' theory of payment of amount of Rs.1,73,00,000/- towards consideration for Agreement for Sale dated 7 July 2017.

8. In order to counter the findings of the Trial Court that no evidence in the form of bank statement was produced before the trial Court to prove the actual payment of amount of Rs.1,73,00,000/-, Appellants have produced bank statements along with the Appeal. However, in the amendment application, now they want to take a new stand that the said amounts were actually paid in respect of purchase of property at Lohgaon. This again tends to break the link between the payment and Agreement for Sale. Whether

Plaintiffs would succeed in establishing such link by first succeeding in the amendment application and then in proving the contents of amended plaint, is something which would be clear at the end of the Trial. As on the date of the passing of the impugned order Plaintiffs miserably failed to make out any *prima facie* case for grant of any temporary injunction.

9. Relief of temporary injunction is a discretionary relief. The Court would refuse the equitable relief of temporary injunction to a party who is not consistent in his/her stand. Plaintiff first pleaded that the amount of Rs. 1,73,00,000/- was paid towards purchase of suit flats and shop. Now in amendment he wants to suggest that the payment was towards purchase of another property and the agreement for sale of suit flats and shop was executed by way of 'adjustment'. When Plaintiff took a calculated chance of waiting for over 4 years for execution of agreement for sale and filed the Suit only after execution of Deed of Assignment dated 16 May 2018, the question that arises is whether Defendants (and especially the subsequent purchasers) can be made to suffer prejudice indefinitely till Plaintiffs establish their varying stands. Reliance of Mr. Panchpor on the Judgment of the Apex Court in **Ambalal Sarabhai Enterprise Limited** (supra) in this regard appears to be apposite. In Paragraph 16 of the Judgment, Apex Court has referred to its previous

judgment in **Dalpat Kumar Vs. Prahlad Singh** (1992) 1 SCC 719 and has held in Paragraph Nos. 15 & 16 as under:

> " 15. Chapter VII, Section 36 of the Specific Relief Act, 1963 (hereinafter referred to as 'the Act') provides for grant of preventive relief. Section 37 provides that temporary injunction in a suit shall be regulated by the Code of Civil Procedure. The grant of relief in a suit for specific performance is itself a discretionary remedy. A plaintiff seeking temporary injunction in a suit for specific performance will therefore have to establish a strong prima-facie case on basis of undisputed facts. The conduct of the plaintiff will also be a very relevant consideration for purposes of injunction. The discretion at this stage has to be exercised judiciously and not arbitrarily.
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> 16. The cardinal principles for grant of temporary injunction were considered in **Dalpat Kumar vs. Prahlad Singh,** (1992) 1 SCC 719, observing as follows :
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>> "5...Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that noninterference by the Court would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages. The third condition also is that "the balance of convenience" must be in favour of granting injunction. **The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that which is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject matter should be maintained in status quo, an injunction would be issued. Thus the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit**."

(emphasis supplied)

10. After weighing the balance of convenience and applying the test of prejudice likely to be caused to both the parties, it is seen that grant if temporary injunction puts a fetter on right of Defendants (especially the subsequent purchasers). On the other hand, refusal of injunction would place Plaintiffs in the same position as they were since 2013 after alleged payment of Rs. 1,73,00,000/-. It must also be borne in mind that Plaintiffs have also made a prayer for refund of amount of consideration along with interest and compensation. Since Plaintiffs do not appear to be consistent in respect of their stand, the discretionary relief of temporary injunction could not have been granted in their favour by the Trial Court.

11. In my view therefore, the Trial Court has rightly rejected application for temporary injunction. The Appeal being devoid of merits, is dismissed without any order as to costs.

12. In view of disposal of Appeal, Interim Applications do not survive and stand disposed of.

(SANDEEP V. MARNE, J.)

13. After the judgment is pronounced, the learned counsel for the Appellant, would make a request for continuation of the ad-interim relief in

favour of the Appellant. The request is opposed by learned counsel for the Respondent.

14. Considering the nature of findings recorded in the suit coupled with the fact that the Plaintiff has made out a prayer for refund of consideration of amount of Rs.1,73,00,000/- (One Crore Seventy Three Lakhs), the request for continuation of stay is rejected.

(SANDEEP V. MARNE, J.)