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

INTERIM APPLICATION NO. 1584 OF 2023
IN
COMMERCIAL SUIT NO. 70 OF 2023

NSNS Realtors LLP ...Applicant

In the matter between

NSNS Realtors LLP ...Plaintiff

vs.

Gray Matrix Solutions Private Ltd. ...Defendant

Mr.Nitin V. Gangal a/w Mr.Ashok D. Kadam and Ms.Pruna Shukla
i/b. Namita Mestry – Advocates for Plaintiff-Applicant.
Mr.Leena Temkar – Advocate for Defendant.

CORAM : S. M. MODAK, J.

DATED : 8TH SEPTEMBER 2023

P. C. :

1. Heard learned Advocate for the Plaintiff-Applicant and learned Advocate for Defendant-Respondent.
2. Pending Suit for specific performance, this Application is filed asking for interim reliefs. Prayer clauses (a) and (b) read thus :-

- “(a) That pending the hearing and final disposal of the present suit the Defendants, their servants, agents and any person claiming through them be restrained by a temporary order and injunction of this Hon’ble Court from selling, transferring, alienating, encumbering, dealing with and/or disposing off the suit property i.e. Unit No. G – 1001, admeasuring 270 sq. mtrs. carpet area, on 10th floor, at G – Wing, Lotus Corporate Park, at Graham Firth Steel Compound, Western Express Highway, Goregaon (East) Mumbai – 400063, together with 3 car parking along with its occupancy, possessory and ownership rights together with undivided shares in the said land;
- (b) That pending the hearing and final disposal of the present suit the Court Receiver, High Court, Bombay be appointed as Receiver in respect of the suit property Unit No. G – 1001, admeasuring 270 sq. mtrs. carpet area, on 10th floor, at G – Wing, Lotus Corporate Park, at Graham Firth Steel Compound, Western Express Highway, Goregaon (East) Mumbai – 400063, together with 3 car parking with all powers under Order XL Rule 1 of Civil Procedure Code, 1908 including the powers of taking possession of the suit property and handing over the same to the Plaintiff herein without any royalty and security;”

3. Prayer clause (a) deals with restraining the Defendants from

creating third party interest in any manner, whereas, prayer clause (b) deals with appointment of Court Receiver. So far as the issue of not creating third party interest is concerned, learned Advocate for the Defendants on instructions submitted that they will not create third party interest during pendency of the Suit.

4. There is opposition to the appointment of Court Receiver. With the assistance of both sides, I have gone through the pleadings and the documents annexed. The facts are as follows :-

- (a) There was an agreement for sale dated 6th March, 2020. The total consideration is Rs.6,10,00,000/-. Rs.1,67,45,000/- was paid.
- (b) The Defendants have taken a loan from PNB Housing Finance Limited. The Plaintiff has agreed to repay that loan.
- (c) After doing that, the Plaintiff has agreed to pay remaining consideration to the Defendants. The Plaintiff was expected to pay consideration within a period of 60 days.
- (d) The Suit flat is Office No.1001 admeasuring 270 sq.mtrs. There is also parking slot attached to this Unit. Whereas, there is also Unit No. G – 1002.
- (e) There was licensee who was using both these premises as a single unit and the leave and license agreement is dated 4th October, 2019. The period of licence was to expire on 30th September, 2024. In between, there was COVID situation.

- (f) The Plaintiff could not fulfill his commitments. He even wrote to Defendants vide his letter dated 8th December, 2020 thereby informing that they have decided to cancel the deed.
- (g) The reason quoted is the licensee by name “*EISNERAMPER (INDIA) CONSULTANTS PVT. LTD.*” has vacated earlier and in fact, the Plaintiff has asked for loan and the Bank has mutually agreed to sanction the loan on the basis of ‘Lease Rent Discounting’.
- (h) At that juncture, Defendants have in fact shown readiness to continue with the agreement.

5. It is true that there are correspondence which suggest that Defendants have extended the period from time to time and initially, it was extended till 30th September, 2020 and thereafter also.

6. Somehow, the Plaintiff was sanctioned loan of Rs.4,36,45,000/- by his Banker ICICI Bank on 2nd September, 2022. However, at that juncture, Defendants have not come forward to complete the transaction and Plaintiff was required to issue a legal notice on 23rd November, 2022. There is no reply. Hence, this Suit is filed.

7. No doubt, the correspondence suggests that Plaintiff has shown inclination to discontinue the transaction and at that time, Defendants was ready to continue with the transaction. However,

when the Plaintiff came with the case of sanction of loan, at that time, Defendants have not come forward. According to learned Advocate Shri.Gangal, time is not essence of the contract. Because, according to him, there is no period prescribed for payment of the consideration and furthermore, the correspondence shows the intention of the parties that the time is not essence of the contract. He relied upon the observation in case of ***WELSPUN SPECIALTY SOLUTIONS LIMITED V/S. OIL AND NATURAL GAS CORPORATION LIMITED***¹.

8. Whereas, it is contended on behalf of the Defendants that the Plaintiff has committed a breach of the terms. That is to say, he has not fulfilled their obligations and once they have shown readiness to discontinue the transaction, later on, he cannot be justified in asking for specific performance and any relief of appointment of Court Receiver.

9. Certainly for protecting the property, Court can appoint Court Receiver as per the provisions of Order XIV of the Code of Civil Procedure, 1908 [“CPC”]. It is true that correspondence also suggest that at one point of time, Defendants have shown their inclination to

¹ (2022) 2 Supreme Court Cases 382

execute cancellation deed and even they made it clear that they are in search of suitable prospective buyer. This is expressed in the email dated 6th October, 2021 sent by the Defendants to the Plaintiffs. So, this Court feels that the undertaking not to create third party interest till disposal of the Suit will not be in the interest of justice. Admittedly, the Plaintiff has paid Rs.1,67,45,000/-. It is not only the Plaintiff who can be blamed but when the Plaintiff was ready to go on with the transaction, Defendant has backed out. So, I think, the Court Receiver needs to be appointed.

10. I am not inclined to accept the contention of learned Advocate Shri.Gangal to put the Plaintiff into possession as the agent of Court Receiver. It is for the reason that at some point of time, the Plaintiff has shown inclination to discontinue the transaction. At the same time, the prayer at clause (c) for permitting the Plaintiff to erect wall and allowing the Plaintiff to use that part also cannot be accepted. So, in given set of facts, I think appointment of Court Receiver and appointing the Defendants as agent will serve the ends of justice.

11. Hence, following order is passed :-

ORDER

(i) The undertaking given by the Defendants that they

will not create third party interest till disposal of the Suit is accepted.

- (ii) Prayer clause (b) is allowed with following modification :-
 - (a) The Defendants are appointed as agent of the Court Receiver on payment of royalty paid by the Defendants.
 - (b) The Defendants shall execute the necessary documents as required by the Court Receiver.
 - (c) The Court Receiver shall determine the amount of security deposit as well as royalty required to be paid to the Court Receiver.
 - (d) Court Receiver to take symbolic possession of Suit property.

12. Parties to communicate this order to the Office of Court Receiver.

13. Interim Application is disposed of accordingly.

[S. M. MODAK, J.]