



Arb.Appln.Nos.57 and 58 of 2023

Arb.Appln.Nos.57 and 58 of 2023

Reserved on	24.02.2023
Pronounced on	01.03.2023

KRISHNAN RAMASAMY, J.

These applications are filed to vacate the order of interim injunction dated 06.02.2023 passed in O.A.Nos.73 and 74 of 2023.

2. When the O.A.Nos.73 and 74 of 2023 came up for hearing on 06.02.2023, this Court passed the following order:-

“These Applications have been filed to grant an injunction.

2. The learned counsel appearing for the applicant would submit that on 18.12.2014, the applicant had entered into a contract with the respondents in the form of Memorandum of Understanding (MoU). The applicant is supposed to get land approval, divide the land into plots and sell the developed plots.

3. In terms of Clause 4 of the said MoU, the sale consideration for each Plot shall be calculated at Rs.777/- per Sq.Ft. and the same has to be paid by the applicant to the respondents. This was the understanding agreed between the parties. As per the agreement, he has obtained all the approval, divided the plots and sold developed plots. Whenever the third respondent sells the plots, he used to pay the money at the rate of 777/- per Sq.Ft in favour of the land owners of the property.

4. In the said circumstances, during the Covid period by



WEB COPY



Arb.Appln.Nos.57 and 58 of 2023

taking advantage, the third respondent has sold 127 plots without knowledge of the applicant, which is contrary to the provisions of the MoU dated 18.12.2014. Further, the third respondent has also not allowing the applicant to perform his contractual obligation and preventing access to the plots. Hence, he prayed for injunction.

5. Considering the submission made by the learned counsel for the applicant and on perusal of the affidavit, it appears that the applicant is supposed to get plots approval, divide the land into plots and sell the same to third party. In terms of agreement, it also appears that he has done his job and also sold few plots but during the Covid period, it appears that the third respondent has sold the plots and taken the money. In terms of the MoU, the respondents are entitled to Rs.777/- per Sq.Ft. Now it appears that they have sold more than Rs.777/- per Sq.Ft. which excess amount they have supposed to pay to the applicant.

6. Considering the aforesaid facts, this Court is of the view that the applicant has made out a prima facie case for grant of interim injunction and there shall be an order of interim injunction along with a direction to the third respondent to forthwith cease and desist from preventing the applicant from performing its obligations under the MoU and the respondents are restrained from continuing with the sale of developed plots till 27.02.2023.

7. Notice to the respondents returnable by 27.02.2023. Private notice is also permitted.

Post the matters on 27.02.2023. ”

3. However, the learned counsel appearing for the applicant in vacate stay petition and the first respondent in O.A. (hereinafter called as “applicant”) submitted that the first respondent had obtained the interim order by suppressing the material facts. Further he would submit that on



06.02.2023, the first respondent had mentioned only with regard to the Memorandum of Understanding ["MoU"] dated 18.12.2014 and he had not mentioned anything about the sale agreement dated 13.12.2014 and the other MoUs, which were entered between the applicant, the first respondent and the other parties dated 12.10.2015 and 01.06.2016. These are all the very vital agreements, which were entered subsequent to the alleged MoU dated 18.12.2014. Further, it was contended that the applicant had not at all signed the alleged MoU dated 18.12.2014, however, only the first respondent had signed the same, as if he is representing the applicant and another party of the first part of the MoU dated 18.12.2014. The applicant submitted that it has not at all given any authorisation or power of attorney to and in favour of the first respondent to represent the applicant or its partner. The first respondent had also not produced any of the authorisation before this Court.

4. He would further contend that even as per the Clause 8 of the said MoU, on the completion of 7 months from the date of MoU, the MoU stands terminated automatically without any reference to the parties and the parties



to the first part are free to sell the schedule of properties to the persons of their choice etc. Further, nothing has been mentioned about the alleged MoU dated 18.12.2014 in the terms of the MoU dated 12.10.2015, which was entered subsequent to the alleged MoU and was also signed by the first respondent. Subsequently on 01.06.2016, one more MoU was also entered between the applicant and the first respondent and wherein it has clearly stated in Clause 4 as follows:-

“4. Any agreement or advanced receipt, sale deeds, etc., without the signature of the party to the first part, i.e., applicant herein, will not bind the first party for any claim by any prospective purchasers.”

5. It was further submitted that all the other MoUs were superseded and entirely different terms and conditions were agreed by the parties by virtue of the implication of the MoUs dated 12.10.2015 and 01.06.2016. By concealing these MoUs, the first respondent had approached this Court as if only MoU dated 18.12.2014 is available and in existence and there is a breach in the Clauses on the part of the applicant by depriving the rights of the first respondents. Hence, believing the aforesaid statement of the first



respondent, this Court had granted the interim injunction in O.A.Nos.73 and 74 of 2023. However, now the learned counsel for the applicant brought to the knowledge of this Court that the first respondent had suppressed the above material facts and obtained the interim injunction. Hence, he prays to vacate the interim injunction.

6. In response, Mr.V.Prakash, learned Senior counsel appearing for the first respondent would submit that the MoU dated 18.12.2014 was acted upon. Further, he had referred the statement of the applicant and some of the payment receipts that is said to have been made by the first respondent by virtue of cheque or demand draft to make it clear about how the first respondent had remitted the various amounts from time to time. Thereby he would contend that the MoU was acted upon and in terms of the MoU, over and above Rs.777/- per square feet of sale precedes that the first respondent is entitled for the balance amount and the first respondent has spent huge amount in terms of the MoU dated 18.12.2014 for the development of plots. Due to the above act of the first respondent, the plots become salable after obtaining the approval from the authorities. After all the steps were taken



and the huge amount was spent by the first respondent, now the applicant started selling the plots, depriving the rights of the first respondent by ignoring him. Therefore, considering these aspects only, this Court granted the interim injunction.

7. Further he contended that a *prima facie* case can ultimately decided at the trial and in support of his contentions, he had referred the following judgments of the Hon'ble Supreme Court:

(i) ***Govind Rubber Ltd. vs Louis Dreyfus Commodities Asia (P) Ltd.*** reported in (2015) 13 SCC 477;

(ii) ***Ramrameshwari Devi vs. Nirmala Devi*** reported in (2011) 8 SCC 249;

(iii) ***Caravel Shipping Services (P) Ltd. vs. Premier Sea Foods Exim (P) Ltd.*** reported in (2019) 11 SCC 461;

Further he submitted that at this stage, the right of the first respondent has to be protected. Therefore, this Court had rightly given a due consideration to the submissions and granted interim injunction on 06.02.2023.

8. Heard the submissions made by Mr.V.Prakash, learned Senior



Arb.Appln.Nos.57 and 58 of 2023

counsel, who is appearing for the first respondent and Mr.Rahul Balaji, learned counsel who is appearing for the applicant in these present applications.

9. When the matter was came up for hearing today, it was mentioned that there is a breach in the terms and conditions of the MoU dated 18.12.2014 and while obtaining the interim injunction, the first respondent has not brought into the knowledge of this Court about the subsequent agreements dated 12.06.2015 and 01.06.2015, which are all the very vital documents, wherein the first respondent was also one of the parties. Both the agreements were signed by the applicant as well as the first respondent. They also agreed to the terms and conditions of the said agreement and worked out certain modalities with regard to the sale of the plots. Even after the said agreement, the tenure of the alleged MoU dated 18.12.2014 was also expired as on date. When such being the case, ignoring these two agreements, the first respondent approached this Court and obtained the interim injunction. In the MoU dated 18.12.2014, though the names of the applicant and its partner have been shown as the parties of the first part



along with the first respondent, only the first respondent had signed as if he is representing himself and the other two i.e., applicant as well as the one of the partners of the applicant. Ironically, though he had mentioned that the first respondent representing the applicant as well as the partner of the applicant, he had not produced any authorisation/Power of Attorney before this Court on 06.02.2023 and the same has not been produced even today.

10. Further, the learned counsel for the applicant had vehemently opposed with regard to the execution of the MoU dated 18.12.2014 and he had also stated that his client (applicant) had not given any authorisation to the first respondent to sign the said MoU. Even the said MoU was also expired within 7 months in terms of the said agreement i.e., by July 2015. Subsequently, the agreements were entered on 12.10.2015 and 01.06.2016 by prescribing the specific terms when the said MoU is going to be expired and at present, the applicant has no binding obligation by virtue of any of the MoU to any of the parties and the applicant is free to deal with the properties, which are available as stock in trade.



Arb.Appln.Nos.57 and 58 of 2023

WEB COPY

11. When such being the position, though very many cases were referred on behalf of the first respondent, due to the reason of suppression of certain material facts and failure of the first respondent to produce the authorisation and due to the expiry of the terms of the alleged agreement dated 18.12.2014, on fact, this Court is of the view that no *prima facie* case has been made out and the balance of convenience is also not in favour of the first respondent. Therefore, this Court is inclined to vacate the interim injunction granted on 06.02.2023.

12. Accordingly, the order of interim injunction dated 06.02.2023 passed in O.A.Nos.73 and 74 of 2023 is vacated.

13. The Applications in Arb.Appln.Nos.57 and 58 of 2023 are disposed of. No costs.

01.03.2023

nsa



WEB COPY



Arb.Appln.Nos.57 and 58 of 2023

KRISHNAN RAMASAMY, J.

nsa

Arb.Appln.Nos.57 and 58 of 2023

.03.2023