



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	21.06.2023
Pronounced on	08.09.2023

CORAM:

THE HON'BLE Ms.JUSTICE **R.N.MANJULA**

A.Nos.2036 & 2037 of 2023 in
O.A.No.308 of 2008 in
C.S.No.280 of 2008

A.No.2036 of 2023

Reliance Home Finance Ltd.,
Reliance Centre,
6th Floor, South Wing,
Off Wester Express Highway,
Santacruz, Mumbai 400 005.

Also at:

Reliance House, Ground Floor,
No.5, Haddows Road,
Nungambakkam,
Chennai 600 006.

... Applicant / 8th defendant

Vs.

S.K.A.Abdul Kader (Since deceased)

1.N.H.Rahima
2.A.Shek Mohamed Aliar
3.A.Hameed Sulthan
4.Ms.Maalika Fathima

... Respondents 1 to 4 / plaintiffs 2 to

5

5.Mrs.Vijayalakshmi
6.Mr.G.Suresh



7.Ms.Nivedha Ramesh
8.Minor Krishnan
9.Mr.M.Rajendra kumar
10.Mr.M.Omprakash

... Respondents 5 to 10 / defendants 1 to 6

PRAYER in A.No.2036 of 2023: This Application has been filed under Order XIV Rule 8 of O.S.Rules r/w. Order XXXIX Rule 4 of C.P.C., to vacate the injunction granted in O.A.Nos.308 of 2008 by order dated 18.03.2008.

A.No.2037 of 2023

Reliance Home Finance Ltd.,
Reliance Centre,
6th Floor, South Wing,
Off Wester Express Highway,
Santacruz, Mumbai 400 005.

Also at:

Reliance House,
Sai JBM Complex,
1st Floor, Building No.536,
New No1057, Plot No.5,
Poonamalee High Road,
Arumbakkam, Chennai – 600 106.

... Applicant / 8th

defendant

Vs.

S.K.A.Abdul Kader (Since deceased)
1.N.H.Rahima
2.A.Shek Mohamed Aliar
3.A.Hameed Sulthan



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4.Ms.Maalika Fathima

... Respondents 1 to 4 / plaintiffs 2 to 5

5.Mrs.Vijayalakshmi

6.Mr.G.Suresh

7.Ms.Nivedha Ramesh

8.Minor Krishnan

... Respondents 5 to 8 / defendants 1 to

4

9.Mr.M.Rajendra kumar

10.Mr.M.Omprakash

11.Mr.Santhosham

... Respondents 8 to 11 / defendants 5 to

7

12.The Sub Registrar,

Adyar, Chennai 600 020.

... Respondent 12 / 9th defendant

PRAYER in A.No.2037 of 2023: This Application has been filed under Order XIV Rule 8 of O.S.Rules r/w. Order XXXIX Rule 4 of C.P.C., to pass a judgment and decree on the admissions of fact in the pleadings of the plaintiffs in the (amended) plaint and in the affidavit in Cont.Petition No.1641 of 2017 that the plaintiffs are not ready and willing to perform their part with respect to the agreement dated 22.03.2005.

In both Applications:

For Applicant : Mr.V.Prakash, Senior Counsel for
Ms.K.Jayasudha

For Respondents : Ms.Srividya Aravindan



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COMMON ORDER

These Applications have been filed to vacate the injunction granted in O.A.Nos.308 of 2008 by order dated 18.03.2008 and to pass a judgment and decree on the admissions of fact in the pleadings of the plaintiffs in the (amended) plaint and in the affidavit in Cont.Petition No.1641 of 2017 that the plaintiffs are not ready and willing to perform their part with respect to the agreement dated 22.03.2005.

2. The averments of the applications are in brief:

The applicant is the 8th defendant. The 8th defendant is the Regional Manager – Legal of M/s.Reliance Home Finance Private Limited, representing the applicant. He is the Authorized Officer appointed under the statute of the applicant Company. The respondents 1 to 4 / plaintiffs 2 to 5 had filed a suit for specific performance against R5 to R8 / D1 to D4 in C.S.No.280 of 2008. The suit property belonged to one P.Govinda Kutty Menon who died intestate on 16.04.1992. The first defendant is the



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wife and the second defendant is the son and the 3rd and 4th defendants are the minor grandchildren of P.Govinda Kutty Menon. The suit property was inherited by the respondents 5 to 8 / defendants 1 to 4. The respondents 1 to 4 / plaintiffs 2 to 5 and the respondents 5 to 8 / defendants 1 to 4 had entered into an agreement of sale in respect of the suit property for the sale consideration of Rs.1,50,00,000/-. The plaintiffs had paid a sum of Rs.54,50,000/- towards the advance sale consideration. The respondents 1 to 4 / plaintiffs were also put into possession in the ground floor of the suit property as a part performance of the contract.

2.1. As per the sale agreement, it was agreed between the parties that the balance sale consideration is Rs.95,00,000/-. The first vendor shall apply to and obtain permission of the competent Court for the sale of the minors' share in the property. The balance sale consideration shall be paid to the vendors on execution and registration of the sale deed by the vendors within a period of three months.

2.2. Subsequent to the above agreement, the 5th respondent / first



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defendant approached the Court praying to appoint of herself as the guardian for the minor respondents 7 and 8 / defendants 3 and 4 and to grant permission to sell the shares of the minors in O.P.No.566 of 2005. The said petition was dismissed on 05.01.2007, with a direction to the 5th respondent / 1st defendant to enter into fresh agreement with the plaintiffs for a sale consideration of Rs.2,39,61,387/-. The respondents 1 to 4 / plaintiffs challenged the said order by way of filing O.A.No.2232 of 2007 in O.P.No.566 of 2005 seeking to implead themselves and also filed an application in A.No.4124 of 2007 to modify the order passed by the learned Single Judge on 05.01.2007. The said application was dismissed on 30.07.2007 with a liberty to the respondents 1 to 4 / plaintiffs to file a third party appeal against the order dated 05.01.2007 made in O.P.No.566 of 2005.

2.3. Hence, the respondents 1 to 4 / plaintiffs preferred an appeal in OSA.No.220 of 2007 against the order passed in A.No.2232 of 2007 and also preferred an appeal in OSA.No.232 of 2007 against the order passed by the learned Single Judge in O.P.No.566 of 2005 dated 05.01.2007.



The said appeals in OSA.Nos.220 & 232 of 2007 were disposed by modifying the order passed by the learned Single Judge in O.P.No.566 of 2005 by confirming the order to the extent of the share belonging to the minors 7 and 8 respondents / 3 & 4 defendants and thereafter, the respondents 1 to 4 / plaintiffs had filed a suit for specific performance in C.S.No.280 of 2008 against the respondents 5 to 8 / defendants 1 to 4 under the sale agreement dated 22.03.2005 by stating that the leave was granted to sell the minors' share also. The Court granted injunction restraining the alienation of the suit schedule property in O.A.No.308 of 2008.

2.4. During the pendency of the suit, the 7th defendant who was a tenant in the remaining floors of the suit property other than the ground floor since 2007 expressed his readiness to purchase the suit property.

2.5. Since the respondents 1 to 4 / plaintiffs had executed a letter of consent to the 7th defendant on 12.04.2017 to receive a sum of Rs.2,15,00,000/- as an amicable settlement towards the refund of the



advance of Rs.54,50,000/- paid under the agreement of sale and compensation there on.

2.6. It was also agreed to quit and deliver the vacant possession of the suit schedule property on or before 30.04.2017. The respondents 1 to 4 have also issued identical settlement letter in a non-judicial stamp paper to the respondents 5 to 8 / defendants 1 to 4. Subsequently, the respondents 5 to 8 / defendants 1 to 4 sold the property in favour of 7th defendant under a registered sale deed *vide* document No.888/2017.

2.7. This applicant who is the 8th defendant in the suit being not aware of the pending suit and settlement among the parties advanced a home loan of Rs.9,30,00,000/- to the 7th defendant for purchase of the suit property. The said loan is a secured loan by way of a mortgage of the suit schedule property. The applicant / 8th defendant was impleaded by an order of this Court made in A.No.9536 of 2018 in C.S.No.280 of 2008 dated 14.03.2019 on the application filed by the respondents 1 to 4 / plaintiffs. The applicant had preferred an appeal before the learned Division Bench against the order of granting injunction in O.A.No.308 of



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2008 along with the application to condone the delay. The application filed to condone the delay was dismissed by the order of the learned Division Bench dated 06.06.2022. The applicant / 8th defendant challenged the said order by way of preferring a Special Leave Petition before the Hon'ble Supreme Court. The Supreme Court *vide* its order dated 15.12.2022, granted liberty to the applicant to approach the original Court itself for vacating the injunction. Hence, the application in A.No.2036 of 2023 has been filed to vacate the injunction granted in O.A.No.308 of 2008 dated 18.03.2008.

2.8. Since the respondents 1 to 4 / plaintiffs themselves had given up their right in the agreement for sale entered with the respondents 5 to 8 / defendants 1 to 4 and executed a consent letter dated 12.04.2017 for conveying the property in favour of the 7th defendant, the judgment should be passed by dismissing the suit on the above undertaking given by the plaintiffs themselves.

3. The counter of the 2nd respondent / 3rd plaintiff states that the



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applications are abuse of process of law. The applicant is the Financial Institution and it had extended financial assistance to the 7th defendant for the purchase of the suit property in total violation of the order of injunction passed in O.A.No.308 of 2008 in C.S.No.280 of 2008 dated 18.03.2008. The applicant not being a party to the sale agreement dated 22.03.2005 does not have any *locus standi* to raise any grounds as mentioned in these applications. The deceased 1st plaintiff had entered into a sale agreement dated 22.03.2005 for the purchase of the suit property for a sum of Rs.1,50,00,000/- from the defendants 1 to 4. The 1st defendant had signed the sale agreement for herself and on behalf of the minor children. She had filed a guardian original petition for appointing herself as a guardian of minors and to seek permission to sell the minor's 6/32 share in the suit property. After assessing the value of the minor's share in the suit property through the Commissioner and found the value is higher, the permission application was rejected. Since the permission application was rejected and the sale of entire property including the share of the minor, it was challenged before the Division Bench and the order of the learned Single Judge got modified later



limiting the rejection only to the extent of minor's share.

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3.1. In the meanwhile, the defendants 1 & 2 sent a lawyer's notice on 03.03.2007 either to purchase the entire property or to call off the sale agreement dated 22.03.2005. After getting the modified order in the guardian original petition in the appeal, the plaintiffs issued legal notice to the defendants that they are ready and willing to pay the enhanced sale consideration for the minor's share along with the balance sale consideration for the remaining shares of the co-owners as agreed in the sale agreement. Only in this background of the facts, the plaintiffs have filed a suit for specific performance and there is no suppression of facts.

3.2. The sale deed dated 12.04.2017 executed by D1 to D4 in favour of the 7th defendant is *void abinitio*, since the 4th defendant was a minor as on the date of the sale deed dated 12.04.2017. The date of birth as per the averments in O.P.No.566 of 2005 is 07.06.1999. Therefore, on the date of the sale deed dated 12.04.2017 he was a minor. Before getting the



sale deed executed, the 1st defendant who is the guardian of the minor defendants ought to have filed an application to declare the 4th defendant as major. The sale deed dated 12.04.2017 has been executed in violation of the injunction order already in force.

3.3. The notice about the pending injunction has been informed by the plaintiffs to all the defendants including the 8th defendant. Despite that, he did not choose to implead himself as a party to the proceedings. These applications have been filed by the 8th defendant in connivance with the defendants 1 to 4 and 7th defendant. The plaintiffs have initiated contempt proceedings against defendants 1 to 4 for violating the order of injunction, in Cont.P.No.1641 of 2017. Simultaneously, the plaintiffs have filed an application to implead the applicant, the purchaser and the Sub-Registrar as defendants and issued notice to the said defendants including this applicant. The applicant has received the notice on 13.12.2018 itself.

3.4. Even after the receipt of notice in A.No.9536 of 2018, the applicant did not take any steps to approach this Court for seeking any appropriate relief and indulged in illegal means in order to safeguard the



defendants 1 to 4, by filing a petition in CrI.M.P.No.771 of 2019 under Section 14 of SARFAESI Act before the Chief Metropolitan Magistrate, Chennai. In the said proceedings it was represented by the applicant that there was no stay or litigation pending. Since the 8th defendant had violated the orders of the Court by providing loan to the 7th defendant to purchase the suit property contrary to the orders of this Court, a contempt petition has been filed and the said contempt petition was also allowed. The appeal challenging the orders passed in the said contempt petition was also dismissed. Only in order to escape from the punishment, the applicant has filed the application to vacate the order of injunction along with an application to condone the delay.

3.5. In the earlier order of this Court itself, the fraudulent act on the part of the applicant has been clearly observed. The applicant has also filed an application to reject the plaint in A.No.3301 of 2022, raising the very same points and the same was dismissed on 28.09.2022. The applicant is knocking the doors of the Court to legalize his action of granting loan to the 7th defendant. Hence these applications are liable to



be dismissed.

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4. The learned counsel for the applicant / 8th defendant submitted that the Bank has already taken SARFAESI proceedings in view of the default committed by the 7th defendant after availing the loan in respect of the suit property; pending SARFAESI proceedings, no civil suit can be filed and it is barred under Section 34 of the SARFAESI Act (Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act); the plaintiffs have already given their consent to sell the suit property in favour of the 7th defendant and hence the defendants were not ready and willing to perform the contract as claimed by the plaintiffs; hence the suit itself is liable to be dismissed.

4.1. The plaintiffs had attempted for amicable settlement with the defendants 1 to 4 and reduced the same in writing also on 12.04.2017; hence there was no impediment for the 7th defendant to purchase the suit property from the defendants 1 to 4 and the deceased S.K.A.Abdul Kader; in fact the applicant was fraudulently influenced to advance the loan amount of Rs.9,30,00,000/- to the 7th defendant with the knowledge



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of late S.K.A.Abdul Kader and the defendants 1 to 3; the mortgage deed was also executed by the 7th defendant in favour of the applicant Bank by offering the suit property as a security for the loan availed by the 7th defendant; so far as this applicant is concerned, he is not aware of the order of injunction passed in the suit; he has been impleaded subsequently by the plaintiffs; since the plaintiffs have knowingly allowed the defendants 1 to 4 to sell the suit property in favour of the 7th defendant, the injunction order itself has become infructuous and unenforceable; the plaintiffs 1 to 4 are estopped to go against their own agreement given in writing to get a compensation of Rs.2,15,00,000/- towards the advance already paid; having waived the right for specific performance, the plaintiffs cannot enjoy the order of injunction and hence the injunction order is liable to be vacated.

5. The learned counsel for the respondents 1 to 4 / plaintiffs 2 to 5 submitted that the suit property involves minor's interest also; while filing the suit for specific performance, the plaintiffs 1 to 4 did not suppress any material facts; the alleged letter dated 12.04.2017 would show that it is



given only by the third plaintiff by stating that if the amount is paid on or before 30.04.2017, he would vacate the premises and hand over the possession by agreeing to settle the matter amicably; the agreed amount was not paid and hence the letter cannot be taken as something through which the plaintiffs have surrendered their right to claim specific performance.

5.1. The applicant / 8th defendant having failed to file an appeal challenging the order made in O.A.No.308 of 2008 dated 18.03.2008, have taken this shortcut of filing the application to dismiss the suit, although the plaintiffs have relinquished their rights; the above contention of the applicant is misleading and not supported by truth; the applicant / 8th defendant had sanctioned the loan in favour of the 7th defendant despite knowing the injunction was pending and the contempt petition filed by the plaintiffs against the defendants for having sold the property during the pendency of the injunction order, has also been allowed; the applicant had colluded with the defendants 1 to 4 and 7th defendant and facilitated the execution of the sale deed to defraud the interest of the



plaintiffs; hence the applicant has not established that the balance of convenience and irreparable loss in his favour; the applicant being a wrong doer, cannot take advantage of his own wrongs; hence the applications are liable to be dismissed.

Discussion:

6. For the sake of convenience, the parties can be referred by their names during the discussion.

7. The petition mentioned property was inherited by Vijayalakshmi and three others who are the defendants 1 to 4. They had entered into a sale agreement with one S.K.A.Abdul Kader (deceased first plaintiff) on 22.03.2005 to sell the property for a valuable consideration of Rs.1,50,00,000/-. The vendors have also received a sum of Rs.54,50,000/- as a part sale consideration. On receipt of the same, the proposed purchaser was put into possession of the suit property. The suit property forms a part of a large building which comprises several floors. The property subject to the sale agreement between S.K.A.Abdul Kader



and Vijayalakshmi and others is in respect of ground floor. Since S.K.A.Abdul Kader died, subsequently his legal representatives have been added as plaintiffs 2 to 5.

8. Since the suit property also involves minor's interest, the vendor Vijayalakshmi had filed proceedings to appoint herself as a guardian of the minor and also to permit her to sell the shares of the minors in O.P.No.566 of 2005. Since the plaintiffs who had given their money as advance, got aggrieved due to the dismissal of the above proceedings, they have preferred a third party Appeal in OSA.No.232 of 2007. In the judgment passed in the Appeal, the order passed in O.P.No.566 of 2005 was modified by confirming the order to the extent of the share involving the minor alone and thereafter, the parties further negotiated and agreed to enhance the sale consideration in respect of the minor's share and thus, they proceeded further.

9. Since the sale has not been fructified as agreed, the agreement holders have filed a suit for specific performance in C.S.No.280 of 2008.



In the said suit, an Original Application has also been filed in O.A.No.308 of 2008. In the said Application, an order of interim injunction has been granted against the vendors not to alienate or encumber the suit property by creating any third party interest, pending disposal of the suit. When the facts are so, the vendors had taken efforts to convey the entire suit property and the other floors in favour of the 7th defendant Santhosham who was already a tenant in the suit premises. The said Santhosham was running a Ladies Hostel there. During such course, an offer was given by the plaintiffs to receive Rs.2,15,00,000/- as one time settlement for vacating the suit property and to give up their interest in the suit property. The above said amount is said to be inclusive of the refund of the advance amount received by the vendors. One of the plaintiffs Shek Mohamed Aliar thought it fit to purchase peace and had expressed his willingness by sending a letter dated 12.04.2017 by stating that the offer is acceptable provided it is honoured before 30.04.2017. Had the amount was settled as agreed, the dispute would have got settled by that time itself. For the reasons known to the parties, it did not fructify.



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10. On the other hand, the vendors have sold the entire suit property including the ground floor which is a subject matter of the sale agreement in favour of the 7th defendant. The applicant who is the Bank has sanctioned financial assistance to the 7th defendant for purchasing the suit property. All these transactions were done during the pendency of the order of injunction. Hence the plaintiffs had initiated contempt proceedings against the defendants 1 to 4 and that has been allowed and became final in view of the dismissal of the Appeal. All the orders have been produced and the parties cannot have any quarrel on these points.

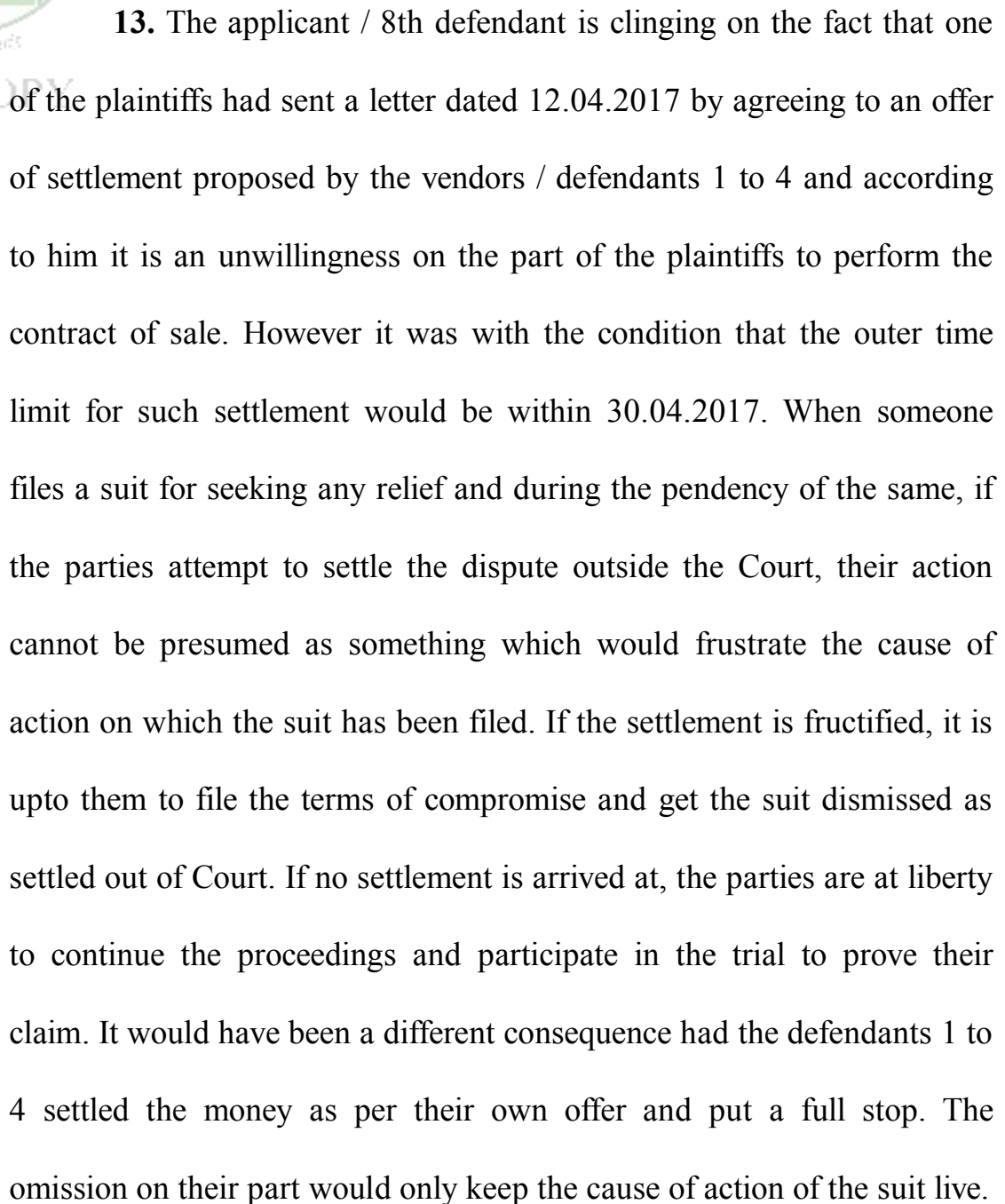
11. The 8th defendant comes into picture after he was impleaded as a party to the proceedings in the application filed by the plaintiffs. For the reasons best known to the 8th defendant, he did not show any inclination to implead himself as a party to the proceedings. However, he got impleaded in view of the application filed by the plaintiffs themselves. Thereafter, he filed an application to condone the delay of 4329 days in filing the Appeal challenging the order of injunction granted in



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O.A.No.308 of 2008. But the same was dismissed. By virtue of the order dated 06.06.2022 made in C.M.P.No.10558 of 2021 in O.S.A.SR.No.94861 of 2020, the Special Leave Petition preferred by the applicant / 8th defendant challenging the above said order was also dismissed. However, liberty was given to the applicant / 8th defendant to file an application to vacate the injunction. Only consequent to that, these applications have been filed.

12. It is to be noted that the applicant / 8th defendant has already filed an application to reject the plaint and that was also dismissed by virtue of the order of this Court dated 28.09.2022. It is not known whether the applicant has preferred an Appeal challenging the said order. Now he has filed these applications stating that the suit should be dismissed in view of the alleged admissions made by the plaintiffs themselves with regard to their readiness and willingness and to avail the relief of specific performance.



14. As stated already, all the plaintiffs did not participate in the



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settlement offer and in fact at the time when the defendants 1 to 4 executed the sale deed in favour of the 7th defendant, the fourth defendant was a minor. So it cannot be claimed that the plaintiffs had forgone their claim by doing some action which would frustrate their own interest or did something amount to admission of giving up their own claim.

15. Even for the sake of arguments if the injunction is vacated, that would complicate the matter which has already been confused in view of the sale deed executed by the defendants 1 to 4 in favour of the 7th defendant and for which the 8th defendant sanctioned funds to the 7th defendant. So far as D1 to D4 are concerned, they are on a better position, as they had received some sale consideration from the 7th defendant. The 8th defendant had obtained mortgage deed in respect of the suit property which is inclusive of the property subject to the sale agreement between the plaintiffs and the defendants 1 to 4. When such being the case, if the order of injunction is vacated that would be detrimental to the interest of the plaintiffs.

16. Even when the injunction was pending, the sale transaction



had taken place and thus the 8th defendant got impleaded as a party.

Now if the injunction is vacated, that would pave a way for further alienation and encumbrance which would defeat the interest of the plaintiffs. Even if the plaintiffs get a successful decree they cannot see the fruits of their decree. The suit property is a part of a large building which comprises several floors. So far as the plaintiffs are concerned, their interest is limited to only one floor. The plaintiffs who run from pillar to post from the date of filing of the suit and face several proceedings, cannot be made to suffer further damages by vacating the injunction.

17. Since the applicant has got a mortgage in respect of other floors also, his interest is better protected than the interest of the plaintiffs. The applicant / 8th defendant had invited trouble by himself by sanctioning loan in respect of the property over which an order of injunction pending. Instead of participating in the trial and bringing a conclusion to the proceedings, the applicant has filed the application to vacate the injunction without showing any balance of convenience or irreparable loss in his favour. Hence, I am not inclined to vacate the



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injunction as prayed and to dismiss the suit for the imaginary reasons stated by the applicant / 8th defendant.

18. In the result, the application filed in A.No.2036 of 2023 seeking to vacate the injunction granted in O.A.No.308 of 2008 by order dated 18.03.2008 and the application filed in A.No.2037 of 2023 to pass a judgment and decree on the admissions of fact in the pleadings of the plaintiffs in the plaint and in the affidavit in Cont.Petition No.1641 of 2017 that the plaintiffs are not ready and willing to perform their part with respect to the agreement dated 22.03.2005, are dismissed.

Index: Yes
Speaking Order
Neutral Citation : Yes
gsk

08.09.2023



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R.N.MANJULA, J

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