14 **24.04.24**

Ct. No. 04

akd

F.M.A. 700 of 2023
CAN 1 of 2023
CAN 2 of 2023

Uma Sankar Mundra
Vs.
Macadam Leisure Private Limited.

Mr. Rahul Karmakar,
Mr. Saparshi Kumar Mal,
Mr. Abhishek Jhunjhunwala.
... for the appellant.
Mr. Ayan Banerjee,
Ms. Shebatee Datta,
Mr. Abhijit Sarkar,
Mr. Abhik Chitta Kundu.
... for the respondent.

Though after noticing that the Trial Court has not recorded proper reasons in support of its conclusion that the ad interim order of injunction granted in the suit is made absolute, but after hearing the respective parties and upon perusal of the materials annexed with the applications taken out in the instant appeal we have decided to dispose of the appeal itself on merit.

A suit for Specific Performance of an agreement for sale of the property described in the schedule to the plaint is filed by the plaintiff/respondent. It is averred in the plaint that the defendant/appellant being the owner of a plot of land as well as the building constructed thereupon floated an offer for sale of the said property and the plaintiff/respondent after making necessary enquiry agreed to purchase the same on a consideration of Rs.3,00,000,00/-. It is further averred that a sum of Rs.2,00,000/- was paid as a token/advance money by cheque and in course of time a sum of Rs.13,50,000/- and Rs.10,00,000/- were paid on diversed date by cheque; which were duly encashed by the defendant/appellant, which would further be evident from the entry made in the Bank account of the appellant.

The plaint further proceeds that the appellant agreed to execute the sale deed, but did not appear on the date when the sale deed was sought to be registered. In fact, an agreement for sale was executed upon understanding the contents or the terms and conditions embodied thereon by the appellant and having failed to register the sale deed, the suit for Specific Performance is filed. It is further averred in the plaint that pursuant to the agreement the possession was given in respect of a portion of the suit property, which is still enjoyed by the plaintiff/respondent.

Interestingly, the defendant/appellant took a defence that the said property was agreed to be given on lease and it was never intended to be sold at such consideration price. The payments received through cheques from the plaintiff/respondent are also denied and disputed in the written statement. However, in the counter-claim the defendant/appellant has virtually admitted to have received the sum of Rs.13,50,000/- and Rs. 10,00,000/- through cheques signed by the Director of the plaintiff/respondent, but have denied the payment of Rs.2,00,000/- which according to the defendant/appellant is paid by somebody else and not by the plaintiff/company.

In the counter-claim the defendant/appellant has prayed for a decree for declaration that the alleged agreement for sale dated 7th November, 2019 contains forge and fake signature and is the product of serious fraud and forgery and, therefore, be declared void ab initio and non-est in the eye of law.

There is no prayer with regard to the recovery of possession allegedly given on the basis of an agreement for sale. However, it is submitted that a separate suit for recovery of possession has been filed which is pending for final disposal.

On the conspectus of the aforesaid facts, the Trial Court proceeded to make the ad interim order absolute on the premise that whether an agreement for sale was ever made by the parties or not or the plaintiff/respondent advanced the consideration money to the defendant/appellant on the basis of the agreement for sale is the triable issue to be decided at the time of final disposal of the suit and in order to protect the right the ad interim order restraining the defendant/appellant from alienating, transferring or creating a third party interest in respect of the property was made absolute.

The law relating to grant of temporary injunction is more or less settled that the Court must return its findings on three golden principles; firstly existence of prima facie case, secondly balance of convenience and inconvenience in favour of the plaintiff and thirdly irreparable loss and injury to be caused in the event the temporary injunction is not granted.

We are not unmindful of the proposition of law that while recording satisfaction as to the existence of prima facie case, the Court must arrive at the conclusion that the right appears to have been created which in the event of its invasion would cause irreparable loss and injury to the litigant and, therefore, the balance of convenience and inconvenience lies in his favour. Such findings cannot be construed as final or having impact at the time of final disposal of the suit, but are mere prima facie or tentative in nature.

The conduct of the parties in course of the proceeding as well as the stand taken in the respective pleadings are also one of the factors concerning the existence of prima facie case, as the granting of temporary injunction is in exercise of equitable jurisdiction.

In the instant case certain amounts of money were paid through cheques by the plaintiff/respondent, which have been duly encashed in the Bank account of the defendant/appellant. In the written statement there is a complete denial on the part of the defendant/appellant with regard to the payment of certain amounts, but in the counter-claim there is an admission of such payments.

The only defence as it appears is the nature of transaction whether the payment so received by the defendant/appellant was a part payment towards the total consideration money for sale of the schedule property or a part payment in furtherance of demise of the portion of the suit property upon execution of a deed of lease.

Essentially the aforesaid questions are the triable issues and depend upon various factors and the quality of evidence required to be adduced. However, at the injunction stage this Court finds the conduct of the defendant/appellant, who is prevaricating his stand on different stages of the proceeding, to be one of the relevant factors on equitable principles.

The payment of certain amounts does not appear to have been denied and the possession of the plaintiff/appellant also appears to have been admitted for the simple reason that the suit for recovery of possession is filed by the defendant/appellant, which is still pending. Whether such possession is by way of trespass or on the strength of agreement for sale is not the subject matter to be decided in the instant appeal and, therefore, the parties are free to take appropriate defence in the said proceeding.

In view of the conduct of the defendant/appellant, who at one point of time denied the payment of certain money and correspondingly admitted to have received certain money does not instill confidence in the Bench that he is a trustworthy litigant. Whether such payment relates to proposed execution of the lease deed or sale of the entire property is the matter of trial and till such issue is decided we do not find that the plaintiff/respondent should be denied protection against creation of a third party interest in respect of the suit property.

We thus do not find any infirmity or illegality in the ultimate conclusion that the ad interim order is required to be made confirm based upon the findings recorded hereinabove and, therefore, no interference is called for.

For abundant precaution we once again make it clear that the findings made hereinabove is mere tentative and shall not have any persuasive impact at the time of deciding the suit after full fledged trial.

The Trial Court is requested to bring the suit to its logical end at an earliest preferably within six months from the date of the communication of this order and in order to adhere the time limit, all interlocutory applications should be expedited and no unnecessary adjournment should be granted to either of the parties unless necessitated by unforeseen and unavoidable circumstances.

The appeal and applications are accordingly disposed of.

(Harish Tandon, J.)

(Madhuresh Prasad, J.)