

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**APPEAL FROM ORDER NO. 903 OF 2024
WITH
INTERIM APPLICATION NO. 15813 OF 2024**

Arinjay Pramod Korgaonkar & Ors. ...Appellants
Versus
Samarth Sahakari Bank Limited & Ors ...Respondents

Mr. Amjith M. A. a/w. Mr. Sachin R. Pawar & Mr. Rohan Kaiche for the Appellants
Mr. Muralidhar Khandilkar for the Respondent No. 1
Mr. Yatin Malvankar for the Respondent Nos. 2 & 3.

CORAM : M. M. SATHAYE, J.

DATED : 17th DECEMBER 2024

P.C.:

1. Heard learned Counsel for the parties. Perused the records. The Appellants are Plaintiffs and the Respondents are Defendants.
2. The Appeal is filed challenging the order dated 07/11/2024 passed by the Civil Judge, Senior Division, Khed, Taluka-Khed, District-Ratnagiri below Exhibit-6 in Spl. Civil Suit No. 64 of 2024. By the said impugned order, the Application of the Appellants seeking interim injunction restraining the Respondent No. 1-Bank from executing the Sale Deed in respect of certain land at Dapoli, District Ratnagiri and from constructing thereon or creating third party interest therein, is rejected.
3. Learned Counsel for the Appellants submitted that the transaction in question arises out of Memorandum of Understanding (MOU) dated

13/12/2023, under which certain arrangement between the Appellants and the Respondent No. 1-Bank was arrived at, wherein it was agreed that the Bank will issue No Objection Certificate (NOC) for development of the property at Karjat and after re-payment of the outstanding loan other properties viz. flats at Pune and certain land at Dapoli were agreed to be reconveyed to the Appellants.

4. The suit is filed on 16/08/2024. It appears that before filing of the suit, the Respondent No. 1-Bank has executed registered 'Sathekhat' (Agreement to sell) dated 29/07/2024 in respect of the property at Dapoli in favour of Respondent Nos. 2 & 3.

5. Learned Counsel for the Appellants has submitted that under the MOU, the Respondent No. 1 was supposed to give 30 days notice, if any of the properties were to be sold, however, such notice was not given. He submits that in such circumstances, the aforesaid transaction in favour of the Respondent Nos. 2 & 3 is not legal.

6. Perusal of the MOU between the parties indicates that certain payment schedule was agreed, which contemplated second payment of Rs.51 lakhs within two working days of signing of MOU and issuance of NOC. It is the contention of the Appellants that the NOC was not issued by the Bank and therefore, the second payment of Rs.51 Lakh was not made.

7. Perusal of the impugned order shows that the Trial Court has considered the MOU dated 13/12/2023. It is recorded by the Trial Court that Appellants through their pleadings have not disclosed about the payment of Rs.51 Lakhs and this was highlighted as a breach by the Respondent No 1-Bank. From the impugned order, it cannot be seen that the

case of 'non-payment of Rs.51 Lakhs due to non-issuing of NOC' was made out before the Trial Court.

8. Claim of re-conveyance of property under the MOU, which is the prayer clause (c) in the Plaint, is akin to the suit for specific performance of the said MOU. Therefore *prima facie* the aspect of lack of readiness and willingness has direct bearing on the said prayer.

9. The Trial Court has recorded that non-payment of Rs.51 Lakh was breach on the part of the Appellants, which *prima facie* disentitles the Appellants from claiming the right of re-conveyance of the property.

10. The impugned order records in paragraph no. 11 that apparently the Appellants had volunteered to deposit the remaining amount under the MOU by filing an Application Exh. 08. The impugned order further records that the Appellants though filed such Application, did not deposit the amount, within stipulated time. The Trial Court has held that this is clear indication that the Appellants are not ready and willing to perform their part of the contract and the amount of Rs.6.09 Crore, which was supposed to be deposited, was not deposited.

11. It is not disputed that such an Application Exh. 08 was filed and though time was given by the Trial Court to the Appellants, the amount was not deposited as volunteered. In that view of the matter, apparently the findings of the Trial Court about readiness and willingness cannot be faulted with.

12. Viewed in the light of what is observed above, the impugned order is neither perverse, nor there is any error apparent on the face of the records. The conclusion drawn in the impugned order is on the basis of material

available before the Court.

13. In that view of the matter, I do not find this to be a fit case to substitute my discretion in the place of discretion exercised by the Trial Court.

14. Accordingly, the Appeal from Order and pending interim Application are dismissed.

15. It is however clarified that any transaction or sell of the suit properties made during the pendency of the suit, will be subject to final outcome of the suit. The suit will be decided on its own merits and in accordance with law, without being influenced by the observations in the impugned order or this order. Rival contentions of the parties are kept open.

(M. M. SATHAYE, J.)