

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4290 OF 2024

Mahaveer Ramchandra Mandot & Anr.

.. Petitioners

Versus

Dilip Multanchand Meher

.. Respondent

.....

- Mr. Jaydeep Deo for Petitioners
- Mr. Abhijit P. Kulkarni a/w Mr. Krushna Jaybhay, Ms. Sweta Shah & Mr. Gourav Shahane for Respondent

.....

CORAM : MILIND N. JADHAV, J.

DATE : JULY 15, 2024

P. C.:

1. Heard Mr. Deo, learned Advocate for Petitioners and Mr. Kulkarni, learned Advocate for Respondent.

2. By virtue of the impugned judgment & order dated 06.11.2023 passed in Misc. Civil Appeal (MCA) No. 121/2023, the learned District Court has upset the order passed below Exh. 5 by the learned Trial Court.

3. Plaintiff has filed the Suit seeking injunction against the Defendants in respect of the Suit property. Facts in the present case are somewhat convoluted and for the sake of reference, the facts which are narrated from paragraph Nos. 4 to 50 in the judgment of the District Court may be read herein for the sake of brevity. I do not wish to repeat the same as the Trial is yet to be completed.

4. Briefly stated it is the Plaintiff's case that there was agreement between the parties to transact and sell the Suit property for an amount of Rs. One Crore. Since the entire amount stipulated under the said agreement was not paid as per the said transaction / agreement and only part of the said amount was paid, Plaintiff resiled and did not wish to complete and honour the said transaction / agreement. On the part of Defendants, it is contended that Defendants had paid an amount of Rs. 15 Lacs each to the Plaintiff and one of his brother at the time of execution of the agreement and subsequent thereto with the passage of time had also paid over a further amount of Rs. 35 Lacs.

5. Mr. Deo would argue that if the aforesaid figures are seen, then the Defendants have paid an amount of Rs. 50 Lacs *qua* and to the extent of 50% of the Suit property namely 4.5 Ares out of 9 Ares to the Plaintiff. He would therefore submit that Defendants had shown readiness and willingness to pay the amount to the extent of at least 50% of the suit property which is clearly borne out with the acknowledgment of the receipt by the Plaintiff and hence, the learned District Court ought not to have upset the order passed by the learned Trial Court giving temporary injunction. However at the heart of the matter is the present disposition and status of the Suit property. It is an agreed position that Plaintiff's licensee is in possession of the Suit

property though the Defendants claim that Suit property has remained in symbolic possession of the Defendant right through out. The licensee is paying licence fee to the Plaintiff only.

6. One more submission which is advanced by Mr. Deo is that the said licensee at an earlier point of time in the past was also paying licensee fee partly to the Defendants. All these issues are in respect of merits of the matter. During the interregnum, how the Suit property is required to be dealt with is the question before me. In so far as the substantive reliefs in the Suit plaint are concerned, they hinge upon seeking permanent injunction against the Defendants in view of the transaction between the parties.

7. Considering the fact that at present physical possession of the Suit property is with the licensee who is paying the license fee to the Plaintiff only, it would be in the interest of justice to direct both the parties to maintain absolute *status quo* in respect of the Suit property as it is as on today.

8. Learned Trial Court is directed by this Court to decide the Suit proceedings i.e. Special Civil Suit No. 1933 of 2013 as expeditiously as possible and in any event within a period of six months from today strictly in accordance with law. Parties shall co-operate with the Trial

Court and shall not seek unnecessary adjournment unless it is absolutely necessary in case of any urgency or emergency.

9. Needless to state that all contentions of the Plaintiff as also the Defendants which have been noted by this Court as also by both the Courts below i.e. Trial Court and the District Court are expressly kept open. This is so because these are *prima facie* observations, but while deciding the Suit proceedings, learned Trial Court shall not be influenced by any of the observations and findings in the Exh. 5 order as also in the District Court's order.

10. Parties are directed to appear before the Trial Court on 22.07.2024 at 10:30 a.m. along with a server copy of this order as well as their specific draft issues. Learned Trial Court is requested to take the draft issues on record and fix up the schedule for hearing on the Suit the as per its convenience and discretion.

11. With the above directions, Writ Petition is disposed.

[MILIND N. JADHAV, J.]

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